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Ilie CHIRTOACĂ Vladislav GRIBINCEA Daniel GOINIC

LRCM LEGAL RESOURCES CENTRE FROM MOLDOVA

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Authors:

Ilie CHIRTOACĂ

Vladislav GRIBINCEA

Daniel GOINIC

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Executive Summary

The judicial system in the Republic of Moldova has always been exposed to the risk of having inconsistent judicial practice. The 2011-2016 Justice Sector Reform Strategy (JSRS), in the domain of intervention 1.2.4, emphasized the need for insuring the consistency of the judicial practice. This analysis was prepared by the Legal Resources Centre from Moldova (LRCM) to boost the consistency of the judicial practice.

Drawing on empirical data, the document examines to what extend the courts practice is uniform in legal actions concerning the expropriation of immovable property from good-faith purchasers whose legal titles were registered in the public registry (cadastre). Article 51 of the Law on Cadastre prohibits the expropriation of immovable property from good-faith purchasers, even if their legal titles were registered by mistake. Our topic of choice was determined by the underlying economic interests and the higher risk of inconsistent judicial practice they entail. Besides, prior to the research, apparently the judicial practice in this field was inconsistent, as evidenced by the decisions of the European Court of Human Rights (ECtHR) in several cases against Moldova.

The analysis does not aim to determine what should have been the right solution in the analyzed court judgements. It only focused on the consistency of the courts' solutions in light of the reasoning laid out in the court judgements and the adopted solutions.

The research covered all the court judgements of the Supreme Court of Justice (SCJ) passed within 36 months, from 1 January 2017 through 31 December 2019, which were available on its website. All told, we found 16 relevant SCJ court judgments. In addition to the SCJ court judgements, we looked into the reasoning provided in the district and appellate court judgements on the corresponding SCJ cases.

Purchaser's good faith was invoked by the parties or considered by judges *ex officio* in 12 of the 16 cases. None of the judgments in these 12 cases, however, expressly mentioned Article 51 of the Cadastre Law. Good faith was examined in the context of the good-faith purchaser protection provided for in the Civil Code (which is narrower than the protection offered by the Cadastre Law). This could indicate that judges and lawyers have little knowledge about this rule. In the other four cases, the court judgements failed to mention

the purchaser's good faith at all. Still, legal action in these four cases was dismissed for other reasons, the purchaser's ownership remaining valid.

Three of the 16 examined cases were sent to retrial, and the final solution is still unknown. In the remaining 13 cases that the SCJ resolved irrevocably, the legal action was dismissed in 8 cases and legal titles were nullified in 5 cases. Of the eight dismissed actions, four were dismissed on account of the purchaser's good faith, and the other four, for other reasons (for example, the validity of the power of attorney to sell, the plaintiff's behavior that refuted their good faith, etc.). In one case (3ra-977/17), judges granted good-faith purchaser protection although the circumstances of the case raised serious doubts about the purchaser's good faith. The litigation concerned the purchase of two land plots in Chișinău without local council's approval.

In the other five cases, judges admitted legal action. In four of them, judges concluded that the purchasers had not acted in good faith. In one case, the legal title was nullified without considering the purchaser's good faith at all.

The analysis revealed that solutions in the examined court judgements were not entirely consistent but deviations from legal standards were not so numerous (only in one case out of 13). Still, the reasoning in the examined decisions cannot be considered consistent. In 4 of the 13 cases, while action was dismissed, good faith was not examined although this was the simplest way of dismissing the action. In three cases, the reasoning was inconsistent. In Cases No. 2ra-1524/18 and 2ra-176/18, the SCJ concluded that the plaintiff's continued living in the apartment sold without their consent confirmed the bad faith of the third-party purchaser. Judges suggested that the third-party purchaser could not have been unaware of the claim of the plaintiff as long as the latter had lived in the apartment. In another case, 2ra-381/18, judges found that the third-party purchaser had acted in good faith even though the plaintiff continued living in the repeatedly sold property.

The Context and Purpose of the Document

The judicial system in the Republic of Moldova—which comprises more than 20 courts across three jurisdictional tiers and, until 2016, had more than 50 courts—has always faced the risk of inconsistent judicial practice. Over the years, even the SCJ practice could not be called uniform. In spite of numerous tools designed to ensure consistency of the judicial practice, little improvement has been established in this respect until 2011. The limited impact of the efforts to standardize judicial practice could be explained by the frequent modification of legislation and the conjectural interpretation of the law by the legislature and executive bodies, by the lack of traditions to follow the interpretations of the law given in the superior courts judgements, by the poor reasoning of the judgements, as well as by the insufficient consistency of the case law of the superior courts.

Taking into account the less uniform court practices, the JSRS, in the domain of intervention 1.2.4, emphasized the need for uniformity of judicial practice. Starting with 2012, the SCJ has become more active in this field. By 31 December 2019, the SCJ had passed and updated more than 35 judgements of the Plenary, bout 109 recommendations, and about 48 opinions on how to apply the legislation uniformly. Also, a more advanced search engine for the SCJ case law has been integrated into the SCJ website. This analysis does not aim at evaluating the extent to which the mechanisms for uniformization of judicial practice existing in the Republic of Moldova are used efficiently, or if they are sufficient. The document analyses whether the practice of the Supreme Court of Justice of the Republic of Moldova is uniform in a narrow field. In other words, we have tried to analyse the impact of efforts concerning the uniformization of the judicial practice rather than efforts themselves. We only wanted to determine whether courts' judgements in the chosen field were consistent or compatible.

The document analyzes judicial practice in just one field: the expropriation of immovable property from good faith purchasers. The document analyzes the SCJ's case law developed in this field from 1 January 2017 through December 2019.

Methodology

Under Article 51 of the Cadastre Law, if a good-faith purchaser acquires immovable property from an individual who was registered in the cadastre as owner by mistake, the legal title to the property is left to the good-faith purchaser. In this research, we checked the extent to which judicial practice makes use of this guarantee provided for in Article 51 of the Cadastre Law.

We chose this specific topic because such disputes usually have significant value, which entails a higher risk of inconsistent judicial practice. This choice was also determined by our prior awareness that here are plenty such cases.

The research covered all court judgements the SCJ had passed within 36 months, from 1 January 2017 through 31 December 2019, and the solutions offered by district and appellate courts in the corresponding cases. The SCJ's court judgements were taken from the Court's website (www.csj.md). The other court decisions were accessed at the courts web portal (www.instante.justice.md). The analysis was carried out only on cases in which:

a. the litigation involved claims to the immovable property;
b. the legal title to the immovable property had been registered in the public registry; and
c. it had been claimed that the legal title to the immovable property had been registered by mistake.

The SCJ's website does not allow searching court judgements in accordance with the reasoning presented by the SCJ. Therefore, we tried to identify those judgements manually, in accordance with the legal problem or the matter of litigation indicated in the SCJ's database of cases. Considering the small number of court judgements so identified, we also studied all judgements passed in the 36 months on cases that involved cadastral authorities.

In our research, we identified 16 relevant cases examined by the SCJ from 1 January 2017 through 31 December 2019. The details about those cases are presented in the annex in the end of this document. We did not intend to consider what solutions courts should have offered in the examined cases, so we analyzed mostly the reasoning presented in the court judgements, rather than the final solution. The analysis included the cases that the

SCJ had sent to retrial. Both the reasoning from the SCJ's court judgements and that from the decisions of lower courts were analyzed. The analysis examined only the level of uniformity of the case law. For that end, we analyzed:

a. whether judges admitted the legal action or not;
b. whether judges considered the purchaser's good faith in their court judgements; and
c. how consistent were the reasoning sections of the examined court judgements.

The analysis was carried out from July 2019 through January 2020.

Uniformity of judicial practice or independence of judges?

In the Republic of Moldova, probably similar to all existing legal systems, the society lives mainly on the basis of rules written by the legislature or executive. Traditionally, in the continental legal systems, the judicial power is perceived as an arbitrator in disputes with the state, which must protect those who are weak from the powerful ones and do justice. Traditionally, by their decisions, judges in those systems have the task of ensuring compliance with the law, but not of establishing new rules.

History consistently confirms that the legislative process is behind the evolution of the society. Social relationships are becoming more complex and diverse, while legal regulations, which are general by nature, do not always provide clear answers to all the situations that arise in practice. On the other hand, the excessive legal regulation or blind adherence to the law can seriously affect the efficiency of state institutions and cause social discontent. Moreover, in some countries laws adopted by the executive or legislature undermine human rights or considerably limit the ability of judges to do justice. For these reasons, judges can not refuse to do justice, even if the law does not offer a solution or is wrong. Thus, in the case of Moldova, when a law violates human rights, judges may refer the Constitutional Court[1] disregard the provisions of normative acts that are inferior to the law[2] or even directly apply the provisions of the international human rights treaty to the detriment of the national law.[3] At the same time, if the civil law does not provide a solution or when this solution is not clear, the law requires the judge to apply the analogy of the law or to follow the principles of law.[4]

Laws are read by few people and not all of those who read them understand them fully. On the other hand, the litigants are not interested so much in the text of the law, but rather on its impact. Namely for these reasons, the enforcement of the law, rather than its text, determines the perception of the exact content of the law, gives the litigant confidence in the rule of law and creates the perception that justice has been done.

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[1] See Article 121 of the Civil Procedure Code and Article 7 (3) of the Criminal Procedure Code.

