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TABLE OF CONTENTS

CONCEPTUAL FRAMEWORK OF THE RESEARCH 5
SUMMARY OF THE CHAPTERS 10
GENERAL CONCLUSIONS AND RECOMMENDATIONS 26
BIBLIOGRAPHY 29
LIST OF THE AUTHOR'S PUBLICATIONS RELATED TO THE THESIS 31
ANNOTATION.....33
ADNOTARE 35
АННОТАЦИЯ.....37

CONCEPTUAL FRAMEWORK OF THE RESEARCH

Theoretical Relevance and Practical Significance of the Research Problem. The theoretical relevance and practical significance of the research problem are determined by the role of the concept of good faith throughout the entire system of private law, particularly in property law. This concept permeates most institutions of civil law[1,2], having normative, interpretative, supplementary and guiding functions, while also serving as a basis for triggering legal protection mechanisms (legal institutions that protect sincere but mistaken beliefs). Research on good faith is interdisciplinary and transdisciplinary in nature, since good faith does not operate in isolation but within other legal institutions.[3] At the national level, the relevance of research on good faith stems from the modernization of the Civil Code, which has reshaped the application of this concept and generated gaps in legal scholarship, as well as from the increasing number of cases concerning the protection of good-faith acquirers. At the international level, the balance between the protection of the true owner's rights and those of the acquirer is addressed differently in legal doctrine, legislation and case law, highlighting the need for a comparative study of legal systems. Furthermore, the case law of the European Court of Human Rights (ECtHR) emphasizes the importance of legal certainty and the protection of property.

The relevance of the research also stems from the absence of a comprehensive and systematic monographic study covering the entire spectrum of manifestations of the concept of good faith, which could serve as a foundation for the clear and uniform application of the relevant legal provisions.

The Object of the Research is good faith in property law, examined in its two meanings, as a standard of conduct and, in particular, as a sincere but mistaken belief, with a focus on the elements and criteria for assessing good faith and on the legal mechanisms for protecting good-faith acquirers in the acquisition of registered and non-registered property rights.

Aim and Objectives of the Thesis. The aim of this thesis is to define the contours of good faith from a normative, theoretical and practical perspective within property relations, particularly in its meaning as a sincere but mistaken belief, by identifying its constituent elements and

[1] BAIEȘ, S., ARAPU, E. *Prezumțiile în dreptul civil.* Chișinău: CEP USM, 2011. p.72.
[2] ARAPU, E. *Aplicarea prezumției de bună-credință prevăzută de Codul civil al Republicii Moldova prin prisma CEDO.* În: Interacțiunea dreptului intern cu dreptul internațional: provocări și soluții: conf. intern., 14 noiembrie 2014. Chișinău. Ch., 2015. 332 p. ISBN 978-9975-53-557-1. pp. 191-199.
[3] ШИРВИНДТ, А. М. *Принцип добросовестности в ГК РФ и сравнительное правоведение.* Aequum ius. От друзей и коллег к 50-летию профессора Д. В. Дождева. Москва: Статут, 2014, с. 205, сс. 203-242; 245с. ISBN 978-5-8354-0994-5.

examining how they are reflected in the acquisition of registered and unregistered rights. The **research objectives** are as follows:

- to analyze the Roman origins of good faith and the evolution of the concept in national civil legislation, from the Civil Code of the Moldavian SSR of 1964 to the modernization introduced by Law No. 133/2018; - to identify the fundamental doctrinal sources concerning good faith; - to define good faith as a unitary concept with a dual meaning, based on doctrinal definitions and on the legal definition provided in Article 11 of the Civil Code; - to conduct a comparative analysis of the meanings of good faith in German, Romanistic and Dutch legal doctrine, as well as in the Draft Common Frame of Reference (DCFR), substantiating the terminological choice; - to distinguish good faith from bad faith and examine its relationship with abuse of rights, legal appearance and the prohibition against invoking one's own unlawful conduct or bad faith; - to analyze the applications of good faith as a standard of conduct and as a sincere but mistaken belief; - to identify the elements of good faith as a sincere but mistaken belief (the subject matter of knowledge, the subjective and objective criteria, the relevant person, the relevant time and the allocation of the burden of proof) in the acquisition of registered and unregistered rights; - to establish the role of public registers and to formulate proposals for the interpretation of the relevant legal provisions and for improving the legal framework.

Research Methodology. The **historical method** provided the basis for tracing the development of the concept of good faith in Roman law and its legislative evolution. The **logical method** (deduction, induction, analysis and synthesis) enabled the formulation of the specific rules governing the application of good faith and of general conclusions. The **systemic method** involved examining good faith as an integral part of the civil law system. The **comparative method** made it possible to identify the most appropriate legal solutions in other legal systems. The **method of judicial practice analysis** was used to examine how courts apply legal provisions concerning good faith in the field of property law.

Research Hypotheses and Main Scientific Findings Submitted for Defense. The research is based on the hypothesis that good faith constitutes a unitary concept with two distinct meanings, as a standard of conduct and as a sincere but mistaken belief, and that good faith does not produce legal effects in itself, since the protection granted by the legislator depends on the fulfilment of the criteria established for each particular case. Three subsidiary hypotheses derive from the main hypothesis. First, confusion and difficulties in interpretation arise from the improper use of legal terminology. Second, good faith does not validate the legal irregularity of an acquisition but justifies the application of autonomous mechanisms for acquiring rights, based on the principle of legal certainty. Third, the standard of knowledge imputed to the acquirer is

determined by the level of development of public registers. The main scientific findings submitted for defense are the unitary yet dual nature of good faith, the inexpediency of a general legal definition of good faith as a sincere but mistaken belief, and the interpretative solutions concerning Articles 523, 525, 527 and 529 of the Civil Code, detailed among the elements of novelty.

The Major Scientific Problem Addressed by the Research. It consists in substantiating the unitary yet dual-meaning nature of the concept of good faith and identifying the elements of good faith as a sincere but mistaken belief (the object of knowledge, the subjective and objective criteria, the person whose knowledge is assessed, the relevant moment, and the allocation of the burden of proof). This has made it possible to substantiate the thesis that good faith as a sincere but mistaken belief cannot be given a general legal definition, as well as to clarify the conditions under which national mechanisms for the protection of good-faith acquirers operate, particularly where the legislator refers to good faith without specifying its criteria, with a view to ensuring their uniform interpretation and application.

Scientific Novelty. The scientific novelty of the findings lies in the fact that the thesis represents the first study in national legal doctrine devoted to good faith as a unitary concept with a dual meaning, examined from the perspective of its manifestations in property law. The elements of scientific novelty are reflected in the following: - developing arguments in support of the terms *good faith as a sincere but mistaken belief* and *good faith as a standard of conduct*, rather than other terminological combinations; - establishing that good faith and bad faith constitute distinct and independent legal concepts; - systematizing the elements that the legislator should specify in legal provisions granting protection (the applicable criterion, the person whose knowledge is to be assessed and the subject matter of that knowledge); - demonstrating that Article 525 of the Civil Code, although expressly referring only to Article 524, is equally applicable to Article 523; - proposing the application, by analogy of law, of the criteria established in Article 527 to acquisitive prescription of movable property under Article 529(1)(a) and (b); - situating the national legal framework between the formal and substantive models of good faith in relation to registered rights; - determining the relevant time for assessing good faith separately for different legal institutions.

Theoretical Significance and Practical Value of the Research. The theoretical significance of the research lies in the identification and in-depth analysis of fundamental national and foreign doctrinal sources concerning good faith and in the establishment of a systematic doctrinal framework for the application of good faith in property law. It proposes a unified analytical framework applicable to any legal institution in which good faith produces legal effects, based on the distinction between the two meanings of the concept and the three elements for determining a sincere but mistaken belief. **The practical value** of the research lies in the

possibility of using its conclusions as a reference for the interpretation and application of civil law provisions, with a view to promoting uniform judicial practice concerning the protection of good-faith acquirers.

Dissemination and Validation of Research Findings. The research findings have been disseminated through 19 scientific works, including scientific articles published in *Studia Universitatis Moldaviae*, Social Sciences Series, and *Legea și Viața*, as well as papers presented at national and international scientific conferences. Opinion on the Proposed Amendment to Article 525(1) of the Civil Code, formulated in the thesis, was submitted to the Ministry of Economic Development and Digitalization of the Republic of Moldova and examined during the legislative drafting process.

Overview of the Thesis Structure. The thesis is structured as follows: abstracts, introduction, three chapters, general conclusions and recommendations, bibliography, annexes, and information on the dissemination of the research findings. Each chapter concludes with a set of conclusions.

Chapter 1. Analysis of the State of Scientific Research on Good Faith in Property Law. The first chapter examines the Roman origins of the concept of good faith, the definitions and theories developed in legal doctrine, and the applicable legislative framework, both from a historical perspective (beginning with the Civil Code of 1964) and in its current form. It also examines the relationship between the protection of the good-faith acquirer and the security of civil transactions.

Chapter 2. The Concept of Good Faith in Civil Law substantiates the dual meaning of good faith by examining legal doctrine in the Republic of Moldova, the German and Dutch legal systems, as well as legal systems belonging to the Romanistic legal tradition.

The chapter also covers the applications of good faith as a standard of conduct (co-ownership, neighboring property rights and condominium ownership) and the specific applications of good faith as a sincere but mistaken belief, as well as related legal concepts (abuse of rights and legal appearance).

Chapter 3. Good Faith as a Sincere but Mistaken Belief in the Acquisition of Ownership Rights constitutes the core of the thesis and is based on the premise that protection is not granted merely because the acquirer acts in good faith, but depends on the fulfilment of specific criteria established for each particular case of protection. The chapter examines the legal foundations of institutions that have the effect of depriving the true owner of ownership, the necessity of introducing, or refraining from introducing, a general legal definition of good faith as a sincere but mistaken belief, and the subjective and objective criteria for determining bad faith (actual knowledge/culpable lack of knowledge).

