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INTERNATIONAL PROPERTY LAW

DREPTUL INTERNAȚIONAL AL PROPRIETĂȚII

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ABSTRACT. *Property law is a set of legal rules governing such property relations in which authorized persons can exercise their rights to property (things) without the need for positive actions of other persons. The acquisition and termination of ownership 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 of the action.*

The signs of property rights are: a) Property rights are provided for by civil law. b) The right in rem is an absolute right, namely, in the event of a collision between its owner and an unlimited number of subjects on whom the obligation is assigned, the rights of the bearer of the right in rem are not violated. c) The right of ownership accompanies a thing as a result of its transfer to other persons, the so-called right of inheritance. If the owner of a thing withdraws from 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 are preferential rights; in case of contradictions between property and liability rights, priority will be on the side of property rights. e) The object of property rights are individually defined things. The central institution of property law is the right of ownership. The legal content of property relations 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 a thing has the right to dispose of the thing at his own discretion and not to allow any influence on the thing by other persons.

Keywords: *property law, property relations, acquisition and termination of property rights, obligations, subjects, individual thing, priority.*

REZUMAT. *Dreptul proprietății este un set de reguli juridice care reglementează astfel de relații de proprietate în care persoanele autorizate își pot exercita drepturile asupra proprietății (lucrurilor) fără a fi nevoie de acțiuni pozitive ale altor persoane. Dobândirea și încetarea dreptului de proprietate și a altor drepturi reale de proprietate sunt determinate de legea statului pe teritoriul căruia imobilul se afla sau se afla la momentul acțiunii.*

Semnele dreptului de proprietate sunt: a) Drepturile de proprietate sunt prevăzute de legea civilă. b) Dreptul real este un drept absolut, și anume, în cazul unei coliziuni între titularul său și un număr nelimitat de subiecți cărora li se cede obligația, drepturile titularului dreptului real nu sunt încălcate. c) Dreptul de proprietate însoţeşte un lucru ca urmare a transmiterii acestuia către alte persoane, aşa-zisul drept de moştenire. Dacă proprietarul unui lucru se retrage din posesia lucrului împotriva voinței sale, el rămâne totuși proprietar și nici măcar nu este lipsit de dreptul de

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a revendica lucrul din posesia ilegală a altcuiva. d) Drepturile de proprietate sunt drepturi preferenţiale; în caz de contradicţii între drepturile de proprietate şi cele de răspundere, prioritate va fi de partea drepturilor de proprietate. e) Obiectul drepturilor de proprietate sunt lucruri definite individual. Instituția centrală a dreptului proprietății este dreptul de proprietate. Conţinutul juridic al raporturilor de proprietate se manifestă printr-un ansamblu de drepturi subiective exclusive ale proprietarului, prin triada următoarelor componente: deţinerea, folosirea şi înstrăinarea. Proprietarul unui lucru are dreptul de a dispune de lucru la propria discreție și de a nu permite vreo influență asupra lucrului de către alte persoane.

Cuvinte-cheie: *dreptul proprietăţii, raporturile de proprietate, dobândirea şi încetarea drepturilor de proprietate, obligaţii, subiecte, lucru individual, prioritate.*

Introduction. 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 [5], 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 [8, 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 [18, p. 78].

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 [14, 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 [17, 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[5]: "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 [15, 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 under 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 [20].

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, 1950 [7]: "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 [12] 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 [6] "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 [13, p. 211], but by the law of the place where the thing is located. §37 of the Law on IPR of China [3]: "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 [9] 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 [19] 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*) [11, 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 established by the agreement of the parties, however, if there is no clause on the applicable law in the agreement, then the *lex loci contractus* will apply - a conflict of law binding to the law of the place of conclusion of the transaction.

When applying Incoterms in international trade, both the moment of transfer of ownership and the moment of transfer of risk are recognized as independent categories. In Incoterms, certain importance is given to establishing the moment of transfer of risk.

An appropriate way of regulating the issue is the application of the autonomy of the will of the parties, as it is provided in §38 of the Law on Emergencies of China [4]: "Parties can choose the law applicable to the emergence of real rights to movable things during their transportation. If the parties have not made a choice, the law of the place of destination of the thing shall be applied. The best option for regulating the rights to the property complex is the autonomy of the will of the parties and the splitting of the conflict binding.