[2] See Article 12 (2) of the Civil Procedure Code and Article 7 (4) of the Criminal Procedure Code.

[3] See Article 12 (4) of the Civil Procedure Code and Article 7 (5) of the Criminal Procedure Code.

[4] See, for example, Article 12 (3) of the Civil Procedure Code.

The law is not adopted for one person or a predetermined group of persons. It should generate similar effects for all who fall within its scope, regardless of the position held in society, wealth, political affiliation or other aspects. That is why, art. 16 par. 2 of the Constitution of the Republic of Moldova stipulates that all are equal before the law. This constitutional norm does not only enshrine the recognition of equality of all before the law, but also the equality before the authorities that apply it. This equality can not exist when, by applying the same text of the law to similar situations, the judge issues opposite solutions.

The system of precedent, where the interpretation of a given rule by the higher court rulings is, as a rule, binding for settling similar cases by inferior courts, did not emerge as an emanation of the legislator's will. On the contrary, it was the result of the legislator's passivity when judges were forced to do justice in situations where the law did not suggest a solution. That is why the precedent cannot invalidate a legal norm, but merely clarifies how a general provision is applied in a certain examined situation.

Justice can have only one face. In a judiciary there can be no disorder or chaos, because in this case, the litigants are left in a state of insecurity and legal uncertainty. The highest jurisdiction in each state is called to ensure a well-organized judiciary. Given the independence of judges, the highest court does not have direct levers to put in order the judiciary. It should be noted, however, that the independence of the judge is the right of the latter to do justice without being influenced by the solution s/he has to take in one case or another. At the same time, independence can not be interpreted as giving the judge the right to neglect the legal provisions or, without particularly convincing reasons, to interpret the law to the detriment of well-established judicial practice.

Perhaps the main lever for organizing the judicial systems is the consistent interpretation of law by judges. It is already a tradition established in European judicial systems to respect the interpretations of the law given by the highest court of the state, regardless of whether the given interpretations, according to the law, are binding or not. Recently, this principle seems to be also extended to the courts of appeal.[5] Respect for the interpretation of the law provided by the superior court is a sign of respect for these courts, but also a tool that ensures confidence in the judiciary. On the other hand, the solution given by a judge that runs counter to the superior court practice will inevitably be quashed. This, however, does not mean that a judge from a lower court cannot find that well-established judicial practice, including the practice of the higher court, is outweighed by social realities, or that the legal situation s/he is examining is different. However, in this case, the judge should be particularly convincing and his/her approach can not vary from one case to another.

Observance of the interpretation of the law given by the highest court can only take place, if the very practice of that court is uniform and its solutions are clear for judges and

[5] See ECtHR, Decision *Tudor Tudor v. Romania*, 24 March 2009, paras. 26 – 32.

convincing. On the other hand, it is natural for judicial practice to evolve[6] and when the highest court changes its practice, it should clearly highlight this fact. These requirements have become even more demanding in the Internet age, when the supreme court rulings are published and everyone can have access to them from anywhere in the world. Namely for these reasons, the European Court of Human Rights (ECtHR) noted that there is no fair trial when the supreme court develops a contradictory practice or does not contribute to the consistency of the existing contradictory practice.[7]

The risk of non-uniform judgements is a feature inherent for any legal system with multiple levels of jurisdiction or with courts having specific jurisdiction. Such discrepancies may also occur within the same court, especially in systems where judicial practice has not been well codified before. Per se, these divergences can be tolerated at a certain stage, as achieving the uniformity of court practice is a long process. The ECtHR does not accept "deep and persistent" divergences in the national judiciary that last too long.[8] When examining such situations, the ECtHR shall verify if:

a) the divergences are "profound and persistent";
b) the national legislation provides for mechanisms to address inconsistencies; and
c) the mechanism is applied and, if applied, what are the effects.[9]

As mentioned above, the uniformity of judicial practice determines numerous benefits, both for the litigants and for the judiciary. However, the uniformization process must remain flexible enough to allow for the development of the case law.

The legislation of the Republic of Moldova provides for many levers to ensure the uniformity of judicial practice. Among them may be listed the following:

a) advisory opinions of the SCJ in civil cases (Article 12^2 of the Civil Procedure Code);
b) the mandatory nature of the ECtHR's case law in criminal cases (Articles 7 (8) and 427 (1) para. 16 of the Criminal Procedure Code);
c) appeal in the interest of the law in criminal cases (Articles 7 (9) and 465^1 of the Criminal Procedure Code);
d) of criminal judgements that are contrary to the previous practice of the SCJ(Article 427 (1) para. 16 of the Criminal Procedure Code);
e) judgements of the Plenary SCJ; or
f) disciplinary sanctioning of the judge for non-observance of the uniform judicial practice (Article 4 (1) letter (b) of Law No. 178/2014 on the Disciplinary Liability of Judges).

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[6] See ECtHR, Decision *Atanasovski v. the former Yugoslav Republic of Macedonia*, 14 January 2010, para. 38.

[7] See ECtHR, Decision *Beian v. Romania*, 6 December 2007, paras. 29 – 40.

[8] See ECtHR, Decision *Zivic v. Serbia*, 13 September 2011, paras. 44 – 47, where this period lasted two years.

[9] *Mutatis mutandis*, Decision in *Albu and Others v. Romania*, 10 May 2012, para. 34.

It does, however, matter to what extent these levers are used and what is the real impact of the efforts to unify judicial practice.

Compliance with the judicial practice inevitably limits the judges' discretion and, implicitly, their freedom to settle the cases. The Constitutional Court of the Republic of Moldova has stated that, when settling a case, the judge must be independent both from the other judges and from the chairperson of the court or from the other courts.[10] However, the Constitutional Court stated in the same judgement that it does not exclude the obligation of the judge of a lower court to comply with a previous judgement of a higher court instance with regard to the interpretation of the law applicable to subsequent cases.[11] On the other hand, the possibility for the SCJ to issue recommendations or explanations, when these are given outside the cases it examines, involves the risk of being contrary to the independence of judges guaranteed by art. 116 of the Constitution of the Republic of Moldova.[12]

[10] See Decision 21/2016 of the Constitutional Court, para. 103.
[11] *Idem*, para. 109.
[12] *Idem*, paras. 112 – 113.

Laws and Judicial Practice in Expropriation Cases against Good-Faith Purchasers

General Considerations on Good Faith in Civil Law

According to national laws and doctrine,[13] the concept of good faith has several meanings. In its most common use, the concept sets out a **legal principle**. The first reference to good faith in this interpretation is found in Article 55 of the Constitution of the Republic of Moldova, which states that any person exercises his/her constitutional rights and freedoms *in good faith*, without infringing the rights and freedoms of others.[14] Similarly to the Constitutional provision, Article 10 of the Civil Code (Article 9 in the previous version) regulates good faith as the mandatory behavior of parties in civil legal relations. Under this provision, individuals and legal entities must exercise their rights and discharge their obligations in good faith and in accordance with the law, the contract, public order, and morals.

The new regulations introduced a definition of good faith in Article 11 of the Civil Code as a **standard of behavior** for a party, characterized by fairness, honesty, openness, and consideration for the interests of the other party in legal relations.[15] The same article also describes an illustrative (but not exhaustive) situation where the good faith principle applies: *"In particular, it is against good faith for a party to act contrary to its earlier statements or its earlier behavior if the other party relied on those statements or that behavior for good reasons to its detriment.*[16]

The second frequently used meaning of the concept of good faith is in a form of a **presumption**. The presumption of good faith is a legal guarantee that protects the parties in civil legal relations from abusive interference in their rights. For instance, Article 582 of the Civil Code (Article 375 in the previous version) does not allow expropriation in the case of good faith purchasers when the property was taken from possession for valuable consideration with the owner's consent. Thus, the law protects the purchaser, even when it

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[13] Baiesu, Sergiu. *Buna-credință. Principiu fundamental al dreptului civil* (2020). Article published in the collection of reports from the scientific conference *The Realities and Prospects of the National Legal Education System* held on 1 and 2 October 2019 on the occasion of the 60th anniversary of the Faculty of Law of the State University of Moldova. Available at: https://bit.ly/2u3M9l7.

[14] Article 55 of the Constitution of the Republic of Moldova.

[15] *Civil Code of the Republic of Moldova*, Article 11 (1).

[16] *Idem*, Article 11 (2).

becomes known later that the legal title to the acquired property belongs to another person and they claim it back.

While Article 582 of the Civil Code imposes certain conditions for the protection of good-faith purchasers, the special law on the cadastre of immovable property does not set conditions. Under Article 51 of the Cadastre Law, if a good-faith purchaser acquires immovable property from an individual who was registered in the cadastre as owner by mistake, the legal title to the property is left to the good-faith purchaser. In this research, we checked the compliance of judicial practice with the guarantee provided for in Article 51 of the Cadastre Law.

Good faith is presumed until there is evidence to the contrary.[17] Therefore, the court must consider the existence or absence of good faith in each case *ex officio*. If, in their legal action, the plaintiff does not refer to this fact, the action should be dismissed because the presumption of good faith has not been refuted. We will try to examine this aspect in the analysis as well.

The following situation illustrates the application of the guarantees for good-faith purchasers. In this case, the ECtHR dismissed as manifestly unfounded the application of a former owner whose claim to the immovable property of a good-faith purchaser had been dismissed. Following the same logic, in another decision,[18] the ECHR criticized expropriation from a purchaser for reasons attributable exclusively to the seller.