Keywords: good faith, dual meaning of good faith, good faith as a standard of conduct, good faith as a sincere but mistaken belief, presumption of good faith, bad faith, abuse of rights, legal appearance, security of civil transactions, protection of good-faith acquirers, protection of the true owner, acquisition of ownership rights, actual knowledge, culpable lack of knowledge, public registers, formal and substantive good faith, acquisition of registered and unregistered rights.

SUMMARY OF THE CHAPTERS

The research conducted in Chapter 1, entitled "Analysis of the State of Scientific Research on Good Faith in Property Law", addresses one of the initial research objectives, namely identifying the Roman origins of good faith. Thus, it can be reaffirmed that good faith has its origins in Roman law, with the decisive factor in the consolidation of the principle of good faith being the moment when *fides* acquired legal significance. As a complex concept, good faith originally had not only a religious dimension but also a moral one, since Roman law did not initially distinguish between moral and legal norms. Subsequently, as law and morality became distinct, Roman law differentiated the legal concept of good faith (*bona fides*) from that of honesty (*honestum*).[4] In Roman law, *bona fides* represented one of its most remarkable achievements, opposing formalism while simultaneously complementing it. It introduced a system of agreements based not merely on strict compliance with prescribed formalities, but above all on respect for the parties' intentions, loyalty and trust—in other words, on spiritual and moral values, which provided the most appropriate means of giving effect to equity and integrity.[5] In the field of property rights, *bona fides* played a role in various modes of acquiring ownership, such as acquisitive prescription (*usucapio*)[6], accession to immovable property (*inaedificatio*)[7], acquisition of ownership of fruits[8],

[4] As good faith emerged as a distinct legal concept, separate from the notion of honesty, several related linguistic terms developed in Roman law, such as *fidus* (reliable, trustworthy), *fidelis* (faithful), *fiducia* (trust, security) and *confidere* (to trust). By contrast, the concept of *fides*, understood as an oath or promise, implied submission in early Roman law, as illustrated by *fiducia*, *fideicommissum*, *fideipromissio* and *fideiussio*, institutions governed by *stricti iuris* principles. See POP, C. Aspecte privind apariția, evoluția și aplicabilitatea bunei-credințe în dreptul roman. În: MANGU, F. I. (coord.) Probleme controversate în dreptul obligațiilor: buna-credință în dreptul privat, executarea obligațiilor civile, răspunderea civilă. București: Universul Juridic, 2019, pp. 80-95, p. 85; 523p. ISBN 978-606-39-0584-1. Disponibil: https://studia.law.ubbcluj.ro/index.php/iurisprudentia/article/download/35/56?inline=1.

[5] GORPHE, F. *Le principe de la bonne foi.* Paris: Librairie Dalloz, 1928, p.10; 261 p.

[6] Since the Romans did not define the concept of *bona fides*, its precise meaning remains difficult to determine. Legal doctrine, however, maintains that the possessor had to sincerely believe, at the time of transfer, that they had become the owner of the property. *Bona fides* was presumed in favor of the possessor, with the burden of proof resting on the person alleging the contrary, while a possessor in bad faith could not acquire ownership through *usucapio*. Furthermore, good faith was required only at the time of acquiring possession, and subsequent bad faith did not interrupt the running of the acquisitive prescription period. See HOOPS, Björn; MARAIS, Ernst J. (eds.). *The Acquisition of Immovables through Long-Term Use*. Cambridge – Antwerp – Chicago: Intersentia, 2022, p.9. ISBN 978-1-83970-241-9.

[7] The legal rules governing accession to immovable property (*inaedificatio*) depended on the good or bad faith of the builder and the owner of the land or materials, affecting ownership of the construction and the materials used, as well as the possibility of recovering them or obtaining compensation. See CIUCĂ, V. Drept roman. Lecțiuni. Ed. a II-a, addenda, corrigenda et incrementa. ISBN 978-606-714-030-9. Vol.1. Iași: Editura Universității "Alexandru Ioan Cuza", 2014, pp. 605-607; 671p. ISBN 978-606-714-031-6. pp. 424-425.

[8] As long as fruits remained attached to the property producing them, they constituted an integral part of that property. As a general rule, they belonged to the owner, but they could also be acquired by other persons, such as a good-faith possessor, an emphyteuta, a usufructuary or a lessee, depending on the legal status of the person holding the property. See VOLCINSCHI, V. ș.a. *Drept privat roman: note de curs.* Redactor științific: Victor Volcinschi. Chișinău: Tipografia „Reclama", 2014, p.202; 400 p. ISBN 978-9975-58-034-2.

and specification (*specificatio*). From the perspective of Roman procedural law, the concept of good faith gave rise to a new category of actions, known as *bonae fidei iudicia*. The Roman principle of *bona fides praesumitur* also contributed to the development of the concept of good faith.

Good faith is a unique concept that is closely connected with every institution of civil law. Moreover, the proper exercise of any subjective civil right requires compliance with the principle of good faith. In these circumstances, almost every doctrinal study refers either to good faith as a principle[9] or as a presumption[10], or, to some extent, examines one of its specific applications, since every legal provision is inherently governed by the requirement of good faith. Thus, identifying the doctrinal sources relevant to the present research constituted an important research objective.[11]

Good faith is a complex concept,[12,13] which makes both its analysis and, particularly, its definition challenging. Nevertheless, legal scholars who have devoted their research to this concept have attempted to define it, taking into account its various meanings and manifestations. In a statement highlighting the importance of good faith, it has been argued that if Romanian society were to lose its way, it could rediscover itself through good faith. It is therefore necessary to rediscover genuine good faith, the kind that safeguards the law.[14]

Regarding the evolution of the concept of good faith in Moldovan civil law, its origins can be traced back to a period preceding the adoption of the Civil Code of 2002. Good faith, in its manifestations as an excusable mistake and as loyalty in legal acts, was also implicitly reflected in the provisions of the Civil Code of 1964.[15] The Civil Code of 2002[16] expanded the range of civil

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[9] BAIEȘ, S., ROȘCA, N. *Drept civil. Partea generală. Persoana fizică. Persoana juridică*. Chișinău: Tipografia Centrală., 2014, p. 43.

[10] ARAPU, E. Prezumția de bună-credință, prezumție fundamentală a dreptului civil. În: Codul Civil al Republicii Moldova: 10 ani-realizări, rezerve și perspective: conf. intern., 19-20 septembrie 2013. Chișinău. Ch., 2015, 420 p. ISBN 978-9975-71-643-7. pp. 77-87.

[11] Among the scholars who have made valuable contributions to the study of good faith, whose works are examined in the present thesis, are D. Gherasim, V. Stoica, M. Nicolae, E. Chelaru, F. S. Cotea and others (Romanian legal scholars); V. Volcinschi, S. Băieșu, I. Crețu, T. Tabuncic, A. Tarlapan, O. Cazac and others (Moldovan legal scholars); F. Gorphe, M. Boudot, Ph. Le Tourneau, M. Poumarède, G. Lyon-Caen and others (French legal scholars); В. П. Грибанов, В. И. Емельянов, К. В. Нам, Д. В. Дождев, М. А. Ерохова and others (Russian legal scholars). Other distinguished foreign legal scholars include W. F. Ebke, B. M. Steinhauer, H. Schäfer, J. P. Schmidt, R. Zimmermann, Christian von Bar and others.

[12] In view of its various legal manifestations, good faith is regarded in legal doctrine as an institution characterized by a genuine "variable geometry".

[13] VIȘINOIU, B. *Despre un posibil Cub al lui Rubik în materia drepturilor reale.* În: ALMĂȘAN, A. ș. a. In honorem Corneliu Bârsan: ius est ars boni et aequi. București: Hamangiu, 2023, tom.1, pp. 290-317, p.290; 912 p. ISBN 978-606-27-2395-8.

[14] CRISTEA, S. *Buna-credință: o altă dimensiune*. În: ALMĂȘAN ș.a. *Op. cit.,* tom. 3, pp. 59-63, p.63; 720 p. ISBN 978-606-27-2397-2.

[15] Codul civil al R.S.S. Moldovenești. Aprobat prin Legea R.S.S. Moldovenești cu privire la aprobarea Codului civil al R.S.S. Moldovenești din 26.12.1964. În: Veștile Sovietului Suprem al R.S.S. Moldovenești, 1964, nr. 36, art. 81 (abrogat).

[16] Codul civil al Republicii Moldova nr. 1107-XV din 06.06.2002. În: Monitorul Oficial nr. 82/86 din 22.06.2002.

law institutions in which good faith played a role. The Law on the Modernization of the Civil Code[17] contributed to a clearer definition of the concept of good faith.

Chapter 1 also examines the idea that the concepts of transfer and acquisition of rights are closely related to that of legal transactions, which also entails ensuring compliance with a general and fundamental principle, namely the protection of legitimate reliance.[18] In fact, the protection granted by the legislator to a good-faith acquirer, although not based on fully recognizing the effects of the legal act intended to transfer ownership, which is in fact ineffective, arises from the need to ensure the effective implementation of general principles such as the stability and security of civil transactions.

The relationship between good faith and equity, examined in this chapter, is based on the fact that, historically, both equity and good faith (*bona fides*) have had a considerable influence on the development of private law. All modern legal systems refer to both good faith and equity as legal concepts. Equity, which serves to supplement and correct the content of civil legal relationships, plays a role in such relationships when they are based on good faith. From a legal perspective, equity performs at least three functions: *adjuvandi, vel supplendi, vel corrigendi juris civilis* (to assist, supplement or correct civil law). Equity invokes the concept of good faith without, however, being identical to it.

An analysis of the provisions of the Civil Code reveals that good faith is recognized in both of its meanings: as a general standard of conduct governing the exercise of civil rights and the performance of civil obligations, and as a sincere but mistaken belief based on an excusable mistake, to which the legislator attributes legal effects, particularly in the acquisition of property rights.

