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# STUDY

## **Property rights in the Transnistrian region of the Republic of Moldova**



CHISINAU 2010

***Promo - LEX***



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Transnistrian region of the  
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## **Study** **“Property rights in the Transnistrian region of the Republic of Moldova”**

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## INTRODUCTION

In this study we intend to examine the exercise of property rights in the Transnistrian region of the Republic of Moldova, where the legitimate constitutional authorities have been unable to exercise control for 18 years. One does not to be completely familiar with the details of the conflict to understand the material that follows in this present study, which pursues two main goals: First, to stress the importance of respect for ownership in the disputed region, and the inseparable relationship between economy and property, and, second, to highlight a number of high-risk areas with respect to property rights.

The present study is based on information collected by the author during his activity in the region, as well as on information provided by active human rights organizations, and on cases examined by, or pending before, the European Court of Human Rights. Various bulletins, reports and recommendations of international organizations concerning human rights are also drawn upon.

The concept of Transnistria is geographical rather than historical.<sup>1</sup> However, this hasn't prevented the secessionist authorities from defying international law and inventing a new history based on falsehoods. The transformation of local patriotism, understood in ideological terms, into local nationalism, understood as a government ideology, is perhaps the best explanation of how the PMR regime has managed to survive in the Transnistrian region hitherto.<sup>2</sup> The arguments put forward by the separatists can be divided into three main categories: the violation of linguistic, cultural and political rights; the brutality of the 1992 war; and the denial of economic rights.<sup>3</sup> So, starting with 1990, the region's economic potential has become a pivotal instrument in the political discourse practiced on the eastern side of the Nistru, and a key argument for separation from the Republic of Moldova.

Property has existed at all times as a constant factor. Being an economic concept, property reflects the relationship between people in the process of production and distribution of physical possessions. Property relations show those who own the means of production and those in whose interests these are being used.<sup>4</sup> In reality, the entire economic potential is in the hands of the leaders of this unrecognized republic. Because of the external military and political support for the region, and not because the region had concentrated more than one-third of the industrial capacity of Moldova, the secessionist regime has existed and developed, creating structures that have replaced the legitimate authorities. The economy of the region is mainly industrial and includes the electric energy sec-

1 Politosfera. Oleg Serebrian, Ed. Cartier. Chişinău. 2001

2 Naționalismul transnistrean: actorul invisibil al secesiunii RMN (Transnistrian Nationalism: the invisible actor of the PMR secession), Igor Munteanu, 27.02.2003

3 [www.europa.md%2Fupload%2FFile%2FSumarExecutivalRaportului.doc&rct=j&q=proprietate+in+RMN&ei=of1bS\\_mF6XgnAPWnKCCag&usg=AFQjCNE8ISaq1-MhzsYS2R1YWpD6gkq0Rg](http://www.europa.md%2Fupload%2FFile%2FSumarExecutivalRaportului.doc&rct=j&q=proprietate+in+RMN&ei=of1bS_mF6XgnAPWnKCCag&usg=AFQjCNE8ISaq1-MhzsYS2R1YWpD6gkq0Rg)

4 Drepturile și libertățile fundamentale. Sistemul de garanții. (Fundamental Rights and Freedoms. System of Guarantees) I. Creangă și C. Gurin. Chişinău 2005, pag. 150

tor, ferrous metallurgy, machine building and metal working, chemical industry, woodworking, furniture manufacturing, printing industry, light industry, building materials industry, etc. Highly profitable companies are located here, including the Rybnitsa Foundries, and the Kuchurgan and Dubasari hydroelectric plants.<sup>5</sup>

In the early years of its existence, the Republic of Moldova changed its views on property. The existence of any establishment or entity implies that certain rules of conduct with respect to ownership and control over property be defined. Until the adoption of the Constitution of Moldova in 1994, a series of key laws to govern and protect property were adopted: the Property Law of 20 Jan. 1991<sup>6</sup>; the Land Code of 25 Dec. 1991<sup>7</sup>; and the Privatization Law of 4 Jul. 1991.<sup>8</sup>

In the same period, a parallel system was brought into existence in the eastern region of the Republic of Moldova, introducing separate regulations in defiance of the constitutional norms and international law. Those regulations favored one group of people, who have transformed this region into a black hole in Europe, where human rights cannot be guaranteed.

The Transnistrian conflict has lasted for more than 18 years now, and in the meantime new generations have appeared in the region, without any moral or psychological connections with the rest of Moldova's population. This rupture is the consequence of fierce propaganda practiced during all these years, with Moldova being depicted as an aggressor, its people despising the community living on the eastern side of the Nistru.<sup>9</sup> It is no wonder that the reintegration of the country has become an extremely complicated thing to accomplish. This fact determined the authorities in Chisinau to promise multiple concessions to the population living in the region, revealing the incapacity of the Republic of Moldova to handle some situations. The secessionist authorities used those promises to make speculations, interpreting them as attempts to occupy the region.

The leadership of Moldova has repeatedly declared that the Moldovan state could recognize the ownership rights over possessions located in Transnistria that were privatized outside the legal framework of the Republic of Moldova, only after a peaceful political solution to the conflict is found. This position is essential in the context of the instruments which the administration of the Republic of Moldova intends to employ to settle the Transnistrian issue in a dialogue with Russia.<sup>10</sup> Delivering on this promise could have positive effects, but at the same time they could be extremely negative for the population of the region as well as for the economic state of the country in general. This assertion is based on the following arguments.

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5 <http://www.olvia.idknet.com/olr-2.htm>

6 <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=312832>

7 <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=313324>

8 <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=313321>

9 <http://www.olvia.idknet.com/conflikt.htm>

10 *Viziunea sintetizată asupra problemei transnistrene* (Synthesized View on the Transnistrian Issue), IPP, 26.11.2008, <http://www.ape.md/libview.php?l=ro&id=476&idc=154>

Bearing in mind that property is a fundamental element of the market, we are well aware that understanding the way the market interacts with the law is crucial in political analysis, in the development of laws and in legal interpretation.<sup>11</sup> It is opportune to remark that the right of ownership in the region, in most cases, was obtained naturally, as a result of transactions between persons, transactions which normally wouldn't raise any question, like home purchases, obtaining of ownership over homes privatized free of charge, over allotted plots of land, inherited possessions, registration of inventions, etc. At the same time, large industrial enterprises were privatized, of major importance for the national economy, transactions which were done in conditions of complete non-transparency, and in the absence of monitoring on the part of the legitimate authorities, not to mention that the privatization proceeds were used to maintain and enrich the illegally instituted regime. Analysts applying the international law of *de facto* regimes suggest the PMR does not "have the right to sell-off Moldovan state assets or any private property. Any such sales face possible challenge and repudiation should Transnistria become reintegrated into Moldova".<sup>12</sup> Also, some legal experts have insisted that the regime in PMR has no right to change the form of property and make possessions located in the region subject to privatization.<sup>13</sup>

Although, according to the Constitution, the right of ownership is guaranteed in the Republic of Moldova<sup>14</sup>, most specialized reports reveal cases of severe violations of property rights. Despite the fact that most of the cases lost by Moldova at the European Court of Human Rights concern the violation of the right to property<sup>15</sup>, we can say that there is a mechanism in place to protect this right: legal action in national courts and the possibility filing an application with the ECHR. Yet this mechanism is available only on the western side of the Nistru, and to a much smaller extent on the eastern one.

