

## PROTECTION OF OWNERSHIP IN THE REPUBLIC OF MOLDOVA, UKRAINE, EUROPEAN UNION. COMPARATIVE LEGAL ASPECT

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*The paper deals with the problems of legal regulation of civil and legal protection of absolute civil rights in the Republic of the Moldova, Ukraine, as well as the European Union. Absolute civil rights, in particular, such as property rights, occupy an important place in the civil law system. These rights are fundamental not only to civil law, but also to the whole national legal system, because personal non-property rights are the basis of the vital activity of an individual, property rights, in particular property rights, are basic economic rights (rights intellectual property rights ensure the protection of literary, artistic, scientific and technical creative activity, and hereditary rights ensure effective civil succession). Therefore, a comprehensive scientific and legal general theoretical study of the whole range of issues concerning the grounds for the emergence of absolute civil rights, their place in the civil law system of Moldova, Ukraine and other countries, types of absolute civil rights in civil science, and their legislative consolidation is necessary and relevant. These surveys can be used in research, rule-making, educational activity.*

**Keywords:** absolute civil rights, property rights, limits to the exercise of absolute civil rights, Republic of Moldova, Ukraine, European Union.

## ASIGURAREA DREPTURILOR DE PROPRIETATE ÎN REPUBLICA MOLDOVA, UCRAINA, UNIUNEA EUROPEANĂ. ASPECTE LEGALE COMPARATE

*Prezenta lucrare examinează aspectele problematice ale reglementării legale și ale protecției drepturilor civile absolute în Republica Moldova și Ucraina, precum și în cadrul Uniunii Europene. Drepturile civile absolute, în special, cum ar fi dreptul la proprietate, ocupă un loc important în sistemul dreptului civil. Aceste drepturi sunt fundamentale nu numai pentru dreptul civil, ci și pentru întregul sistem juridic național, deoarece drepturile personale, morale stau la baza vieții unei persoane, drepturile reale, în special dreptul de proprietate, sunt drepturi economice de bază (drepturile de proprietate intelectuală protejează activitatea de creație literară, artistică, științifică și tehnică, iar drepturile de moștenire asigură succesiunea civilă efectivă). Prin urmare, un studiu teoretic general științific și juridic cuprinzător al întregii game de probleme privind temeiurile apariției drepturilor civile absolute, locul acestora în sistemul de drept civil din Moldova, Ucraina și alte țări, tipurile de drepturi civile absolute în domeniul civil și consolidarea lor legislativă rămân necesare și relevante. Aceste cercetări pot fi utilizate în activități științifice, stabilire de standarde, educaționale și de predare.*

**Cuvinte-cheie:** drepturi civile absolute, drepturi de proprietate, limite ale exercitării drepturilor civile absolute, Republica Moldova, Ucraina, Uniunea Europeană.

## ASSURANCE DES DROITS DE PROPRIÉTÉ EN RÉPUBLIQUE DE MOLDOVA, EN UKRAINE ET DANS L'UNION EUROPÉENNE. ASPECTS JURIDIQUES COMPARÉS

*Cet article examine les aspects problématiques de la réglementation juridique et de la protection des droits civils absolus en République de Moldova et en Ukraine, ainsi qu'au sein de l'Union européenne. Les droits civils absolus, en particulier, tels que le droit de propriété, occupent une place importante dans le système de droit civil. Ces droits sont fondamentaux non seulement pour le droit civil, mais aussi pour l'ensemble du système juridique national, car les droits personnels et moraux sont la base de la vie d'une personne, les droits réels, en particulier les droits de propriété, sont des droits économiques fondamentaux (les droits de propriété intellectuelle protègent l'activité créative littéraire, artistique, scientifique et technique, et les droits de succession assurent une succession civile effective). Par conséquent, une étude théorique scientifique et juridique générale complète de toute la gamme des questions concernant les motifs de l'émergence des droits civils absolus, leur place dans le système de droit civil de la Moldova, de l'Ukraine et d'autres pays, les types de droits civils absolus dans le domaine civil et leur consolidation législative restent nécessaires et pertinents. Cette recherche peut être utilisée dans des activités scientifiques, normatives, éducatives et pédagogiques.*

**Mots-clés:** droits civils absolus, droits de propriété, limites à l'exercice des droits civils absolus, République de Moldova, Ukraine, Union Européenne.

## ОБЕСПЕЧЕНИЕ ПРАВ СОБСТВЕННОСТИ В РЕСПУБЛИКЕ МОЛДОВА, УКРАИНЕ, ЕВРОПЕЙСКОМ СОЮЗЕ. СРАВНИТЕЛЬНО-ПРАВОВОЙ АСПЕКТ

*В данной работе рассматриваются проблемные вопросы правового регулирования и защиты абсолютных гражданских прав в Республике Молдова и Украине, а также в пределах Европейского Союза. Абсолютные гражданские права, в частности, такие как право собственности, занимают важное место в системе гражданского права. Эти права являются фундаментальными не только для гражданского права, но и для всей национальной правовой системы, ведь личные неимущественные права являются основой жизнедеятельности физического лица, вещные права, в частности право собственности, являются базовыми экономическими правами (права интеллектуальной собственности обеспечивают охрану литературной, художественной и научно-технической творческой деятельности, а наследственные права обеспечивают эффективное гражданское правопреемство). Поэтому необходимым и актуальным остается комплексное научно-правовое общетеоретическое исследование всего круга вопросов относительно оснований возникновения абсолютных гражданских прав, их места в системе гражданского права Молдовы, Украины и других стран, видов абсолютных гражданских прав в цивилистической науке и их законодательного закрепления. Данные изыскания могут быть использованы в научно-исследовательской, нормотворческой, учебно-преподавательской деятельности.*

**Ключевые слова:** абсолютные гражданские права, имущественные права, пределы осуществления абсолютных гражданских прав, Республика Молдова, Украина, Евросоюз.

