

# The Value of the Good Faith of the Occupier for Acquiring the Right of Ownership by Limitation of Possession

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## Summary

This scientific article is devoted to the study of the legal significance of such a category of legal status of the purchaser of another's thing, as its good faith. The essence of this phenomenon has been studied, it has been established that the criterion of good faith attaches significant importance to the claims of the participants of these relations for the acquisition or preservation of private property rights. The paper emphasizes that, in addition to the importance of good conscience at the time of possession of another's thing, which gives legal certainty the possibility of registration of the title and is part of the actual composition for the acquisition of property or the right of ancient possession, bona fides also characterizes the behavior of the occupier. In this case, good conscience only has some legal consequences when it is opposed to subjective law. Under such conditions, it acquires direct legal significance, including as a condition for the acquisition and protection of rights. Good faith possession of another's property is an internal indicator of the subject's awareness of a certain property status. This sense, the article assesses this status from the standpoint of the scientific concept of the visibility of law. According to this theory, prescription is also considered as a consequence of the appearance of law, however, because it arises and lasts against the will of the parties and despite their awareness of this fact. Therefore, bona fide continuous and open possession of property as one's own, during the acquisition period, was most significantly associated with the appearance of property. Therefore, the concept of good faith, in the sense of personal perception of real values, is closely related to the principle of protection of the appearance of law, as it is aimed at understanding it by third parties. The paper notes certain differences in the application of the theory of the appearance of the right in the acquisition of property by a bona fide purchaser from an unauthorized alienator and the acquisitive prescription. It is emphasized that such a mechanism must be used in presuming the attitude to the thing as its own, by the holder of movable property. But there should be exceptions to the rule, in particular, if the owner has grounds for vindication of the thing.

## Keywords:

*visibility of law, good conscience, bona fide holder*

## 1. Introduction

In order to determine the legal status of the subject who holds the property in respect of which he has no title, it is important to have a bona fide condition. The deployment of civil turnover has created legal tools to protect the holder against the owner. These are such tools as acquisitive prescription, acquisition of property at the time

of receipt of property from an unauthorized alienator, restriction of vindication. All of these tools are interconnected, and each is based on the good conscience of the purchaser. Thus in the Ukrainian legislation legal value is given to good conscience at the time of acquisition of a thing, instead of at the further possession of it. The good conscience of the illegal occupier is important at the time of receiving someone else's property. Loss of good faith in the future (notification of the holder of the existence of the real owner, filing a vindication lawsuit, etc.) does not affect the legal status of the acquirer.

The scientific study of the good faith of the acquisition of another's thing and its manifestations during the ancient possession is quite relevant, because modern legislation does not give a clear answer to some of the demands of real practice. For example, the legal significance of the good conscience of the ancient holder in the process of his opposition to the requirements of the owner to demand the thing has not been determined, the actions of the occupier must be unambiguously assessed in order to comply with the law on openness. All this has a significant impact on the effectiveness of the institution of acquisitive prescription, and thus - improving the dynamics of material relations. In this paper, these issues are investigated on the basis of the important principle that the actual relationship should be governed by their legal proportionality.

The good conscience of a person is a state of his will, which is characterized by an apologetic ignorance of the objective obstacles to achieving the legal goal, in particular the acquisition of private law [1, p. 81]. Accordingly, an unscrupulous holder (malae fidei possessor) knows or must know that he occupied someone else's property [2, p. 484]. Thus, at present, it is the criterion of good faith that attaches significant importance to the claims of the participants in these relationships for the acquisition or preservation of private property rights. Despite the legal significance of good conscience at the time of taking possession of another's thing, which gives legal certainty the possibility of registration of the title and is part of the partial factual composition for the acquisition of property or the right of ancient possession, good faith possession of another's thing also characterizes the behavior of the occupier. In this capacity, it does not affect the manner of exercising the right, but its state in the subjective perception of the property

holder. At the same time, in our opinion, the legal category of good faith (*bona fides*) cannot be too broadly interpreted, which would in fact equate it with non-abuse of law, general respect for the rule of law, and so on. If, during the period of long-term possession, the subject learns that his occupation showed no signs of good faith, although he did not know about it before, his legal status will not change. Therefore, it cannot be agreed that the dishonesty of a person in any case may result in the loss of the possibility of his protection [3, p. 49].