The authorities in Chisinau have declared that they will not be able to ensure observance of the provisions of the European Convention on Human Rights and Protocol no.1 to the Convention in what concerns the omissions and actions committed by the institutions of the self-proclaimed Transnistrian republic on the territory effectively controlled by them, until the definitive settlement of the conflict in this zone.<sup>16</sup> Thus, the acts adopted by the authorities contradict the political promises made earlier.

In the following chapters we will make a legal analysis, rather than an economic one, of how the right to property, as a fundamental human right, is respected.

11 Ugo Mattei, S. Baieş, N. Roşca, Editura Arc 2004, „Principiile fundamentale ale Dreptului de proprietate” (“Basic Principles of Property Law”), pag. 46

12 [www.europa.md%2Fupload%2FFile%2FSumarExecutivalRaportului.doc&rct=j&q=proprietate+in+RMN&ei=of1bS\\_mF6XgnAPWnKCCag&usg=AFQjCNE8ISaq1-MhzsYS2R1YWpD6gkq0Rg](http://www.europa.md%2Fupload%2FFile%2FSumarExecutivalRaportului.doc&rct=j&q=proprietate+in+RMN&ei=of1bS_mF6XgnAPWnKCCag&usg=AFQjCNE8ISaq1-MhzsYS2R1YWpD6gkq0Rg)

13 Research by the Association of the Bar of the City of New York “Thawing a Frozen Conflict: Legal Aspects of the Separatist Crisis in Moldova”

14 Art. 46 of the Moldovan Constitution stipulate that the right to possess private property and government bonds are guaranteed

15 See [www.lhr.md](http://www.lhr.md), statistics of cases lost by Moldova at the ECHR

16 Parliament ordinance No. 1298 of 24 July 1997 on the ratification of the Convention and additional protocols to it, <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=307753>

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## Chapter I

# OBSERVANCE OF PROPERTY RIGHTS IN THE UNRECOGNIZED PMR

Political pressures have the ability, and usually manage, to leave their mark on the property law system. However, they mainly take the form of specific statutes, which are the product of the groups exerting pressure and therefore they are not intended to make impartial decisions over limited resources.<sup>1</sup> There is no doubt that the negotiations on the Transnistrian issue depend to a great extent on the intention of some interest groups. Hence, the regulation of property rights depend on these interests, which explains the extremely frequent change in the legal provisions concerning property in the region.

Concerning the self-proclaimed PMR, experts have noted that the occupying authorities can, *de facto*, exert control over the economic resources on a territory, yet, *de jure*, the previous owners remain the legitimate owners. Any economic activities undertaken jointly with the separatists or insurgents by a third party are done so at its own risk.<sup>2</sup> Therefore, there are sufficient legal arguments to demand the abrogation of any act concluded by persons who are not vested with this right.

The Tiraspol regime can be defined as an occupying regime. Yet formally the leaders of this nonexistent republic maintain they are the successors of the former USSR leadership in the region, which disbanded in the early '90s. In fact, high-ranking officials in the Russian Federation, like Russian Duma's Deputy Speaker Sergey Baburin, stated that "our mission is to make Moscow understand this thing as well: we should not make a difference between the recognition of Abkhazia and South Ossetia and the recognition of the PMR. You are the only fragments of the Soviet Union which remain faithful to the USSR, more than all the [former] Union Republics put together".<sup>3</sup> Such statements have been borrowed by the separatists to build a state ideology. They reveal the communist, or neo-communist, nature of the regime, with all the consequences and methods it implies, at least during the early stage of becoming a so-called entity. It should also be mentioned that, after the removal of the authoritarian regime in the Republic of Moldova (except for PMR), a law was adopted to rehabilitate political victims. The lawmakers found that during the rule of the totalitarian regime (1917-1989) the state authorities

1 Ugo Mattei, S. Baieș, N. Roșca, Print House Arc 2004, „Principiile fundamentale ale Dreptului de proprietate” (“Basic Principles of Property Law”), pag. 39

2 [www.europa.md%2Fupload%2FFile%2FSumarExecutivalRaportului.doc&rct=j&q=proprietate+in+RMN&ei=of1bS\\_mf6XgnAPWnKCCAg&usg=AFQjCNE8ISaq1-MhzsYS2R1YWpD6gkq0Rg](http://www.europa.md%2Fupload%2FFile%2FSumarExecutivalRaportului.doc&rct=j&q=proprietate+in+RMN&ei=of1bS_mf6XgnAPWnKCCAg&usg=AFQjCNE8ISaq1-MhzsYS2R1YWpD6gkq0Rg)

3 <http://www.olvia.idknet.com/ol58-01-10.htm>

had committed a series of mass political repressions.<sup>4</sup> The adoption of a rehabilitation act after 70 years of mass repressions and expropriations, for the purpose of compensating damages and liquidating the consequences of totalitarian arbitrariness, demonstrates the absolute and perpetual nature of the right to property. However, it should be stressed that in a region of Moldova a structure similar to the Soviet model continues to exist and, therefore, the repressions there have not ceased. Hence, regardless of how long this unrecognized entity continues to exist, the authorities in Chisinau would be obliged to declare that the repressions in PMR have persisted beyond the declaration of Moldova's independence.

The nature of the right of ownership is conceived as the most comprehensive expression of the content of a legal right, which is derived from the circumstance that the owner is justified to exercise by themselves the prerogatives afforded by this right, and that it exists as long as the possession forming the subject subsists.<sup>5</sup>

We could examine the right to property from two perspectives: economical and legal. In the economic sense, property can be interpreted as the relationship between people with respect to an object with economic value. In the legal sense, it can be defined as legal relations governed by the civil law. The legal sense of the notion of property can have two meanings:

- in a wider sense, property comprises the right of ownership as well as other real rights;
- in this sense being an owner means to own something exclusively and have control over it;
- in a stricter sense, property can be either real or movable.<sup>6</sup>

Applying this interpretation to the situation in the PMR, it should be remarked that, unlike the economy on the western side of the Nistru, where the private sector is dominant, the economy on the eastern side of the Nistru has the characteristics of a *state-controlled* economic system<sup>7</sup>, being under the direct control of the elites that form the leadership of the so-called *state*. This fact explains the different regulation of the right to property in the western and the eastern sides of Moldova.

We should stress that the regulation imposed by the secessionist leaders doesn't differ much from the Soviet one, that is why the people in the region, who are living in an information vacuum and feel nostalgia for the soviet past, cannot react appropriately. Because, we are well aware of the fact that the

4 See Law no. 1225 of 8 Dec. 1992, <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=313312>

5 Dreptul de proprietate. (Property Law) Volume I, V. Pătulea, C. Turianu, Ed. Roseti 2004

6 Dreptul de proprietate (Property Law). Volume I, V. Pătulea, C. Turianu, Ed. Roseti 2004

7 [http://pdc.ceu.hu/archive/00002400/01/0311\\_transn-research.pdf](http://pdc.ceu.hu/archive/00002400/01/0311_transn-research.pdf)

population in the eastern region of Moldova is living behind an iron curtain erected tenaciously through aggressive propaganda by the local leadership, and the changes occurring in the economy and the life of the Republic of Moldova are presented here as the most dramatic chapters in the country's history.