Foreign investments are those tangible and intangible assets that belong to legal entities and individuals of one state and that are located in the territory of another state with the subsequent purpose of extracting profit. As a rule, investments are divided into direct investments and indirect investments. What direct investment entails is the creation of joint ventures and enterprises invested by foreign investors, moreover, these same foreign investors manage the enterprises. The main pursued goal of such direct investment is the maximum optimization of the use of funds, at the expense of minimal taxes and costs for intermediaries. The main points that provide foreign investors with certain advantages [16]: a) the possibility of repatriation of income; b) the possibility of performing their functions through branches of a foreign legal entity. Several levels are distinguished in the legal regulation of investment relations: the international legal level and the intrastate level. The manual developed and adopted by the World Bank in 2010 [10] on the

coordinated survey of direct investments contains: "this manual is a unique tool for calculating global aggregate indicators and determining the geographical distribution of direct investment balances and thus provides significant new information about the degree of globalization and ensures an increase in the overall the quality of data on direct investments in the world as a whole.

Investment disputes are resolved through a conciliation procedure. The Seoul Convention contains a definition of traditional non-commercial risks, which are risks associated with currency exchange, war, and civil unrest. Within the framework of this Convention, a system of state and private insurance at the national level was created, which was supplemented by an international multilateral system of insurance of foreign investments.

Bilateral international agreements on mutual encouragement and protection of foreign investments are the most flexible instrument in the regulation of investment relations. Agreements of this type are concluded with the aim of ensuring the maximum protection of capital investments of the other contracting state on the territory of one contracting state, as well as to obtain a guarantee of the unhindered export of the currency part of the profit and protection against non-commercial risks. Such international agreements on the mutual protection of investments of their kind, the mutual obligation of states will be freed from the forced withdrawal of capital investments.

Capital investments involve any property values, in particular: 1) shares and other forms of participation in enterprises; 2) rights arising from any contributions made for the purpose of creating economic values; 3) immovable property, as well as all types of rights related to it; 4) intellectual property rights (patents, trademarks, names of places of origin of goods, company names, industrial designs, copyrights, technologies and "know-how"); 5) rights to carry out economic and commercial activities, provided on the basis of a law or contract, relating to exploration, development, exploitation and conservation of natural resources [11]. Each of the parties to the agreement ensures the protection of capital invested in its territory. The arising dispute is considered: a) by the Arbitration Institute of the Stockholm Chamber of Commerce; b) ad hoc arbitration court. Resolving disputes, the arbitration court is based on: a) the provisions of the Agreement; b) according to the norms of the national legislation of the country in whose territory capital investments are placed; c) on the basis of norms and generally recognized principles of international law. Most states do not contain codifying norms in their national legislation on foreign investments.

Those states that pursue policies aimed at actively attracting foreign capital adopt special investment codes. These states include: Poland, Argentina, China. The legal regime of foreign investments and activities of foreign investors for their implementation cannot be less favorable than the regime for property, property rights and investment activities of legal entities and individuals.

One of the main methods of attracting foreign investment is the creation of free economic zones (SEZs). According to the opinion of UN experts, "SEZs are restricted industrial areas, representing a part of the country's territory with a duty-free customs and trade regime, where foreign companies producing products mainly for export enjoy a number of tax and financial benefits" [11].

The International Association for the Development of Free Zones (MARSEZ) defines a free economic zone as a special territorial and economic formation, favorable to economic, scientific, technical, ecological and social development, specially created by additional delegation of rights and powers [1].

The following are the general principles of FEZ functioning: a) absence of customs duties; b) preferential taxation regime; c) free circulation of convertible currency; d) provision of a wide range of benefits and privileges. The term "free economic zone" is collective. FEZ is a defined territory with favorable economic conditions for both national and foreign entrepreneurs who are recognized as owners of individual legal status. Prominent and characteristic features of FEZ are: a) foreign trade privileges; b) fiscal benefits; c) financial benefits; d) administrative benefits; i) separate zone management system.

The classification of SEZs is as follows: a) Trade and warehouse zones, representing small territories without a permanent population and enjoying customs freedom, namely, you can import goods in any volume without paying duty. b) Export- production zones are zones of a specialized type with a high degree of industrialization, i.e. part of the territory of the state, which has clear borders and is prepared for industrial development. c) The research park is a type of SEZ based on the integration of highly developed production, science and education, the purpose of which is the development and implementation of modern technologies. d) Complex SEZ is an "open" city or a special district that uses elements of different types of SEZ. According to the degree of integration into the national and international economy, it was divided into two types of SEZs: a) closed zones oriented to the external market; b) integration zones integrated into the national economy.