### Introduction

Scientific studies of absolute civil rights and their types were carried out both during the Soviet era and in the independent Republic of Moldova and Ukraine. However, before the declaration of independence in Moldova and Ukraine, these studies were mostly of a general theoretical nature, since property relations were to a certain extent legally limited, and the personal non-property rights of a person were also not widely used. Despite this, it is worth

noting the scientific works on certain absolute civil rights of such famous scientists as: B. S. Antimonov, S. M. Bratus, D. M. Genkin, O. S. Ioffe, L. A. Krasavchikova, S. N. Landkof, Yu. G. Matveev, N. N. Malleina, M. S. Mallein, A. A. Podoprighora, Z. V. Romovskaya, E. A. Sukhanov and others.

### Main points

Moldavian jurist Alexander Sosna writes that “property as a legal category means that property belongs to certain persons

– individuals or groups – under certain conditions and in certain forms (the right of ownership in the subjective sense). Property is divided into two main forms: public and private. Public property is divided into state and municipal. Private property is property owned by individuals and legal entities that are not state or municipal enterprises. According to paragraph (1) Art. 315 of the Civil Code of the Republic of Moldova (hereinafter referred to as the Civil Code of the Republic of Moldova) No. 1107-XV of 06/06/2002, the owner has the right to possess, use and dispose of the thing<sup>1</sup>. Therefore, according to the research of the above-mentioned author, the owner has 3 powers:

1. right of possession;
2. right of use ;
3. the right to dispose of property .

In the work of the Moldovan author, we read that “according to part (1) of Art. 303 of the Civil Code of the Republic of Moldova, possession is acquired by deliberately achieving the actual possession of a thing. According to paragraph (1) Art. 285 of the Civil Code of the Republic of Moldova “things are recognized as all objects that can be an individual or collective property, and property rights. Things are divided into immovable and movable<sup>2</sup>.”

After modernization, the Civil Code of the Republic of Moldova was supplemented with some important norms protecting personal non-property rights. Yes, Art. 43 of the Civil Code of the Republic of Moldova provides that, *in accordance with the law, every natural person has the right to life, health, physical and mental integrity, to free expression of opinion, to the name, honor, dignity and professional reputation, to his own image, to*

*respect for intimate, family and privacy, the protection of personal data, respect for one's memory and body after death, as well as other similar rights recognized by law. These rights are inviolable and inalienable<sup>3</sup>.* According to Art. 1 Civil Code of the Republic of Moldova, legislation is based on the recognition of the equality of participants in the relations they regulate, the protection of intimate, private and family life, the recognition of the inviolability of property, freedom of contract, the protection of good faith, the protection of consumer rights, the recognition of the inadmissibility of anyone interfering in private affairs, the need for the unhindered exercise of civil rights, ensuring restoration of violated individual rights, their protection by competent jurisdictional bodies.

In this article, we will try to determine the prerequisites for the implementation of absolute civil law, which should include: a) the presence of a specific right in a person, its legislative recognition in the form of general permission or direct consolidation in the rule of law, and the legitimate grounds for acquiring such a right by a specific person; b) the presence of a person - a subject of law - an appropriate amount of civil capacity; c) the absence of legal and factual obstacles to the corresponding behavior of the subject; d) the proper subject of the exercise of the right. A doctrinal approach to understanding the purpose of civil law protection of absolute rights is substantiated, which covers not only the reaction to the violation itself and its consequences, but is also aimed at preventing violations of both an absolute civil right and a legally protected interest. It also substantiates the advantages of civil law protection of absolute rights, due to a number of specific

<sup>1</sup> Sosna Александру, Защита права собственности. In: *Legea și viața*. 2018, nr. 5(317), pp. 36-39. URL: [https://ibn.idsi.md/sites/default/files/imag\\_file/36-39.pdf](https://ibn.idsi.md/sites/default/files/imag_file/36-39.pdf) (дата обращения: 26.11.2021).

<sup>2</sup> The same source.

<sup>3</sup> *Гражданский кодекс Республики Молдова: Закон №133 от 15.11.2018. // Опубликовано: 01.03.2019 в Официальном мониторе №66-75 art. №:132. Вступил в силу 01.03.2019.*

features and special legal approaches in the regulation of civil liability, the property nature of civil liability; additional burden for the violator of civil rights and interests; the horizontal nature of responsibility, due to the legal equality of participants in civil relations; compensatory (restorative) nature of civil liability; the initiative of the injured party to apply state coercion to the violator of his rights and interests, etc.

Scholar *Bogdan Shcherbina* from Ukraine believes that the current practice of the courts of individual countries of the European Union (hereinafter referred to as the EU) and the European Court of Human Rights (hereinafter referred to as the ECtHR, the European Court, the Court) is correct, since the courts must respond to the realities of social relations due to the development information technologies. In the EU countries, the provision of the European Convention on Human Rights (hereinafter referred to as the ECHR)<sup>4</sup> is a certain guideline for the uniform enforcement of property rights<sup>5</sup>. According to the well-known Ukrainian lawyer and Chairman of the Supreme Court of Ukraine *Y. Romanyuk*, the correct interpretation of the fundamental principles of protection of property rights in accordance with Article 1 of the Protocol to the Convention on Human Rights and Fundamental Freedoms (hereinafter referred to as the Convention) and the application of the relevant practice of the ECtHR becomes an impetus for the correct resolution of disputes by the courts at the national level<sup>6</sup>. Indeed, the right to private property, the possibility of

its normal implementation and protection is a sign of a developed *legal state*.