Of course, in order to justify the existence of a separate 'state', the leaders in Tiraspol have adopted dozens of laws and even a constitution. The so-called fundamental law of the PMR recognizes, among other, the right to property.<sup>8</sup> What follows below demonstrates how illusory this provision is and how it is applied in many areas where the personal interests of the Tiraspol leaders prevail.

The local constitution guarantees the right to property yet it does not oblige the government of the region to take responsibility for liabilities, nor to take responsibility, at least politically, for the violation of the right to property. The insubstantiality of, and the impossibility to make use of, this guarantee results from the formal provision that anyone can be deprived of property under a court decision, without being given the reasons for such a decision. So, expropriation is left in the power of the courts, which are known to be subject to political influence, since all the judges are appointed by the leader of the so-called republic.<sup>9</sup>

Safeguards will be detailed in the last chapter, but to create a clearer picture of the state of the judiciary in the region, we shall stress that the level of confidence of the population in courts is lower than in police officers in the region.<sup>10</sup>

Some experts suggest that the regulations imposed by the region's authorities, including those related to property, may be disturbing and disproportionate, but should nevertheless be respected, since they exist. On the other hand, we cannot disagree with the opinion that, from a practical viewpoint, these regulations bear the mark of political decisions made by a small group of people, who are not concerned with the public welfare and who do not represent the interests of the local population.

Therefore, while trying to resist the temptation of examining and assessing the rules imposed by the authorities of the region, we shall analyze the situation regarding the observance of the right to property from the perspective

8 Art. 37 of the pmr constitution states: (1) The state guarantees the right to property to everyone; (2) The owner is free to own, exploit and control the owned possessions; (3) Nobody can be deprived of possessions, but under a court decision. (4) The exercise of the right of ownership shall not harm the environment, historic and cultural assets, and infringe on other people's rights and interests protected by law. The right to inheritance is guaranteed

9 Art. 83 of the pmr constitution state that judges, except for constitutional justices and people's judges, shall be appointed by the president on the recommendation of the chairmen of the supreme court and arbitration court

10 Statement made by a jurist practising in the Transnistrian region at the international conference themed "Personal Freedom and Security in Conflict Regions", 5-6 May 2009, <http://promolex.md/index.php?module=news&item=186>

of constitutional norms and European standards in the field.

Undoubtedly, one of the most important economic advantages of owning a possessions is the ability to make profit out of it, although a greater profit can be obtained from the exploitation of the possession rather than from its transfer. Here we refer to the multitude of possibilities of owning assets. Property transfers are dynamic transactions which involve juridical systems in creating frameworks for a market.<sup>11</sup> This is where the first difference appears between the possibilities existing on one side of the Nistru and the other.

We should also mention the obstacles created on purpose or accidentally by the authorities in Chisinau in relation with certain people residing in the self-proclaimed PMR. The most recent cases that were brought to public attention revealed an unfair attitude of the constitutional authorities toward some persons in the region, for example the Tiraspol-based company Interdnestrcom and the people who deposited money in saving banks. In the first case, the right to property was violated through decisions pronounced by national courts, as a result of which the company lost an important amount of money invested in acquiring a license, and the second case concerns a discriminatory provision expressed in a public law.

The content of the right to property is defined by the attributes (prerogatives) which a possession affords its owner. The key attributes of the right to property are: the ability to own, the ability to use, and the ability to control a possession.<sup>12</sup> We will try to analyze the situation starting from the attributes of the right to property. It should be noted that, although the secessionist authorities tried to emulate the legislation of the Russian Federation in every aspect, the implementation and interpretation of the right to property in the PMR is done in the interest of certain people. In other words, in practice, the right to property is regulated rather by the administrative acts adopted by the president, the supreme soviet (the legislative body), town councils, ministries, and only formally by codes. Obviously unpredictability has left a strong mark on the relations in this field. This is the reason why it is so complicated to predict how things will develop in the region with regard to the subject of this study.

It should not be forgotten that besides the linguistic factor another factor that led to the division of the country was the economic issue. The citizens on the eastern side of the Nistru pleaded for the preservation of the Soviet model of regulation, in which there is no private property over land, while the industry is under the control of the state. Under the rules adopted in this

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11 Ugo Mattei, S. Baieș, N. Roșca, Editura Arc 2004, „Principiile fundamentale ale Dreptului de proprietate” (“Basic Principles of Property Law”), pag. 62

12 Dreptul de proprietate. Volumul I, V. Pătulea, C. Turianu, Ed. Roseti 2004, pag. 26

region, real property as an essential element of the patrimony belongs to the *state*, or the municipality, and may be transferred to private ownership. Real property in the region is mostly owned by the *state*.

The minimum condition required for land to remain an area for safe investment is the existence of stable legal institutions, even if rudimentary.<sup>13</sup> Out of the total area of irrigated farmland in Moldova in 1990, roughly 38% were terraces located on the left bank of the Nistru, that is, in the Transnistrian region, a territory which represents some 11% of the country's area. While in 1977 the region had 58,500 hectares of irrigated land, 14 years later that area almost doubled to 118,100 hectares, representing roughly 50% of the total farmland. For example, in 1991 in the districts of Slobozia and Grigoriopol the share of irrigated land constituted 88-94% of the total, while in Rybnitsa and Dubasari the share was 42-56%. It's no wonder that in the Soviet era, the Transnistrian region of Moldova earned itself the reputation of the "garden of the Soviet Union". For example, the results of the Slobozia district alone in terms of agrifood and canned foods exceeded the results of the entire Armenian Republic.<sup>14</sup>

After 1991 the situation changed dramatically. By 1996 the area of lands equipped with irrigation systems dropped to 109,900 hectares, and by 2001 to 91,900 hectares. In the districts of Dubasari and Rybnitsa the areas of such lands decreased by 50% and 58%, respectively. The collective farms, or kolkhozes, while formally existing, became destitute. In the same period, the share of irrigated farmland dropped from 73% to 21%. The situation regarding irrigation-assisted agriculture became even more dramatic by 2004, when the irrigated land constituted 4% of the total, and only 1.8% in Grigoriopol.<sup>15</sup>

In 2002 the PMR adopted a land code, which proclaimed that the land cannot be placed under private ownership. Later, however, a land privatization scheme was developed, using the Ukrainian model, which intended to introduce a mixed form of ownership. The separatist authorities said they had been assisted by a group of experts from the Odessa Oblast. In the opinion of the secessionist authorities the allotment of land plots to workers in kolkhozes, i.e. collective ownership, had generated total irresponsibility, which led to the inefficiency of land management.<sup>16</sup>

The initiators of that reform suggested the following: the inhabitants of rural areas would receive in private ownership the land lying near their houses

13 Ugo Mattei, S. Baieş, N. Roşca, Editura Arc 2004, „Principiile fundamentale ale Dreptului de proprietate” (“Basic Principles of Property Law”)