However, it should not be forgotten that a person who has in good faith seized someone else's property and extends the old possession, does not receive property rights until the statutory period expires. In this case, during its course, she was able to keep the thing not because she has the right, but despite the absence of it [4, p. 273]. Moreover, as K.I. Sklovsky rightly points out, good conscience in material relations is a factor inherent only in the person who opposes the law. Indeed, it is completely impractical and superfluous to prove the existence of goodwill in the holder of a subjective right, such as a creditor under an obligation or an owner. Establishing and proving this fact will not in any way affect the legal situation [5, p. 60]. In practice, the subject of the right does not need to rely on his *bona fides*, much less prove or even presume it, because the person who opposes it must challenge the subjective right itself. Thus, only when good conscience is opposed to law, it acquires direct legal significance, including as a condition for the acquisition and protection of law.

## 2. Theoretical Consideration

### 2.1. The general concept of good faith of the ancient holder

Ukrainian civil law purposefully introduces a mechanism for exercising the right to hold another's property and the right to protection against violation of such possession, including from the owner. After all, today there are more and more cases when the possession of a thing is not really based on any right. Such cases are not always a socially undesirable phenomenon, and sometimes they are the best way to mediate material relationships. For example, according to the design of the ancient acquisition mechanism, the actual long-term possession of someone else's property is a prerequisite for acquiring ownership. One of the defining grounds for such an outcome under national law is the good conscience of the illegal acquirer. A person who has *bona fides* - good conscience, could not and should not have known at the time of receipt of the thing that its alienator is acting contrary to the authority received from the owner, or has no authority at all. Thus, the protective tools for the protection of the rights of such holder and owner have different legal bases, not the same

principles and principles of implementation. If the holder is also the owner, then in addition to his title there is no need to involve other factors of holdership, such as good conscience. Conversely, when the purchaser is not the owner, his good faith must be determined. But this does not mean that the presumption of possible legality of the maintenance of property as one's own cannot be refuted in the manner prescribed by law. Therefore, the issue is quite relevant and requires additional research. Also interesting and insufficiently studied is the issue of the legal conflict between the static property rights of the non-holding owner and the dynamic rights of the non-owner.

In civil law, the issue of untitled possession of property and the possibility of acquiring property after such an occupation of another's property in certain circumstances, many scholars have paid attention. In these works, the range of scientific views fluctuated quite widely, different legal assessments of the currently studied features of the acquired ownership institutions. A number of quite authoritative civilian scholars point to the existence of an exclusive mechanism for obtaining property. And, depending on the legal validity, such exceptional methods are associated either with the expiration of the statute of limitations, or with another - the *bona fide* purchase of the thing from an unauthorized trader. These mechanisms are presented as mutually exclusive. In particular, it is indicated that a *bona fide* purchaser for refusing the holder in the vindication claim is able to obtain ownership only by prescription of possession, no other way is provided by current legislation. We can agree with this position. At the same time, the issue of developing the concept of holdership protection regardless of the legal title and finding the appropriate balance with property rights in order to achieve better dynamics of material turnover has not found scientific coverage. The purpose of this article is to study this issue and develop practical recommendations on the real nature of each of the ways of acquiring property.

It is indisputable that such a legal phenomenon as the good conscience of the acquirer, largely determines the productivity of the acquired ownership institution. Part 1 of Article 344 of the CCU deals with *bona fide* possession: only such possession is a prerequisite for the emergence of property rights by prescription. In Ukrainian law (unlike, say, Russian) this is not the only way to acquire property by prescription (given the existence of Part 3 of Article 344 of the CCU), but this option is most consistent with the classical understanding of the acquisitive prescription mechanism. Since the acquisition of ownership of another's property under the statute of limitations is one of the ways to protect untitled possession, thus protecting illegal possession for prescription in the event of its occurrence on the basis of a contract. But in the field of property relations, the acquisition of property rights by prescription of possession can occur only with *bona fide* possession.