It is known that the ECHR was founded in 1959, and is located in Strasbourg (a city in Eastern France), in the Palace of Human Rights. It is within the walls of the eminent building, designed by the British architect *Richard Rogers*, that the Court carefully monitors the respect for the human rights of millions of Europeans in the member states of the Council of Europe that have ratified the Convention<sup>7</sup>. The Court is a supranational, international judicial body competent to issue binding rulings (for States Parties) and on complaints filed individually by applicants, individuals and/or States about violations of the civil and political rights set forth in the Convention. Since 1998 it has been possible to file complaints directly. Thanks to the practice of the Court, the Convention is considered a powerful and dynamic tool for solving pressing problems and challenges, and strengthening the rule of law and democracy in Moldova. In order to understand what is the primary role of the European Court in protecting the rights of citizens, we will single out the most important rule that is indisputably observed: ***the court examines only cases of violation of those rights that are guaranteed by the Convention and its Protocols. In all other cases, all complaints will be rejected.*** Note that the Convention establishes civil and political rights, and most socio-economic rights are not enshrined in it. Of the economic rights, the Convention, in particular Article 1 of Protocol No. 1, protects only *the property right* of individuals and legal entities (that is, individuals who have the right to freely use their property). By virtue of Art. 1 of Protocol No. 1 to the Convention, *every natural or legal person has the right to respect for*

<sup>4</sup> Щербина Б. С. Абсолютні цивільні права: реалізація і захист. Київ. 2018. Дисс. на здобуття ст. докт. юрид. наук. с. 98.

<sup>5</sup> С наиболее точной информацией о ратификации данной Конвенции и ее Протоколов, заявлений, оговорок можно ознакомиться, переходя по ссылке: [www.conventions.coe.int](http://www.conventions.coe.int). [https://www.echr.coe.int/documents/convention\\_rus.pdf](https://www.echr.coe.int/documents/convention_rus.pdf) (дата обращения: 26.11.2021).

<sup>6</sup> Там же..

<sup>7</sup> Европейский Суд по правам человека. URL:<https://www.coe.int/ru/web/moscow/european-court> (дата обращения: 26.11.2021).

*his property. No one may be deprived of his property except in the public interest and under the conditions prescribed by law and the general principles of international law.* The practice of the ECHR provides for the possibility of such a trial in which the respondent is the plaintiff's own state. The basis is the Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1950 (hereinafter referred to as the Convention) and its Protocols<sup>8</sup>.

The Convention is the basis of the activity of the Court and it protects not only the right of ownership in its classical form and understanding ( *possession, use, disposal* ), but also operates when violations of property rights are associated with an untimely court decision on a property dispute, excessive amounts of tax collection or fines, as well as the impossibility for the owner to use his property due to the deterioration of the environmental situation, disasters, during the liquidation of emergency situations (hereinafter - ES), during siege, military, emergency situations<sup>9</sup>(hereinafter - PE), against the backdrop of the spread of pandemics, and with unreasonable deprivation / restriction of the legal right to inherit, disputes between the tenant and the owner, damage to property during martial law in the country, other situations with consequences<sup>10</sup>. It should be noted that the state of emergency in the Republic of Moldova provides for much more radical measures, including those restricting the freedoms and rights of citizens. In particular, it is during an emergency that the authorities have the right

to temporarily relocate residents to safer areas, mobilize the able-bodied population, and urgently remove heads of state / non-state organizations from work. Thus, requisition, expropriation, forcible eviction of residents from their houses/apartments, planned «*in the name of the public good*» are not always humane, and also do not always provide legal protection for the property of vulnerable segments of the population. The right of private property and its protection on the territory of the Republic of Moldova are guaranteed, and this is officially enshrined in Art. 46 of the Constitution of the Republic of Moldova.

The European Court also clarified that the concept of “property” includes “*private law assets that are not physical property, such as shares or claims based on contract or tort*”. As well as benefits arising from certain types of insurance<sup>11</sup>. Note that the *decision becomes final if it has not been appealed and procedures for its execution have been initiated*.

There are complex disputes about «property». Thus, for example, the Court considers that a license to engage in or other activity may be property, but only in cases where this implies the long-term nature of this license, the receipt of benefits and dependence on the emergence of reasonable legitimate expectations from the owner himself.

In addition to the usual content of property rights, the European Court also includes non-property (personal) rights, for example, we also include “reputation” in it, justifying this by the fact that in some situations and under certain conditions “reputation” can be equated with the right of ownership ( for example, *Van Marle and Others v. the Netherlands*). In their

<sup>8</sup> Докипедия: Европейского Суда по правам человека в защите экономических прав (материал подготовила Н.В. Вильская, РФ).

<sup>9</sup> Ст. 17-27 Закон «О режимах чрезвычайного, осадного и военного положения» N 212-XV от 24.06.2004 (в силу 06.08.2004) // Мониторул Официал ал Р.Молдова N 132-137 ст.696 от 06.08.2004 (дата обращения: 26.11.2021).

<sup>10</sup> Maksurov A.A. Protection of property rights from unreasonable interference of the state in the rights of the owner in the European Court of Human Rights // *International public and private law*. 2011. No. 5. p. 13-17.

<sup>11</sup> Решение Европейского Суда по правам человека по делу “Stran” Greek Refineries and Stratis Andreadis v. Greece” (N 13427/87) // Европейский Суд по правам человека. Избранные решения. Т. 2. М.: Норма, 2000. с. 54-68.

comments on the jurisprudence, the compilers of the ECtHR Human Rights Bulletin quite rightly pointed out that a significant problem now raised by the applicants is the non-enforcement of court decisions in civil cases, on the payment of benefits, pensions and other types of compensation.

Another category of cases for the protection of property rights is represented by cases for the collection of taxes, fines and other debts, mandatory fiscal payments. In the Republic of Moldova, in the fight against illegal actions of credit institutions/banks, the provisions of *the Consumer Protection Law no. 105 of 13-03-2003* significantly help lawyers<sup>12</sup>.

When considering cases arising from property relations, the ECtHR characterized this problem differently, arguing that “*any derogation of the owner’s fund*” is already an “*encroachment*” on his property<sup>13</sup>. Consequently the question arises - is even the slightest encroachment on someone's property lawful without legal grounds? In the practice of the ECtHR, we distinguish other categories of cases for the protection of property rights in case of various types of deprivation of property - confiscation, expropriation, nationalization of property, which often represents a disproportionate interference, unjustified from the point of view of Article 1 of Protocol No. 1. This article does not guarantee the right to receive full compensation in all circumstances, since legitimate purposes are “*in the public interest*” (various economic reforms and other measures to ensure greater social justice) may claim compensation in the amount below the market value.

<sup>12</sup> Опубликован: 27.06.2003 в Monitorul Oficial № 126-131 статья № 507 // ИЗМЕНЕНО ЗП168 от 26.07.18 МО 333-335 от 24.08.18 ст. 549; вступил в силу с 14.02.19.

