Legal Regulations Regarding Common Property in The Republic of Moldova

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Abstract: The right of joint ownership remains, until now, the most discussed topic of civil law in the field of the institution of property, emerging from the stages of its considerable development history. In the Republic of Moldova, which is going through the stages of accession to the European Union, the spirit of the times is agitated by the issue of property. This is understandable, because in recent centuries the attitude towards property and its existence, as a phenomenon and as a legal institution, has changed radically: from reflecting the feudal peculiarities of regulating property relations - to ensuring the lasting stability of common property under the conditions the market economy. Thus, the new requirements of social development explain the increased interest in common property rights.

Constitutionation, which represents not only a simple totalization of the victories and achievements of society, but also proposes new development perspectives for society and the state, representing a program of activity, establishing the fundamental principles of the entire economic, political, social and legal life of the state, not the subject of property is left silent. Moreover, in any society, common property, as part of production relations, represents a fundamental institution that defines its economic and social system.

The research of the common property right involves a study of the regulation of the legislation in force on the territory of the Republic of Moldova. At the moment, the legal norms that regulate this institution are found in the Civil Code of the Republic of Moldova and other normative acts, the fundamental being of course represented by the Constitution of the Republic of Moldova

On the internal level, the Constitution of the Republic of Moldova, adopted on July 29, 1994, (hereinafter the Constitution of the Republic of Moldova) includes private property in the fundamental human rights, which proclaims the fundamental principles regarding property, namely - according to art. 9 of the Constitution of the Republic of Moldova: property is public and private. It consists of material and intellectual goods; property cannot be used to the detriment of human rights, freedoms and dignity.

As a rule, the property right is presented as a simple right, belonging exclusively to a single owner, but in certain situations this right belongs simultaneously to several people. In this case it is about the common property. The grounds for the emergence of the common property right are diverse. Joint ownership can result both from the law (Law no. 913 on the condominium in the housing fund, CF of the Republic of Moldova, CC of the Republic of Moldova other normative acts, as well as from conventions, etc.

Property rights as well as claims on the state are guaranteed. No one can be expropriated except for a cause of public utility, established according to the law, with the right and prior compensation.

In any system where the right to property is guaranteed by the Constitution, the crucial moment that constitutional adjudication faces is the selection from a variety of regulatory decisions of a redistributive nature, as they directly or indirectly affect the right to property.

Keywords: property, Property right, common property, legal institution.

INTRODUCTION

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DISCUSSIONS

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property. The grounds for the emergence of the common property right are diverse. Joint ownership can result both from the law (Law no. 913 on the condominium in the housing fund, the Family Code of the Republic of Moldova, the Civil Code of Republic of Moldova) other normative acts, as well as from conventions, etc.

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In any system where the right to property is guaranteed by the Constitution, the crucial moment faced by constitutional adjudication is the selection from a variety of regulatory decisions of a redistributive nature, as they directly or indirectly affect the right to property.

The concept of joint property rights has not been uniformly interpreted and understood during various historical periods. This state of affairs finds its explanation first of all in the fact that there is a very wide spectrum of problems that must be solved as a premise for the formulation and determination of a concrete vision on the common property right, vis-à-vis the socio-economic development of the country.

It is clear that the search algorithm for the answers to the questions that concern the field specialists, as well as the content and character of the answers found, depends on the interpretation of the norms in force.

On June 6, 2002, the Parliament of the Republic of Moldova approved a new Civil Code of the Republic of Moldova, in force from 12.06.2003, thanks to which this institution, through the common property, received a wider regulation. By Order of the Minister of Justice no. 519 of December 3, 2013, the Working Group for the amendment and completion of the Civil Code of the Republic of Moldova was created. It includes various legal specialists, both theorists and practitioners – university professors, judges, notaries, lawyers, as well as officials of the Ministry of Justice. Thus, on 01.03.2019, the changes were introduced and updated Civil Code of Republic of Moldova. Changes and additions Civil Code of Republic of Moldova represents an important step forward and a large-scale effort towards the modernization of the national legal infrastructure and bringing it in line with the most modern regulations used internationally, while also taking into account the problems of interpretation and application of the current wording of Civil Code of Republic of Moldova.

Civil Code of Republic of Moldova it is the most voluminous and detailed legislative act in matters of private law in the Republic of Moldova. Having the power of organic law, it regulates the status of persons, property, obligations, inheritance and private international law. In the second book, chapter III of Civil Code of Republic of Moldova the regulations regarding common property are included: *"The property is common if two or more owners have the right of ownership over an asset".* Joint ownership may arise under the law or under a legal act. The right of joint ownership is considered the main form of the right of ownership (art. 543 of the Civil Code of Republic of Moldova).