A, the spouse of B, sold immovable property purchased during their marriage to C without B's consent. At the moment of sale, B was abroad and found out about the sale only a few years later. In the meantime, C has started construction on the property purchased from A.

B took legal action, requesting the nullity of the sales and purchase contract because the sold property was indivisible property jointly owned by the spouses. B argued that, under Article 21 of the Family Code, any transaction for alienating immovable property is null and void if it was conducted without the consent of the other spouse.

C filed a counterclaim to obtain court acknowledgment that C had purchased the property in good faith as they had been unaware that the plaintiff was the co-owner of the disputed immovable property. C argued that A and B wanted more money for the property in question, hence the legal action. C requested the protection of their legal title under the ownership guarantee for *good-faith* purchasers.

The solution given by courts: National courts concluded that C would have been subjected to disproportionate interference if they had been forced to return the disputed property and demolish the construction. B had not challenged how the cadastral office had registered the disputed site and had asserted that her spouse had been responsible for misrepresentation before the public notary when he sold the property. In addition, the courts took note that B had not complained against her spouse, who was responsible for the sale of the property. In the end, the courts found no evidence to support the allegation that the plaintiff B had not been aware of the transaction and had not consented to it and concluded that C enjoyed the presumption of good faith.

The summary of the ECtHR's decision in Claudia CORNEI v. Republic of Moldova, Application No. 11735/09

[17] *Idem*, Article 10 (2).

[18] See *Dacia S.R.L. v. Moldova*, 18 March 2008, paras. 51 – 66.

Judicial Practice in Expropriation Cases against Good-Faith Purchasers

To enable the assessment of the practice of applying the presumption of good faith, in this research we analyzed the practice of the courts between 2017 and 2019. All told, 16 legal actions involving claims to property where Article 51 of the Cadaster Law applied were identified (*detailed information is available in the Methodology section*).

From January 2017 through December 2019, the SCJ resolved irrevocably 13 such cases and sent 3 to retrial. Of the 13 irrevocably solved cases, the SCJ upheld the lower courts' solutions in 12.

In 8 of the 13 irrevocably solved cases, the plaintiffs' claims were dismissed, and the legal title was acknowledged after the purchasers. In the other five cases, the plaintiffs' claims were admitted, and the legal title nullified and registered on the plaintiffs. In two of the five cases, the legal title was nullified in by the district court and in another two, in the appellate court. In one case, the legal title was nullified by the SCJ. In none of the cases where the legal title was nullified, the purchasers were awarded damages. In four of the five cases where new owners were expropriated from property, the courts examined and refuted the presumption of good faith.

In what follows, we will examine the courts' solutions in the dismissed actions and, respectively, in the admitted actions where the legal title was nullified.

Courts' solutions in dismissed actions (8 cases)

The thorough analysis of the eight cases where the former owners' claims to property were dismissed and the purchasers' interests were protected suggest that judges tend to dismiss action when it is possible to demonstrate that plaintiffs' behavior in itself contributed to the alienation of the property. In such cases, courts often do not get to examine the purchasers' good faith, dismissing the action for other reasons. In only four of the eight cases resolved in favor of the purchasers, the courts dismissed the action, invoking the purchasers' good faith.

The Application of Good Faith Presumption When It Was Found That Public Records Were Legal

Thus, in Case No. 2ra-668/17 decided by the SCJ on 24 May 2017, the plaintiff—the Mayor's Office of Strășeni—requested the nullity of the land sales and purchase agreement because the defendant had sold a part of the land to a third party (the purchasers) even though that part of the land was the mayor's office property. The public register, however, had no reference to the title of the mayor's office to the land. Apparently, the grounds for the legal action were ensured by an ordinance of the National Anticorruption Center (NAC).

On 23 May 2016, the Strășeni Court dismissed the action of the mayor's office as clearly unfounded. The **district court** found, *inter alia*, that the records were presumed authentic

until there was evidence to the contrary and that, at the moment of sale, no references had existed that the sold property was disputed. On 6 December 2016, the Chișinău Court of Appeals (CA) quashed the district court's judgment and admitted the appeal of the mayor's office. The **appellate court** declared the sales and purchase agreement signed by the mayor's office and the defendant null and void as the official document confirming the surface area of the sold land had been nullified by a court judgement. To refute the district court's argument that, at the moment of sale, no reference had existed in the register, the appellate court found that the mayor's office had not registered the judgment in the cadastre since it had not become irrevocable yet and the sales and purchase agreement had been executed three days before the judgment became final. As for the guarantee for the good-faith purchaser, the appellate court found that the latter did not benefit of the presumption of good faith as Article 375 of the Civil Code excluded purchasers' good faith when property was taken from the owner's possession without the owner's consent. Additionally, the purchaser could not invoke good faith as long as the registration was based on an official document that had been nullified by court judgment. The appellate court suggested that, after the correction of record entries, the purchasers would be able to claim legal title to the part that was really the owner's property. On 24 May 2017, **the SCJ**—quashed the decisions of both lower courts and dismissed the claim of the mayor's office. Just like the district court, the SCJ concluded that, at the moment of sale, the owner had the required full capacity. In addition, the mayor's office failed to produce evidence that the **purchasers** had known that the land had been disputed. As for the judgment that nullified the official document, which the appellate court took into account in quashing the district court's judgment, it lacked legal force since it had not been registered in the public records. The SCJ considered the good faith of the purchasers, noting that they had not been aware of the litigation concerning the land when they were signing the sales and purchase agreement.

We can see that, in this case, the SCJ found arguments supporting the good faith of the purchasers and considered the arguments in their favor and against them. The court found, *inter alia*, that it had not been proven that the purchasers had been aware or should have been aware of the impediments to signing the contract, the burden of proof was born on the plaintiff (mayor's office). Nor had the plaintiff proven that, either deliberately or by lack of due diligence, the purchasers had not known about the claim of the mayor's office to the property they had purchased. Therefore, the SCJ followed the spirit of Article 51 of the Cadastre Law, which states that the good-faith purchaser maintains their legal title even if they acquire immovable property from an individual who was registered in the cadastre by mistake.

In a similar case, No. 3ra-977/17 of 20 December 2017, the Town Council of Codru (plaintiff) took legal action to nullify several decisions of the Mayor's Office of Codru and the mayor themselves by which the mayor's office had alienated two land plots, one of 600 sq. m. and another of 754 sq. m. The new owner had registered the legal title in

the cadastre. The Town Council of Codru considered that the mayor had exceeded their powers as this violated the Land Code, which states that the awarding and alienation of land is the prerogative of local councils. On 1 April 2016, the **district court**—the Centru Court—dismissed the plaintiff's action as tardy. On 28 March 2017, the Chișinău CA admitted the plaintiff's appeal and declared the decisions of the Mayor's Office and the mayor of Codru illegal. The **appellate court** took into account the plaintiff's argument that the former mayor had exceeded his powers, which rendered illegal his acts and, implicitly, nullified the sales and purchase agreement. Similar to the Case No. 2ra-668/17 examined by the SCJ on 24 May 2017 and mentioned earlier in this document, the alleged illegality of the mayor's actions had been mentioned in a motion from the NAC. On 20 December 2017, the SCJ quashed the appellate decision and upheld the judgment of the district court, dismissing the application of the Town Council of Codru. **The SCJ** found that, although the case in question confirmed the illegality of the decisions passed by the mayor's office and the mayor in 1999, their nullity was not appropriate because they had already been enforced and thus exhausted. In addition, SCJ judges found that, at the moment of signing the sales and purchase agreement, the public register did not contain any legal defect that could have impeded the signing of the contract, which served as an element of the purchaser's good faith. The SCJ also underscored that the nullity of the sales and purchase agreement would be an unjustified interference in the peaceful possession guaranteed by the Constitution and the European Convention on Human Rights.

In a similar case, No. 2ra-12/18, examined by the SCJ on 17 January 2018, the Municipal Council of Chișinău and the Mayor's Office of Chișinău filed an application for revision from a judgment dated from 2012 by which the defendant (the first owner) had usucapted the title to 125 sq. m. immovable property in the center of Chișinău (Ismail St.) built on a site owned by the state. Later, the first owner had sold the property to third parties (purchasers). The mayor's office claimed title to the site and the construction on it. In their turn, the purchasers requested to be acknowledged as good-faith purchasers. On 4 April 2014, the Rîșcani Court of Chișinău admitted the application for revision of the mayor's office. The **district court** quashed the judgment of 2012, which acknowledged the possession, use, and disposition by the first owner, because the municipal council had not been involved in that legal action. In addition, the district court declared the sales and purchase agreement signed by the first owner and the purchases null and void. The district court also ordered the demolition of the construction and instructed the Territorial Cadastral Office of Chișinău to delete the record entries on the purchasers' immovable property. As for the purchasers' good faith, the court held that it did not extend to illegal constructions. On 23 March 2017, the **appellate court**—the Chișinău CA—dismissed the appeals from the first owner and the purchasers of the disputed property. As for the good faith of the purchasers, the appellate court found that good faith did not apply to illegal constructions. The appellate court dismissed the purchasers' argument that public records were presumed authentic and complete until evidence to the contrary (diverging from the SCJ's solutions in Cases Nos. 2ra-668/17 and nr. 3ra-977/17, where this was

the chef argument taken into account). On 17 January 2018, **the SCJ** quashed the lower courts' decisions on procedural grounds. The court stated that the plaintiff had filed the application for revision after the expiry of the limitation period. Thus, the registered property remained in purchasers' ownership, albeit for other reasons than the presumption of good faith. Even though the purchasers did not lose their property, the reasoning of the appellate court is problematic. The property was registered in the public registry, and the Cadastre Law operates with the rule regarding the legality of records. A later declaration of the construction illegal could not affect the good faith of the last purchasers.