Meanwhile, there are currently attempts to reduce the scope of good faith in civil relations. In the doctrine of his time, a thesis was stated, according to which the bona fide acquisition of a thing is excluded if it was stolen or left the owner in another way against the will of the latter [6, p. 499]. We cannot support this position. After all, the determining factor in recognizing bona fides as such is the subjective factor that characterizes the acquirer in terms of his belief in his right, his confidence in the legitimacy of the occupation. Therefore, it is possible to obtain property in good faith that was once lost or stolen. The main thing is that the buyer did not know and could not know about the defects of the transaction. If this requirement is not met, and the owner knows or guesses about the illegal behavior of the trader, it is not about good faith. Moreover, even the existence of reasonable doubts about the possible alienation of property that does not belong to the counterparty, usually does not destroy a good conscience. Given the above, the scientific concept deserves a critical assessment, according to which good faith is excluded if the illegality of alienation follows directly from the law [7, p. 68]. Because such an approach de facto makes it impossible to acquire property both from an unauthorized trader and by the statute of limitations. The fact is that any unauthorized alienation (as a result of error, incapacity, prohibited by law, etc.) is directly contrary to law. Therefore, in order to ensure the effectiveness of material turnover, it is necessary to exclude the influence of an objective factor - legality - on the effectiveness of alienation. The transfer of property by an unauthorized person must be covered only by the subjective perception of the acquirer, which is the effective value for resolving the issue of its good faith.

Good conscience is the basis for the holder in some cases the right of ownership at the time of transfer (Article 330 CCU), in others - the right to long-term possession with the possibility of further acquisition of property after the expiration of the statute of limitations. But during the old days, such an holder, despite his good faith, is unable to resist its vindication requirements. Because the law defines a clear list of objections to vindication. According to Art. 388 of the CCU in respect of a person who in good faith received property that fell out of possession of the owner against or against his will or free of charge, the provisions on the restriction of vindication do not apply. A lawsuit filed by the owner in a timely and timely manner to claim the thing from a bona fide holder must be satisfied. Since this property can be vindicated, the purchaser does not receive ownership of it at the time of transfer and by virtue of the provisions of Art. 330 CCU. What then is the importance of good faith in such a situation? It is obvious that good conscience at the time of occupation of the thing is a qualifying feature of the ancient holder, which in accordance with the requirements of the same law allows to obtain ownership of another's property.

Another problematic issue, in particular, in the practical plane, is the temporal characterization of good faith as a phenomenon. Most researchers point to the objective impossibility, as a rule, to maintain awareness of one's hold lawful acquisition and positioning oneself as the owner throughout the acquisition period. Therefore, it is proposed to allow subjective dishonesty to the ancient holder under certain conditions. In particular, duration, continuity, openness of possession of property as one's own are offered as circumstances for forgiving dishonesty. We believe that such a position deserves criticism. These circumstances of openness, continuity and duration of possession are mandatory factors that characterize the right of ancient possession. And they cannot replace another factor that determines the basis for such possession - the good faith of the purchaser. But, as is already obvious, the acquisition itself must be bona fide, further maintenance of the property may logically not have this feature. Firstly, it is often objectively simply impossible (for example, when acquiring a property right requires a court decision), and secondly, good faith ownership is not crucial to any right. Therefore, we can conclude that the ancient possession, which was dishonest from the beginning, cannot turn into bona fide, but the reverse transformation is possible and in practice often inevitable. Therefore, the legal concept of "bona fide holder" needs to be concretized. This is a person who at the time of acquiring the right to hold the thing did not know and could not know that the property she took, belongs to someone on the right of ownership. Further awareness of the holder of the illegality of his possession has no legal significance.