Chapter 2, entitled *"The Concept of Good Faith in Civil Law"*, focuses on highlighting good faith as a fundamental concept that constitutes a unitary idea with a dual meaning: on the one hand, it expresses a psychological state in the form of a sincere but mistaken belief, and on the other hand, it represents a standard of conduct. Despite certain differences in approach, French[19],

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[17] Legea privind modernizarea Codului civil și modificarea unor acte legislative nr. 133/2018. În: Monitorul Oficial al Republicii Moldova nr. 467-479 din 14.12.2018. [Accessed 22. 09.2022] Available at: https://www.legis.md/cautare/getResults?doc_id=34327&lang=ro.

[18] The reliance of legal subjects on the stability and predictability of the legal effects of acts of disposition is not limited to a purely psychological dimension but constitutes a structural condition for the functioning of civil transactions. It is reflected in the genuine ability of individuals to plan their legal conduct, assess risks and commit resources to property-related legal relationships without fear of arbitrary legal instability. Consequently, reliance constitutes an essential element of the mechanism for the transfer and acquisition of rights, making possible the very dynamics of legal and economic transactions.

[19] VOUIN, R. *La bonne foi: Notion et rôle actuels en droit privé français*. Paris: L.G.D.J., 1939, pp. 32-38. 478p.; DESGORCES, R. *La bonne foi dans le droit des contrats: rôle actuel et perspectives*. Thèse (Université Paris II), Paris: 1992. [online] [accesat 24.08.2025], pp. 36-38. 600 p. Disponibil: http://www.theses.fr/1992PA020017; LE

German[20], Quebec[21], Swiss[22], Belgian[23], Romanian[24] and Moldovan[25] legal doctrine converge on the idea that good faith is a dual concept or a legal concept capable of taking multiple forms.[26] The comparative legal analysis conducted in this chapter leads to the conclusion that certain legal systems employ distinct terms for the two fundamental legal meanings of good faith: a sincere but mistaken belief and a standard of conduct. Such an approach is established in German and Dutch law, where this duality is also reflected at the terminological level. Nevertheless, the use of different terms for the two meanings of good faith may give rise to difficulties in interpretation and application. In particular, the legal translation of the concept cannot be carried out mechanically but requires determining the specific meaning in which it is used: a sincere but mistaken belief or a standard of conduct.[27] From this perspective, choosing between the terms *guter Glaube*, *Treu und Glauben*, *goede trouw* or *redelijkheid en billijkheid* goes beyond a purely linguistic issue, as it depends on the legal meaning attributed to good faith in the relevant context.

Legal systems belonging to the Romanistic legal tradition, drawing on the different meanings of good faith, have developed a conceptual approach of considerable historical importance in legal doctrine, distinguishing between subjective good faith and objective good faith. French law retains the single term *bonne foi*; however, recent French legal doctrine moves away from this classification and instead refers to good faith as legitimate ignorance (*la bonne foi, ignorance légitime*)[28] and good faith as loyal conduct (*la bonne foi, comportement loyal*)[29].

TOURNEAU, Ph., POUMARÈDE, M. *Bonne foi.* În: *Répertoire de droit civil Dalloz.* Paris: Dalloz, ian. 2017 (actualizat iul. 2023). [online] [Accessed17.09.2023]. Available at: https://www.dalloz.fr. nr. 3.

[20] SCHMIDT, J.P. Art. 1:201: Good Faith and Fair Dealing. În: JANSEN, N., ZIMMERMANN, R. (eds.). Commentaries on European Contract Laws. Oxford: Oxford University Press, 2018, pp.103; 2218 p. ISBN 978-0-19-879069-3.

[21] LEFEBVRE, B. *La bonne foi: notion protéiforme.* În: *Revue de droit de l'Université de Sherbrooke*, 1996, vol. 26, nr. 2, p. 321-354. [online] [accesat 23.08.2025]. Available at: https://doi.org/10.17118/11143/12870.

[22] STEINAUER, P.-H., BIERI, L. *(Comentariu la) Art. 3.* In: PICHONNAZ, P. et al. *Code civil I Art. 1-456 CC, Commentaire romand, 2e éd.* Bâle: Helbing Lichtenhahn, 2023, pp. 69, 71; 476 p. ISBN 978-3-7190-3900-4.

[23] DE REY, S. *La bonne foi subjective dans le livre 1er du Code civil*. În: DIRIX, E.; WÉRY, P. (eds.). *Le livre 1er du Code civil: Dispositions générales*. Bibliothèque de la Faculté de droit et de criminologie de l'Université catholique de Louvain, vol. 63. Bruxelles: Larcier Intersentia, 2024, pp. 295-334. [online] [accesat 24.08.2025]. Available at: https://pure.uva.nl/ws/files/178733736/OA_La_bonne_foi_subjective_S._De_Rey_final.pdf.

[24] GHERASIM, D. Buna-credință în raporturile juridice civile. București: Editura Academiei RSR, 1981. 252 p. p. 24, pp. 34-35; NICOLAE, M. *Codex Iuris Civilis.* Tom I. *Noul Cod civil,* ed. critică. București: Universul Juridic, 2012, p. 41; 2464 p. ISBN 978-973-127-740-0.

[25] CAZAC, O. Adnotare la art. 11 [online]. În: Codul civil Adnotat [Accessed 23.08.2025]. Disponibil: https://animus.md/adnotari/11/.

[26] STEIN, P.A. *Commentaar op art. 3:11 BW.* In: HIJMA, J. et al. (red.). Groene Serie Vermogensrecht. Deventer: Wolters Kluwer [online], [actualizat la 15 decembrie 2018] [Accessed 15 decembrie 2024]. Available at: https://www.wolterskluwer.nl, nr. 3.0.

[27] SCHMIDT, J.P. Art. 1:201: *Op. cit.,* p. 104.

[28] LE TOURNEAU, Ph., POUMARÈDE, M. *Op. cit.*, nr. 3.

[29] Idem, nr. 4.

Contemporary Romanian legal doctrine maintains the traditional classification of subjective good faith and objective good faith. According to Professor Marian Nicolae, the objective meaning is "equivalent to loyalty and honesty in the exercise of rights and the performance of obligations", while the subjective meaning refers to "a person's non-culpable ignorance of a particular legal situation".[30]

Dutch legal doctrine developed under the former Dutch Civil Code, according to Van Schilfgaarde[31], distinguished between objective good faith as *good faith in conduct* and subjective good faith as *good faith in ignorance*. The new Dutch legal framework has gone further than the German system, abandoning even the terminological notion of *belief* in relation to the standard of conduct and replacing it with the concept of *reasonableness and fairness* (*redelijkheid en billijkheid*).

Although modern legal doctrine increasingly tends to move away from the terminology of *subjective/objective* in favor of a more precise functional distinction between good faith as a sincere but mistaken belief and good faith as a standard of conduct, certain legal systems have retained this classification even in relatively recent legislation.[32]

In the legal doctrine of the Republic of Moldova, this distinction has also been clarified, with a preference for the terms *good faith as a sincere but mistaken belief* and *good faith as a standard of conduct*.[33]

An important conclusion drawn from the research conducted in Chapter 2 concerns the recommendation to include the term *good faith* in the names of various civil law institutions. However, when regulating a particular legal institution, merely referring to the requirement of good faith is not always sufficient. Such a reference appears sufficient where good faith is understood as a standard of conduct, since this meaning is defined in Article 11 of the Civil Code. By contrast, it is insufficient where good faith is understood as a sincere but mistaken belief. In such cases, the legislator should provide further clarification in the legal provision: 1) whether only the subjective criterion (actual knowledge) applies or whether the objective criterion (what the person ought to have known) also applies; 2) whose knowledge must be assessed. As a rule,

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[30] NICOLAE, M. *Op. cit.,* p. 41.
[31] VAN SCHILFGAARDE, P. Goed & Trouw (Van der Grinten-bundel). Zwolle: Tjeenk Willink, 1984, pp. 57, 59, apud STEIN, P.A. Op. cit., nr. 3.1.
[32] In Belgian law, this classification was codified in the new Belgian Civil Code [See *Code civil belge. Loi du 28 avril 2022. Moniteur belge*, July 1, 2022, p. 54079. [Online] [Accessed August 23, 2025]. Available at: https://www.ejustice.just.fgov.be/eli/loi/2022/04/28/2022A32057/justel], which entered into force on January 1, 2023. Book I (General Provisions) contains Article 1.9 (Subjective Good Faith) [For further details, see DE REY, S. *La bonne foi subjective dans le livre 1er du Code civil*, pp. 295–334]. Paragraph (2) provides that a person acts in bad faith if they are aware of the facts or legal act to which good faith relates, or if they ought to have been aware of them, taking into account the specific circumstances.
[33] CAZAC, O. *Op. cit*.

this requirement is implicit in the broader legal context, although in certain cases it must be expressly specified; 3) what constitutes the subject matter of the knowledge in question.

Regarding the relationship between good faith and bad faith, it should be emphasized that defining good faith is not always sufficient, in itself, to define bad faith. Although seemingly opposed, good faith and bad faith are two autonomous concepts that do not operate merely as opposites of one another but serve as distinct criteria for assessment depending on the specific circumstances. The absence of good faith does not automatically amount to the presence of bad faith in every case. Likewise, good faith cannot be reduced to compliance with certain psychological criteria, the failure to satisfy which would directly establish bad faith. The distinction between *being* in good faith and *acting* in good faith highlights the fact that not every instance of unreasonable conduct automatically implies bad faith.[34]

In the section devoted to the law of obligations,[35] good faith is examined as a fundamental concept governing legal relationships, without which the exercise of rights and the performance of obligations by the parties involved would be seriously affected. A distinction is drawn between the good faith of the contracting parties, which concerns each party individually, and contractual good faith, which relates to the very essence of the contract. The duty of good faith is a legal, general and positive obligation of a mandatory nature. The application of good faith in contractual relationships extends to the pre-contractual, contractual and post-contractual stages. Furthermore, the implications of good faith in tort law are decisive in establishing liability. Good faith must be observed by all parties to a contractual relationship and may also produce effects in favour of third parties. As regards the pre-contractual stage, following the modernization of the legal framework, it may be concluded that the decision to enter into a contract entails compliance with both general and specific duties to provide information.[36] In this context, providing consumers with accurate and complete information constitutes an essential condition for ensuring informed consent and, at the same time, a means of maintaining contractual balance between the parties.