14 Evoluția economiei transnistrene. O evaluare critică. Centrul de investigații strategice și reforme. Chișinău 2001

15 Research – Human Rights in Moldova's Transnistrian Region, Promo Lex, Chișinău 2008, [http://promolex.md/upload/publications/en/doc\\_1233068241.pdf](http://promolex.md/upload/publications/en/doc_1233068241.pdf)

16 <http://www.olvia.idknet.com/ol02-03-03.htm>

and also a 0.3 ha plot of land, while the urban residents would be entitled to a building plot for a country house, or *dacha*, and another plot of 0.15 ha. Farmland would be available only to employees or retired employees in the agricultural sector. The persons who do not hold the *citizenship* of the PMR would not be able to participate in transactions involving land.<sup>17</sup>

A referendum was held in 2003 to obtain public endorsement for those ideas.<sup>18</sup> Although most participants in the referendum consented to the idea of private ownership of land, the poll was not *validated*, on the explanation that the turnout had been under 50%.<sup>19</sup> Two realities became obvious: the increasingly widening gap between the interests of the elites and the will of the population of the region; and the large scale of emigration. At the same time, the adoption of such unpopular measures like land privatizations revealed the functional incapacity of the system and the possessive intentions of the elite group. In fact, the propaganda issued in the last decade about the “collapse” of the Moldovan economy because of land privatizations has had a boomerang effect on those elites.

The legal regime of land ownership was not modified at that time, leaving the *state* to be the exclusive owner of land.

The legal regime of other categories of immovable property was modified to the benefit of private ownership. Starting from 1992, the PMR residents became able to *privatize* apartments and other dwellings from the stock of *state* and municipal housing, free of charge. Similar regulations were applied on the western side of the Nistru, where residents were also entitled to home-privatizations. Under the rules adopted in the PMR, each person would be entitled to 18 sq.m. per person and each family to 20 sq.m. without paying a fee. However the law contained an incongruity in that the president of PMR, and he alone, would be authorized to determine the method and the conditions of home-privatizations<sup>20</sup>.

On 3 July 2007 an act was issued to regulate the method of acquiring ownership over real property (houses and other structures) in rural areas. Under this act, the local authorities may recognize the right of ownership over homes located in villages and raion (district) capitals until 2015. To obtain a title of ownership over a home, a person needs to submit an application, the registration certificate of the real property, registration certificate of the underlying land, a copy of the identification document, and receipts of the

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17 <http://www.olvia.idknet.com/ol92-03-03.htm>

18 The 2003 referendum held by the Tiraspol authorities, like many other polls organized in the region, was not recognized by the legitimate authorities

19 <http://www.olvia.idknet.com/ol33-04-03.htm>

20 Law on home privatizations, <http://www.vspmr.org/Law/?ID=410>

paid fees and taxes.<sup>21</sup> It would seem at first glance that there are no impediments preventing a person who obtained the right to use or build a house in the Soviet era from obtaining ownership of that house, likewise with owners of apartments. But the first act as well as the second one neglect the right of the persons who were forced to flee their homes in the early '90s out of the fear of being persecuted by the secessionist forces; that is, internally displaced persons. Their right to obtain ownership of their homes is not guaranteed and, moreover, they will never be able to do that under some local ordinances. At the same time, even if the national legislation entitles these persons to a dwelling, their rights of ownership in the Transnistrian region have not been abolished.

Returning to the attributes of the right of ownership over immovable property, it should be remarked that, owing to the political realities, the inhabitants of the Transnistrian region have the ability only to own land, as the right of control of other real property, like houses and apartments, is limited, bearing in mind that they have no right to transfer ownership to non-citizens of the PMR.

Although formally the legal relations with respect to movable property are subject to a more flexible regulation, in the PMR these relations are inadequately developed. Problems with the observance of rights arise from the defective regulation and implementation mechanisms. The courts, while being placed under the control of the so-called president, often issue unjust decisions in relation with holders of property rights, depriving them of property and modifying the legal status of the possession. There have been multiple cases of abuses committed by the region's enforcement bodies, including the customs service, the *militsiya*, the border guards, where confiscation and sequestration of movable possessions is a common practice.

Experts believe that a potential reintegration would benefit the companies in the region, by offering new external trade and transit opportunities. Today the PMR's external trade is mainly oriented toward the CIS countries, with a share of over 61%.<sup>22</sup> Even without such an eventuality, the importance of intellectual property safeguards in the region is essential, both for the local producers and for the companies which export goods and services to the PMR, since intellectual property rights can be considered part of the patrimony as they can have material value.<sup>23</sup>

The national legislation of the Republic of Moldova is strongly connected with the European system of values, which is demonstrated by the more

21 Law on the system of registration of ownership of homes in villages and raion centres, <http://www.vspmr.org/Law/?ID=2230>  
22 [http://pdc.ceu.hu/archive/00002400/01/0311\\_transn-research.pdf](http://pdc.ceu.hu/archive/00002400/01/0311_transn-research.pdf)

23 Case of Balan v. Moldova, ECHR judgment of 29 Jan. 2008, <http://lhr.md/files/476.doc>

than 25 conventions, treaties and agreements signed by Moldova. Unfortunately, Moldova could not guarantee their application on all its territory. In the eastern region, intellectual property rights are inadequately safeguarded and they tend to be violated very often. Although an organization was established in the region similar to the Moldovan Intellectual Property Agency (AGEPI), "it lacks any authority, a proof being that the trademarks and the rights of intellectual property over the goods produced by the Rybnitsa Foundries, the companies "Kvint", "Electromash", "Tighina" etc., are registered in Chisinau. The corresponding agency in Tiraspol was set up in 2003, when an intellectual property was registered for the first time in the region. The Tiraspol authorities have since put impediments in the way of registering intellectual property rights with the Moldovan authorities, insisting that they be registered only in the PMR.<sup>24</sup> A relevant example is the case of the footwear manufacturer "Tighina", which came under harsh criticism for the decision to register intellectual property rights with the Moldovan authorities, and not with the local ones. The separatists intend to introduce administrative sanctions for the failure to register intellectual property rights locally".<sup>25</sup> So far it is not clear whether the separatists will define the registration of trademarks as an obligation or a right of the companies.

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<sup>24</sup> Research Paper on Transnistria, [http://pdc.ceu.hu/archive/00002400/01/0311\\_transn-research.pdf](http://pdc.ceu.hu/archive/00002400/01/0311_transn-research.pdf)  
<sup>25</sup> <http://www.olvia.idknet.com/ol62-05-03.htm>

## Chapter II

# HIGH-RISK ISSUES

### a. Exercise of ownership over land on the eastern side of the Nistru

The legal system defines land as a subject of particular importance in the property law. In a technical, rather than social, context, there is no doubt that the land law is perhaps the most complex domain of the traditional property law for several reasons of economic nature, which appear to be externalities of the law rather than exceptions in the transactions relating to immovable property.<sup>1</sup> It is probably this complexity that determines the existence of a multitude of severe violations of the property rights, including various restrictions in cases involving land.