In another case, No. 2ra-1977/18, examined by the SCJ on 26 September 2018, the plaintiff—the Mayor's Office of Țibirica—requested the correction of entries in the cadastre to set limits on the ownership of land inherited by the defendant. According to the mayor's office, the defendant had acted in bad faith, registering legal title to a land plot larger than the inherited one (0.1218 ha instead of 0.07 ha). On registration, the defendant had allegedly reported a different surface area to the territorial cadastral office. On 22 December 2017, the Strășeni Court dismissed the action of the mayor's office. The **district court** found that it was the responsibility of the authorities to determine and to verify the accuracy of record entries. In addition, judges held that it was inadmissible and impossible to dispossess the purchaser as long as the procurement act (inheritance certificate) had not been challenged. On 19 March 2018, the Chișinău CA dismissed the appeal of the mayor's office and upheld the district court's judgment. The **appellate court** found that the legal title to the land plot of the challenged size was confirmed by public records. Just like in SCJ's Cases Nos. 2ra-668/17 and 3ra-977/17, the courts took into account the public records that confirmed the legal title to the land. On 26 September 2018, **the SCJ**—denied the mayor's office appeal, declaring it inadmissible because the invoked arguments did not identify the principal violation or the misapplication of substantive law rules. In this case, the courts did not get to examine the purchaser's good faith and gave significant weight to cadastre records.

The Application of Good Faith Presumption in a Previous Validly Executed Alienation Agreement

In Case No. 2ra-524/19, examined by the SCJ on 10 April 2019, the plaintiffs requested the nullity of an agreement for the sale and purchase of one third of an apartment in Chișinău. In 2015, the plaintiff had learned that he had lost the ownership of one third of an apartment privatized in 2005. According to records, it had been sold by a third party holding the power of attorney-in-fact back in 2006. The plaintiff alleged that they neither had signed, nor had participated in the sale, nor had received the money for the property and that the sale had been fictitious. On 14 June 2017, the Chișinău Court dismissed the action. The **district court** argued that the power of attorney issued by the plaintiff—which provided for the right to sell the apartment—had not been cancelled. On 13 November 2018, the Chișinău CA upheld the district court's judgment. The **appellate court** also found that the legal act (the sales and purchase agreement) had been validly executed and there were no grounds for nullifying it. On 10 April 2019, the SCJ declared the appeal on

the points of law as inadmissible. **The SCJ** found that the arguments did not identify the principal violation or the misapplication of substantive law rules.

In Case No. 2ra-794/19, examined by the SCJ on 5 June 2019, the plaintiff requested the nullity of the agreement for the sale and purchase of a 260 sq. m. property in the town of Codru. According to the plaintiff, a co-owner had sold a part of the plaintiff's property based the power of attorney by which the plaintiff had empowered the co-owner to sell it. The plaintiffs argued that their consent had been vitiated by fraud/prevarication/error. The powers vested into the co-owner through the power of attorney had had other purposes than sale. One day before the signing of the sales and purchase agreement, the co-owner with the power of attorney had entered into a leaseback agreement on behalf of the plaintiffs with a bank (the purchaser of the property) to purchase from it the property also sold by them. On 3 August 2017, the Chișinău Court dismissed the action as unfounded. Just like in the SCJ's Case No. 2ra-524/19, the **district court** argued that the plaintiffs had consented under a valid power of attorney that expressly provided the possibility of sale. This power of attorney had not been cancelled. In addition, the district court argued that, after the alienation of the property, the plaintiffs had paid approximately 37 lease payments cumulatively under the leaseback agreement, which proved that the plaintiffs had acknowledged the legality of the leasing agreement for approximately three years. The **appellate court** dismissed the plaintiffs' appeal, reiterating the arguments of the district court. On 5 June 2019, **the SCJ** dismissed the appeal as inadmissible. In this case, the courts did not get to examine the good faith of the purchaser and only considered the plaintiff's actions, which seemingly were sufficient for dismissal.

Misleading about the Nature of Agreement

In Case No. 2ra-381/18, examined by the SCJ on 25 April 2018, the plaintiff requested the nullity of the agreement for the sale and purchase of an apartment in Bălți. According to the facts of the case, in 1995, the plaintiff along with his spouse became the owner of the apartment in question. After the decease of the plaintiff's spouse in 2000, a notary had executed the certificate of inheritance for the entire immovable property only on behalf of the plaintiff's mother. In 2007, the plaintiff's mother had sold the apartment. She had been misled into believing that she was signing a loan agreement and that the property was pledged as collateral for loan recovery. After the first sale and purchase transaction, the property in question had been sold three more times. The last purchaser filed a counterclaim to be acknowledged as good-faith purchaser. Until the final decision in this case, the plaintiff's family continued living in the disputed property. On 30 May 2014, the **district court**—the Bălți Court—dismissed the action on procedural grounds, invoking the expiry of the limitation period. On 14 November 2017, the Bălți CA quashed the district court's judgment. The appellate court found the absolute nullity of the first sales and purchase agreement signed between the plaintiff's mother and the first purchaser. All subsequent agreements remained valid. The **appellate court** confirmed that the first purchaser had not acted in good faith, whereas the others were presumed to have acted in good faith until evidence to the contrary. On 25 April 2018, **the SCJ** declared the

plaintiff's appeal inadmissible. In this case, the SCJ upheld the lower court's solution of refusing expropriation from the purchasers on presumption of good faith. The solution in this case diverged from the one the SCJ offered in Case No. 2ra-1524/18. In that case, the courts refuted the purchasers' good faith on account that the plaintiffs had continued living in the sold property. This circumstance had been used as evidence to prove that the purchaser had not acted in good faith because they knew or should have known that the property could have been disputed.

Good Faith: Acknowledged or Presumed?

In Case No. 2ra-1952/18, examined by the SCJ on 17 October 2018, a company requested the nullity of the agreement for the sale and purchase of business premises in the town of Leova, alienated in 1998, because the property acquisition act (the decision of the general meeting of the company) had been annulled in court in 2013. In 2006, the first purchaser had alienated the property based on a sales and purchase agreement. That contract had been put on cadastre record in 2007. The plaintiff argued that all subsequent acts (sales and purchase agreements) should have also been declared null and void as the court had annulled the first act by which the defendant had acquired the property. The purchaser of the property invoked good faith. On 1 December 2017, the Court of Cimișlia dismissed the action. Instead, the **district court** admitted the counterclaim of the purchaser, whom it declared as having acted in good faith. The district court argued that the sales and purchase agreement was presumed legal, being confirmed by a notary, and that the plaintiff had not proved the linkage between the nullity of the act of the general meeting of the plaintiff company in 1998 and the litigation in question. The court did not involve the defendants in the examination of the case. On 31 May 2018, the Comrat CA dismissed the plaintiff's appeal as unfounded. The **appellate court** reiterated the arguments of the district court. On 17 October 2018, the **SCJ** declared the plaintiff's appeal inadmissible. In that case, judges refused to order expropriation from the good-faith purchaser. However, the reasoning of the district court—upheld by higher courts—is different from the one in the SCJ's case No. 2ra-176/18, where judges found that courts could not consider good-faith purchaser status since good faith was presumed.

Courts' solutions in the admitted actions where the legal title was nullified (five cases)

In five cases, the plaintiffs' claims were admitted, the legal title was declared null and void, and the property was returned to the plaintiffs. In four of these five cases, judges considered and rebutted the presumption of good faith. The arguments used to rebut good faith differed from case to case. In one of the five cases, judges failed to consider the purchaser's good faith even though the latter invoked it during court proceedings.

Forgery of Acts

In Case No. 2ra-2066/17, examined by the SCJ on 29 November 2017, the plaintiff requested the nullity of the agreements for the sale and purchase of an apartment in

Chișinău previously owned by her family. The plaintiff argued that the sale was conducted under suspicious circumstances. At the time of alienation, the plaintiff was registered as deceased, and there was a certificate of death in her name. The plaintiff challenged the legality of the death certificate that had been used to initiate successorship and the sale of the apartment to a third party. The purchaser of the property requested to have their good faith status acknowledged. On 12 May 2016, the Buiucani Court admitted the plaintiff's application and nullified the certificate of death in her name and, consequently, the inheritance certificate and the sales and purchase agreements. The **district court** found that the act used to initiate successorship and later to alienate the apartment was false. On 14 July 2017, the Chișinău CA dismissed the appeal and upheld the district court's judgment. The **appellate court** reiterated the arguments of the district court. The appellate court did not refer to the purchaser's argument regarding good faith. On 29 November 2017, **the SCJ** declared the appeal inadmissible. In this case, the purchasers invoked good faith both in court of appeals and at SCJ. The courts failed to consider this argument and to rebut this presumption if it did apply.