## 2.2. Legal status of the ancient occupier

The fact that the actual holder was informed of the existence of the owner by filing a claim for recovery of property may significantly affect his legal status and, depending on the time of filing the claim (within the statute of limitations or not) affect the possibility of acquiring ownership of the property by acquisitive prescription. But the holder may not recognize the authenticity of such a message. In this case, the dispute must be resolved by the court. After all, as you know, even in the case of filing a lawsuit after the expiration of the statute of limitations, the law enforcement agency must consider the dispute on the merits and establish the legal status of the parties to the dispute. Therefore, despite the possible effectiveness of resolving the dispute on the merits, the court must determine the nature of the possession, its good faith or bad faith.

Thus, the notification of a bona fide illegal holder about the illegality of possession in the presence of objections of the latter does not automatically make him unscrupulous. This means that the statute of limitations at the time of such notification does not stop. Moreover, the court may not satisfy the claim of the owner of the vindication claim, if the

latter is filed outside the statute of limitations. So, as you can see, the proposal to obligatorily adjust the procedure for calculating the statute of limitations from the moment of filing a lawsuit (interruption) or at the time of the lawsuit (suspension) is unjustified: in case of vindication claim the requirement to adjust the statute of limitations is inappropriate given the lack of legal grounds for the claim. On the other hand, if the acquisition period continues during the litigation of the claim, it is possible that the acquisition period will end during the process. This can lead to unjustified benefits for the actual holder of the property and reduce the possibility of protecting the rights of the owner. From the above follows an obvious conclusion. The current rule should be supplemented by a rule of the following content: if the statute of limitations has expired during the court proceedings for a claim for recovery of property, it is extended until the end of the dispute.

A special specificity is given by the legislator to the legal mechanism of acquisition of property by prescription of possession of real estate. In particular, Part 4 of Article 344 of the Civil Code of Ukraine provides for the need for a court decision on the acquisition of property rights under the statute of limitations for such things (as well as for vehicles and securities). In addition, the right of ownership of immovable property subject to state registration arises under the statute of limitations from the moment of such registration (Part 1 of Article 344 of the CCU) [8, p. 119]. The literature has repeatedly noted the vagueness, practical inefficiency and ineffectiveness of this rule, which does not contribute to the main goal of the ancient acquisition institute.

Let's start with a critical analysis of the legal characteristics of a person applying to the court for recognition of property rights. The law does not specify the status of this person. But it is quite clear that it carries out these actions after the expiration of the acquisitive prescription, ie at this time is no longer the old holder. What is the right of such a subject: the authority over ancient possession has expired, the property has not yet come? Moreover, there are additional problems. The doctrine is convinced that the owner has the right to protect his property from encroachment only during the statutory acquisition period (in Russian law it is explicitly stated in Article 234 of the Civil Code, in Ukrainian - is assumed). Such an uncertain status of property holder is hardly socially feasible.

There are also questions about the legal support of the process of recognizing property rights. The law does not contain instructions on its nature, but the established practice has ambiguously approved the claim procedure. As you know, a lawsuit is a procedural form of resolving a dispute between a right holder and his violator. In almost the vast majority of cases, it is difficult to find a person who violates the quiet and long-standing possession. But, based on the frankly unreasonable construction of the mechanism for resolving this issue, the owner after the expiration of the

statute of limitations must come up with a defendant on his claim, despite the absence of a violator of his rights. Of course, the jurisprudence has developed such "violators" - local governments, but such an approach cannot cause anything but criticism. Moreover, numerous decisions of Ukrainian courts are completely illegal, when the claim for recognition of the right of ownership under the statute of limitations is rejected due to the objections of such a "defendant".

