

E-ISSN: 2360 – 6754; ISSN-L: 2360 – 6754

# European Journal of Law and Public Administration

2018, Volume 5, Issue 2, pp. 104-114

<https://doi.org/10.18662/eljpa/46>

## ETHICAL PRINCIPLES OF REALIZATION OF THE RIGHT OF OWNERSHIP

*Yuriy PATSURKIVSKY*

Covered in:

CEEOL, Ideas RePeC, EconPapers, Socionet,  
HeinOnline

---

Published by:

Lumen Publishing House

On behalf of:

STEFAN CEL MARE UNIVERSITY FROM SUCEAVA,  
FACULTY OF LAW AND ADMINISTRATIVE SCIENCES,  
DEPARTMENT OF LAW AND ADMINISTRATIVE SCIENCES

# ETHICAL PRINCIPLES OF REALIZATION OF THE RIGHT OF OWNERSHIP

Yuriy PATSURKIVSKY<sup>1</sup>

## Abstract

*In the following article are examined theoretical and practical aspects of realization of civil laws. Basic principles of realization of civil laws are principles of freedom of realization of equitable rights and principle of observance of the set limits of realization of civil laws. It is suggested to understand other principles of realization of civil laws (honesty, cleverness, accordance of setting of right, solidarity of members' interests of legal relationships) in quality of limits of realization of right. The article is dedicated to research of problem questions of realization of equitable civil rights and duties, and also determination of their intercommunication. The different aspects of intercommunication of realization of civil laws and implementation of duties are analyzed. The theoretical and practical aspects of discretion of subjects of civil legal relationships are examined during realization of evaluation concepts in a civil law. Basic principle is subjective interest during realization of discretion of subject. An important role is played by an estimation carried out by a subject at realization of maintenance of evaluation concept. This estimation represents as vital experience of subject so degree of realization to them of maintenance of evaluation concept in a civil law.*

*The problem of the realization of law was and until now is considered ambiguous and became the subject of lively scientific discussions. The right is an endless work not only of state power, but of the whole people, and all life is a reflection of the unceasing struggle and work of the whole people, which clearly outlines the activities of the people in the field of economic and intellectual production. Taking into account the contradictory nature of many theoretical issues of the realization of law, as well as their exceptional complexity, lawyers have repeatedly turned to the analysis of the legal nature and the features associated with the implementation of law. However, to date, the problem of realizing law in the field of private law is one of the less investigated areas in legal science, which have not found the*

---

<sup>1</sup> Ph.D. (in Law), Associate Professor, Department of Private Law, Yuriy Fedkovych Chernivtsi National University, Chernivtsi, Ukraine, [ura0505156@gmail.com](mailto:ura0505156@gmail.com), +380662716938

*proper theoretical and practical solutions. All this in aggregate determines the relevance and choice of the topic of my scientific research.*

**Keywords:**

*Principles of realization of rights, principles of realization of civil laws, honesty, cleverness, justice, abuse of law, application of right, realization of equitable right, implementation of duties, intercommunication of rights and duty, realization of right, discretion, evaluation concepts, estimation in a right, will, subjective perception, realization of law.*

**Problem statement.**

The problem of ensuring the realization of subjective rights and obligations in civil law is relevant. The realization of freedom by subjects of civil legal relations requires proper legal protection taking into account modern civilist approaches. In the civilist doctrine, the doctrine of the realization of subjective rights and responsibilities has been elaborated in a sufficiently detailed way by many researchers, among which V.P. Gribanova, according to his opinion, the realization of law is the commission of real actions that transform the abstract possibility of a certain behavior into reality [1: 44-5]. Such a point of view is supported by N. Ostapyuk, who believes that the realization of subjective civil law is the realization of the powers empowered by the person following the content of this right. The position of O. Belyansky, who determines the mechanism for the direct realization of the rights and freedoms of the person as a "complex of legal means, as well as individual actions of a person in the exercise of his rights and freedoms in order to fully and effectively use them, deserves special attention" [2: 66]. Stability of coexistence of people is impossible without establishing certain limits inherent in each freedom - without the coordination of behavior. Such a reconciliation manifests itself, in particular, in the emergence of certain rights and obligations among people. Another factor that ensures the stability of human life is the effective interaction of man with the environment, with the material world - the world of things, which is the material resource of human existence. The significant importance of things in human life has reasons, because most of the mutual rights and responsibilities of people have their object material goods, that is, they have the nature of property rights and responsibilities. One of the main

objectives of establishing rights and obligations is the protection of material goods.