In another, similar case, No. 2ra-176/18, examined by the SCJ on 28 February 2018, the plaintiff requested the nullity of the agreement for the sale and purchase of a jointly owned apartment in Chișinău registered in the name of the plaintiff's minor daughter and sold by her to a third party. According to the circumstances of the case, in 2003, the plaintiff and his spouse, who he later divorced (one of the defendants), had purchased an apartment from joint funds. The ex-wife had registered the legal title in the name of their minor daughter without giving notice to the plaintiff. In 2014, the daughter had sold the property to a third party. The plaintiff, however, continued living in the apartment and refused to relinquish its possession. On 23 June 2016, the Botanica Court of Chișinău dismissed the plaintiff's action. The **district court** also admitted the counterclaim of the third-party purchasers and ordered the eviction of the plaintiff. On 17 May 2017, the Chișinău CA admitted the plaintiff's appeal and quashed the district court's judgment. The **appellate court** declared the sales and purchase agreement null and void, acknowledged the plaintiff's title to half of the apartment, and instructed to delete the purchaser from the records. The appellate court found that the act by which the juvenile daughter had become the owner of the apartment had been forged. In addition, the appellate court found from the plaintiff's words that the third-party purchasers had been aware that the plaintiff was one of the owners of the apartment, hence the rebuttal of their good faith. On 28 February 2018, the SCJ dismissed the purchasers' appeal as unfounded. **The SCJ** reiterated the appellate court's arguments, adding that the purchasers had known about the plaintiff's intention to divide the property, but had signed the corresponding legal act, nonetheless. In the same case, the courts refuted the purchasers' good faith by the argument that, from the plaintiff's words, the purchasers had known about the actual situation, namely that the plaintiff lived in the apartment and objected to the way the property had been registered in the public records. This solution is similar to the one in SCJ's Case No. 2ra-381/18, where the courts refuted the purchasers' good faith on account that the plaintiffs had

continued living in the alienated property. This circumstance was used as evidence that the purchaser had not acted in good faith because they had known or should have known that the property could have been disputed.

In a similar case, No. 2ra-1524/18, examined by the SCJ on 12 September 2018, the plaintiff requested the nullity of the sales and purchase agreements, the deletion of the legal title, and the registration of the legal title to a house in Orhei in her name. According to the circumstances of the case, in 2010, the plaintiff had learned that she had lost the ownership of the house she lived in, which had been sold to the first defendant in 2007. She had not consented to the signing of the contract, believing that she was signing a life care agreement. After the execution of the contract at a notary, the first defendant got nowhere to be found. In the meantime, the immovable property had been sold twice. The last owner filed a counterclaim to have the obstacles in using the property removed. Instead, the plaintiff invoked the bad faith of all buyers. On 25 May 2015, the Orhei Court admitted the action. The **district court** rebutted the purchasers' good faith, mentioning, among other arguments, that they failed to appear before court, that the contract price had never been paid, and that the plaintiff had continued living in the sold house. On 28 February 2018, the **appellate court**—the Chișinău CA—upheld the dismissal of all sales and purchase agreements. The appellate court found that the nullity of the main agreement entailed the nullity of the subsequent act. On 12 September 2018, the SCJ declared the **appeal** inadmissible. The Curt sent this case to retrial twice. In the end, the courts upheld the judgment of the district court, which convincingly found all subsequent buyers as having acted in bad faith.

In a similar case, No. 2rh-7/19, examined by the SCJ on 6 February 2019, the plaintiff requested the nullity of the agreements for the sale and purchase of land she had inherited in Chișinău. The plaintiff was the sister of the owner of the disputed land. The plaintiff's brother had died in March 2010, and in November 2010, the land he had owned had been alienated to a third party based on a power of attorney that had been later proven false. After that, the land had been alienated twice within short time. On 9 October 2015, the Chișinău Court admitted the action. The **district court** took into account that none of the purchasers could account for the triple sale of the property at the same price. The price the land plot had gone for was significantly smaller than the market price. The Chișinău CA admitted the action of one purchaser. In the absence of evidence to the contrary, the **appellate court** found, *inter alia*, that the purchaser had presumably acted in good faith. They had had reasons to believe that the seller of the property was acting under a legal power of attorney. On 28 December 2016, the SCJ quashed the appellate decision and upheld the district court's judgment. The SCJ found that the power of attorney under which the land plot had been alienated the first time had been issued after the decease of the plaintiff's brother. In the meantime, the attorney-in-fact had been convicted for the murder of the land owner. Accordingly, the sales and purchase agreement and the subsequent agreements were null and void. The SCJ argued that the nullity of the initial act entailed the nullity of the subsequent legal acts. As for good faith invoked by the

purchasers, the SCJ found that it did not apply to property acquisitions from persons who neither own nor are empowered to sell it. The SCJ mentioned that the good faith of the purchaser was irrelevant to the expropriation. In that case, the SCJ refused to presume that the purchaser had acted in good faith because the property had been alienated from a person who had not had powers for that. Still, Article 51 of the Cadastre Law does not provide for such exceptions.

In Case No. 2ra-2069/19, examined on 6 November 2019, the plaintiff requested the nullity of the agreement for the sale and purchase of an apartment in Ungheni she had owned previously. The plaintiff had signed a sales and purchase agreement believing that she was signing a loan agreement and pledging the apartment as collateral. She claimed to have been misled by her spouse to give consent. In addition, she argued that she had been pregnant and had been 18 years old. After the transaction, the new owner had alienated the property to a third party. In court, the purchaser invoked good faith. On 23 November 2018, the Ungheni Court dismissed the plaintiff's action because she failed to prove that her spouse (defendant) had acted fraudulently and with prevarication. The **district court** took into account that the notary had confirmed the plaintiff's consent to the sale and had explained the meaning of the contract. As for the subsequent sale to a third party, that agreement could not be nullified because the purchaser enjoyed the presumption of good faith. On 21 March 2019, the Chișinău CA admitted the plaintiff's appeal and quashed the district court's judgment. The **court of appeals** declared the sales and purchase agreements null and void and held that, on signing the contract, the plaintiff had had tender age, had been pregnant, and had not had full capacity to understand the meaning of the contract. At the time of appeal, she had already divorced her spouse. In addition, the appellate court considered that the vitiated nature of the agreement was also clear from the acknowledgment she had signed along with the contract to confirm that she was waiving the right to redeem the apartment. By making her sign such a declaration, the third-party purchaser had taken all actions to render the semblance of legitimacy to the sales and purchase agreement. The bad faith of the first purchaser was confirmed by the alienation of the apartment to a third party shortly afterward (after 8 months). On 6 November 2019, the SCJ declared the purchaser's **appeal** inadmissible. In this case, the appeals court refuted the purchaser's good faith by arguing that they had alienated the property shortly (8 months) after acquiring it.