Not the best legal situation with the substantive component of such litigation. It seems to us that the owner of such property has the right to file an application for recognition of the right of ownership under the acquisitive prescription. In order to apply to the court for recognition of property rights, a person must, of course, know that he is not the owner of such property, that is, to know about the illegality of his possession. Thus, the right of ownership of real estate, securities, vehicles under the statute of limitations can be acquired only by an unscrupulous illegal holder. Recall that one of the prerequisites for the acquisition of property by prescription is the good conscience of the purchaser. We have already pointed out the possibility of such a situation, when during the acquisitive prescription the holder will be informed about the presence of the real owner. Regardless of the intentions of the latter, the old course will not be affected, except in the case of satisfaction of the vindication claim or voluntary refusal of the holder. But it is not necessary for the holder to realize that he is not the owner during the acquisition period. As practice shows, in most cases, the possession of the statute of limitations runs smoothly, the occupier does not know and cannot know about the defect of the acquisition of the thing, that is, continues to remain in good faith. If so, the question arises: why should a person who considers himself the owner go to court to recognize this property? The normative curtsey can be explained only in this way - after the expiration of the statute of limitations, only an entity that has become dishonest during the statute of limitations or after its expiration has the right to present a court application. To these subjects of recourse to the court should also be added those who kept someone else's property after the expiration of the contract (Part 3 of Article 344 of the CCU), ie from the very beginning of possession for the statute of limitations did not have bona fides. A bona fide owner, despite the actual defect of maintenance, will never make such a statement.

Therefore, only a person who clearly understands that he is not the owner can apply to the court for recognition of the right of ownership of real estate. Otherwise (in good faith possession) this person does not need a court decision, as he already considers himself the owner of the thing. And if for the acquisition of the right of ownership of movable property by such a subject it is enough to change the assessment of the concept of bona fides, covering only the moment of acquisition of the thing, regardless of further possession, it is much more difficult for real estate

situations. The court, considering the issue of recognizing the right of ownership of property by the statute of limitations, of course, will analyze the good faith possession. As has been repeatedly noted, a bona fide purchaser is a person who could not be aware of a defect in the property rights of the alienator. However, with the introduction of rules on notarization of transactions and state registration of real estate rights, it becomes virtually impossible to qualify the purchaser as a bona fide person (it must be recognized that the statute of limitations on real estate applies only to punishable acts - illegal notarization, illegal state registration). Indeed, it can hardly be considered that he did not know and could not have known that he was receiving a thing that did not belong to the alienator, an entity that did not invite or receive any statutory evidence of the seller's ownership of the immovable property. In any case, this is how Ukrainian jurisprudence assesses the status of the acquirer.

In view of the above, we can fully agree with the opinion of K.I. Sklovsky that the system of registration of real estate rights is aimed at eliminating the possibility of recognizing the ownership of these objects under the statute of limitations. This is done by the actual displacement, the exclusion of good conscience, and the payment for such an approach is a significant restriction, complicating the turnover of real estate [1, p. 83, 93]. The very phenomenon of acquiring property acquired in good faith by prescription of possession is impossible [9, p. 117]. Moreover, in fact, it becomes impossible to protect the holdership of a person who holds real estate without state registration, in case of its seizure (including forcibly) by the owner or other persons [10, p. 15-16]. Meanwhile, it should be clearly understood that these insurmountable obstacles to obtaining property apply to entities in which the owner, due to the expiration of the statute of limitations, can no longer vindicate the thing. So the property simply goes out of civil circulation. Therefore, we must recognize the invalidity of the rule on the acquisition of real estate by prescription for most cases. But was this result - the withdrawal from circulation of a significant amount of property that cannot be returned by the owner - sought by society, authorizing the restoration of the commented institution? Hardly. Only weighing interests is the right way to form a fair and common rule. Logical deduction on the basis of concepts is never able to indicate the correct path, and if this happens, then by pure chance [11, p. 179].

### **2.3. Analysis of the situation from the point of view of the concept of visibility of law**

Numerous researchers have tried to solve the situation with the actual possession of another's property without proper law on the basis of the scientific concept of the appearance of law. According to her, the ostentatious appearance of law, in fact, replaces legal possession.