<sup>13</sup> [https://studref.com/319674/pravo/zaschita\\_prava\\_sobstvennosti\\_vzyskanii\\_nalogov\\_shtrafov\\_inyh\\_obyazatelnyh\\_fiskalnyh\\_platezhey](https://studref.com/319674/pravo/zaschita_prava_sobstvennosti_vzyskanii_nalogov_shtrafov_inyh_obyazatelnyh_fiskalnyh_platezhey) (дата обращения: 26.11.2021).

The phrase “*subject to the conditions provided by law*” requires that clear and accessible legal provisions be in place and properly enforced. The power of the European Court to review the compliance of the actions of the authorities with the norms of national legislation is limited, since the right to interpret and apply legislation primarily belongs to the country (in our case, Moldova and Ukraine). When considering cases related to the control of the use of property, the ECtHR draws attention to two points: whether the statutory control pursues the goal of ensuring the “*general interest*” and whether the functioning of the relevant legislation and, accordingly, the control provided for by it is proportionate to the legitimate aim pursued. Analyzing Art. 1 of Protocol 1 to the Convention, it should also be noted that this is the only article of the Convention and its Protocols, which, firstly, speaks directly about guarantees of the rights of not only individuals, but also legal entities, and, secondly, concerns the issue of property and real estate<sup>14</sup>. *Y. Romanyuk* also points out that Ukrainian legislation has not reached perfection in matters of regulating property rights and ensuring real guarantees of the rights of owners, since this area is constantly improving, changing, and the time has come for radical changes. This position deserves attention, since there are indeed separate legal norms on the right of ownership that need to be improved in order to eliminate contradictions in the relevant legal regulation (for example, on the acquisition of property rights by acquisitive prescription in relation to unauthorized construction objects).

<sup>14</sup> Рожкова М.А. К вопросу о понятии «собственность» в Конвенции о защите прав человека и основных свобод и практике ЕСПЧ. URL:<https://cyberleninka.ru/article/n/k-voprosu-o-ponyatii-sobstvennost-v-konventsii-o-zaschite-prav-cheloveka-i-osnovnyh-svobod-i-praktike-evropeyskogo-suda-po-pravam-cheloveka> (дата обращения: 26.11.2021).

However, in the national legislation of Moldova, Ukraine and the EU, regulating property relations, there is an appropriate level of norms on the right of ownership and other rights in rem, which are arranged logically and grouped according to the relevant institutions. Of course, taking into account the positive experience of the EU countries, it is possible to amend certain legal norms to eliminate gaps in law and problems in law enforcement in general.

The scientific literature notes the synchronism of approaches to the regulation of property relations in the EU countries. In particular, there is a three-level legal regulation of these relations: the national legislation of a certain EU country, the EU law and the ECHR. Moreover, EU law refers to the Charter of Fundamental Rights of the European Union. Also, in the scientific literature on this occasion, it is indicated that the essence of the adaptation of the legal system of Ukraine to the legal system of the EU lies in Ukraine's perception of the European concept of law in general and the concept of *private law*, in particular, taking into account that the latter in origin and ideology is a purely European concept<sup>15</sup>. At the same time, this is not about adapting the "*private law*" of Moldova or Ukraine to the "*private law of Europe*", but about adapting the key domestic concept of civil law and the provisions of the civil legislation of a number of countries to the principles of European law (i.e., convergence of the conceptual foundations of private law of Moldova, Ukraine and EU private law).

A special place in this process is occupied by the principles of the functioning of legal institutions that determine the content of absolute civil rights, such as property rights (the basis of economic development), personal

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<sup>15</sup> Щербина Б.С. Абсолютні цивільні права: реалізація і захист. Київ. 2018. Дисс. на здобуття ст. докт. юрид. наук. с. 104.

non-property rights (as the basis of physical existence and social existence), intellectual property rights (as the basis of creative potential). and scientific and technological progress)<sup>16</sup>. As we can see from the studied sources, legal scholars in the EU countries have been thinking about the codification of EU private law for a long time. The leading place among the institutions, the legal norms of which are proposed to be unified and codified, is occupied by *the institution of property rights* as an absolute civil right.

The relevance of this problem within the framework of our state is due to the fact that the right to respect for private property is guaranteed by Art. 46 of the Constitution of the Republic of Moldova and art. 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, and that this right is very often violated<sup>17</sup>. The study of absolute civil rights in the scientific literature is characterized by the fact that, as a rule, they concern the scientific analysis of certain types of absolute civil rights (personal non-property rights, their types, property rights, other property rights, intellectual property rights, inheritance law). Each type of absolute civil rights has its own characteristics, an appropriate theoretical basis for research and special legal regulation. Summarizing scientific research on personal non-property rights, we note that their system includes both universal personal non-property rights, which are of a fundamental nature and belong to all individuals without exception, and special personal non-property rights, which are vested only in certain individuals (in cases expressly provided by law). We note the scientific works of A. V. Dzeri<sup>18</sup>,

<sup>16</sup> The same source

<sup>17</sup> Сосна Александру, Защита права собственности. In: Legea și viața. 2018, nr. 5(317), pp. 36-39. URL: [https://ibn.idsi.md/sites/default/files/imag\\_file/36-39.pdf](https://ibn.idsi.md/sites/default/files/imag_file/36-39.pdf) (дата обращения: 03.11.2021).

<sup>18</sup> Гражданское право Украины. Общая часть: учебник / под ред. О.В. Дзери, Н.С. Кузнецовой, Р.А.

R. A. Maidanik <sup>19</sup>, Ya. Shevchenko <sup>20</sup> on the institutions of law, which rightly emphasize the need for further research on this topic, which should be directed to the correct determination of directions for improving legislation in this area, taking into account the positive European experience. The study of inheritance rights is important in view of the fact that the exercise of the right to inheritance determines the emergence of another absolute civil right - *the right to property*. In our opinion, certain aspects of inheritance law need to be improved in the Republic of Moldova, the exercise by heirs of their right to inherit, to formalize an inheritance, to determine mandatory shares, and it is new doctrinal approaches that can help in solving these problematic issues. When considering inheritance cases, the court must indicate specifically what must be taken into account when recognizing a person as an “unworthy heir”, and all grounds for recognizing an heir as “bad” must be confirmed by a decision of the court.