According to the current regulations, the new wording of art. 550Civil Code of Republic of Moldova provides for the acts of administration and disposition regarding the goods jointly owned by shares. In particular, with regard to administrative acts regarding the common good, the unanimity rule is switched to the rule of the majority of the parties' quotas for taking the decision to conclude the respective act.

In particular, art. deserves attention. 551 Civil Code of Republic of Moldova from which it follows that each co-owner can stand alone in court, regardless of the procedural quality, in any action regarding the co-ownership, including in the case of the claim action.

The legislator in art. 561Civil Code of Republic of Moldova states that if the shared ownership asset is indivisible or is not conveniently divisible in kind, the division is made by:

a) the assignment of the entire good, in exchange for a sult, in favor of a co-owner, at the request or, in in favor of several co-owners, at their joint request. In the case of several award requests that contradict each other, the court applies the provisions of art. 561Civil Code of Republic of Moldova. Thus, the previous confusion is removed which could be interpreted that the asset is assigned in kind only if all co-owners request it.

b) if none of the co-owners requested the assignment of the entire property, the sale of the property in the mode determined by the co-owners or, in case of disagreement, at the auction and the distribution of the price to the co-owners in proportion to the share of each of them. One of the ways in which the co-owners can agree to make the sale is the internal auction, without the participation of third parties (art. 561Civil Code of Republic of Moldova).

A novelty for the civil legislation of the Republic of Moldova is the inclusion of art. 575-580 which regulates periodic ownership - a variety of joint ownership, used especially in vacation products (timesharing). Periodic ownership is the type of ownership that appears whenever several people (co-owners) successively and repetitively exercise the attribute of use specific to the right of ownership over a movable or immovable asset, in determined time intervals, equal or unequal.

Since the periodic property is only a variety of the common property in shares, the legal provisions regarding the common property in shares apply accordingly to the periodic property to the extent that they do not contradict the provisions of this chapter (art. 575 para. (3) Civil Code of Republic of Moldova).

In Romanian legislation, joint ownership is regulated in the Civil Code of Romania in book III "Goods", title I, "About goods and real rights in general", chapter IV, "Joint property".

The definition of common property contained in art. 631 of the Civil Code of Romania is not immune to criticism, as the plurality of owners, although it is a necessary feature, is not sufficient to define this form of ownership.

If we were to apply only the criterion of the plurality of owners of the right of ownership to discover the forms of joint ownership, then we could consider that they are forms of joint ownership and conditional ownership or revocable ownership, because in these cases there are several owners of the right of ownership exercising, in a particular way, attributes specific to this right. However, by regulating art. 632 of the Civil Code of Romania, the legislator presents us as forms of joint ownership only joint ownership in shares (co-ownership) and ownership in commune. From the way the text is drafted (using the articulated form of the plural "forme"), it follows that no other types of common property are allowed apart from these. Or, under these conditions, the definition included in art. 631 of the Civil Code of Romania is not sufficiently precise, because it is not able to differentiate joint ownership from other forms of ownership. Inspiration from art. 1010 the CC of Quebec that defines co-ownership, would have been, in this case, opportune (Pop, L. 2006).

In our view, what is essential to joint ownership is the ability of the holders of ownership of the same asset to have qualitatively identical prerogatives in the manifestation of their ownership of the asset. Thus, all co-owners, regardless of their share of the property right, have the opportunity to exercise the same attributes of the right of ownership over the asset (for example, each will have the capacity of co-owner over the entire asset, will exercise the use over the entire asset in materiality his, he will have the right to harvest the fruits according to his share of the ownership right, he will be able to conclude acts of disposition on his own share of the ownership right, and the obligations stemming from the capacity of co-owner of the same property will also be the same for each of them.

By this, common property differs essentially from other forms of property rights in which the existence of several holders of private property rights would be admitted. For example, in the case of conditional or revocable ownership, some attributes of the right of ownership can be exercised simultaneously, but not together, but disparately, in a manner specific to each holder.

Thus, in the case of conditional ownership, the right of ownership is simultaneously exercised by two owners, one of whom is the owner under a suspensive condition, and the other under a resolutive condition, the same event having the value of a suspensive condition for one part of the act and a resolutive condition for the other. The owner under a suspensive condition has only a virtual right of ownership, which he can protect through preservation acts and which can be the object of the legal provision. The right of ownership under a suspensive condition turns into a right simply upon fulfillment of the condition. At the same time, the revocable owner effectively exercises the attributes of ownership, as if he had a right simply, and by fulfilling the condition, his right is retroactively abolished and the owner's right is consolidated under a suspensive condition.