“The core of the Moldovan economy is agriculture, based on the private ownership of land. In what concerns land on the eastern side of the Nistru, a number of experts opined that the issue could generate conflicts if the legitimate bodies tried to impose authority as well as if the secessionist bodies modified relevant regulations”.<sup>2</sup>

According to the constitution of the separatist region, the PMR’s territory includes all the lands located on the eastern side of the Nistru River. After hostilities ended the secessionist forces were unable to take control of a number of communities in the district of Dubasari and located on the left bank of the Nistru, so they declared them to be temporary under the occupation of Moldova; instead they annexed a number of locations from the right bank, including the municipality of Tighina, several villages on its outskirts and a number of villages in the district of Causeni.<sup>3</sup>

In the villages situated in Dubasari and placed under the jurisdiction of the legitimate authorities, the agrarian reform was implemented by allotting land and issuing ownership titles under the Land Code. According to Moldova’s Constitution, the holders of these titles could enjoy all the advantages of ownership over land. Until 2003 they were able to farm their plots, which, metaphorically speaking, were transecting the PMR. This can be seen on the political and administrative map of the Republic of Moldova: Vasilevca village, which is part of the commune of Cocieri, and the commune of Molovata Nouă, have farmland along the border with Ukraine. The secessionist au-

1 Ugo Mattei, S. Baieş, N. Roşca, Print House Arc 2004, „Principiile fundamentale ale Dreptului de proprietate” (“Basic Principles of Property Law”)

2 [http://pdc.ceu.hu/archive/00002400/01/0311\\_transn-research.pdf](http://pdc.ceu.hu/archive/00002400/01/0311_transn-research.pdf)

3 <http://www.zdg.md/140/investigatii/>

thorities, anticipating a potential loss of control over the Rybnitsa – Tiraspol roadway, which crosses the district of Dubasari, placed under the jurisdiction of Moldova, closed all the secondary roads that connected the Moldovan villages to their plots, forcing those working the land to use only the paths controlled by PMR's border guard outposts

At the start of 2005 the separatist authorities barred the access of over 5,000 landowners to 8,600 hectares of land. This includes private plots owned by the inhabitants of Dubasari district as well as public- and state-owned land, among which were large strips of forest, some portions of lakes, etc. The domain of Doroțcaia village has a total of 3,831.15 hectares of land, including 114.85 hectares of publicly-owned land and 2,636.30 hectares of privately-owned land, 426 hectares of forest, and 654 hectares of pastureland; the domain of Molovata Nouă has a total of 872 hectares of land, including 60 hectares of publicly-owned land, 390 hectares of privately-owned land, 253 hectares of forest, and 169 hectares of pastureland; the domain of Cocieri commune has 1,800 hectares, including 181 hectares of publicly-owned land, and 1,619 hectares of privately-owned land; the domain of Pârâta village consists of 986 hectares of land, including 526 hectares of land under private property, 231 hectares of pastureland, and 229 hectares of forest; the domain of Coșnița commune comprises 1,143 hectares, including 1,086 hectares of land under private property, and 57 hectares of forest. As a result, during 2005 those lands were left uncultivated and uncared for. The local farms sustained irreparable damages and many went bankrupt, with the worst affected being the small peasant households. In Doroțcaia village alone the measure affected 1,400 owners of land. The inhabitants of this village were especially affected since roughly 92% of their farm plots are located beyond the Rybnitsa – Tiraspol roadway, where access was denied.<sup>4</sup>

Under the pressure of international organizations, the farmland crisis was settled, yet the negotiated solution contradicted the national legislation, since, despite the fact that the legitimate authorities recognized the Dubasari residents' right of ownership over those lands, the owners were still forced to accept the conditions imposed by the separatists and enter into lease agreements for those plots with the administration of Dubasari, subordinated to Tiraspol. The farmers may now have access to their farm plots only if they can produce the certificates issued by the unrecognized authorities.

The government of Moldova partly compensated the farmers for the damages and the lost income<sup>5</sup>, but this temporary solution has not been able

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4 [http://promolex.md/upload/publications/ro/doc\\_1232982861.pdf](http://promolex.md/upload/publications/ro/doc_1232982861.pdf)

5 See Government decision no. 1281 of 09 Dec. 2005 on the compensation of losses incurred in the process of exploiting farm plots beyond the Ribnița-Tiraspol road, <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=298588>; Law no. 265 of 05 Oct. 2006 on the compensation of liabilities to the budget of social insurances for 2005 owed by the farmers ex-

to remove the tension. The so-called contracts expired at the end of 2009, still no talks have been initiated so far to resolve the issue of the farm plots located beyond the Tiraspol – Rybnitsa roadway. Keeping the situation in a frozen state favors the secessionist forces, which could employ an older scenario, with the help of which, after the signing of the ceasefire agreement (in 1992), the separatists took over of the municipality of Bender.

The situation of the other lands located on the eastern side of the Nistru and controlled by the secessionists is even worse. Although the leaders in Tiraspol used to declare that “land belongs to the people”, farm plots have been practically gifted to a group of people.

The reform of the production relations in the region through the establishment of agricultural production cooperatives (abbr. CAP) in 1998 aimed to overcome the crisis in the area by providing the population with agricultural foods and ensuring the food security of the region. This form of establishment was trialled in the district of Rybnitsa, under a decree issued by I. Smirnov on 8 Jan 1998. The decree provided for the transformation of kolkhozes into cooperatives and sovkhoses into joints stock companies. This way, every employee of a kolkhoz would be entitled to a share in the CAP, in the form of stocks, which came with the right of ownership over certain movable and immovable possessions, like equipment, buildings, vehicles, etc., and with the right to use certain farm plots. This apparently progressive move was conceived to motivate land workers to farm the land and derive profit from this activity. Through decree no.390 issued by I. Smirnov in 1999, this form of establishment was introduced throughout the region controlled by the separatists.<sup>6</sup> The implementation of the decree was preceded by huge pressures from the administrators of the enterprises who sought to take full advantage of the transfer of property from kolkhozes and sovkhoses. Concomitantly, the amendment of the so-called constitution offered the PMR president unlimited powers in administrating state property.

Later, despite the failure of the 2003 land referendum, the Tiraspol leaders appeared to have found “a solution”. Starting from 2003, a host of collective farms were declared insolvent and closed by decrees of the PMR president, while their lands were transferred to some companies or vegetable-processing factories. The contracts for those lands were signed by the local authorities, appointed by the PMR president. As a result, the inhabitants of rural areas have been deprived of the effective possibility to derive profit from

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plotting land beyond Rîbnîța-Tiraspol roadway, <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=318121>; Government decision no. 567 of 21 May 2007 of the approval of the Regulations on the method of compensation of incomes to local budgets, social insurance budget and mandatory health insurance fund lost in connection with the tax relief granted to the owners of land located beyond the Rîbnîța-Tiraspol road, <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=325893>

6 See details at <http://chipmr.ru/?p=312>;

farming. In fact, by these actions, the illegitimate authorities led to the dissolution of small farms, instituting a monopoly in agriculture instead.