Annex: Summary of the Examined Cases

No.	SCJ's Case No.	Date	Plaintiff	Defendant	Subject matter	Arguments of the plaintiff	The LT registered in the cadaster	Rebuttal of good faith	Did expropriation take place?	Were damages awarded?	The solution and reasoning of lower courts	The solution and reasoning of the SCJ	SCJ judges	Comments
1	2ra-668/17	24 may 2017	Mayor's Office of Strășeni	Olicedae-vschi Nicolae and Olga, Cosieru Ion	The nullification of the sales and purchase agreement for a land plot in the town of Strășeni	The mayor's office challenged that a part of the land plot registered in the cadaster, which the owner (Cosieru Ion) had sold to the purchasers (Olicedae-vschi) had been the property of the local government. A NAC's ordinance confirmed this allegation. The public register, however, had no reference to it.	1	0	0	0	**District court:** The Court of Strășeni dismissed the action of the mayor's office as clearly unfounded on 23 May 2016. The cadaster records are presumed authentic until proof to the contrary. At the moment of sale, there were no prohibitions or references regarding a litigation. **Appeal:** On 6 December 2016, the Chișinău CA quashed the District court's judgment and admitted the appeal of the mayor's office. The court declared the sales and purchase agreement null and void as the official document identifying the surface area of the sold land plot had been nullified by a court judgement. The mayor's office had not registered changes according to the court judgment since it had not been irrevocable yet. The sales and purchase agreement had been prepared three days before the court judgment became final and irrevocable. With regard to the purchaser, the court found that they did not benefit of the presumption of good faith as Article 375 of the Civil Code excluded purchasers' good faith when the property was taken from possession without the owner's consent. Additionally, they could not invoke good faith as long as the registration was based on an official document that had been nullified by court judgment. After the correction of register data, the purchasers would be able to claim legal title to the part that was really the owner's property.	**SCJ:** Both decisions were quashed, and the claim of the mayor's office was dismissed. According to judges, at the moment of sale, the owner had the required full capacity. Article 375 of the Civil Code protects the good faith of the purchaser. The plaintiff failed to produce evidence to prove that the purchasers had known that the land had been disputed. The judgment lacked legal force as long as it had not been registered in the records. The court of Appeal on the points of law considers that the purchasers had acted in good faith and had not been aware of any impediments to the sales and purchase agreement.	Valeriu Doagă Ala Cobăneanu Dumitru Mardari Nicolae Craiu Tamara Chișca-Doneva	The court found arguments supporting the good faith of the purchasers and considered the elements in their favor and against them. The court found, inter alia, that it had not been proven that the purchasers had been aware or should have been aware of the impediments to signing the contract. Nor had the plaintiff proven that, either deliberately or by lack of due diligence, the purchasers had not known about the claim of the mayor's office.
2	2ra-2066/17	29 nov 2017	Martea Natalia	Malenchi Valeriu and Angela	The nullification of the agreements for the purchase and sale of an apartment in Chișinău.	The plaintiff challenged the validity of the sale of an apartment owned by her family that had been alienated under suspicious circumstances. At the time of alienation, the plaintiff had been registered as deceased, and there had been a certificate of death in her name. The plaintiff challenged the legality of the death certificate that had been used to initiate succession and the sale of the apartment to a third party.	1	0	1	0	**District court:** On 12 May 2016, the Buiucani Court admitted the plaintiff's application and nullified the certificate of death in her name and, consequently, the inheritance certificate and the purchase and sale/and donation agreements. **Appeal:** On 14 July 2017, the Chișinău CA dismissed the appeal and upheld the District court's judgment. The CA upheld the findings of the District court, namely that the plaintiff was the sole heir. The court did not refer to the purchaser's good faith.	**SCJ: Inadmissible.** The presented observations do not reveal any semblance of the violation of the rules of substantive or procedural law or the violation of fundamental rights and freedoms.	Tatiana Vieru Nicolae Craiu Oleg Sternioală	The purchasers invoked good faith both in court of appeals and at SCJ. The courts did not refer to this aspect. The District court's decision cannot be identified. The solution is contrary to the one in Case No. 2ra-668/17. In that case, the SCJ denied the expropriation from the good-faith purchaser.
3	2ra-1446/17	13 dec 2017	Poceanin Diana	Baciu Ivan and Cristina Cojocari	The nullification of the agreement for the sale a house and the adjacent land plot from the district of Nisporeni	In 2005, the plaintiff purchased a house and the land plot adjacent to it. In 2009, the contract was declared null and void by court decision, and the plaintiff was awarded compensation for reconstruction expenses. One year earlier, the seller of the house (Vincea) donated it to Cristina Cojocari (the first defendant). In 2013, the defendant Cojocari sold the house and the land plot to another third party, Baciu Ivan (the second defendant).	1	0	N/A	0	**The first set of procedures:** District court: On 12 December 2013, the Nisporeni Court nullified the donation agreement of 2008. **Appeal:** On 3 April 2014, the Chișinău CA quashed the judgment of the District court and dismissed the action. Appeal on the points of law1: On 17 December 2014, the SCJ quashed the appellate decision and upheld the District court's judgment. **District court:** On 15 October 2018, the Strășeni Court dismissed the action of the plaintiff. The court found, inter alia, that the plaintiff, who bore the burden of proof, failed to produce reliable evidence supporting the good faith of Baciu (the good-faith purchaser). Appeal: Chișinău CA **Appeal (after the retrial ordered by the SCJ):** On 20 March 2019, the Chișinău CA admitted the plaintiff's application and sent the case to District court for retrial. The appellate court reiterated the position of the SCJ about thorough examination and the clarification of the good faith of the plaintiff Cojocaru.	**SCJ:** The Appeal on the points of law appeal was admitted and the case was sent back to District court for retrial. Another omissions consisted in failure to clarify the good faith of the plaintiff Cristina Cojocari in signing the sales and purchase agreement, considering that the donation agreement by which she had acquired the property in 2008 had been null and void.	Iulia Sîrcu Maria Ghervas Dumitru Visternicean Mariana Pitic Luiza Gafton	Currently, the case is pending at the Strășeni Court again. The case was sent to retrial because of failure to consider the good faith of the first purchaser. The good faith of the second purchaser was not considered at all.
4	3ra-977/17	20 dec 2017	The Town Council of Codru	Mayor's Office of Codru, Mazur Vasile, Alexei and Clava, *i. a.* NAC's Prosecution Directorate	The nullification of some decisions of the Mayor's Office of Codru and the sales and purchase agreement under which the defendant had become the owner of a land plot in 1996	In 1996, by decision of the Mayor's Office of Codru, one of the defendants took possession of two land plots, one of 600 sq. m. and another of 754 sq. m. By order of the mayor dated from 1999, the first defendant purchased the land plots for MDL 527 and registered their legal title in the cadaster. The plaintiff considers there were violations of the Land Code, which states that the awarding and alienation of land is the prerogative of local councils rather than mayors.	1	0	0	0	**District court:** On 1 April 2016, the Centru Court dismissed the application as tardy. **Appeal:** On 28 June 2016, the Chișinău CA upheld the District court's judgment. **Appeal2:** On 28 March 2017, the Chișinău CA admitted the plaintiff's appeal. The court declared the decision of the Mayor's Office of Codru to award the property to the plaintiff and the sales and purchase agreements illegal. In issuing the challenged acts, the mayor had exceeded their powers, which entails the illegality of the acts. This information had been obtained from the NAC's motion.	**Appeal on the points of law1:** On 23 December 2016, the SCJ admitted the plaintiff's Appeal on the points of law appeal and sent the case to appellate court for re-examination. **Appeal on the points of law2:** The SCJ quashed the decision of the Chișinău CA and upheld the District court's judgment by which the application was dismissed as late.	Iulia Sîrcu Maria Ghervas Ion Druță Luiza Gafton Mariana Pitic	The court of Appeal on the points of law found that, although the case in question confirmed the illegality of the decision passed by the mayor's office, its nullification was not appropriate because it had already been enforced and thus exhausted. In addition, the SCJ found that, at the moment of signing the sales and purchase agreement, no legal vitiations impeded the signing of the contract. Thus, the court found the good faith of the defendant when they signed the agreement for the sale and purchase of the land. The court also underscored that the nullification of the sales and purchase agreement would be an unjustified interference in the ownership right guaranteed by the Constitution and the ECHR.