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[34] For further details, see ARAPU, E. *Buna-credință și reaua-credință. Delimitări conceptuale*. În: Integrare prin cercetare și inovare: conf. cu part. intern., 9-10 noiembrie 2023, Chișinău. Ch., 2024. 724 p.; pp.320-325. ISBN 978-9975-62-693-4. Available at: https://ibn.idsi.md/ro/vizualizare_articol/201622

[35] For further details, see ARAPU, E. *Buna-credință în materia obligațiilor*. În: Realități și perspective ale învățământului juridic național: conf. intern., 3-4 octombrie 2024. Chișinău. Ch., 2025. pp. 711-720. ISBN (pdf) 978-9975-62-938-6. Available at: https://ibn.idsi.md/vizualizare_articol/243503.

[36] For further details, see ARAPU, E. Respectarea principiului de bună-credință în contextul digitalizării actelor juridice. În: Digitalizarea actelor juridice în contextul modernizării serviciilor publice: conf. intern., 1 noiembrie 2022, Chișinău. Ch., 2024, p.27-34; 190 p. ISBN 978-9975-62-741-2 (PDF). Available at: https://ibn.idsi.md/ro/vizualizare_articol/213305.

Regarding the functions of good faith, these are predominantly manifested in contractual relationships. Most legal systems[37] distinguish between several functions of good faith, although opinions differ as to the precise definition of each function.[38] Within the legal system of the Republic of Moldova, which belongs to the continental European legal tradition, four functions of good faith can be identified: the concretizing/interpretative function, the supplementary/complementary function, the limiting/corrective/moderating function (abuse of rights), and the adaptive function (hardship).

An important conclusion of this chapter is that good faith as a standard of conduct applies not only to the law of obligations but also to property law. Thus, good faith as a standard of conduct also plays an important role in property law, although its role is less significant than that of good faith as a sincere but mistaken belief. This role is particularly evident in the static dimension of property relationships: relationships between co-owners[39] and neighbourly relations, including those between condominium owners.[40] Good faith in matters of co-ownership concerns the exercise of the powers granted to each co-owner. Accordingly, the exercise of possession, use and disposal of common property must respect the rights and interests of the other co-owners, as well as the limits established by law. There are situations in which the exercise of ownership in good faith may cause certain permissible inconveniences to the owner of neighbouring land. However, there are also situations in which an owner, through the exercise of ownership rights, causes impermissible inconveniences, as well as situations in which an owner exercises those rights predominantly for the purpose of causing harm or otherwise prejudicing the owner of neighbouring property, thereby committing an abuse of rights.[41]

The research conducted leads to the conclusion that good faith as a sincere but mistaken belief does not, in itself, produce legal effects protecting the reliance of a person acting under such

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[37] HESSELINK, M.W. *The Concept of Good Faith.* [Accessed: 2.09.2024] Available at: https://pure.uva.nl/ws/files/1019849/94441_The_concept_of_good_faith_in_Towards_a_European_Civil_Code.pdf.

[38] ARAPU, E. Funcțiile bunei-credințe. În: Protecția drepturilor omului în dreptul public și dreptul privat. Studii doctorale, vol. IV: conf. naț., ediția a III-a, 11 Decembrie 2021, Universitatea din Craiova. Facultatea de Drept. Școala Doctorală de Drept. Centrul de Cercetări Juridice Fundamentale. Centrul de studii și cercetări de drept privat „Ion Dogaru". Coordonator, Gîrleșteanu G.L. Craiova: Universitaria, 2022, pp.163-173. ISBN 978-606-14-1830-5.

[39] For further details, see BAIEȘ, S., ROȘCA, N. *Drept civil. Drepturile reale principale*. Ed. a III-a. Chișinău: Tipografia Centrală, 2016, 272 p. ISBN 978-9975-53-749-0.; SFERDIAN, I. Drept civil. Drepturile reale principale. Studiu aprofundat. București: Hamangiu, 2021, ISBN 978-606-27-1863-3.

[40] CAZAC, O. *Adnotare la art. 18, Legea condominiu [online]*. Codul civil Adnotat [Accessed: 24.08.2025]. Disponibil: https://animus.md/adnotari/condominiu18/; *Legea cu privire la condominiu* nr. 187 din 14.07.2022. În: Monitorul Oficial al Republicii Moldova, nr. 238-244 din 29. 07. 2022. Available at: https://www.legis.md/cautare/getResults?doc_id=132437&lang=ro.

[41] For further details, see ARAPU, E. *Abuzul de drept ca formă de încălcare a bunei-credințe în cadrul raporturilor de vecinătate*. În: Integrare prin cercetare și inovare: conf. cu part. intern., 10-11 noiembrie 2020. Vol. II. Chișinău. Ch., 2020, 362p. ISBN 978-9975-152-52-5; pp.253-257. Available at: https://ibn.idsi.md/ro/vizualizare_articol/114217.

a belief. Unlike good faith as a standard of conduct, the conditions for the protection of good faith as a sincere but mistaken belief are defined by each legal provision establishing a specific case of protection.[42] It should be observed that the protection afforded to a party acting in good faith varies depending on the specific context. Indeed, such protection prevents the legal effects that would otherwise have arisen if the person acting in good faith had been aware of the existence of the legal defect. In this regard, a distinction may be drawn between cases in which the protection of good faith entirely prevents the occurrence of legal effects unfavourable to the person acting in good faith and those in which it merely mitigates such effects. Although such a favourable legal effect is not an essential element of good faith itself, it nevertheless constitutes an essential element of the protection of good faith.[43]

In matters concerning the nullity of legal acts and the circulation of property, assessing the good or bad faith of the acquirer is not a secondary consideration but an essential condition for determining the legal effects, which the court must establish before delivering its decision. Good faith in relation to the nullity of a civil legal act constitutes the acquirer's sincere but mistaken subjective belief that their title is fully valid and that no defect exists which could be invoked by third parties. The scope of this belief is not limited to the conviction that the acquirer is contracting with a *verus dominus* (the true owner), but extends to all conditions governing the validity of the legal act. Knowledge of any defect, regardless of its nature, excludes good faith. Good faith is lost at the moment the acquirer becomes aware of any ground of invalidity affecting the title.

Another legal institution examined in this chapter is the revocatory action,[44] also referred to in legal doctrine as the *actio pauliana*. It constitutes a legal remedy for the protection of creditors, enabling them to seek a declaration that legal acts concluded by the debtor to the detriment of their rights are unenforceable against them. The purpose of this institution is to discourage conduct by the debtor aimed at evading the performance of obligations or making it more difficult for the creditor to obtain satisfaction of their claim. The debtor's conduct must comply with the standard of behaviour established by Article 11(1) of the Civil Code. This standard safeguards the creditor's ability to obtain satisfaction of their claim, including by preventing the debtor from engaging in legal acts that could obstruct or hinder the exercise of the creditor's legitimate interests.

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[42] STEINAUER, P.-H., BIERI, L. *Op. cit.*, p. 71.

[43] FOUNTOULAKIS, C., HONSELL, H. (Comentariu la) Art. 3. In: GEISER, Th., FOUNTOULAKIS, C. (eds.). Zivilgesetzbuch I Art. 1-456 ZGB, Basler Kommentar, 7. Aufl. Basel: Helbing Lichtenhahn, 2022, p. 91; 3196p. ISBN 978-3-7190-4510-4.

[44] For further details, see BAIEȘ, S., ARAPU, E. *Implicațiile bunei-credințe în cadrul acțiunii revocatorii*. În: *Studia Universitatis Moldaviae. Seria Științe Sociale*. Chișinău: CEP USM, 2023 Nr. 3(163) p.50-58. ISSN 1814-3199. Coaut. BAIEȘ, S. l Available at: https://ibn.idsi.md/ro/vizualizare_articol/182665.

The legal provisions governing the revocatory action are closely linked to the good-faith test. Thus, a legal act must not only comply with the requirements of this principle but must also avoid prejudicing the legitimate interests of third parties, even where its conclusion is advantageous to the parties involved. In the case of the debtor, the apparent advantage obtained through the conclusion of a legal act may consist in the reduction of their assets, with detrimental consequences for the satisfaction of creditors' claims. Such conduct is incompatible with the requirement of honesty established by Article 11 of the Civil Code. Although good faith is presumed, this presumption may be rebutted by proving that the debtor engaged in prejudicial conduct contrary to the requirements of good faith. In such circumstances, where the legal conditions for a revocatory action are satisfied, the legal act cannot be enforced against the creditor, who is not required to bear the detrimental consequences of the debtor's conduct.

It is important to emphasize that, both in matters concerning the acquisition[45] and the loss of ownership,[46] the legislator provides enhanced protection to persons acting in good faith.

In matters of artificial immovable accession, the good or bad faith of the builder determines the application of a distinct legal regime.[47] The proper application of the relevant legal provisions

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[45] Pursuant to Article 509 of the Civil Code, ownership may be acquired, under the conditions prescribed by law, through occupation, legal acts, succession, accession, acquisition in good faith, acquisitive prescription, and court judgments where these have the effect of transferring ownership. In cases provided for by law, ownership may also be acquired by virtue of an administrative act. This enumeration is not exhaustive, as other methods of acquisition may be established by law. Acquisition in good faith and acquisitive prescription are recognized by the Civil Code as distinct methods of acquisition that address the same problem of failed transfers of ownership. They differ in the circumstances in which they apply (for example, acquisition in good faith does not apply where the defect in the transfer consists in the nullity of the legal act intended to transfer ownership, but only in situations falling within the category of grounds rendering a legal act ineffective) and in the conditions they impose. Essentially, both institutions provide legal protection to the acquirer (C) against a claim for recovery of property or, as the case may be, rectification of the register brought by the true owner (A), also referred to as *verus dominus*. Where the statutory conditions are satisfied, A's claim is dismissed not merely because C is acting in good faith, but because, by operation of law, C's ownership right becomes established to the point where A ceases to be the holder of that right. See CAZAC, O. *Adnotare la art. 509.* In: *Codul civil Adnotat.* [Online] [Accessed September 1, 2025]. Available at: https://animus.md/adnotari/509/.