The suspensive or resolutive nature of the condition event means that only conservation and administration acts, insofar as they are useful to the asset, are considered profitable to both owners. In reality, the owner under suspensive condition can only exercise acts in order to protect his suspensive right. He does not have effective possession of the asset. He can dispose of his conditional right to the same extent as any other right holder can alienate his patrimonial right. The suspensive owner cannot convey more than he has himself, so the acquirer also receives a suspensive right. As for the owner under resolutive condition, the exercise of the attributes of his property is qualitatively different from that under suspensive condition.

He may exercise all legal acts in respect of the property as if it were his right simply. The finality of the concluded acts is under the sign of the fulfillment of the condition. If his right to be abolished, then the deeds of disposition and those of administration, if they were unprofitable, will be abolished in their turn. Regarding the conclusion of administrative and disposition acts, the Civil Code of Romania through the prism of art. 641 regulates the conclusion of the acts of administration and disposition regarding the common good. The rule is that the administrative acts can be concluded with the consent of the majority of the co-owners and the share parties. The co-owners can ask the court to supplement the consent of the person who is unable to express his will or who abusively opposes the performance of an administrative act indispensable to maintaining the utility or value of the asset (para. 3 art. 641 of the Civil Code of Romania). Acts of disposition must respect the rule of unanimity. Acts concluded with non-compliance with these rules are unenforceable to the co-owner who did not consent, expressly or tacitly, to the conclusion of the act. He has opened the possessory action against the third party who came into possession of the common property following the conclusion of the act. Regarding the exercise of procedural rights by co-owners, art. 643 of the Civil Code of Romania provides that each co-owner can stand alone in court, regardless of the procedural quality, in any action related to co-ownership, including in the case of claim action. It is also expressly stated that the court decisions pronounced in favor of co-ownership benefit all co-owners, and those against one co-owner are not opposed to the others.

Therefore, the civil legislation expressly admits the promotion of the claim action by a single co-owner. The problem that arises is whether the current legislation expressly prohibits it. We have seen that the legal regime of co-ownership is not now organized by law, it is built by doctrine and practice. The solution to reject this action was established by practice starting from the rules of the legal regime of the exercise of co-ownership. It can be observed, however, that this solution can sometimes even harm the interests of the co-owners, so that, under these circumstances, it is wrong. Compared to the arguments presented in the doctrine (Ciochină-Barbu, I. 2019) for one or another of the solutions, compared to the current legislative proposals, it can be considered that the traditional solution of rejecting this action should be reconsidered. A solution in accordance with the current constitutional status regarding the protection of property and the specific legal content of the common property right does not necessarily exclude the claim of a co-owner directed against a third party who possesses the common good without right. So, such an action can be admitted without waiting for the modification of the civil law in the sense of its express regulation (by virtue of the principle that in the private legal space what is not prohibited is allowed).

In Germany the legislator (Otgon, A. 2015) joined the Prussian system in terms of the right of common property and considered it welcome and necessary to make available to its citizens, as in the French system, the following regime of common property of goods obtained in common.

Joint ownership occurs when two or more subjects acquire an indivisible thing (for example, a statuette, a single real estate complex) or a thing that cannot be divided according to law (for example, a land is divided according to the general rule, but its division is impossible if the lands formed as a result of such a division are smaller than the minimum maximum size established in the manner prescribed by law).

In the research plan in the field of other states than the Republic of Moldova, we can say with certainty that the topic analyzed is a subject of fierce disputes among specialists in the field, thanks to its specificity. Among them, we will mention with priority the studies of Russian, Romanian researchers, etc.

In the regulation of the Civil Code of the Republic of Moldova, there is no definition of the notion of common property, just as there is no definition of co-ownership, so the task of configuring these concepts has fallen to the doctrine.

As for the national researches, the local specialized literature initially based its achievements on the Soviet juridical science, which, unfortunately, did not draw special attention to the conflicting issues in the matter of common property. However, with the adoption of the Civil Code of the Republic of Moldova in force from 12.06.2003, some research attempts were made in the given field.

The narrow angle of research in this field served as an impetus for the achievement of the objectives of the given work regarding conflicting issues regarding the forms of common property, the grounds and the effects that common property produces.

In the local specialized literature (Otgon, A. 2014), the necessary attention is not paid to the theoretical and practical aspects of common property. The publications are with reference to shared ownership or shared ownership – as forms of joint ownership.

And from these considerations we can conclude that the topic of the proposed master's thesis is a current and important one.