No.	SCJ's Case No.	Date	Plaintiff	Defendant	Subject matter	Arguments of the plaintiff	The LT registered in the cadaster	Rebuttal of good faith	Did expropriation take place?	Were damages awarded?	The solution and reasoning of lower courts	The solution and reasoning of the SCJ	SCJ judges	Comments
5	2ra-1909/17	20 dec 2017	Corjan Grigore	Hachi Tudor and Botnari Marina	Claim to farmland in the village of Pitusca, Calarasi, the liquidation of obstacles in using the land and counterclaim to nullify the legal title of the land owner, and the deletion of the plaintiff's title to the land in the cadaster	According to the land owner's legal title issued by the Mayor's Office of Pitusca, Calarasi, on 17 February 2010, the plaintiff owns a 0.97 ha land plot, but their ownership has been impeded by the defendant, who has occupied a part of the land without permission, farming it and harvesting its crops, for two years. Hachi Tudor and Botnari Mariana filed a counterclaim to nullify the legal title to the land issued in the name of Corjan Grigore. They consider that responsible persons at the Mayor's Office and the Council of Pitusca, Calarasi, issued the legal title in the name of Corjan Grigore by mistake and that it contains wrong data that does not correspond to the reality.	1	0	N/A	0	**District court:** On 22 September 2016, the Calarasi Court dismissed the plaintiff's claim and admitted the counterclaim filed by Hachi Tudor and Botnari Mariana. The court nullified the legal title issued in the name of Corjan Grigore on 17 February 2010. No evidence was produced of whether the plaintiff's title had been issued under a valid act. **Appeal:** On 27 April 2017, the Chișinău Court of Appeals dismissed the appeal and upheld the District court's judgment.	**SCJ:** The court quashed the appellate decision in entirety and sent the case to the Chișinău Court of Appeals for retrial. The mayor's office acknowledged that the legal title was not on records due to an error that could not be blamed on the plaintiff.	Valeriu Doagă Ala Cobăneanu Iurie Bejenaru Nicolae Craiu Tamara Chișca-Doneva	**On 20 December 2018, the Chișinău Court of Appeals** quashed the 22 December 2016 judgment of the District court in entirety and dismissed the counterclaim. The land plots of the defendants are not counterposed to the land plots of the plaintiff.
6	nr. 2ra-12/18	17 jan 2018	The Municipal Council of Chișinău and the Mayor's Office of Chișinău	Gherasimenco and others, the intervenors Oanta and others	The nullification of the sales and purchase agreement, the deletion of the record entries on the property, the demolition of the unauthorized construction, and the vacation of the illegally occupied land plot	By a court judgment dated from 2012, the plaintiff usucapted a building with a 125 sq. m. in 103 Ismail St., Chișinău. Later the plaintiff alienated the property to third parties. The third parties, who purchased the construction in 2013, requested to be acknowledged as good-faith purchasers.	1	0	0	0	**District court:** On 4 April 2014, the Rișcani Court of Chișinău admitted the application for revision of the Mayor's Office of Chișinău, quashed the judgment of the Rișcani Court of Chișinău dated from 2012 because the municipal council had not been involved in the proceedings, and resumed the case on Mr. Gherasimenco's possession of the building. The District court admitted the counterclaim filed by the Municipal Council of Chișinău and the Mayor's Office of Chișinău and nullified the sales and purchase agreement signed by Vladimir Gherasimenco and Viorel Onta in 2013. The court ordered the demolition of the unauthorized construction and the vacation of the illegally occupied land and instructed the Territorial Cadastral Office of Chișinău to delete the record entries on the purchasers' immovable property. The court mentioned that the good faith of the purchaser did apply to illegal constructions. Appeal: On 23 March 2017, the Chișinău Court of Appeals dismissed the appeals filed by Vladimir Gherasimenco and Diana Gherasimenco, Viorel Onta and Daniela Onta.	**SCJ:** The SCJ quashed the 2014 order to admit the application for revision because the revision had been filed after the expiry of the limitation period. Therefore, the authorities' action was dismissed too.	Oleg Sternioală Iurie Bejenaru Mariana Pitic Nicolae Craiu Ala Cobăneanu	The SCJ dismissed the action on procedural grounds. The lower courts found the absolute nullity and refused to apply the good-faith purchaser guarantee.
7	2ra-176/18	28 febr 2018	Țulea Dumitru	Silviei Tulea, XXXX, Jalba Viorica, Postolache Svetlana and Denis, *i. a.* ÎS Cadastru	The nullification of the agreement for the sale and purchase of a jointly owned apartment of 55 sq. m. in Chișinău registered in the name of the plaintiff's juvenile daughter and alienated by her to a third party	In 2003, the plaintiff and his spouse, who he later divorced (one of the defendants), purchased an apartment from joint funds. The property was registered in the name of their minor daughter without giving notice to the plaintiff. In 2014, the daughter sold the property to a third party. The plaintiff, however, continued living in the apartment and refused to relinquish it, even replacing the lock.					**District court:** On 23 June 2016, the Botanica Court of Chișinău dismissed the plaintiff's application and admitted the counterclaim of the third-party purchaser and ordered the eviction of the plaintiff from the disputed property. **Appeal:** On 17 March 2017, the Chișinău CA admitted the plaintiff's appeal, quashed the decision of the District court and declared the sales and purchase agreement null and void. The court acknowledged the plaintiff's title to half of the apartment, and instructed to delete the third party from the records. The court found that the act by which the juvenile daughter had become the owner was forged. In addition, the court found from the plaintiff's words that the third-party purchasers had been aware that the plaintiff was one of the co-owners of the apartment.	**SCJ:** On 28 February 2018, the SCJ dismissed the Appeal on the points of law appeal as unfounded. The SCJ reiterated the CA's arguments, adding that the purchasers had kown about the plaintiff's intention to divide the property, but had signed the corresponding legal act, nonetheless.	Valeriu Doagă Svetlana Filincova Iurie Bejenaru Mariana Pitic Tamara Chișca-Doneva	The appellate and SCJ courts refuted the purchasers' good faith by the argument that, from the plaintiff's words, the purchasers had known about the actual situation, namely that the plaintiff had lived in the apartment and had objected to the way the property had been registered in the public records.
8	2ra-381/18	25 apr 2018	Stupalov Dmitri	Iacovenco, Stupalova, Ialovenco, and Cureavii	The partial nullification of the certificate of inheritance and the nullification of the agreement for the sale and purchase of an apartment in Bălți	In 1995, along with his spouse, the plaintiff became the owner of an apartment in Bălți. After the decease of the spouse in 2000, a notary executed the certificate of inheritance for the entire immovable property in the name of the plaintiff's mother Stupalov Evghenia. In 2007, the apartment was sold. The plaintiff's mother stated that she had been mislead about the nature of the agreement. She had believed that she was signing a collateral agreement. After that transaction, the property in question was sold three more times. The last purchaser (Apostol) filed a counterclaim to have their good faith acknowledged. Until the SCJ's decision, the plaintiff's family continued living in the disputed property.	1	0	0	0	**District court:** On 30 May 2014, the Bălți Court dismissed the action on procedural grounds, invoking the expiry of the limitation period. **Appeal:** On 7 June 2016, the Bălți CA admitted the plaintiff's appeal, quashed the decision of the District court, and dismissed the action as filed after the limitation period. The court admitted the counterclaim of the last purchaser (Apostol) and ordered the plaintiff's eviction from the apartment. **Appeal2:** On 14 November 2017, the Bălți CA quashed the District court's judgment of 30 May 2014. The court declared the certificate of inheritance partially null and void and the first sales and purchase agreement absolutely null and void. All subsequent contracts remained valid. The court confirmed that the first purchaser had not acted in good faith and the others were presumed to have acted in good faith until proof to the contrary.	**SCJ:** On 14 December 2016, the SCJ admitted the plaintiff's Appeal on the points of law appeal and sent the case to the Bălți CA for re-examination. **Appeal on the points of law2:** Inadmissible. The Appeal on the points of law appeal does not meet the grounds prescribed under Article 432 (2) – (4). It does not identify the principal violation or the misapplication of substantive law rules	Iulia Sîrcu Mariana Pitic Dumitru Visternicean	The appellate court refused expropriation from the good-faith purchaser. It did not took into account, however, that the plaintiff's family had continued living in the sold apartment. In Case No. 2ra-1524/18, this was viewed as an element that proved the lack of good faith in the purchasers.

No.	SCJ's Case No.	Date	Plaintiff	Defendant	Subject matter	Arguments of the plaintiff	The LT registered in the cadaster	Rebuttal of good faith	Did expropriation take place?	Were damages awarded?	The solution and reasoning of lower courts	The solution and reasoning of the SCJ	SCJ judges	Comments
9	2ra-1337/18	15 aug 2018	Gheorghe and Irina Dabija	Nicolae and Nina Papuc, Ecaterina Verdes and others, *i. a.* ÎS Cadastru	The nullification of the agreement for the sale and purchase of an apartment in Chișinău	In 2005, the plaintiffs became the owners of an apartment. On 2 July 2012, they decided to alienate it and entered into sales and purchase agreement with the first defendant (Papuc Nicolae). The defendant did not pay the contract price. The second day, the defendant sold the property to a third party, who, in its turn, sold it to another third party 15 days later. In 2016, the first defendant was convicted for fraud.	1	0	N/A	0	**District court:** On 26 June 2017, the Botanica Court of Chișinău admitted the plaintiff's action. All three sales and purchase agreements were declared null and void. **Appeal:** On 8 February 2018, the Chișinău Court of Appeals quashed the District court's judgment partially without touching the solution of nullifying the contracts.	**SCJ:** The case was sent for re-examination under appeal. Allegedly, the lower courts had not indicated what actions of the first defendant represented fraudulent conduct and had not set out their conclusions about the reasonableness of the request to nullify the contract.	Oleg Sternioală Iurie Bejenaru Mariana Pitic Nicolae Craiu Nina Vascan	The purchasers invoked good faith both in District court and in court of appeals. The District court found that it could not accept this argument because the first defendant had not paid the plaintiffs the price for the apartment. The appellate court found that the good faith presumption was rebutted by the total nullity of the sales and purchase agreements and the grounds for declaring them null and void. In addition, good faith cannot be acknowledged by a court judgment.
10	2ra-1524/18	12 sept 2018	Eugenia Furtună	Denis Dobrioglo, Andrei Postolache, and Leonid Karagheaur	The nullification of the sales and purchase agreements, erase of the legal title, and the registration of a house in Orhei in her name	In 2010, the plaintiff learned that she had lost the ownership of the house she lived in, which had been sold to the first defendant under a sales and purchase agreement in 2007. She had not consented to the signing of the contract, believing that she was signing a life care agreement. After the execution of the contract at a notary, the first defendant dissapeared. In the meantime, the immovable property was sold twice. The last owner (Karagheaur) filed a counterclaim to have the obstacles removed. The plaintiff invoked the bad faith of all buyers.	1	1	1	0	**District court (2011):** The plaintiff's claim was admitted. The sales and purchase agreements were declared null and void, and the legal title of the defendant (Karagheaur) was deleted from records. **Appeal:** On 25 April 2012, the Chișinău Court of Appeals admitted the appeal of the defendant Karagheaur and instructed to delete the plaintiff' in the residence records and to evict her. **SCJ: Retrial.** On 31 October 2012, the SCJ sent the case to retrial. According to the decision, judges had failed to lay out their conclusions about the limitation period invoked by the defendants under Article 227 of the Civil Code—an error related to the nature of the legal act, which sets a period of six months. **District court2:** On 25 May 2015, the Orhei Court restarted the limitation period for the plaintiff's action. The court found that the defendants had not acted in good faith because they failed to appear before court, the contract price had never been paid, and the plaintiff had continued living in the sold house. **Appeal2:** On 2 November 2016, the Chișinău Court of Appeals dismissed the appeals of Dobrioglo and the last defendant (Karagheaur) because one of the appellants did not have the right of appeal. **Appeal on the points of law2:** Retrial. On 17 May 2017, the SCJ admitted the Appeal on the points of law appeal of the first defendant (Dobrioglo), quashed the appellate decision, and sent the case to appellate court for re-examination. Multiple conclusions of the appellate court were confusing, particularly with regard to the type of nullity (absolute or relative), and the examination also covered the restart of the limitation period. **Appeal3:** On 28 February, the Chișinău Court of Appeals upheld the nullification of all sales and purchase agreements. The court found that the nullification of the main act entailed the nullification of the subsequent act.	**Appeal on the points of law3:** Inadmissible. The Appeal on the points of law appeal does not meet the grounds prescribed under Article 432 (2) – (4). It does not identify the principal violation or the misapplication of substantive law rules	Svetlana Filincova, Luiza Gafton, Dumitru Visternicean	The case was sent to retrial twice. In the end, the courts upheld the judgment of the District court, which convincingly found all subsequent buyers as having acted in bad faith.
11	2ra-1977/18	26 sept 2018	Mayor's Office of Țibirica	Vasile Cozma	The correction of public record entries to set limits on the ownership of land inherited by the plaintiff in the village of Țibirica	Allegedly, the defendant acted in bad faith, registering legal title to a land plot larger than the inherited one (0.1218 ha instead of 0.07 ha). On registration, the defendant misled the staff of the territorial cadastral office with regard to the size of the land plot.	1	0	0	0	**District court:** The plaintiff's claim was dismissed. It is the local government's duty to verify the accuracy of records before issuing geometrical designs. It is inadmissible and impossible to dispossess the defendant as long as the primary procurement act (inheritance certificate) had not been challenged. **Appeal:** The District court's judgment was upheld. The case materials and the available documents confirm the legal title to the land plot of the size that the plaintiff had challenged.	**SCJ:** Inadmissible. The Appeal on the points of law appeal does not meet the grounds prescribed under Article 432 (2) – (4). It does not identify the principal violation or the misapplication of substantive law rules	Oleg Sternioală Nicolae Craiu Maria Ghervas	Good faith was not considered although the action was dismissed.
12	2ra-1952/18	17 oct 2018	SA „Micul Prinț"	David Golban, Natalia Sandu, and a local government	The nullification of the agreement for the sale and purchase of business premises in the town of Leova (the shop/book shop Luminita)	At a general meeting of SA Micul Prinț in 1998, one of the defendants (Natalia Sandu), who was also a shareholder of SA Micul Prinț, procured the disputed property using her shares. Later, she entered into agreement with the Ministry of Privatization and purchased the rest of the shares necessary for the property in question. In 2006, she sold the property to the second defendant (David Golban)—the purchaser—and the contract was registered in the cadaster one year later (in 2007). In 2011, by the decision of the economic court, upheld by the SCJ in 2013, the general meeting of the plaintiff company was declared null and the first defendant took ownership of the disputed property. The plaintiff argued that all subsequent acts (sales and purchase agreements) should have also been declared null and void. The purchase invoked good faith.	1	0	0	0	**District court:** On 1 December 2017, the Cimișlia Court dismissed the plaintiff's action. The court admitted the counterclaim of the purchaser (Golban), acknowledging his good-faith purchaser status. **Appeal:** On 31 May 2018, the Comrat Court of Appeals dismissed the plaintiff's appeal as unfounded. The court upheld the arguments of the District court: (1) the legality of the sales and purchase agreement had been confirmed by a notary, and (2) the plaintiff had not proved the linkage between the nullification of the general meeting of the plaintiff company in 1998 and the litigation in question. The conclusions from that decision cannot be accepted because the defendants had not been involved in the proceedings.	**SCJ:** Inadmissible. The filed Appeal on the points of law appeal does not imply that the court had examined the evidence arbitrarily.	Svetlana Filincova Dumitru Visternicean Nicolae Craiu	Judges refused to order expropriation from the good-faith purchaser. However, the solution of the District court is different from the one in Case No. 2ra-176/18, where judges found that courts could not consider the good-faith purchaser status since good faith was presumed.