[46] Following a recent amendment to the Criminal Code [Codul penal nr. 985 din 18.04.2002. În: Monitorul Oficial al Republicii Moldova nr. 72-74 din 14.04.2009. Disponibil: https://www.legis.md/cautare/getResults?doc_id=153355&lang=ro.], Article 106² provides that the confiscation of property transferred to or acquired by third parties is permissible where those third parties knew or ought to have known of the origin of the property or of the purpose of avoiding confiscation, as well as where, despite the transfer, the property remained under the effective ownership of the person concerned by the criminal proceedings.

[47] With reference to the provisions of the former Romanian Civil Code, it was argued that the law should recognize the landowner's right to choose, even where the builder acted in good faith, between retaining the works upon payment of compensation and requiring their removal at the expense of the person who carried them out. Furthermore, the landowner should have the right to claim compensation for damage to the land and its restoration to its previous condition. It was observed that two fundamental principles of law had to be reconciled: on the one hand, the principle of the protection of ownership, which can no longer be called into question today, and, on the other hand, the principle of the protection of good faith. In such circumstances, a conflict arises between the two principles, which must be resolved in favour of one of them: *tertium non datur* (there is no third alternative). See DOGARU, I., CERCEL, S. *Accesiunea imobiliară în Codul civil român și în proiectul Codului civil.* In: *Revista de științe juridice. Codul civil român între tradiție și reformă la 140 de ani de la aplicare*, p. 20. [Accessed September 21, 2023]. Available at: https://drept.ucv.ro/RSJ/images/articole/2006/RSJ1/0103DogaruCercel.pdf.

depends on establishing the builder's conduct. The assessment of such conduct must take into account the circumstances in which the construction was carried out and any other objective circumstances relating to the right to undertake the work.

In matters of inheritance,[48] as with other methods of acquiring ownership and other rights, as well as obligations, it is important to ensure the principle of legal certainty through provisions protecting persons acting in good faith who are involved in inheritance-related civil legal relationships (heirs, legatees, creditors of the estate, etc.).

As regards the abuse of rights,[49] as a manifestation of failure to comply with the requirement of good faith in the exercise of subjective civil rights, in property law it arises in situations where, although the exercise of ownership rights constitutes a lawful act in itself, the owner nevertheless deliberately and intentionally causes harm to another person. It also arises where the abuse does not result from malicious intent and is not aimed at harming another person, but rather from the excessive and unreasonable exercise of ownership rights, contrary to good faith.

Furthermore, the existence of legal appearance requires two essential elements: a material element and a psychological element. The material element consists in the actual exercise of the powers associated with a right by the apparent right-holder, with the appearance potentially arising from public registration, legal acts or factual circumstances. The psychological element presupposes the existence of a mistaken but good-faith belief on the part of third parties who relied on that appearance without their mistake being attributable to their own negligence.[50]

It has been argued[51] that, although neither the Civil Code of the Republic of Moldova nor the Romanian Civil Code expressly defines apparent ownership, the existence of this legal institution may be inferred from Article 17 of the Romanian Civil Code, concerning common and invincible error. In the civil law of the Republic of Moldova, although a similar general provision is absent, certain manifestations of this concept can be identified in several provisions of the Civil Code. These include Articles 11–14, which govern good faith and the prohibition against invoking one's own unlawful conduct or bad faith; Article 331(3)–(6), concerning the nullity of legal acts and its effects; and Article 358, concerning the consequences of the ineffectiveness of legal acts.

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[48] CAZAC, O. Drept civil. Moștenirea. Chișinău: Bons Offices, 2022. Animus, ISBN 978-9975-87-988-0, 900 p.

[49] For further details, see ARAPU, E. Abuzul de drept - o exercitare a dreptului contrar bunei-credințe. În: Studia Universitatis Moldaviae. Seria Științe Sociale. Chișinău: CEP USM, 2022, Nr.3(153), pp.126-134. ISSN 1814-3199, ISSN online 2345-1017. Available at: https://ibn.idsi.md/vizualizare_articol/157175.

[50] MATEFI, R. Aparenţa în drept (*error communis facit ius*) – izvor de obligaţii. În: revista Universul Juridic, nr.7, iulie 2018, pp. 26-30; p. 28.

[51] BAIEȘ, S. Proprietatea aparentă: deja istorie sau încă realitate. În: In Honorem Flavius Antoniu Baias. Aparența în drept. Tom I. București: Hamangiu, 2021, pp. 749-758. ISBN 978-606-27-1846-6, p.751.

Furthermore, elements of the theory of legal appearance may also be identified in the legal provisions governing possession as a factual situation producing legal effects.

Romanian legal doctrine maintains that, following the entry into force of the current Romanian Civil Code, the theory of legal appearance no longer applies in matters concerning public registers, as the protection of third parties is ensured through the principle of substantive publicity, which is governed by its own rules.[52] Although both mechanisms arise from the same objective situation, namely the discrepancy between the state of the register and the actual legal situation, they differ in terms of the subjective requirement.[53] Under the principle of substantive publicity, protection requires the existence of a good-faith third-party acquirer for valuable consideration who has relied on the contents of the land register and registered their right, whereas legal appearance requires the existence of a common and invincible error concerning the transferor's status as owner.[54]

As regards the principle prohibiting reliance on one's own unlawful conduct or bad faith[55](*nemo auditur propriam turpitudinem allegans*), it prevents a person from obtaining legal advantages as a result of their own unlawful conduct or conduct contrary to good faith, since conduct that violates civil law provisions cannot serve as a basis for exercising or enforcing a subjective civil right.

Chapter 3, entitled „*Good Faith as a Sincere but Mistaken Belief in the Acquisition of Ownership"*, focuses on an analysis aimed at resolving the scientific problem of identifying the elements of good faith as a sincere but mistaken belief and determining how it affects the acquisition of registered and unregistered rights.

The research conducted in Chapter 3 supports the conclusion that, in property law, good faith is most frequently invoked as a defence against a claim brought by the true owner of the property (A, *verus dominus*). The person invoking this defence claims to be a good-faith acquirer (C) and argues that, on this ground alone, A's claim should be dismissed. This scenario is particularly common where A brings an action for recovery of property. With the development of the legal regime governing public registers with constitutive effect, the action for rectification of the register has, in practice, taken the place of the action for recovery of property. From C's perspective, good faith provides *protection*. A third person, B, must also be introduced into this

[52] SFERDIAN, I. *Op. cit.,* p. 918.
[53] Idem, p. 924.
[54] Ibidem.
[55] For further details, see ARAPU, E. *Interdicția invocării comportamentului propriu ilicit sau de rea-credință.* In: *Integrare prin cercetare și inovare*: International Conference, November 10–11, 2022, Chișinău. Chișinău, 2022, pp. 257–259, 414 p. ISBN 978-9975-62-472-5. Available at: https://ibn.idsi.md/ro/vizualizare_articol/174497.

scenario. As a rule, B is the person responsible for the failure of the transfer of ownership, acting as A's apparent representative or merely as a possessor (lawful or unlawful, including a thief) who disposes of A's property, or as an apparent owner (holding both *titulus* and *modus*) whose title of ownership is nevertheless null or ineffective, etc.

Good faith is the decisive factor, but it is not sufficient on its own. The law typically establishes additional conditions for granting definitive protection to the acquirer (as applicable: taking possession, obtaining registration, or completing a period of legally qualifying possession). Indeed, good faith as a sincere but mistaken belief does not, in itself, produce legal effects protecting the reliance of a person acting under such a belief. Unlike good faith as a standard of conduct, the conditions for protecting good faith as a sincere but mistaken belief are defined by each legal provision establishing a specific case of protection.[56]

The mechanisms protecting a good-faith acquirer constitute genuine exceptions to the *nemo plus* principle,[57] whereby a legitimate legal appearance is consolidated and transformed into a definitive legal situation in the interests of the security of civil transactions. The expropriatory effect on the *verus dominus* must have a solid justification. As a rule, this justification is linked to the maxim *probatio diabolica*, reflecting the need to ensure the smooth, secure and rapid circulation of rights. The protection of A's interests as opposed to those of C must be examined from the perspective of a systemic necessity, within the limits of equity and/or reasonableness, taking into account the nature of the property in general and, in particular, subjective and objective factors such as: A's fault in creating the impression that B was authorized to act; A's participation in a previous transfer; C's good faith; the type of property and the possibility of verifying its owner; the appearance created for the good-faith acquirer by the fact that the property was in B's possession; the need to avoid excessive verification requirements; C's good-faith reliance on the circumstances supporting B's authority to dispose of the property; and A's assumption of the consequences of the risk arising from entrusting the property to B.

The analysis conducted in Chapter 3 has led to an important conclusion supporting the decision of the Moldovan legislator **not to establish a general definition of good faith as a sincere but mistaken belief**, but instead to regulate, in each particular case, either the subjective criterion alone or the subjective criterion combined with the objective criterion, depending on the legal institution concerned. Nevertheless, where the principle of good faith is applied by analogy

[56] STEINAUER, P.-H., BIERI, L. *Op. cit.*, p. 71.
[57] RODRÍGUEZ DIEZ, J.E. *Potestas alienandi. Transfer of ownership by a non-owner from Roman law to the DCFR.* Rotterdam: aolf Legal Publishers (WLP), 2016, p. 367; 491 p. ISBN 9789462403246. Available at: https://www.academia.edu/30612716/Potestas_alienandi_Transfer_of_ownership_by_a_non_owner_from_Roman_law_to_the_DCFR.

of law to a specific case in which the criteria for good faith are not expressly established, the approach combining the subjective and objective criteria should be applied.