A precursor work on the analyzed topic is the one developed by Băieșu S. and Otgon A. (2014) *"The legal regime of the co-owner's right of pre-emption when selling a share of the common property by shares"*. In particular, the authors mention that the researched topic, through its specific approach to property rights, remains relevant, a conclusion arising from the enormous importance of property rights in social life. And its novelty consists in a detailed analysis of the legal regime of the right of preemption in the context of shared property, highlighting the main problematic aspects that have arisen in judicial practice (Otgon, A., Băieșu, S. 2019).

The article is interesting *"Overview of Termination of Common Property by Partition"* by A. Otgon dated 2015, where the author performs general look at the sharing as a way to terminate the right of common ownership in shares, we distinguish several important assumptions, namely:

- the notion of sharing is to be used in the context in which it is desired to divide the assets, which constitute common property in shares;

- to distinguish between the term definitive sharing and usage sharing;

- to apply the general provisions regarding the division of the common property into shares and in the case of the division of the common property in commune and in the case of the division of the inheritance property;

- to take into account the possibility of invoking absolute or relative nullity, when the conditions provided by law for the conventional division are not met;

- to make a distinction in the application of the legal provisions regarding the sharing of common assets amicably and judicially (Otgon, A. 2015).

Another article, by the same authors A. Otgonwhat deserves attention *"Peculiarities of the termination of joint property in shares by division"* dated 2015. In particular, the author analyzes the possibility of relinquishing the right to joint ownership over joint partitions, situation regulated by the Civil Code of the Republic of Moldova, unfortunately the author states, that we do not have detailed regulations regarding the rights and obligations of the co-owners regarding common partitions, but in practice we observe the necessity of the obligation regarding the maintenance and repair expenses of the common property, which is the object of the partitions common. Thus, for various reasons, usually one of the co-owners renounces his right of ownership over the common partitions, which can constitute a wall, ditch or other partition between two plots of land located within the town. Also, the mentioned article also provides for the accessory nature of the share in the property right over the assets that constitute joint partitions. Mentions the author, two conditions necessary to be met for the renunciation to produce effects. This should be effective, i.e. in the future the co-owner who has borne the maintenance and repair expenses will become the exclusive owner of the property that is the object of the common partitions and these obligations should be correlative, belonging to both co-owners and not personally to one of the co-owners. Concluding on what was researched, the author mentions the need to complete the legislative provisions with regulations related to the procedure of relinquishing the co-ownership right, the legal effects that may occur, who are the subjects who can acquire shares of the co-ownership right, as well as with aspects related to the obligations established by law regarding jointly owned assets and the consequences that occur when the asset is relinquished (Otgon, A. 2015).

In the list of Ms. Otgon A.'s works dated 2015 we also find *"Peculiarities of the termination of co-ownership by relinquishing the property right"*, as well as *"The Legal Nature of Periodical Property"*, *"The concept and legal characteristics of the right of common ownership in shares - parts"*. In these works the author established the most discussed interpretations regarding the concept of shared ownership, resulting from a multitude of contradictory opinions and a varied interpretation. Both national and international legislation use the concept in question under different aspects and, most of the time, admitting confusion in the exact rendering of the researched notion. It is important to mention also the performance of a comparative analysis, with other terms close in meaning and concept to the notion of shared ownership, and determining the main differences between them. Also, the emphasis was placed on the treatment of the terminological specifics, useful in carrying out an in-depth analysis on the given subject and an attempt was made to determine and establish the main legal characteristics of the shared ownership starting from the current regulations and the specifics of the given institution (Otgon , A. 2014).

The concept of periodic ownership, the author mentions (Otgon, A. 2015), also known as ownership in the "time-sharing" system or spatio-temporal co-ownership, led to the emergence of numerous doctrinal opinions regarding its legal nature, namely from the contradictory reason regarding its applicability and regulation in international law. The most important assumptions regarding the legal nature of periodic ownership agree that it represents a modality of ownership, a timeshare right, a variant of joint ownership or a form of forced co-ownership. The periodic property does not know an express regulation in the current Civil Code of the Republic of Moldova, nor in another special law, considering that it has a wider applicability in the states where tourism and real estate investments know a more significant development, and in the Republic of Moldova there is no the prerequisites for the emergence of such an institution are created. The essence of periodic ownership consists in the fact that we are in the presence of several holders, who exercise their attribute of use successively and repeatedly in determined time intervals. Thus, analyzing the evolution of the emergence of periodic property, the international judicial practice in the matter as well as the way of implementing the legal regulations, the author (Otgon, A. 2015) comes to the conclusion that there is no unanimity regarding its legal nature, and more precisely that there are discrepancies regarding the framing periodic ownership and whether the latter constitutes a modality or variety of ownership. The most significant aspects regarding the legal nature of periodic ownership were analyzed in the form of a comparison with other modalities and forms of ownership, reaching the conclusion that this, in the context of the legal regulation, constitutes a form of forced co-ownership, but under the aspect it theoretically presents itself as a modality of property rights.