Considering the scale of the illegalities, it can be stated that most of those working land in the region were abusively dispossessed of their lands. Here are some relevant examples from the districts of Slobozia and Rybnitsa. In 2001, the kolkhoz in the village of Parcani, Slobozia, was transformed into CAP Parcani. On 10 Feb. 2001, the agricultural land of that CAP was divided into shares and allotted to its members together with ownership titles. On 3 Nov. 2003 the Tiraspol leader issued decree no.799-pn<sup>7</sup>, transferring all the lands of that CAP to some firm called "Agrostil"; later, based on that decree, a lease contract was signed for a period of 99 years. This way, all the land workers in Parcani were deprived of the possibility of making a living from farming. In 2006 the members of CAP Parcani contested the contract, but without any chance of winning, as the litigation has not been solved to this date.<sup>8</sup> Another, more recent, case concerns 1,030 hectares of land in the village of Butuceni, Rybnitsa district. By decree no.249 issued by I. Smirnov on 24 Mar. 2008<sup>9</sup>, all the lands belonging to CAP Butuceni were transferred to a firm called "Fialt-Agro". The complaints of the CAP members are also largely neglected.

## **b. Privatizations and investment in the self-proclaimed PMR**

Though professing to pursue soviet policies, the PMR announced privatizations starting from 1991. First, laws were adopted regulating home privatizations, followed by privatizations of industrial establishments. The initial concept provided that 51% of the privatized company's assets would be granted in shares to the employees, who would have the possibility to take the company on lease and eventually redeem it. The privatization principles applied in industry were extended to kolkhozes, consumer cooperatives and economic associations.<sup>10</sup> The privatization process in the PMR was carried out in several stages. In 1997 large-scale privatization was suspended for a period of five years. In 2002 the Tiraspol leaders decided to abolish the provision granting the employees 51% of the assets of the kolkhozes, consumer cooperatives and economic associations, applying the market principle "money buys ownership", in an attempt to cover the deficit of the PMR's budget and

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7 <http://chipmr.ru/?p=358>

8 Details on CAP Parcani's legal action are available at <http://chipmr.ru/?p=16>; <http://chipmr.ru/?p=104>; <http://chipmr.ru/?p=314>

9 Details at <http://chipmr.ru/?p=156>

10 Privatization in Transnistria: Risks and Benefits, Vissarion Ceşuev, <http://www.cisr-md.org/ROM/Notes%202004%20rom/note13.html>

of the development fund.<sup>11</sup> At that point, the interdiction was still in place for foreigners to participate in privatization deals involving companies from the alcohol and tobacco industry, which were deemed strategic. On 26 Mar. 2003 the PMR's supreme soviet, the legislative body, adopted the law on foreign investment, which lifted that ban. The justification was the widening trade gap in the region.<sup>12</sup> The privatization of the company "Buket Moldavii" started shortly.<sup>13</sup> The list of the assets which could not be privatized shortened considerably and was limited to the assets belonging to the ministry of internal affairs, ministry of security and ministry of defense, the court of accounts and the central bank, the agricultural research establishments, experimental laboratories and plant selection facilities, historical assets, and telecommunication assets.<sup>14</sup>

Despite the fact that PMR has been known as an illegal and unconstitutional entity, virtually all the important companies in the region were privatized by foreign investors through deals with the secessionist authorities. They were encouraged by the position of the Russian Federation, expressed in the "Kozak memorandum", which suggested the need for Moldova to recognize the transactions completed during the existence of the PMR. The attitude of the Russian authorities is not a surprise to anyone, since it was mostly Russian investors that privatized the largest companies from the industrial and energy sector. For example, Russian state-run investors got hold of 100% of the stock of the Dubasari Hydroelectric Plant<sup>15</sup>, and 100% of the equity of the broadcasting center, whose equipment had been used in the Soviet era to jam the broadcasts of the western stations.<sup>16</sup> Moreover, the former Moldovan president, V. Voronin, voiced satisfaction that a majority of industrial enterprises in Transnistria are privatized by Russian investors, for "this means there exists a guarantee that these enterprises will be working and developing, will not die or [be] plundered...as very many facilities have been plundered out on the right Nistru bank in the 1990s. In the Law on the main provisions of a future special legal status for Transnistria, we have written that we shall not be tackling property questions as such – maybe, perhaps, only to an extent in which such questions work for the benefit of the country and of the investors who have put means in the enterprises."<sup>17</sup> This possible scenario would be unfair in relation to the people living on the western side of the Nistru, who also had a contribution to the development the economic potential on the

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11 Ibidem

12 <http://www.olvia.idknet.com/ol101-03-03.htm>

13 <http://www.olvia.idknet.com/ol18-02-03.htm>

14 <http://www.olvia.idknet.com/ol13-02-03.htm>

15 <http://lenta.ru/news/2008/07/31/interraoees/>

16 <http://lenta.ru/news/2007/10/03/rtrs/>

17 See details at [www.infotag.md](http://www.infotag.md), President Voronin hopes to Resolve Transnistrian Problem, Infotag (Chisinau, Feb. 6, 2006)

eastern side. Unlike the population of the western side, the inhabitants of the Transnistrian region had the possibility to take part in the privatization of some assets in Moldova.

Although it is popularly believed that only Russian companies and businessmen made investments in the PMR, the local press reported that 11 industrial companies in the region established economic relations with partners from Germany; the list includes the close companies “Moldavizolit”, “Moldavkabel”, “Tighina”, “Floare”, “Tirotext”, “MMZ”, and the open joint stock companies “Odema” and “Vestra”.<sup>18</sup> Ignoring their own principles, the authorities in Tiraspol opted for opacity in handling privatization deals. According to official media outlets in the PMR a poultry farm located in Grigoriopol, for example, was sold to a Dutch investor for one Transnistrian ruble, equivalent to \$0.15, reportedly in exchange for the obligation to settle all the fiscal liabilities.<sup>19</sup>

As is stated in a report, “applying the analogy to the law of belligerent occupation and to usufruct, the PMR has the ability to use items so long as their use does not destroy their economic value or exhaust the resource. Thus, ongoing use of facilities as required for the ongoing functioning of Transnistria is allowed, anything beyond that is questionable at best. As concerns the sale of assets, it is not allowed under the law of occupation or usufructuary rules. While military assets may be destroyed or other assets used for the well-being of the population, seizing and selling property – either private or public – is expressly prohibited. The PMR’s privatization program is thus exceedingly difficult to justify”.<sup>20</sup>

Thus, a solution is necessary to establish a balance in this situation, because, should it be decided to abolish all the acts that granted ownership over the privatized assets, the Moldovan Government will most likely have to face severe criticism from a number of organizations. This could constitute the subject of a host of litigations involving the government. One expert suggested a solution that deserves attention in connection with those non-transparent privatization deals. The suggestion is to draw up a special legal document which should comprise the following stages:

- inventory and appraise assets by internationally recognized standards, for example, based on the experience of the Union of Valuation Experts of the CIS countries;
- document all the investment funds involved as well as other funds that engaged in common activities with the privatized companies;

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18 <http://www.olvia.idknet.com/ol08-02-03.htm>

19 <http://www.olvia.idknet.com/ol57-02-03.htm>

20 Research by the Association of the Bar of the City of New York “Thawing a Frozen Conflict: Legal Aspects of the Separatist Crisis in Moldova”