Persons who, during the life of the testator, had a significant influence and psychological pressure on him, were forced to make a will in favor of outside “interested persons” (not legal heirs, i.e. relatives, but strangers, sometimes unfamiliar subjects), to cancel the will, or tried by any means in a way to put pressure on the testator or to force the legal heirs so that they renounce the inheritance of their parents / other relatives in advance (in writing), must be held criminally liable.

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Майданика. – К., 2010. – 974 с. / *Гражданское право Украины: Особенная часть: учебник / под ред. О.В. Дзери, Н.С. Кузнецовой, Р.А. Майданика. – Киев, 2010. – 1176 с.*

<sup>19</sup>Майданик Р.А. Проблемы доверительных отношений в гражданском праве: монография / Р.А. Майданик. – К., 2002. – 502 с. / Майданик Р.А. Гражданское право: Общая часть. Введение в гражданское право: учебник/ Р.А. Майданик. – К. – 472 с.

<sup>20</sup>Шевченко Я. Н. Избранные труды (1964-2012 гг.). – Киев, 2012. – 404 с.

More attention should be paid to the legislator in terms of resolving disputes, according to the section of the general, i.e. jointly acquired property of the spouses, preventing the possibility of subsequent unjust enrichment of one of the spouses, *negotiorum gestio* (by breach of trust, deceit, blackmail, concealment of facts, etc.).

It should be noted that the crises that have arisen in connection with the COVID-19 pandemic have also threatened a whole range of fundamental human and civil rights, the rights provided for by national legislation and international human rights treaties, in particular *the right to property*. “*Domestic violence is a public problem, not a private one,*” says Ketelin Avksentiev <sup>21</sup>. The problem of domestic violence (whether physical, sexual, psychological, spiritual or economic) has become global today. During the period of forced isolation of citizens in the Republic of Moldova (2020-2021), the number of complaints and lawsuits filed increased regarding violations of the property rights of family members, where, paradoxically, often the victims of abusive behavior of spouses/ex-spouses/cohabitants and other persons.

It is necessary to carefully check the information, take into account various conditions (season, age, position of persons, other facts), the true situation in the family (i.e. who sues whom and demands to forcibly leave the home within 24 hours <sup>22</sup>), respond promptly, and the main thing, despite the plaintiff's preemptive right of ownership,

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<sup>21</sup> Avxentiev C. Juridice MD. Ordonanța de protecție contra dreptului de proprietate. URL: [https://juridicemoldova.md/11350/ordonanta-de-protectie-contra-drept-de-proprietate.html?fbclid=IwAR10yq\\_11YT\\_9K2Gq3azVLw31U8Der8\\_wkyR04WgfT923GKOUz91mq2ig0](https://juridicemoldova.md/11350/ordonanta-de-protectie-contra-drept-de-proprietate.html?fbclid=IwAR10yq_11YT_9K2Gq3azVLw31U8Der8_wkyR04WgfT923GKOUz91mq2ig0). (дата обращения: 24.11.2021).

<sup>22</sup> Ст. 2787 п.(1) Гражданского процессуального кодекса Республики Молдова от 30 мая 2003 года № 225-XV (с изменениями и дополнениями по состоянию на 11.11.2021 г.) // Опубликован: 03-08-2018 в Monitorul Oficial № 285-294 статья № 436. Вступил в силу с 29.11.21.



is to find ways to protect pregnant women, mothers, elderly women, children and minors, as well as the disabled (often these are the future direct heirs of the property).

In this regard, we agree with the conclusions and recommendations of K. Avksentiev and other lawyers, who also drew attention to the global problem of the population in connection with the current challenges (pandemic, economic crisis, increase in divorces, military conflict between Russia and Ukraine, forced migration of citizens, « frozen» Transnistrian conflict, etc.). We are in solidarity with the mentioned author regarding what status and what rights citizens will have, what their further fate, in the event of a forced evacuation of subjects / “aggressors”, we quote: [author’s translation from Romanian ] *and a severe measure of protection that can benefit the victim of domestic violence, for this reason a clear and precise regulation is needed that would encourage the courts to apply uniform and correct legal rules.*” At the same time, we note that *«the aggressor's property right cannot be higher than the life and health of the victim.»* Article 55 of the Constitution of the Republic of Moldova states that *every person exercises his constitutional rights and freedoms in good faith, without violating the rights and freedoms of others.* Article 53 of the Constitution of the Republic of Moldova directly defines and protects the right of a person infringed by the authorities through an administrative act or by not satisfying the petition within the prescribed period. Thus, *a person can seek recognition of his right, annulment of the act and compensation for damage . And the state, according to the law, bears material responsibility for the damage caused by mistakes made in criminal proceedings by investigative bodies and courts.*

On the other hand, we note the role of such an important component in the system

of checks and balances in the Republic of Moldova as the National Integrity Authority (hereinafter referred to as NIA), authorized to assess the honesty and integrity of public officials by carefully checking their property / property <sup>23</sup>. Since the rooted negative phenomena in our state (such as impunity, corruption, selectivity, bias of judges) should gradually disappear forever, and the state should strengthen supervision over the branches of government, ensure the observance of a culture of honesty and integrity in the community, respect for the principle of equality of all citizens before the law and court, compliance with the basic principles of ownership, according to Art. 9 of the Constitution of the Republic of Moldova. In part (2) Art. Article 9 of the Constitution states that *“property cannot be used to the detriment of the rights, freedoms and dignity of a person.”*

Scientific research of the institute of intellectual property rights should also be aimed at creating an enabling environment for the proper protection and protection of the rights of intellectual property subjects. The current state of the legal protection of <sup>24</sup>intellectual property in Moldova and Ukraine requires more extensive and fundamental research on its problems. Most of the theories (concepts) were expressed and developed during the 20th century both by scientists of the general theory of law and the state, and by representatives of the science of civil law. It is substantiated that certain concepts have already lost their relevance, since a certain understanding of the legal relationship is widely used, in which subjects enter into

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<sup>23</sup> Закон от 17 июня 2016 года № 132 № 132 «О Национальном органе по неподкупности» (с изменениями и дополнениями по состоянию на 07.10.2021г.). URL:[http://continent-online.com/Document/?doc\\_id=39799628#pos=0;0](http://continent-online.com/Document/?doc_id=39799628#pos=0;0). (дата обращения: 26.11.2021).