Next, we will give a separate space to the examination of scientific materials on the topic of the work published in Romania. Following the research of the scientific materials, published on the subject analyzed in Romania, we identify a set of studies, varied, that reflect joint ownership, shared ownership as well as periodic ownership in the content of civil law manuals and monographs but sharing several opinions.

One of the publications of the Romanian doctrinaires Fl. A. Baias, E. Chelaru and R. Constantinovici, I. Macovei is: "Commentary on articles", in which the regulations regarding joint property are also commented on. Although the Code also regulates property in shares separately - parts and the periodic one, the regulations regarding the rules appreciated by specialists who make comments are of particular interest (Baieș, Fl. et al. 2014).

Without multiple nuances of interpretation E. Mocanu in the article "forced and perpetual property: past, present and future" (2012), mentions that "The role of reason is to discern the needs that nature imposes; the authority's role is to ensure compliance with the legislator's will." We are in the period, when the needs have been identified, the will of the legislator has been exposed in the text of the law. It is time to express respect for the law, to intervene in the defense of the owners' rights.

In the author's opinion, at the current stage, state intervention is necessary to regulate:

- the legal nature of the common property in the condominium, making it clear that the forced co-ownership must belong exclusively to the owners of isolated rooms;

- the deadlines and competent bodies to adopt decisions regarding the calculation, the assignment of shares in the condominium to the owners of privatized apartments, as well as the registration of these rights in the Real Estate Register;

- the mandatory registration of ownership in the condominium for the blocks under construction and the forced transfer, together with the sale of the rooms, of the share-parts of the common property as an accessory to the ownership of the apartment or other isolated room; the delimitation at the project level of the rooms that are part of the common property in the condominium and the establishment of the mechanisms for changing the destination so that they cannot be alienated, seized or pledged to the detriment of realizing the right of ownership over the isolated rooms (Mocanu, E. 2012).

Aa more diverse and critical characterization of common property can be found in the work of I. Ciochină-Barbu (2019). "Shared ownership forced on common parts in multi-story buildings or apartments in the regulation of Law no. 196/2018". In all cases of joint ownership, the right holders do not form a legal entity. If a group of persons benefits from legal personality, the right of ownership is found in the patrimony of the legal person, and not in the patrimony of each of the persons who joined to give birth to the legal person. The property right in the patrimony of the legal entity is simply a property right, and not a common property right. Whenever different holders exercise the attributes of the right of ownership over certain material fractions of an asset, we are not in the presence of a common ownership right, but in the presence of several exclusive

ownership rights. In this case it is said that the right of each owner is pro division, that is, it has a different material object from the others.

CONCLUSION

In the context of our study, the analysis is of more pronounced interest the provisions contained in Law no. 196/2018 on the establishment, organization and operation of owners' associations, which lead to the conclusion that these provisions add to the general regulatory framework of forced co-ownership from the Civil Code of Romania, especially with regard to:

- organizing the exercise in the best possible conditions of the rights and obligations of the co-owners in the case of buildings with several floors or apartments or in the case of residential complexes consisting of individual homes, located isolated, connected or connected, in which there are common properties and individual properties by setting up owners' associations, but also tenants' associations, regarding the administration of common spaces within the condominiums; the obligation of the owners' associations to set up the annual repair fund, as well as the working capital; the establishment of the obligation that the rehabilitation works of residential buildings with several sections/stairs should be done unitarily and not on building segments, and in the case of condominiums of the type of multi-story collective buildings, the modification of the appearance of the facade can only be done unitarily on the whole the condominium regardless of the number of owner associations established on the stairs; the possibility that the owners' associations can conclude contracts on behalf of the owners with natural persons, authorized natural persons or with legal persons whose object of activity is the administration of condominiums, in order to administer and maintain the condominium; the obligation of the owners/developers of the residential complexes as sellers to inform the buyers at the time of alienation about the need to set up owners' associations;

- the introduction of the right of preemption at an equal price of the local public administration authorities, on the foreclosed homes, for the recovery of the owners' debts to the association's contribution quotas. These homes will later be used only as social housing, the foreclosed owners having priority in their distribution, only if they meet the conditions established for access to social housing.

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