- hold trilateral consultations (investor – representative of the employees – representative of the government) to agree on the size of the share that will be granted to the employees and the the share of ownership that will be transferred to the government, under explicit conditions, to be further distributed among other citizens;
- register the securities (share, bonds) of the privatized companies with the National Commission on Financial Markets and list them on the Moldova Stock Exchange, allowing them access to the interbank market as well.
- hold shareholders’ assemblies and certify the incorporation documents according to the national laws.<sup>21</sup>

The legitimate authorities have adopted a simpler position. According to the Law on Privatization, the state does not guarantee the right of ownership over possessions located on the eastern side of the Nistru and in the municipality of Bender if they were privatized without any coordination with the Government and didn’t follow the standard procedure.<sup>22</sup> Through the same legal document the Government was assigned the duty of devising a procedure of coordinating the privatization of assets located on the eastern side of the Nistru and in the municipality of Bender. No such instrument has been developed<sup>23</sup>. Moreover, the Government failed to include the issue of privatizations and investments taking place in the Transnistrian region into the Action Plan introduced through Government ordinance no. 891 on 3 Aug.2006, even though the report the Action Plan was based on had found the illegitimacy of all the privatization deals, which constitutes a serious problem both for the state and for the foreign investors, who could lose their investments years later.

The Law on administration and denationalization of public property no.121-XVI of 04.05.2007<sup>24</sup> doesn’t make any reference to the situation in the PMR, rendering privatization transactions in that region null and void *ab initio*, since they didn’t follow the prescribed procedure.

### **c. Problems with restoring property to victims of deportation**

Totalitarian communist regimes share common traits: centralization and militarization of civilian institutions, bureaucratization of governmental activity, monopolization and over-regulation, collectivism and conformism, all of

21 Privatization in Transnistria: Risks and Benefits, <http://www.cisr-md.org/ROM/Notes%202004%20rom/note13.html>

22 See art. 23 para.4 of the Law of Privatization no. 627, of 04 July 1991, abrogated 29 June 2007

23 Viziunea sintetizată asupra problemei transnistrene (Synthesized View on the Transnistrian Issue), IPP, 26.11.2008, <http://www.ape.md/libview.php?l=ro&id=476&idc=154>

24 <http://lex.justice.md/md/324100/>

which develop obedience in the population and a mind set that is resistant toward the progress of democracy. In such circumstances it is very complicated to build a state based on the rule of law. It is crucial that regimes of this kind be condemned and every measure be taken to compensate the population for the damages suffered under such regimes. Thus, the possessions that were illegally confiscated, nationalized or forcibly taken in any other way must be returned to the legitimate owners. If this is not possible, damages must be awarded in this respect.<sup>25</sup>

By adopting Law no.1225-XII of 8 Dec.1992, on the rehabilitation of victims of political repressions, the Moldovan state undertook the obligation to repair the damages caused by the former communist regime, by giving the dispossessed owners their possessions back or paying equivalent monetary compensations. The law applies to the assets that were confiscated, nationalized or taken in any other way from the territory encompassed between the current administrative borders of the Republic of Moldova. However, the implementation of this law, like many other legal documents providing for the compensation of victims, is very difficult and, in the case of some beneficiaries, even impossible. Although the law was adopted more than 17 years ago, the mechanism for the return of property or payment of compensation is still imperfect, creating insurmountable obstacles for certain persons, victims of political repressions, or their inheritors.<sup>26</sup> The mechanism established by the Regulations on the restitution of the value of possessions by reimbursing persons subjected to political repressions, as well as compensation for death as a result of political repressions, approved by Government ordinance no. 627 of 5 June 2007<sup>27</sup>, is not effective in the case of the victims of political repressions who live or who owned possessions on the current territory of the PMR.

First of all, it is extremely difficult, and sometimes impossible, to collect documents certifying the confiscation, nationalization or other form of expropriation on the territory controlled by the secessionist regime, as it was found that no such information is available in the district archives.

Second, no special agency exists to receive and examine applications from the rehabilitated persons living in the districts of Camenca, Rybnitsa, Dubăsari, Slobozia, Grigoriopol and the municipalities of Tiraspol and Bender. At the same time, it is not clear what the sources of financing will be if the applicants manage to produce the required certificates. The importance and gravity of this problem can be deduced from the fact that more than 50% of

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25 See PACE Resolution 1481 (2006), <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta06/Eres1481.htm>

26 See Report on Human Rights in Moldova, 2007-2008, [www.promolex.md](http://www.promolex.md); and the 2008 Report on Human Rights, <http://ombudsman.md/md/anuale/>

27 See <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=325097>

the applications lodged by the PMR residents with the Moldovan Prosecutor General's Office concern the impossibility of recovering for damages caused as a result of repressions.

#### **d. Indexation of savings of the people residing in the Transnistrian region**

According to Law no.1530-XV of 12 Dec. 2002 on the indexation of savings of depositors with the *Banca de Economii* (successor to the Soviet era-*Sberbank*)<sup>28</sup>, the payment of the indexed sums is to be done in stages at the request of the depositors. In the first stage, the first thousand rubles is indexed, then the remainder. The indexed payments are received depending on the age of the depositors, in a descending order.

This law defines the basic principles with respect to indexation, the amounts and methods of payment of the indexed savings deposited by the Moldovan citizens with Banca de Economii until 2 Jan. 1992. However, Art. 9 is contradictory and discriminatory against the citizens living on the eastern side of the Nistru, depriving them of the state's protection.

In Art. 9 of the Law, the Moldovan Parliament provided that the indexation of savings and the payment of indexed savings of the Moldovan citizens in the Banca de Economii's branches located on the eastern side of the Nistru will be considered after the restoration of the financial and budgetary relations between these territories and the budget system of the Republic of Moldova. According to the European Convention on Human Rights, the enjoyment of fundamental rights and freedoms shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. This principle is also recognized by Art. 16 of the Moldovan Constitution.<sup>29</sup>

The ECHR found the violation of the property right guaranteed under Article 1 of Protocol no.1 in combination with Article 14 concerning nondiscrimination in cases where the territorial principle played a central role (case of *Darby v. Sweden* (1990); *Gaygusuz v. Austria* (1996) and in many other cases where plaintiffs had been treated differently.

So far the national authorities have failed to take adequate measures to discontinue these violations. It is not known when the citizens on the eastern side of the Nistru will receive the indexed savings. The delay in settling this

28 <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=312782>

29 <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=311496>

issue entails the risk that some depositors will never be able to use those savings during their lifetime.

The restoration of the financial and budgetary relations between the eastern region and Moldova's budget system entails, in other words, the settlement and normalization of the relationship between Moldova and the eastern side of the Nistru. Since nobody knows when that thing will happen, certain measures must be taken now in order not to deprive a part of the citizens, most of them elderly, of the state's protection.

The Constitution defines the country's economy as being of a social orientation, which implies the obligation of the state to ensure social protection and create adequate conditions to improve living standards for all the citizens of Moldova, without discrimination, and that includes, among other things, the indexation and payment of savings deposited with Banca de Economii. The Moldovan Parliament should remove the discriminatory provision from the law, so that all the citizens of Moldova could enjoy the indexation of savings.

Moreover, the National Development Plan (NDP) provides for the reintegration of the Transnistrian issue particularly in the socioeconomic respect. The credibility of this plan is undermined by discriminatory provisions in legal documents. What is the use of an attractive yet unrealizable project?