<sup>24</sup> Щербина Б. С. Абсолютні цивільні права: реалізація і захист. Київ. 2018. Дисс. на здобуття ст. докт. юрид. наук. с. 248.

relationships to obtain certain benefits, in connection with which they have mutual rights and obligations. Therefore, theories that say that absolute legal relations (and absolute civil law) exist between the subject and the object, without requiring another (obliged) subject, are already outdated and do not reflect existing social relations.

In the Republic of Moldova, issues are increasingly being raised to establish measures to prevent illegal, unjustified enrichment<sup>25</sup>, conflicts of interest, incompatibility provisions and combat them, as well as violations of the legal regime of restrictions and prohibitions. It is often impossible to prove the fact of unjust enrichment of one person to the detriment of another, for example, a business partner, spouse or other relatives, which is a problem for members of society, a drop in confidence in judges, respect for the law, unfair court decisions. Today, practice shows that sometimes Moldovan lawyers use confidential information about a client for their own material gain, divulge the secret of the client, overestimate the cost of their services, cooperate with the defendant of their own client. As a result, the client, in addition to moral damage, may suffer significant property damage; joint property of the spouses. We believe that the property rights of children and women after a divorce may be infringed if the court decides on the division of property equally, in the absence of an amicable agreement and the spouse submits an application for alimony. Since the phenomenon of malicious evasion of alimony payers is becoming more and more popular at present, non-payers hide abroad for years, and the authorities remain powerless. Citizens of Moldova are also concerned about the issue

of property rights in case of unregistered marriage (dispute between cohabitants). In accordance with Art. 567 of the Civil Code of the Republic of Moldova, *in the case when the ownership right belongs simultaneously to several persons and none of them is the owner of one ideal share of the common property, the property is recognized as common joint.* Part 2, part 3 Art. 562 of the Civil Code of the Republic of Moldova establishes that *a participant in shared ownership has a preemptive right to transfer to him the housing in which he had his usual place of residence on the date of filing the claim for division, as well as, in circumstances, to the furniture with which the housing is furnished. A participant in shared ownership has a priority right to transfer to him the property that he used in the course of business or professional activities on the date of filing a claim for division, as well as to movable property that he had in his equipment.*

Yes, Art. 571 of the Civil Code of the Republic of Moldova states that *the division of common property between participants in joint ownership is carried out in proportion to the contribution of each to the acquisition of property. Until proven otherwise, the contribution of co-owners is assumed to be equal.* Art. 572 of the Civil Code of the Republic of Moldova determines that *property acquired by spouses during marriage is their joint property, unless a different legal regime for this property is established by law or an agreement concluded between them. Any property acquired by the spouses during the marriage is assumed to be their joint property until proven otherwise. If the common property represents a right, which, according to the law, is acquired by registration in the public register, and the right is registered only in favor of one of the spouses, either of the spouses may require that the status of this right be entered in the public register as a*

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<sup>25</sup> Закон Республики Молдова от 17 июня 2016 года №133 «О декларировании имущества и личных интересов» // Monitorul Oficial № 245-246 от 30.07.2016 г. (дата обращения: 26.11.2021).

*right of the common property of the spouses.* According to Part 1 of Art. 573 of the Civil Code of the Republic of Moldova, the personal property of spouses is understood as *the property that belonged to each of the spouses before marriage, as well as received by him during marriage on the basis of a gift agreement, by inheritance or otherwise free of charge, is the exclusive property of the spouse to whom it belonged or by which it was received*<sup>26</sup>. Along with this, we note that in order to achieve a resolution of the dispute through the court in your favor, proving your rights to housing, you need to spend a lot of money, time, health, and free legal assistance is even more ineffective.

Further, the ECtHR also started to pass sentences on Moldova due to the unregulated annulment of final judgments and injustice/illegality of actions<sup>27</sup>. This is the *case of Ozhog et al. v. Moldova*<sup>28</sup>, which concerned an unlawful review of a decision that took place more than 15 years ago. The ECtHR ordered Moldova to pay 1.5 million euros in damages to the former shareholders of the Chisinau Gemenii shopping center for a lawsuit between private owners over real estate, as well as return part of the building and land to them. The claimant's material damage was then estimated at 1.5 million euros, non-pecuniary damage - 5,000 euros and 10,000 euros - were costs and expenses. In February 2020, the head of the Legal Resource Center, Vladislav Gribincea, on his Facebook page,

<sup>26</sup> Гражданский кодекс Республики Молдова: Закон №133 от 15.11.2018. // Повторно опубликован: 01.03.2019 в Официальном мониторе №66-75 art. №:132. Вступил в силу 01.03.2019.

<sup>27</sup> ЕСПЧ: Молдова должна выплатить экс-акционерам торгового центра «Гемениі» в Кишинёве 3,5 млн евро. URL: <https://esp.md/sobytiya/2020/02/18/espch-moldova-dolzha-vyplatit-eks-akcioneram-torgovogo-centra-gemenii-v> (дата обращения: 26.11.2021).

<sup>28</sup> CASE OF OJOG AND OTHERS v. THE REPUBLIC OF MOLDOVA. (Application no. 1988/06). URL: <http://hudoc.echr.coe.int/eng?i=001-201134> (дата обращения: 26.11.2021).

commented with obvious indignation on this fatal mistake of Moldovan judges<sup>29</sup>.