No.	SCJ's Case No.	Date	Plaintiff	Defendant	Subject matter	Arguments of the plaintiff	The LT registered in the cadaster	Rebuttal of good faith	Did expropriation take place?	Were damages awarded?	The solution and reasoning of lower courts	The solution and reasoning of the SCJ	SCJ judges	Comments
13	2rh-7/19	6 febr 2019	Reapțeva Valentina	Tiganasu, Vulpe, and others	The finding of the sales and purchase agreements null and void	The plaintiff is the sister of a land owner from Chișinău. The land owner died in March 2010. In November 2010, the land plot he had owned was alienated to a third party based on a power of attorney that was later proven false. After that, the land plot was alienated two more times within very short time.	1	1	1	0	**District court:** The Chișinău Court admitted the action because a sentence passed in District court confirmed the defendant's lack of intention to sign the contract, which was fictitious. None of the defendants could account for the triple sale of the property at the same price which was below the market price. Good faith invoked by one of the third parties cannot be proven because the latter did not produce evidence that they were the possessor or the owner. **Appeal:** The District court's judgment was quashed, and the plaintiff's claim was dismissed. The appellant (the third party Vulpe) had been an accomplice in criminal activity. The appellant was presumed good-faith purchaser in the absence of evidence to the contrary. Presumably, they had had reasons to believe that the other party was acting under a legal power of attorney.	**SCJ:** The appellate decision was quashed, and the District court's judgment was upheld. The power of attorney was issued after the decease of the plaintiff's brother. The attorney-in-fact had been convicted for the murder of the owner. Accordingly, the sales and purchase agreement and the subsequent contracts were null and void. The nullification of the initial act entails the nullity of the subsequent legal act. The purchaser's good faith is irrelevant for property acquisitions from persons who are not empowered to sell it.	Tatiana Vieru Oleg Sternioală Mariana Pitic Nina Vascan Dumitru Mardari	The SCJ mentioned that the good faith of the purchaser was irrelevant to the expropriation.
14	2ra-524/19	10 apr 2019	Vladimir Portnov	Serghei, Grigorii, and Elena Portnov	The nullification of the agreement for the sale and purchase of one third of an apartment in Chișinău	In 2015, the plaintiff learned that they had lost the ownership of one third of an immovable property privatized in 2005. According to public records, the property had been sold by a person holding the power of attorney in 2006. The plaintiff neither had signed, nor had participated in the sale, nor had received the money for the property, and the sale had been fictitious.	1	0	0	0	**District court:** The Chișinău Court dismissed the action. The power of attorney had not been cancelled. The attorney-in-fact had acted on instructions from the principal. **Appeal:** The Chișinău CA upheld the District court's judgment. The contract had been validly executed, and there were no grounds for nullifying it.	**SCJ:** Inadmissible. The Appeal on the points of law appeal does not meet the grounds prescribed under Article 432 (2) – (4). It does not identify the principal violation or the misapplication of substantive law rules	Ala Cobăneanu Dumitru Mardari Svetlana Filincova	
15	2ra-794/19	5 jun 2019	Sandu and Sandu	SA Maib Leasing and others	The nullification of the agreement for the sale and purchase of a 260 sq. m. property in the town of Codru	The sale of a part of the property by a co-owner (the defendant), who had the power of attorney from the plaintiffs to sell the property. One day before the sale, the defendant had entered into a leaseback agreement on behalf of the plaintiffs with a bank (third party) to purchase from it the sold property. The plaintiffs' consent had been vitiated by fraud/prevarication/error. The power of attorney had other purposes than sale.	1	0	0	N/A	**District court:** The Chișinău Court dismissed the action as unfounded. **Appeal:** The Chișinău Court of Appeals upheld the District court's judgment. Presumably, the plaintiffs had consented by a valid power of attorney, which expressly provided for the possibility of sale. In addition, after the alienation, the plaintiffs had paid approximately 37 lease payments cumulatively under the leaseback contract, which proved that the plaintiffs had acknowledged the legality of the leasing contract for approximately three years.	**SCJ:** Inadmissible. The Appeal on the points of law appeal does not meet the grounds prescribed under Article 432 (2) – (4). It does not identify the principal violation or the misapplication of substantive law rules	Mariana Pitic Iurie Bejenaru Nicolae Craiu	The leasing agreement had been signed one day before the sales and purchase agreement. The courts never examined the bank's good faith but dismissed the action.
16	2ra-2069/19	6 nov 2019	Cătălina Drumea	Bodiu, Drumea, and others	The nullification of an agreement for the sale and purchase of an apartment in Ungheni	The plaintiff signed a sales and purchase agreement for an apartment she owned in Ungheni, believing that she was signing a loan agreement and pledging the apartment as collateral. She alleged to have been misled by her spouse to give consent. In addition, she had been pregnant and 18 of age. After the transaction, the new owner alienated the property to a third party. The third party invoked good faith.	1	1	1	0	**District court:** The Ungheni Court dismissed the action because it had not been proven that her spouse (defendant) had acted fraudulently and with prevarication. The notary had confirmed the plaintiff's consent to the sale and had explained the meaning of the contract. As for the subsequent sale to a third party, that contract could not been nullified on account of the purchaser's presumed good faith. **Appeal:** The District court's judgment was quashed, and (both) sales and purchase agreements were declared null and void. The court held that on signing the contract, the plaintiff had had tender age, had been pregnant, and had not had full capacity to understand the meaning of the contract. At the time of appeal, she had already divorced her spouse and had not intended to sign the contract. In addition, the court considered that the vitiated nature of the contract was also clear from the acknowledgment the plaintiff had signed along with the contract to confirm that she was waiving the right to redeem the apartment. By making her sign such a declaration, the third-party purchaser had taken all actions to render the semblance of legitimacy to the sales and purchase agreement. The bad faith of the defendant was confirmed by the defendant alienating the property to a third party shortly afterward (after 8 months).	**SCJ:** Inadmissible. The Appeal on the points of law appeal does not meet the grounds prescribed under Article 432 (2) – (4). It does not identify the principal violation or the misapplication of substantive law rules.	Ala Cobăneanu Svetlana Filincova Dumitru Mardari	The Ungheni Court found that the third party was a good-faith purchaser. The appellate court's decision mentioned no other parties' arguments but the plaintiff's/appellant's. It did not consider the good faith of the third party who had purchased the property in the end. Nor did it consider any compensation for the third party.
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Legal Resources Centre from Moldova

A. Șciusev street, 33, MD-2001 Chisinau,
Republica Moldova
+373 22 843601
+373 22 843602
contact@crjm.org
www.crjm.org
CRJM.org
CRJMoldova
CRJM