Right as a complex social phenomenon is formed under the influence of many factors. One of the most important is the religious, which determines the historical and mental specificity of the system of law of a particular state. Between the church and the state in relation to human rights there have always existed and there are cross-references.

The Christian paradigm is not only the foundation of the establishment of norms of positive law, but also the basis for their application. The peculiarity of positive law is that it is comparable to eternal, the natural law, which invariably accompanies mankind from its inception, is formed only at the sign of the stage of humanity's transition to civilization. Positive law, if it is subject to the principles of natural law, plays a significant role in ensuring the necessary moral freedom of the individual. Positive law creates an opportunity for the moral person to realize his freedom, and also be responsible for his actions.

The author sets himself the task to analyze the degree of scientific development of the problem, to study modern means of ensuring the implementation of subjective rights and responsibilities in civil legal relations, to identify the main approaches to the construction of a modern system of means of ensuring the implementation of subjective rights and responsibilities in civil legal relations, to establish the peculiarities of the use of property and non-property (moral, ethical) means, to examine the significance of the use of classical means to ensure the realization of subjective rights and obligations associated with coercion and new tools as property and non- property.

For the very reason, as the **purpose** and the **subject of this article**, I have chosen the problem of all rights and obligations that have the immaterial benefits of their object (life, health, etc.), that is, the nature of personal non-property rights and responsibilities, in some cases may be complicated or even impossible without the presence of a certain amount of material goods (food, water, medicine, etc.), relevant property rights and obligations (the right to housing and the duty to provide housing, the right to medical care and the duty to provide medical assistance, etc.). ) consider some of the provisions of the Bible.

The Bible states that, already on the sixth day of the creation of the world, people were endowed with the right to possess all the benefits of the Earth: "And God blessed them, and said to them: Be fruitful and multiply, and fill the earth and submit it to yourself; I reign over the fish of the sea,

over the birds of the air, and over every beast that moves upon the earth  
"(Gen. 1:28)

### **Presentation of basic material of the article.**

In accordance with the biblical provision outlined above, man has acquired the natural right to dominate the objects of the material world. There was no property in the paradise garden. Some scholars believe that the reference to the word "own" means the blessing of private property.

However, V. Mazayev considers this position to be unfounded, because God gave the command "rule" not to a specific person, but to all human kind<sup>1</sup>. In the context of this, it should be noted that Art. 13 of the Constitution of Ukraine establishes a legal model for realization of the right of ownership to land and other natural resources (subsoil, atmospheric air, water resources, continental shelf, exclusive (marine) economic zone), which are objects of property rights of the Ukrainian people, which is an independent sub- object of ownership of the specified objects. The originality of the legal ideas embodied in the Constitution of Ukraine regarding the exercise of the property rights of the Ukrainian people to natural resources is based on the modern scientific perception of objects of the environment in system communication - land - man - society - nature. Moreover, the Constitution of Ukraine not only legally objectified the natural right to natural resources in the legal ownership of the Ukrainian people, but also obliges the state to protect land and other natural resources as national wealth [3].

If you turn to the Old Testament, then there is no such thing as a "property". All terms used in the Biblical property law, as a rule, are property, object of assignment, characterizing, rather, the duration of possession and the possibility of inheritance or the sale or purchase of this property.