According to scientific practice, it has long and stably recognized the important principle that the actual phenomenon in life should be taken into account even without its legal proportions and sometimes contrary to true law. In this case, the statute of limitations is also considered as a consequence of the appearance of law, despite the fact that in canon law it arises and lasts against the will of the parties and despite their awareness of this fact. It is believed that bona fide continuous and open possession of property as one's own, during the acquisition period, was most significantly associated with the appearance of property. This is facilitated, in particular, by the very definition of openness of property maintenance, which in many legislatures is interpreted as possession as property.

Good faith possession of another's property is an internal indicator of the subject's awareness of a certain property status. Considering himself the legitimate purchaser of the thing, knowing the social value of his own personality, he simultaneously recognizes the autonomy of the counterparty, shows respect for him. And this is exactly how this subject ensures the strength of the material connection he has created. Thus, the concept of good faith is, in fact, a manifestation of conformity to the principles of justice, perceived and perceived by a person at the level of individual value orientations [12, p. 96-97]. This feature of property law in order to manifest it outwardly is closely related to the principle of protection of the appearance of law. Such visibility should be aimed at its perception by third parties. The latter, seeing that the thing is in possession, must conclude that it is the object of ownership of the holder [13, p. 185]. Of course, in fact, there is a legal difference between property and its external social manifestation - possession, but for the purposes of stabilizing turnover, it is not of fundamental importance, because such a condition is authorized by law [14, p. 42]. Finally, the institute of acquisitive prescription is designed to eliminate such differences after the expiration of the prescribed period.

As we have already said, Ukrainian legislation does not require the internal interaction of the holder with the object of possession, as with his own, and the good faith of the subject throughout the possession. We can assume that from some point the possessor will be fully aware of the defect of improper maintenance of the thing. But in the future, the openness of possession will be objectively obvious to third parties the legality of the law, for which they accept the outward appearance of property rights. At the same time, there are certain differences in the application of the theory of the visibility of the law when acquiring property by a bona fide purchaser from an unauthorized alienator and by the acquisitive prescription. Such differences mainly affect the sphere of property turnover. Thus, in the first case, the appearance of authority of the person with whom the acquirer makes a transaction is essential, while in the acquisition of property by prescription the acquirer already has the appearance of his

own right, which eventually becomes a valid right. Here, the trust in the appearance of the right arises not as a result of the behavior of the pseudo-commissioner, but as a result of a person's long-term proper attitude to the thing as his own. In other words, the determining factor is the holdership, not its origin. Therefore, it is hardly correct to equate the openness and good faith of ancient possession [15, p. 10], as the latter factor does not affect the possibility of acquiring ownership of property. However, given the virtually identical legal result, some scholars suggest qualifying the application of the appearance of law for the acquisition period as a certain legal ersatz, designed to replace the immediate acquisition of property by a more complex legal mechanism [16, p. 273-275] In our opinion, this option is unacceptable: again, the acquisition of property by a bona fide entity from an unauthorized seller and the acquisitive prescription are different material and legal phenomena. Acquisition statute of limitations is applied precisely where there is no possibility of immediate acquisition of property as a result of bona fide occupation of the thing.

The phenomenon of the assumption of the visibility of the law and its effectiveness is significant because it is based on the recognition of the actual existing relationship as a basis for legal transformation. Such a consequence is practically identical with the legal result of the legal presumption, however, it must receive a justification and the specified grounds for the emergence of such a reality. In any case, such a mechanism must be used in the presumption of the attitude to the thing as its own, by the owner of movable property. However, such a prediction as the appearance of the right loses its practical meaning when it is established that the thing left the owner against his will, and he wants to vindicate it before the expiration of the statute of limitations. In other words, the thesis of the visibility of the right should not act contrary to the real right of ownership, which is not passive and was terminated in terms of possession with a defect of the will of the holder. Equating the category of "legal possession" to the appearance of real law allows the introduction of protection of possession within the property protection. But this certainly raises a number of problems. In particular, if the appearance of a right replaces the right itself, which de facto belonged to another person, certain criteria for such replacement must be established. Otherwise, there is a great risk of subjectivity and arbitrariness. This is understood by researchers of the issue. It seems absolutely unacceptable to think in the spirit of the ideas of free law without the slightest positive legal extension of possession at once to all cases of appearance as consistent with the law [16, p. 280-285].