Depending on the mode of functioning of the SEZ, it is customary to divide it into open zones and closed zones. Despite the fact that there are differences in the concepts that exist between foreign trade zones, industrial zones and science parks, all of them are united by the state zonal policy of the USA, namely: the creation of an environment that stimulates innovative and entrepreneurial activity. For example, in China, SEZs have broad autonomous rights in the field of attracting foreign capital, as well as the establishment of a preferential regime for foreign trade activities. Special economic zones were created in the cities of Shenzhen, Xiamen, Zhuhai and Shantou. Regarding the granting of benefits, this right falls within the competence of the Ministry of Science and Technology, not local authorities, which in turn brings significant benefits to the Chinese economy, namely: a) favorable conditions for attracting foreign investments are created; b) new technologies and advanced techniques are attracted; c) the problem of the lack of jobs is solved; d) natural resources are effectively used; i) export profit increases; f) the economy as a whole develops better.

Conclusions

Property law is a set of legal rules governing such property relations in which authorized persons can exercise their rights to property (things) without the need for positive actions of other persons. The acquisition and termination of ownership 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 of the action.

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References:

1. Boguslavskyi M.M. Private International Law: textbook. Moscow. 2021. 287 p.
2. China's Emergencies and Disasters Law. Date of visit [17.11.2023]. Available: https://pravo.hse.ru/intprilaw/VA.
3. China's Emergencies and Disasters Law. Date of visit [18.11.2023]. Available: https://pravo.hse.ru/intprilaw/VA.
4. China's Emergencies and Disasters Law. Date of visit [19.11.2023]. Available: https://pravo.hse.ru/intprilaw/VA.
5. Civil Code of the Republic of Moldova No. 1107-XV dated 06.06.2002. In: *Monitorul Oficial al Republicii Moldova*, 2002, nr. 82-86. Republished in: *Monitorul Oficial al Republicii Moldova*, no. 66-75 (6989-6998) dated 01.03.2019.
6. Code of the Ministry of Emergency Situations of Bulgaria 2005 Date of visit [17.11.2023]. Available: https://pravo.hse.ru/intprilaw/doc/041701 .
7. European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950. Date of visit [16.11.2023]. Available: https://www.coe.int/ru/web/compass/the-european-convention-on-human-rights-and-its-protocols.
8. Frunze Yu.I. Civil law (separate types of obligations): (textbook). Chisinau. 2017. 219 p.
9. GKBelarus. Access data [17.11.2023]. Available: https://pravo.by/document/?guid=3871&p0=HK9800218 .
10. Guidelines for the coordinated survey of direct investments 2010. Date of visit [17.11.2023]. Available: https://www.imf.org/external/russian/np/sta/cdis/2009/120109r.pdf.
11. Hetman-Pavlova, I.V. Private International Law: textbook for masters. Moscow: Yurayt Publishing House. 2013. 945 p.
12. Law of the Republic of Azerbaijan On Private International Law of 2000 Date of visit [17.11.2023]. Available: https://pravo.hse.ru/intprilaw/doc/070801.
13. Lunts L.A. Course of Private International Law. In 3 volumes. Moscow. 2002. 311 p.
14. Puginsky B.I. Commercial law of Russia. Moscow. 2010. 292 p.
15. Shershenevich G. F. *Textbook of Russian civil law* (based on the 1907 edition). Moscow. 1995. 654 p.
16. Sokolova T.V. Peculiarities of creating organizations with foreign investments. Date of visit [17.11.2023]. Available: http://click.begun.ru/kick/jsp&url=4vrIyEhYbHFwip_NeNVSukEIVSYto hb3 9BN SgPvBhWxnrLaol Ki8yxpr8VE.
17. Sukhanova E.A. Civil law: textbook. Moscow. 2006. 549 p.
18. Tatar, O. Private International Law: Study guide: (course of lectures) / Tatar Olga. – Comrat: [S. n.], 2033 (A&V Poligraf). – 270 p. ISBN 978-9975-83-275-5.
19. The Belgian law dated July 16, 2004 "On the Code of Private International Law". Date of visit [17.11.2023]. Available: https://pravo.hse.ru/intprilaw/doc/041801.
20. The Hague Convention on the Law Applicable to Trusts and Their Recognition of 1985. Date of visit [16.11.2023]. Available: https://lexcorp.com/ru/trust/hague_convention/.