Regarding the acquisition of registered rights, we support the opinion expressed by Octavian Cazac that Article 525 of the Civil Code establishes the standard applicable to a good-faith acquirer, which applies directly to Article 524, but is also relevant to the interpretation of the good-faith criterion provided for in Article 523, since both provisions presuppose the same standard for the acquirer of a registered right who relies on the contents of a public register with constitutive effect.

Thus, we consider it appropriate to adopt the proposed amendment to Article 525(1) of the Civil Code by adding a reference to "other relevant legal provisions", thereby eliminating uncertainties of interpretation and ensuring the uniform application of the law in judicial practice.[58] Regarding the acquisition of unregistered rights, the research proposes that, when applying Article 529, recourse should be made to analogy of statute by reference to Article 527, so that good faith is excluded whenever the acquirer (C) knew or ought to have known of the circumstance that prevented them from acquiring ownership of the property in their possession.

In the context of the analysis of legal irregularities, if the acquisition of ownership were legally valid in all respects, the acquirer would have no need to invoke good faith. Good faith becomes relevant when the acquisition is affected by a defect or irregularity of a legal nature. Thus, an acquirer acts in good faith if they are unaware of the subject matter of the knowledge requirement, meaning that they have neither actual nor imputed knowledge of the irregularity. Conversely, in order to rebut the presumption of good faith, the opposing party in the proceedings must demonstrate that, at the legally relevant moment, the acquirer had actual or imputed knowledge of the subject matter of the knowledge requirement, namely the irregularity. Consequently, the role of good faith is not so much to cure the defect, irregularity or legal impediment affecting the legal act, but rather to overcome the failure of the act to produce its intended effect of transferring ownership by providing two alternative methods of acquiring ownership.[59]

A complex issue arises where the acquirer was mistaken about the legal circumstances they believed to exist and relied upon to justify the acquisition, that is, where the acquirer acted under

[58] This research conclusion was put into practice at the legislative level through the submission of a statement of support and an independent opinion concerning the draft law amending certain legislative acts, including Article 525(1) of the Civil Code, to the Ministry of Economic Development and Digitalization of the Republic of Moldova. The submission was examined during the legislative drafting process.

[59] In view of the various doctrinal opinions and formulations examined, we considered it justified to use the terms *legal impediment*, *defect* and *irregularity* interchangeably throughout the thesis. Nevertheless, we maintain that the term *impediment* does not give rise to the same ambiguities as the term *defect*.

a mistake of law. Indeed, an irregularity affecting the acquisition may result from substantial legal uncertainty concerning certain legal relationships (such as an erroneous but reasonably supported legal opinion), from defective legal regulation, or from the inability to prove a legal defect. We consider that a mistake of law alone should not justify the acquirer's lack of knowledge of the irregularity.

The main conclusion concerning irregularities relating to the status of the right-holder and the authority to dispose of property is that the subject matter of the acquirer's good-faith belief is, as the case may be, either the transferor's ownership or the authority of the transferor's representative.

In matters concerning the acquisition of ownership, the acquirer's good faith is presumed, so that the burden of proving otherwise rests with the person challenging it. That person must demonstrate the existence of specific circumstances capable of rebutting the legal presumption. Consequently, the central fact in dispute is the acquirer's bad faith, which must be proved by the party alleging it. This procedural position may be occupied by the true owner, the holder of a limited property right or, in the case of rights subject to registration, any other interested third party, under the conditions laid down in Article 438 et seq. of the Civil Code.

Under common European law, the burden of proving the acquirer's bad faith generally rests with the person alleging it, who is usually the true owner. The acquirer's good faith is presumed until proven otherwise.[60] The legislative rationale underlying the presumption of good faith lies less in a presumption of general honesty than in the evidentiary difficulties associated with positively proving good faith as an internal state of mind. Such proof would require demonstrating indications of the absence of bad faith and would therefore amount to proving a negative.[61] According to the prevailing view in Swiss legal doctrine, the justification for protecting good faith and, implicitly, for the legal presumption lies either in the lesser weight accorded to the opposing party's interest or in the public interest in the security of civil transactions and legal certainty (*Verkehrs- und Rechtssicherheit*), and often in both considerations simultaneously.[62]

With regard to knowledge, the subjective and objective criteria operate alternatively. This means that A may establish only the acquirer's imputed knowledge (the objective criterion),

[60] VON BAR, CH. *Gemeineuropäisches Sachenrecht.* Vol. II. München: C.H. Beck, 2019, 746 p. ISBN 978-3-406-73367-3, p. 512. The author specifies that this rule applies in Germany, Italy (Article 1147(3) of the Italian Civil Code), Austria, Belgium (Article 2268 of the Belgian Civil Code), Estonia (§ 139 of the Estonian Civil Code), France (Article 2274 of the French Civil Code), the Netherlands (Article 3:118(3) BW), Spain (Article 34 LH) and Slovenia (Article 9 of the Slovenian Civil Code).
[61] FOUNTOULAKIS, C., HONSELL, H. *Op. cit.,* p. 85.
[62] Ibidem.

particularly where it is difficult, for example, to obtain evidence demonstrating actual knowledge (the subjective criterion), and this will be sufficient to rebut the presumption of good faith.

The acquirer's failure to exercise due care when required by the circumstances does not constitute a breach of a legal obligation in the strict sense, but rather a failure to fulfil a duty of prudence or to act in their own interest by making inquiries and carrying out appropriate checks. Consequently, bad faith is considered proven where A demonstrates that, in the specific circumstances, C failed to carry out the necessary checks or did not conduct them with the required degree of diligence, and that such diligence was necessary to fulfil the duty of prudence properly.

In continental European legal systems, bad faith is not determined solely by actual knowledge of a legal irregularity, but also by the negligent disregard of circumstances surrounding the acquisition that are capable of contradicting the subject matter of the acquirer's belief. The differences between legal provisions concern the applicable standard for determining the degree of negligence, with a distinction being made, as in tort law, between slight, ordinary and gross negligence. Thus, the higher the level of care required of the acquirer by law, the greater the protection afforded to the owner's rights; conversely, the lower the required standard of care, the greater the protection afforded to the circulation of property. Nevertheless, particular significance is attached to disregarding *suspicious circumstances* capable of excluding good faith. According to the DCFR commentary, even where slight negligence is concerned, the degree of fault does not, in principle, lead to substantial differences in practical outcomes.

In matters concerning registered rights, imputed knowledge (who ought to know and what they ought to know about registered rights involved in civil transactions) is significantly influenced by the rules governing the operation of public registers. Thus, in private law, public registers play an important role in ensuring legal certainty.[63]

It is important to highlight the conclusion reached in the thesis concerning the distinction drawn by O. Cazac between formal good faith and substantive good faith. The former presupposes that the register constitutes the sole relevant source for assessing the acquirer's legal knowledge, whereas the latter also allows information obtained from outside the register to be taken into account, insofar as such information may influence the assessment of good faith.[64]

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[63] An effective system of public registration ensures the security of civil transactions by reducing the costs and time required to acquire rights, simplifying the verification of previous right-holders, increasing the economic value of property and reducing the risk of litigation.

[64] According to the author's interpretation, Article 525(1)(c) and (d) of the Civil Code establish substantive good faith, albeit in a limited form. Thus, point (c) attaches relevance to actual knowledge of inaccuracies in the register obtained from sources outside it, whereas point (d) also takes imputed knowledge into account, but only in relation to the transferor's title of ownership. Consequently, irregularities affecting earlier stages in the chain of transfers remain, in principle, outside the circumstances relevant to assessing the acquirer's good faith.

The moment at which good faith must exist, and consequently the period during which it must be maintained, is determined by specific legal provisions or follows from their purpose. Thus, *in matters concerning registered rights*,[65] under Article 523, the relevant moment for assessing the acquirer's knowledge is the moment at which the application for registration is submitted, since good faith must subsist until that moment. It must therefore be established whether the acquirer knew or ought to have known of the legal irregularity, in accordance with Articles 449 and 525(1). Any subsequent knowledge of the legal defect no longer affects the acquisition of the right and is therefore irrelevant, in accordance with the principle *mala fides superveniens non nocet*. Under Article 524, however, the relevant moment for assessing knowledge is not a single point in time, but the entire period of legally qualifying possession. Consequently, any knowledge of the irregularity acquired during the period of acquisitive prescription excludes the good faith required for the acquisition of the right. The principle *mala fides superveniens non nocet* is therefore inapplicable. On the other hand, *in the case of the acquisition of unregistered rights*, the relevant moment for assessing good faith is the moment at which the person takes possession of the property as owner.

[65] In the Republic of Moldova, as of 1 March 2019, the rules governing immovable property registration were extended to all public registers with constitutive effect through the general system established by Article 420 et seq. of the Civil Code. Consequently, determining the relevant moment for protecting a good-faith acquirer does not depend on whether the property is movable or immovable, but rather on the constitutive effect of the registration of the right. In the case of rights subject to registration in a public register with constitutive effect, good faith is assessed on the date on which the application for registration is submitted.

GENERAL CONCLUSIONS AND RECOMMENDATIONS

With regard to good faith in general, we may conclude that: 1. Good faith is a fundamental concept of private law, playing a decisive role in property law, where it contributes to ensuring the security of civil transactions and protecting the legitimate reliance of participants in legal relationships; 2. Good faith has Roman origins, and the transformation of the notion of *fides* into a legal concept played a decisive role; 3. The modernization of the Civil Code has contributed to the development of legal mechanisms protecting good faith as a sincere but mistaken belief, as well as to the development of the concept of good faith in general; 4. The research confirms the initial hypothesis. Good faith constitutes a unitary concept, but one with a dual meaning, as a standard of conduct and as a sincere but mistaken belief. German legal doctrine played a decisive role in establishing these two meanings, and the Civil Code of the Republic of Moldova follows this approach; 5. The distinction between good faith as a standard of conduct and good faith as a sincere but mistaken belief is drawn by reference to the specific function it performs within the relevant legal provision, not according to the area of law in which it operates; 6. A unitary definition of good faith offers limited practical utility, and it is necessary to define each of the two meanings of good faith separately. Article 11 of the Civil Code provides an appropriate definition of good faith as a standard of conduct, consistent with common European law; 7. The exclusion of good faith from civil law would constitute a violation of the European Convention on Human Rights, demonstrating that the principle has constitutional significance.