At the same time, it must be stated that in practice, in the protection of possession, emphasis is placed in favor of the actual state of affairs, which is the domination of the thing. And this often happens against the law, even indisputable and obvious. Thus, it is seen that the notion of the appearance of a right must not have unlimited

application, but be used in cases where a certain legal order provides protection to the presumed property, or possession, which by its nature is considered to need protection as ersatz property. When in this case the possession has some legal justification (for example, ancient), it is protected not as the appearance of the right, but for its own sake. This is a manifestation of the actual social order, which must not be shaken by subjectivism and arbitrariness. This right to protection must, however, differ from that inherent in the true owner. Possession, although it creates a protective possibility in the form of a right, gives the latter the meaning of a derivative, temporary, because the protected power itself can be subjected to the petition of the real owner. Thus, the legal consequences of de facto occupation in the form of the establishment of a protective possibility of a possessory nature derive from the status quo as such, and create softer general conditions, while the appearance of law acts individually depending on its specific manifestations in relation to only those who trust it. This trust presupposes protection to the extent that the appearance was created by the authorized person's own conduct or to some extent by an authoritative order or administrative act. In fact, the practical consequences of these two approaches are different: when applying the mechanism of visibility of the law, they are stronger, the person protected by it receives the immunity due to the owner. And the owner's possessory protection gives the purchaser only a certain, different from the original protection right.

As we can see, there are many significant differences between the statute of limitations as a state of the acquiring proprietary legal institution and the consequences of the appearance of law. But, of course, it is impossible to completely reject the significance of this principle in the process of illegal and conscientious occupation and further detention. Yes, it is important for the buyer to have the authority of the person with whom the latter enters into an agreement on the alienation of the thing. In this case, visibility is related solely to the extent to which certain legal consequences in the form of acquisition may arise as a result of commercial transactions, the counterparty codes do not meet all the conditions, non-compliance with which otherwise entails the invalidity of the relationship. Therefore, the sufficiency of certain manifestations of the appearance of the law, which provide an opportunity in this case to imagine the existence of conditions that are not really present, allows not to take into account the defects in order to protect turnover. In this way, consequences are achieved that, under certain conditions, make the agreement valid. This is due to the public interest in the dynamics of turnover through the donation of static interest in maintaining the inviolability of the legal status. In other words, we are talking about achieving a kind of balance for the protection of material circulation, while, of course, some public interests that deserve protection are subject to infringement. Therefore, in order to solve the problem in a

similar way by installing some fuses, the main point should be taken into account: this visibility protection can be applied only when the interests of society require it.

But in any case, the appearance of the right covers in the commercial turnover defects are not the actual composition, and the conditions of validity of the legal relationship. The rule is that the incapacity of the alienator can be under certain conditions compensated by the good faith of the purchaser. But this result is not always achieved. Thus, the absence of a property agreement cannot be replaced by the good conscience of the occupier, if it was concluded without the consent of the parties or as a result of error or deception. As we can see, the positive result of the appearance of the right for turnover does not depend on the objective existence of the conditions of reality of alienation of the thing, but is connected with the fact that the purchaser subjectively believed in their existence. It does not matter whether the objective visibility of the right was created by the owner or by an unauthorized trader. At the same time, the legislator does not require the alienator to prove that he has a right in the form of his appearance, the law does not even indicate the obligation of actual possession of the thing by the trader. For the visibility to take due effect, it is sufficient that the alienator has signs of possession and also, at least, the external appearance of the authority. In such circumstances, the law gives the appearance of a real right. It is the reality of such appearance that is the proper justification of the bona fides of the occupier, which forms his specific legal status as the owner under the rule of Art. 330 of the CCU, allows him to raise existing objections to vindication and, ultimately, to acquire ownership in the order of statute of limitations under Art. 344 CCU.