### Findings

We believe that, despite the absolute nature of the studied civil rights, it should also be taken into account that these rights are still inherent in the presence of certain restrictions. However, these restrictions, although they affect the possibility of exercising these rights, outlining the boundaries of individual freedom, they are quite justified, given the motives for their installation. It is proved that the reasons for establishing certain restrictions on absolute civil rights are *the interests of society* as a whole (the so-called *public interests*) and the interests of other specific persons, because *the right of a person ends where the right of another begins*. That is why the legislator often justifiably provides for the limits of the exercise of a certain right or establishes certain restrictions. The absolute nature of the property right is emphasized by the legislative indication of the possibility of its implementation by the subject in accordance with the law, at his own will, regardless of other persons. The implementation of the right of ownership as an absolute right in rem covers any possibility of the owner to act in relation to the property belonging to him, including *possession, use, and disposal* - the *traditional triad*, as well as other powers. The content of these separate powers of the owner is not disclosed at the legislative level, but their interpretation in the scientific literature is generally accepted: ownership as the right of actual (physical or economic) dominance over property, etc. It has been established that the owner, exercising his right, relies on the general permissive principle : *everything*

<sup>29</sup> Грѳинча, В. *Комментарий*. URL: <https://www.facebook.com/100002542172880/posts/3058037324290977/?d=n> (дата обращения: 26.11.2021).

*that is not expressly forbidden is allowed.* However, the owner must take into account the general and special limits of the exercise of his right. The owner has the right to perform any actions in relation to his property that do not contradict the law. When exercising his rights and fulfilling his obligations, the owner is obliged to observe the moral and ethical foundations of society. The practical application of the general boundaries of the exercise of the right of ownership is possible in combination with other legal norms, the prescriptions of which were violated by the owner and on the basis of which conditions and means of liability can be set.

Ukrainian authors (especially *B.S. Shcherbina, Ya. M. Shevchenko*) it is proved that the exercise of the subjective right of ownership should also cover the fulfillment of certain duties assigned to the owner. The provisions on the protection of private property and the binding role of the owner are constitutionally fixed (Art. 9 and Art. 46 of the Constitution of the Republic of Moldova, Art. 14 of the Constitution of Germany, Art. 13 of the Constitution of Ukraine).

It has been established that in Ukraine civil law protection of absolute rights can be carried out both by a court, including an economic court (depending on the subject composition of the relevant dispute), and by an arbitration court, the decision of which is also binding on the parties.

## Bibliography

### *In Russian:*

1. Антология украинской юридической мысли. редкол.: Ю. С. Шемшученко и др. - т. 6: Гражданское право; отв. ред. Я. Н. Шевченко. – Киев, 2003. – 584 с.

2. БАБИНА, Ю. Правовая природа адвокатуры Украины в современных условиях и процессах глобализации. În: *Realități și perspective ale învățământului juridic național: Culegerea*

*comunicărilor*. Vol.1, 1-2 octombrie 2019, Chișinău. Chișinău: CEP USM, 2019, pp. 630-638.

3. *Гражданский кодекс Республики Молдова*: Закон № 133 от 15.11.2018. // Повторно опубликован: 01.03.2019 в Официальном мониторе №66-75 art. №:132. Вступил в силу 01.03.2019. – Кишинэу: Farmec-Lux, 2019 (F.E.-P. «Tipografia Centrală»). – 640 с.

4. *Гражданский процессуальный кодекс Республики Молдова* от 30 мая 2003 года № 225-XV (с изменениями и дополнениями по состоянию на 11.11.2021 г.). // Опубликован: 03-08-2018 в Monitorul Oficial № 285-294 статья № 436. ИЗМЕНЕНО ЗП178 от 11.11.21, МО280-284/19.11.21 ст.386; в силу с 29.11.21.

5. *Гражданское право Украины*. Общая часть: учебник / под ред. О.В. Дзери, Н.С. Кузнецовой, Р.А. Майданика. – К., 2010. – 974 с.

6. *Гражданское право Украины: Особенная часть*: учебник / под ред. О.В. Дзери, Н.С. Кузнецовой, Р.А. Майданика. – Киев, 2010. – 1176 с.

7. ДЕМЕНЕВА, А. *Юридические последствия постановлений Европейского Суда по правам человека для Российской Федерации*: автореферат дисс. на соискание ученой степени канд.юрид. наук. Москва, 2010. – 30 с.

8. Закон «О режимах чрезвычайного, осадного и военного положения» N 212-XV от 24.06.2004 (в силу 06.08.2004). // Мониторул Официал ал Р.Молдова N 132-137 ст.696 от 06.08.2004 (дата обращения: 26.11.2021).

9. Закон Республики Молдова «О Национальном органе по неподкупности» от 17 июня 2016 года № 132 N° 132 (с изменениями и дополнениями по состоянию на 07.10.2021г.). URL: [http://continent-online.com/Document/? doc\\_id=39799628#pos=0;0](http://continent-online.com/Document/? doc_id=39799628#pos=0;0). (дата обращения: 26.11.2021).

10. Закон Республики Молдова «Об адвокатуре» N 1260-XV от 19.07.2002 // Мониторул Официал ал Р.Молдова N 126-127 от 12.09.2002. URL: <http://www.eurasian-advocacy.ru/respublika-moldova/613-zakon-respubliki-moldova-ob-advokature>. (дата обращения: 21.09.2021).

11. ЗАХАРИЯ, С., ИГНАТЬЕВ, В., ЗАВАЛЬНИЮК, А. *Правовое регулирование деятельности хозяйствующих субъектов в Республике Молдова*: Учебное пособие/ Под общ. ред. В.П. Игнатьева; Комратский гос.ун-т. Юрид. фак., Каф. Частного права – Комрат: Б.и., 2009 (Типогр. «Техника Info»). – 344 с.

12. ИГНАТЬЕВ, В., ПРОЦЕНКО, В. Граждане

как субъекты гражданского права. В: *Закон и Жизнь*. 2011, nr. 9(237), pp. 33-43.

13. ИГНАТЬЕВ, В., ПРОЦЕНКО, В. *Гражданское право*. Общая часть. Учебник. Кишинэу, 2010.