With regard to good faith as a sincere but mistaken belief, the research conclusions are as follows: 1. The protection of a good-faith acquirer constitutes an indispensable mechanism for maintaining the stability, predictability and efficiency of civil transactions; 2. The significant scientific problem addressed consists in substantiating the unitary yet dual nature of the concept of good faith and identifying the elements of good faith as a sincere but mistaken belief (the object of knowledge, the subjective and objective criteria, the person whose knowledge is to be assessed, the relevant moment, and the allocation of the burden of proof); 3. The Civil Code of the Republic of Moldova and other European civil codes (unlike the Belgian Civil Code) do not establish a general definition of good faith as a sincere but mistaken belief, but provide a **differentiated** regulation for the acquisition of registered rights and of rights not subject to registration; 4. Confirming the initial hypothesis, the protection of a good-faith acquirer does not arise automatically from the existence of an excusable mistake, but exclusively from the fulfilment of the conditions established by law for each specific protection mechanism; 5. Article 523 refers to

the criterion of good faith without defining it. This function is performed by Article 525, which, although expressly referring only to Article 524, in fact applies equally to Article 523, since both provisions concern the same standard applicable to an acquirer of a registered right who relies on a public register with constitutive effect; 6. Article 529(1)(a) and (b) merely establishes the requirement of good faith for the prescription periods of three and five years, without specifying its criteria in the manner provided for in Article 527; 7. The role of good faith is not to validate a legal irregularity, but to justify the application of autonomous mechanisms for acquiring ownership. Good faith is not the only criterion for promoting legal certainty, but it accelerates legal protection, ensuring immediate acquisition or acquisition through a shorter period of acquisitive prescription; 8. Good faith is influenced by the standard applied in determining imputed knowledge, which in modern law is shaped by the expansion of public registers, particularly by the presumption of knowledge, which operates against the acquirer, and the presumption of accuracy, which operates in the acquirer's favour; 9. The legislation of the Republic of Moldova adopts a predominantly substantive approach to good faith in matters concerning registered rights, limited however by Article 525(1)(c) and (d) of the Civil Code. Consequently, the standard applicable to a good-faith acquirer lies between the formal and substantive models, requiring the acquirer to investigate reasonable suspicions concerning the existence of legal irregularities, without imposing an obligation to investigate the entire chain of previous transfers; 10. To rebut the presumption of good faith, it is sufficient to demonstrate either actual knowledge or imputed knowledge of the irregularity, since the subjective and objective criteria operate alternatively; 11. National case law prior to 1 March 2019 concerning the judicial recognition of a purchaser as a good-faith purchaser for the purpose of registering an imported motor vehicle reported as internationally wanted is open to criticism, since such decisions did not arise from adversarial proceedings between the *verus dominus* and the purchaser. Law No. 133/2018 resolved this inconsistency by allowing registration with an annotation indicating that the vehicle is wanted, so that subsequent purchasers are deemed to have knowledge of this circumstance; 12. The relevant moment for assessing good faith differs depending on the legal mechanism concerned, being the date on which the application for registration is submitted under Article 523 and the entire period of legally qualifying possession under Article 524 of the Civil Code.

With regard to good faith as a standard of conduct, the conclusions are as follows: 1. Good faith as a standard of conduct operates predominantly in the law of obligations, where, taking the form of a general clause, it performs interpretative, supplementary, corrective and adaptive functions; 2. Good faith as a standard of conduct also applies to property relationships, including co-ownership, neighbourly relations and condominium ownership, requiring the powers arising

from ownership to be exercised with due regard for the rights and legitimate interests of other right-holders; 3. A property owner's failure to comply with good faith as a standard of conduct may constitute grounds for tort liability or for dismissing the owner's claim on the grounds of abuse of rights or contradictory conduct.

Recommendations. 1. A general legal definition of good faith as a sincere but mistaken belief is not recommended. The legal framework should be improved by specifying, in each provision establishing a case of protection, the applicable criterion (subjective, or subjective combined with objective), the relevant person and the subject matter of knowledge; 2. It is recommended to amend Article 525(1) of the Civil Code by adding a reference to "other relevant legal provisions", so that the standard of the good-faith acquirer expressly applies to Article 523 as well. The proposal was expressed in the submitted opinion to the Ministry of Economic Development and Digitalization of the Republic of Moldova (Annexes 1 and 2); 3. When applying Article 529(1)(a) and (b), recourse should be made to analogy of statute by reference to Article 527, so that good faith is excluded whenever the acquirer knew or ought to have known of the circumstance that prevented them from acquiring ownership of the property in their possession; 4. Where a provision does not specify the criteria of good faith and the principle of good faith is applied by analogy of law, the subjective criterion combined with the objective criterion should be applied; 5. Future research should focus on the influence of public registers on the assessment of good faith and on the evolution of judicial practice in this field. The findings contribute to the development of national property law doctrine and to uniform judicial practice concerning the protection of good-faith acquirers.

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ANNOTATION

Arapu Elena, "The Application of Good Faith in Property Law", PhD thesis in law, Chișinău, 2026

Structure of the thesis: introduction, 3 chapters, general conclusions and recommendations, a bibliography comprising 249 references, 2 annexes, 2 tables, and 277 pages of main text. The research findings have been published in 19 scientific papers. The doctoral research is based on an extensive analysis of national and international legal doctrine, drawing on fundamental doctrinal sources concerning good faith, as well as relevant case law.

Keywords: good faith, bad faith, equity, objective good faith, subjective good faith, good faith and fair dealing, standard of conduct, sincere but mistaken belief, abuse of rights, appearance of right, good-faith acquirer, actual knowledge, presumed knowledge, acquisition of registered ownership rights, acquisition of unregistered ownership rights.

Purpose of the research: to determine the scope and contours of good faith from normative, theoretical, and practical perspectives within civil law relationships, particularly in the field of rights in rem and, more specifically, in the acquisition of ownership rights. The research aims to provide a theoretical foundation for the concept of good faith as a sincere but mistaken belief and to distinguish it from good faith as a standard of conduct, taking into account the mechanisms ensuring legal certainty and the protection of legitimate expectations in civil transactions.

The objectives of the research are: to analyse the Roman law origins of good faith and the evolution of the concept in national civil legislation; to identify the fundamental doctrinal sources in this field, with particular emphasis on the understanding of good faith as a sincere but mistaken belief; to define the concept of good faith and substantiate its unitary nature despite its dual meaning, as both a standard of conduct and a sincere but mistaken belief; to conduct a comparative analysis of the different understandings of good faith in various legal doctrines and legislative systems, providing justification for the terminology adopted; to distinguish good faith from bad faith and examine its relationship with related legal concepts, such as abuse of rights, legal appearance, and the prohibition against invoking one's own unlawful conduct or bad faith; to analyse the applications of good faith as a standard of conduct and its specific applications as a sincere but mistaken belief; to identify the elements of good faith as a sincere but mistaken belief, namely the subject matter of knowledge, the subjective and objective criteria, the relevant person, the legally relevant moment, and the allocation of the burden of proof in the acquisition of registered and unregistered rights; to analyse the mechanisms for protecting good-faith acquirers;

to substantiate the role of public registers as instruments for ensuring legal certainty; and to formulate proposals for the interpretation of relevant legal provisions and the improvement of the regulatory framework.

Scientific novelty and originality. The scientific novelty and originality of the research arise from the theoretical and practical need for a comprehensive and unified study of good faith as a complex legal concept, capable of providing a sound foundation and reliable reference point for the correct and uniform interpretation and application of legal provisions governing institutions that constitute specific manifestations of good faith. The research provides clear doctrinal and legislative arguments for identifying both dimensions of good faith, as a sincere but mistaken belief and as a standard of conduct, with a view to ensuring the protection of legitimate expectations in civil transactions. Formulation of theoretical and practical conclusions, as well as proposals for the interpretation of relevant legal provisions and the improvement of the regulatory framework, with a positive impact on national legal doctrine and legislation.

Result obtained. The research has resulted in the development of a comprehensive and structured study of good faith as a mistaken belief and its distinction from good faith as a standard of conduct applicable to the acquisition of ownership rights. It identifies the particularities of the objective and subjective criteria in the acquisition of registered and unregistered ownership rights, the allocation of the burden of proof, and the relevant point in time for assessing knowledge, with the potential for integration into the doctrinal and legislative framework.

Theoretical significance. The theoretical significance of the research lies in the identification and comprehensive, in-depth analysis of fundamental national and foreign sources concerning good faith, as well as the incorporation of modern European conceptual approaches (DCFR, comparative law), providing a systematic doctrinal framework for understanding the particularities of the application of good faith in the field of ownership rights.

Practical value. The practical value of the research lies in the potential use of its conclusions as a reference point for developing uniform doctrinal and judicial approaches to the application of good faith within the framework of the modernised Civil Code. The thesis may also serve as a doctrinal resource for undergraduate, master's, and doctoral students at law faculties, as well as for legal practitioners.

Implementation of scientific results. The scientific results is implemented through their use in the process of amending national civil legislation, in the examination of civil cases concerning ownership rights by national courts, and in university teaching activities.