At the same time, we must reasonably deny the thesis expressed at the time by P. Ertmann, that when acquiring property due to the expiration of the acquisition period from the acquirer, the appearance of his own right becomes a real true right [16, p. 290-295]. After all, only a person who knows about the existence of circumstances for the absence of the right - the existence of the real owner - can realize the appearance of the right, and not the right itself. If the occupier is bona fide and he does not know and cannot know the factors that make it impossible to object to the vindication, he acquires ownership of the thing immediately at the time of its transfer. If he is aware of a defect in his possession (for example, being in good faith at the time of acquisition, he later learned of the existence of the rightful owner, or even a court that denied the owner a claim due to the expiration of the statute of limitations), no awareness of the holder's appearance own right at the time of its transfer to ownership of the language cannot go. After all, the acquisitive prescription takes place only when there is no possibility of immediate bona fide acquisition. Only the duration and continuity of ownership are taken into account, and not necessarily the good faith of the possessor. In other words, if the property is acquired at the time of receipt of the property

from an unauthorized transferor, it is always based on the appearance of the right, but the acquisition of ownership on the basis of such visibility for the holder is excluded.

## Conclusions

Bona fides is a characteristic of a person's personal behavior, it reproduces his personal relationships with other individuals. But a good conscience alone cannot create law. According to the researchers, a party who has entered into an agreement with a person who, in his opinion, was authorized to alienate property, is protected not because he has acquired the relevant right, but despite the absence of such a right. It should be noted that the good conscience of the purchaser radically overestimates the essence of the seemingly invalid contract of alienation. It is this property that attaches importance not to the technical but to the essential character for the further possibility of acquiring the right of ownership. The good faith of an illegal trader defines a state of consciousness of a person, which is characterized by an apologetic ignorance of the objective obstacles to achieving the pursued legal goal - the acquisition of property rights. Here, the theory of visibility is fully effective, which emphasizes the trust in the external factual composition [4, p. 273].

Thus, the decisive role in determining the meaning of bona fides is played by the will of the legislator, so good conscience only plays a certain legal role when it allows to oppose the holder of a subjective right, and this is authorized by law. The choice is based on the public need to achieve a balance between the dynamism of relations and the guarantee of turnover, on the one hand, and the stability of rights - on the other. A good conscience contributes to the first of these factors and opposes the second. Such a confrontation with the right to property leads to the emergence of a certain authority on the part of the bona fide holder and, most importantly, provides a legal basis for the possibility of legal protection of such a right. Also, the opposition of property rights is effectively manifested in the state of a bona fide acquirer - *uzukapiya*, or ancient possession. Regarding the manifestations of the appearance of the right, the question of the reality and significance of the degree of good faith for the acquirer is important. In other words, there must be an external event that gives the dominance of the thing a specific appearance of legitimacy [17, p. 133]. In this sense, the purchaser must have sufficient confidence that he has the right. At the same time, we should agree with the thesis that the presence of certain unstable doubts does not hinder good faith.

Modern legislation, although not entirely clear and transparent, still determines the possibility and procedure for acquiring property by a bona fide purchaser when he receives things from an unauthorized trader. In this case, good conscience is important only when obtaining

ownership of property at the time of its transfer (Article 330 of the CCU), for long-standing acquisition, it does not matter, moreover, in the appropriation of real estate such a requirement establishes insurmountable obstacles. The decision of this de facto deadlock situation belongs to the competence of the legislator. But he is not scratching yet. Therefore, given the significant practical relevance, the problem is solved in some way in the field of law enforcement. Thus, the Russian judiciary in resolving applications for recognition of ownership of real estate shifts the emphasis to the statutory requirements for the oldest possession (duration, openness, continuity), rather than the fact of bona fide possession. At the time, such an interpretation of the essence of relations in the Ukrainian judicial law enforcement.

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