14. ИОФФЕ, Ол. *Ответственность по советскому гражданскому праву*. Л.: Изд-во Ленингр. ун-та, 1955. 310 с.

15. Конституция Республики Молдова от 29 июля 1994 г. // Monitor Oficial al Republicii Moldova Nr. 1 от 12.08.1994. Кишинэу: Farmec-Lux, 2018 (Ф.Е.-Р. "Tipografia Centrală"). – 80 с.

16. Конституция Украины от 28 июня 1996 года №254к/96-ВР. URL: <http://zakon2.rada.gov.ua/laws> (дата обращения: 26.11.2021).

17. КЫРНАЦ, Т. *Конституционное право*. Гос. Унив. Молдовы. Академ. права, Кишинэу, Реклама, 2005. – 272 с.

18. МАЙДАНИК, Р. *Проблемы доверительных отношений в гражданском праве*: монография / Р.А. Майданик. – К., 2002. – 502 с.

19. МАЙДАНИК, Р. *Гражданское право: Общая часть. Введение в гражданское право*: учебник / Р.А. Майданик. – К. – 472 с.

20. МАКСУРОВ, Ал. *Защита права собственности в Европейском Суде по правам человека*. М.: Инфра-М, 2014.

21. МАКСУРОВ, Ал. Защита права собственности от необоснованного вмешательства государства в права собственника в Европейском Суде по правам человека // *Международное публичное и частное право*. 2011. N 5.

22. Постановление Пленума Высшей судебной палаты РМ № 8 от 09.10.2006 (бюллетень Высшей судебной палаты № 3, 2007).

23. РОЖКОВА, М. *К вопросу о понятии «собственность» в Конвенции о защите прав человека и основных свобод и практике ЕСПЧ*. // *Журнал российского права*. 2006. №12(120). URL: <https://cyberleninka.ru/article/n/k-voprosu-o-ponyatii-sobstvennost-v-konventsii-o-zaschite-prav-cheloveka-i-osnovnyh-svobod-i-praktike-evropeyskogo-suda-po-pravam-cheloveka> (дата обращения: 01.12.2021).

24. СОСНА, Ал., СОСНА, Б. Определение природы, роли и места решений европейского суда по правам человека в системе источников права Республики Молдова. În: *Supremația Dreptului*. 2019, nr. 1, pp. 5-12.

25. СОСНА, Ал. Защита права собственности. În: *Legea și viața*. 2018, nr. 5(317), pp. 36-39. URL:

[https://ibn.idsi.md/sites/default/files/imag\\_file/36-39.pdf](https://ibn.idsi.md/sites/default/files/imag_file/36-39.pdf) (дата обращения: 14.02.2020).

26. СОСНА, Ал. О некоторых достоинствах и недостатках модернизированного гражданского кодекса Республики Молдова. În: *Materialele Conferinței Internaționale Știința în Nordul Republicii Moldova: realizări, probleme, perspective*. Ediția 4, 26-27 iunie 2019, Bălți. Balti, Republic of Moldova: Tipogr. „Indigou Color”, 2020, pp. 451-457.

27. СОСНА, Б. Гражданское общество в Молдове: успех в действии. În: *Supremația Dreptului*. 2016, nr. 2, pp. 106-115.

28. *Союз адвокатов Республики Молдова бьет тревогу: нарушения прав человека принимают системный характер*. Электронный ресурс: <http://uam.md/index.php?pag=news&id=875&rid=1112&l=ro>. (дата обращения: 16.09.2021).

29. ШЕВЧЕНКО, Я. *Избранные труды (1964-2012 гг.)*. – Киев, 2012. – 404 с.

#### **In Ukrainian:**

1. *Право власності: європейський досвід та українські реалії*. Правовий тиждень. 2015. URL: <http://legalweekly.com.ua/index.php?id=16061&show=news&newsid=123901> (дата звернення 20.04.2018).

2. ЩЕРБИНА, Б. *Абсолютні цивільні права: реалізація і захист*. Київ. 2018. Дисс. на здобуття ст. докт. юрид. наук. 294 с.

3. ЩЕРБИНА, Б. Абсолютні цивільні права в системі цивільного права України. *Часопис Київського університету права*. 2017. № 2. С. 172–175.

4. ЩЕРБИНА, Б. Види абсолютних цивільних прав. Актуальні проблеми юридичної науки: зб. тез Міжнар. наук. конф. «Шістнадцяті осінні юридичні читання» (Хмельницький, 20–21 жовт. 2017 р.). Хмельницький, 2017. Ч. 1. С. 152–154.

5. ЩЕРБИНА, Б. Здійснення абсолютного права власності в Україні. Збірник матеріалів міжнародної конференції «Міжнародне та національне законодавство: способи удосконалення» (Дніпро, 30–31 берез. 2018 р.). Дніпро, 2018. С. 121–125.

6. ЩЕРБИНА, Б. Право власності: окремі аспекти здійснення. Збірник матеріалів Міжнародної науково-практичної конференції «Проблеми реалізації і захисту соціальних прав в Україні» (Львів, 27 квіт. 2018 р.). Львів, 2018. С. 275–278.

7. ЩЕРБИНА, Б. Особливості цивільно-правового захисту абсолютних прав. Збірник матеріалів VIII Міжнародної науково-практичної

конференції «Правове регулювання суспільних відносин на шляху до сталого розвитку» (Київ, 15–20 трав. 2018 р.). Київ, 2018. С. 88–94.

**Romanian:**

1. AVXENTIEV, C. Juridice MD. Ordonanța de protecție contra dreptului de proprietate. URL:<https://juridicemoldova.md/11350/ordonanta->

[de-protectie-contra-drept-de-proprietate.html?fbclid=IwAR10yq\\_11YT\\_9K2Gq3azVLw31U8DEr8\\_wkyR04WgfT923GKOUz91mq2ig0](https://www.facebook.com/100002542172880/posts/3058037324290977/?d=n). (vizitat: 24.11.2021).

2. GRIBINCEA, VI. Comentariu. URL:<https://www.facebook.com/100002542172880/posts/3058037324290977/?d=n> (vizitat: 26.11.2021).

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