ADNOTARE

Arapu Elena, „Aplicarea bunei-credințe în dreptul de proprietate”, teză de doctor în drept, Chișinău, 2026

Structura tezei: introducere, 3 capitole, concluzii generale și recomandări, bibliografie din 249 de titluri, 2 anexe, 2 tabele, 277 de pagini text de bază. Rezultatele obținute sunt publicate în 19 lucrări științifice. Cercetarea doctorală se bazează pe o analiză doctrinară națională și internațională extinsă, fiind valorificate surse doctrinare fundamentale în materia bunei-credințe, precum și jurisprudența relevantă.

Cuvinte-cheie: bună-credință, rea-credință, echitate, bună-credință obiectivă, bună-credință subiectivă, bună-credință și corectitudine, standard de conduită, credință sinceră eronată, abuz de drept, aparență în drept, dobânditor de bună-credință, cunoaștere efectivă, cunoaștere prezumată, dobândirea dreptului de proprietate înregistrat, dobândirea dreptului de proprietate neînregistrat.

Scopul lucrării: determinarea contururilor bunei-credințe din perspectivă normativă, teoretică și practică în cadrul raporturilor de drept civil, cu precădere în materia drepturilor reale, în special a dobândirii dreptului de proprietate. Fundamentarea conceptelor de bună-credință ca credință sinceră eronată și delimitarea de buna-credință ca standard de conduită, ținând cont de instrumentele de asigurare a securității juridice și a protecției încrederii legitime în circuitul civil.

Obiectivele cercetării: analiza originilor romane ale bunei-credințe și a evoluției conceptului în legislația civilă națională; identificarea surselor doctrinare fundamentale în materie, cu accent pe accepțiunea de credință sinceră eronată; determinarea noțiunii de bună-credință și fundamentarea caracterului ei unitar, dar cu sens dual, de standard de conduită și de credință sinceră eronată; analiza comparativă a accepțiunilor bunei-credințe în diverse doctrine și legislații, cu argumentarea opțiunii terminologice adoptate; delimitarea de reaua-credință și corelarea cu figurile juridice conexe, precum abuzul de drept, aparența în drept și interdicția invocării propriului comportament ilicit sau de rea-credință; analiza aplicațiilor bunei-credințe ca standard de conduită și a aplicațiilor particulare ale bunei-credințe ca credință sinceră eronată; evidențierea elementelor bunei-credințe ca credință sinceră eronată, respectiv obiectul de referință al cunoașterii, criteriul subiectiv și cel obiectiv, persoana de referință, momentul relevant și repartizarea sarcinii probei, la dobândirea drepturilor înregistrate și a celor neînregistrate; analiza mecanismelor de protecție a dobânditorului de bună-credință; fundamentarea rolului registrelor de publicitate ca instrument de realizare a securității juridice și formularea unor propuneri de interpretare a normelor incidente, precum și de perfecționare a cadrului normativ.

Noutatea și originalitatea științifică este determinată de necesitatea teoretică și practică a realizării unui studiu unitar în materie de bună-credință ca un concept complex care să constituie fundament și reper temeinic pentru interpretarea și aplicarea corectă și uniformă a normelor care reglementează instituțiile ce constituie manifestări concrete de aplicare a bunei-credințe, punând la dispoziție argumente doctrinare și legislative clare privind identificarea ambelor dimensiuni ale bunei-credințe, cea de credință sinceră eronată și cea de standard de conduită, în vederea asigurării protecției încrederii legitime în circuitul civil. Formularea concluziilor teoretice și practice, precum și a unor propuneri de interpretare a normelor incidente și de perfecționare a cadrului normativ, cu impact pozitiv asupra doctrinei și legislației naționale.

Rezultatul obținut: constă în elaborarea unui studiu complex și structurat de analiză a bunei-credințe ca credință eronată, dar și delimitarea bunei-credințe ca standard de comportament aplicabil în materia dobândirii dreptului de proprietate, prin determinarea particularităților criteriului obiectiv și ale celui subiectiv în materia dobândirii dreptului de proprietate înregistrat și neînregistrat, repartizarea sarcinii probei și determinarea momentului relevant al verificării cunoașterii, cu potențial de integrare în cadrul doctrinar și legislativ.

Semnificația teoretică constă în identificarea și analiza complexă și aprofundată a surselor naționale și străine fundamentale în materia bunei-credințe, precum și valorificarea direcțiilor conceptuale europene moderne (DCFR, drept comparat), punând la dispoziție un cadru doctrinar sistemic asupra particularităților de aplicare a bunei-credințe în dreptul de proprietate.

Valoarea aplicativă se va realiza prin valorificarea concluziilor lucrării ca punct de referință pentru formarea opiniilor doctrinare și judiciare unitare asupra modului de aplicare a bunei-credințe în contextul prevederilor Codului civil modernizat. Teza poate constitui suport doctrinar pentru studenții, masteranzii, doctoranzii facultăților de drept, dar și pentru practicienii dreptului.

Implementarea rezultatelor științifice este realizată prin utilizarea acestora în procesul de modificare a legislației civile naționale, în procesul de examinare a cauzelor civile în materie de proprietate de către instanțele judecătorești naționale, precum și în activitatea didactică universitară.

АННОТАЦИЯ

Арапу Елена, „Применение добросовестности в праве собственности”, докторская диссертация по праву, Кишинёв, 2026

Структура диссертации: введение, 3 главы, общие выводы и рекомендации, библиография, включающая 249 наименования, 2 приложения, 2 таблицы, 277 страниц основного текста. Полученные результаты опубликованы в 19 научных работах. Диссертационное исследование основано на обширном анализе национальной и зарубежной доктрины, с использованием фундаментальных доктринальных источников по вопросам добросовестности, а также соответствующей судебной практики.

Ключевые слова: добросовестность, недобросовестность, справедливость, объективная добросовестность, субъективная добросовестность, добросовестность и честность, стандарт поведения, искреннее ошибочное убеждение, злоупотребление правом, видимость права, добросовестный приобретатель, фактическое знание, предполагаемое знание, приобретение зарегистрированного права собственности, приобретение незарегистрированного права собственности.

Цель исследования заключается в определении содержания и границ понятия добросовестности с нормативной, теоретической и практической точек зрения в рамках гражданских правоотношений, преимущественно в сфере вещных прав, в особенности при приобретении права собственности. Теоретическое обоснование понятия добросовестности как искреннего ошибочного убеждения и его разграничение с добросовестностью как стандартом поведения с учётом механизмов обеспечения правовой определённости и защиты законных ожиданий в гражданском обороте.

Задачи исследования заключаются в следующем: анализ римских истоков добросовестности и эволюции данного понятия в национальном гражданском законодательстве; выявление основополагающих доктринальных источников в данной области с акцентом на понимание добросовестности как искреннего ошибочного убеждения; определение понятия добросовестности и обоснование его единого характера при двойственном содержании, предполагающем понимание добросовестности как стандарта поведения и как искреннего ошибочного убеждения; сравнительный анализ различных подходов к пониманию добросовестности в правовых доктринах и законодательствах различных государств с обоснованием выбранной терминологии; разграничение добросовестности и недобросовестности, а также установление её взаимосвязи со смежными правовыми конструкциями, такими как злоупотребление

правом, видимость права и запрет ссылаться на собственное противоправное или недобросовестное поведение; анализ случаев применения добросовестности как стандарта поведения и особенностей её применения как искреннего ошибочного убеждения; выявление элементов добросовестности как искреннего ошибочного убеждения, а именно объекта, в отношении которого определяется осведомлённость лица, субъективного и объективного критериев, лица, чья осведомлённость подлежит оценке, юридически значимого момента и распределения бремени доказывания при приобретении зарегистрированных и незарегистрированных прав; анализ механизмов защиты добросовестного приобретателя; обоснование роли публичных реестров как инструмента обеспечения правовой определённости и формулирование предложений по толкованию соответствующих правовых норм, а также по совершенствованию нормативно-правовой базы.

Научная новизна и оригинальность исследования обусловлены теоретической и практической необходимостью проведения комплексного исследования добросовестности как сложного правового понятия, способного служить фундаментом и надёжным ориентиром для правильного и единообразного толкования и применения норм, регулирующих правовые институты, представляющие собой конкретные проявления добросовестности. Исследование содержит чёткие доктринальные и законодательные аргументы, позволяющие выявить оба измерения добросовестности, как искреннего ошибочного убеждения и как стандарта поведения, в целях обеспечения защиты законных ожиданий в гражданском обороте. Формулирование теоретических и практических выводов, а также предложений по толкованию соответствующих правовых норм и совершенствованию нормативно-правовой базы, способствующих развитию отечественной правовой доктрины и законодательства.

Полученный результат: разработано комплексное и структурированное исследование добросовестности как ошибочного убеждения, а также её разграничения с добросовестностью как стандартом поведения, применяемым в сфере приобретения права собственности. Определены особенности объективного и субъективного критериев при приобретении зарегистрированного и незарегистрированного права собственности, распределение бремени доказывания и юридически значимый момент проверки наличия соответствующих знаний. Полученные результаты обладают потенциалом для интеграции в доктрину и законодательство.

Теоретическая значимость заключается в выявлении и комплексном углублённом анализе фундаментальных национальных и зарубежных источников по вопросам

добросовестности, а также в использовании современных европейских концептуальных подходов (DCFR, сравнительное правоведение), что позволяет сформировать системную доктринальную основу для понимания особенностей применения добросовестности в сфере права собственности.

Практическая значимость заключается в возможности использования выводов исследования в качестве ориентира для формирования единообразных доктринальных и судебных подходов к применению добросовестности в контексте положений модернизированного Гражданского кодекса. Диссертация может служить доктринальной основой для студентов, магистрантов и докторантов юридических факультетов, а также для практикующих юристов.

Внедрение научных результатов осуществляется посредством их использования в процессе совершенствования национального гражданского законодательства, при рассмотрении национальными судебными инстанциями гражданских дел в сфере права собственности, а также в университетской преподавательской деятельности.

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THE APPLICATION OF GOOD FAITH IN PROPERTY LAW

SPECIALTY 553.01 – CIVIL LAW

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