The removal of the discriminatory provision from the law would be an important sign for the Moldovan citizens living on the eastern side of the Nistru and would make them feel that they are part of the same society, and motivate them to seek the reintegration of the country.

## Chapter III

# PROPERTY SAFEGUARDS IN THE REGION

According to the Constitution, the Republic of Moldova is a sovereign, independent, unitary and indivisible state, a democratic state governed by the rule of law, where the dignity of people, their rights and freedoms, the free development of personality, justice and political pluralism represent supreme values which shall be guaranteed. No private individual, national segment of the population, social grouping, political party or public organization may exercise state power on their own.

According to Art. 20 of the Constitution, every citizen is entitled to effective remedy in the competent courts against actions infringing on his/her legitimate rights, freedoms and interests. No law may restrict the access to justice.

The right to property is not just an abstract conception, consisting of principles and rules, but also a concrete category, deeply rooted in human nature. These institutes differ greatly from one system to another.<sup>1</sup> Thus, for every instance of abuse or violation of the individual right, there has to be a lever to offer it effective protection. In other words, there should be institutions capable of protecting it.

Every legal system must possess certain mechanisms to safeguard the citizens from expropriation (through a remedy that would allow them to recover their possessions) and against actions which attempt to restrict the exercise of their right. The more a property system imposes itself, the more effective it is. To make a property system impose itself as much as possible, economic analysis is offering us a clear suggestion. The right to property should be clearly delimited, while the property laws should be very clearly formulated. Confusion and uncertainty in the property laws leave room for litigations, since every individual involved in a conflict hopes to be favored by the court. Conversely, clearly formulated property laws discourage litigations, for the parties are cognizant from the beginning of who is likely to win and who is likely to lose.<sup>2</sup>

Traditionally, talking about the safeguards of property rights, we could discuss the ability of the PMR residents or of those whose rights are violated in the region to seek help from certain institutions which could protect their rights. Thus, it can be deduced that the need for certain institutions that would be

1 Ugo Mattei, S. Baieș, N. Roșca, Print House Arc 2004, „Principiile fundamentale ale Dreptului de proprietate” (“Basic Principles of Property Law”), pag. 43

2 Ibidem

able to enforce the relevant legislation is crucial.

It seems here that the task of a lawyer is particularly difficult, as one should analyze the mechanisms available to a person both in the legitimate and illegitimate institutions and whether those mechanisms are able to protect the interests of the person. In particular, we refer to the legal safeguards of property rights. Theoretically, all the law enforcement and judicial bodies are capable of protecting to a certain extent the violated right. But considering the institutional hierarchy and the judicial control, I believe it is the judiciary that is ultimately responsible for the implementation of policies for the protection of property rights.

Justice in the PMR is administrated by a rather complex judicial system. We should acknowledge that for most people in the region this system is the only way to find protection. Statistics presented by the official press in the region showed that in 2009 the number of civil cases heard by the PMR's courts rose significantly. In 2009 the courts handled 19,117 cases, as opposed to 14,874 cases in 2008. 17,242 cases were completed and 15,808 resulted in court decisions, by 26% more than in the previous year. The Supreme Court of the PMR accepted to hear 674 civil cases, including 628 appeals, and only in 1.4% cases the decisions of the first courts were quashed.<sup>3</sup>

The increase in the number of litigations indicates the existence of a negative trend in the exercise of the civil rights and freedoms. The judicial and law enforcement bodies in the region are illegitimate and may not administer justice, because they were created by illegitimate and anti-constitutional authorities, which took power through military violence and have retained control of the area through undemocratic methods.<sup>4</sup>

Thus, the courts in the PMR cannot guarantee respect for human rights, for they were established contrary to the legislation and do not have a legitimate authority to hear cases and pronounce judgments.

In the Republic of Moldova the national mechanism of administering justice works according to the national legislation and meets basic international standards. Under the Law on judicial organization no.514-XII of 6 July 1995, territorial courts were established for the municipalities of Tighina (Bender) and Tiraspol, and for the districts of Rybnitsa, Dubasari, Grigoriopol and Slobozia. The inhabitants of Camenca district are placed under the jurisdiction of the Rybnitsa courts. The establishment of territorial courts for the Transnistrian region do not ensure, in a nondiscriminatory manner, the access of citizens to courts. Moreover, according to official information, the court in Ca-

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3 <http://nr2.ru/pmr/267636.html>

4 Personal Freedom and Security in Frozen Conflict Zones, [http://promolex.md/upload/publications/ro/doc\\_1257436825.pdf](http://promolex.md/upload/publications/ro/doc_1257436825.pdf);

menca hasn't been set up yet, while the territorial courts of Rybnitsa, Grigoriopol, Slobozia and Tiraspol do not meet minimum standards. First of all, they do not have separate premises and are hosted by other courts (Rezina, Chisinau and Stefan Voda, respectively. The Tiraspol court doesn't have premises at all and thus does not exist physically). At the same time, the number of judges is too small for a court to form under the Law on judicial organization, while the Tiraspol court doesn't have a single judge of the 17 required.<sup>5</sup>

Thus, conditions haven't been created, not even formally, for the residents of the region, or persons who suffered abuses committed by the secessionist authorities, to be able to obtain just remedy from the competent courts, which establishes the inefficiency of the national protection mechanism.

It should be also mentioned here that not a single case of the 32 criminal proceedings initiated by the Moldovan prosecutors during 1990-2009 has been completed, with 29 being formally in progress and 3 suspended. The inhabitants of Moldova's eastern region filed 456 complaints during 2005-2009, most of them concerning the violation of the right to property.

We consider that a legal vacuum exists today in the PMR, which will inevitably lead to the impossibility to effectively protect human rights in general, and property rights in particular in that region, especially since there are no effective remedies.

Prior to applying to the ECHR, complainants must first exhaust all the possible internal remedies, regardless of their nature (be it legal, administrative, or constitutional, etc), which are able to cease the violation and remove its consequences. These remedies must be accessible, effective, and afford sufficient chances of success. A remedy is deemed accessible when the person is able to initiate it by oneself, without the assistance of third parties. Inaccessible are those which cannot be initiated by the complainant because of procedural or substantive impediments. A remedy is deemed effective when it can redress the wrong. Thus, effective are the appeals, recourses, complaints addressed to the prosecutor for the annulment of the actions of investigators violating a right, etc. Ineffective are the remedies which cannot redress the wrong. The complainant is not obliged to exhaust all the domestic remedies which are not able to redress the situation.

We believe that in the PMR in most of the cases there are no effective internal remedies – and these violations can be brought to the attention of the ECHR – thus mechanisms for the protection of property rights in the Transnistrian region do not exist either.

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5 Ibidem

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## **Acronyms:**

- ECHR** – European Court of Human Rights
- CIS** – Commonwealth of Independent States
- PMR** – Pridnestrovian Moldavian Republic where the word *Pridnestrovian* is a transliteration from Russian – *Приднестровская Молдавская Республика*
- MSSR** – Moldavian Soviet Socialist Republic
- EU** – the European Union
- USSR** – Union of Soviet Socialist Republics