First of all, we must take into account that the Christian understanding of certain concepts does not always coincide with their legal dimension. Private property is no exception here. Unlike the general statements, where God used the words "rule", "master it", "I gave you", in the particular case of the Garden of Eden it is said differently: "And there besieged a man". It also records the duty of a person to "process it and store it". So we can conclude that the land was given to a person "for rent", that its property could become only the fruits of the paradise garden, and not the garden itself. That is, the full property of man could be only the fruits of his own work - that which was created by him, with human hands [4, 5].

In the Christian sense, private property is not entirely property. And this is firstly, God created the earth and gave it to people so that they "multiplied and filled the earth and subjugated it to oneself" (Gen. 1:28). At the same time, God has determined that the earth is His, and the people are "living and storekeepers" in God (Ch. 25:23). Secondly, property in the spiritual sense is one that belongs to a person inevitably. Earthly life transient, transient and related to it earthly property relations.

Therefore, Christian theology uses the term "private property" in a secular context. In the general biblical sense of the right of ownership is considered only as the right to manage the objects of ownership of God, given by God to a man within certain limits.

If the general Christian conception of "property" as "the right of management" covers only the relations between people, then "the right of management" is rightly regarded as "ownership". In fact, this is the case in the Ten Commandments, in which the first four commandments are devoted to the relationship between God and people, and the next six to human relations. The eighth and tenth commandments themselves contain the recognition and protection of the right to private property.

Consequently, "the right to control" is the expression of the relationship between God and people in connection with the use of resources by the people created by God of the world; "Ownership" is the expression of relations between people in connection with the use of these resources in circumstances of earthly life.

There is no contradiction between the "right of management" and "ownership" if the will of God is respected, because God has affirmed the rights as legitimate. God gives people various benefits - rich crops, mental abilities, and others like that.

However, the use of these benefits by their recipients is impossible if they themselves (the good) and the resources created by their help will not be recognized as a private property by people. Because God gives one or another benefit to each person personally, and not to everyone who wants to use it. The right to private property is the observance and control of God given to a particular person.

The legislator in Art. 13 of the Constitution of Ukraine established that each citizen has the right to use natural objects of property rights of the people, in accordance with the law [6]. Private property at all does not oblige people to do something coercion. On the contrary, the principle of private property gives the right to a person to act at his own discretion. At the same time property does not oblige and should not be used to the detriment of a

person and society. The state provides protection of the rights of all subjects of ownership and economic activity, social orientation of the economy. All subjects of property rights are equal before the law. Among the Christian principles is the principle of inviolability of property rights [4, 5]. The Bible states that "when you shoot the wolf of your enemy or his ass, that which is lost, then you will surely return him to him" (Exodus 23: 4); "... when you see the ox of your brother or something out of the flock that you missed, you will not hide from them, but you will surely bring them back to your brother" (Deut 22: 1). This ambition is reflected in Art. 41 of the Constitution of Ukraine as a constitutional principle that nobody can be illegally deprived of property rights or limited in its implementation [6]. The right to private property is inviolable (Part 1 of Article 321 of the Civil Code of Ukraine).

All this testifies to the significant role of material goods, as well as property rights and responsibilities and risks arising from their implementation in modern society.

For the sphere of material goods, which is exposed to various risks, not only property subjective (legal) rights and responsibilities are opportunities and burdens that are the result of legal norms, but also the risks themselves. Risks have a number of characteristics, among which the social role and qualifications of the person carrying out risk activities, its moral qualities and other social factors are important, all that does not allow this person to excessively increase the risk load on other persons related to such activities. Therefore, opportunities and burdens that arise as a result of other norms other than legal ones, namely social norms that are not legal, are also significant for the material wealth that is exposed to risks. Such opportunities and burdens are, first and foremost, moral (moral, ethical) rights and moral (moral, ethical) obligations of property character. The basis of civil-law relations in the biblical texts is the protection of private property, which is achieved by observing the two commandments of God: "do not steal" and "do not want ... nothing to your neighbor". It is supposed to be honest, righteous and just in relation to others: "Love your neighbor as yourself" (Lev 19:18).

In Biblical texts a lot of attention is devoted to the limits of the exercise of civil rights: "If you sell something to your neighbor or buy from your neighbor, do not offend each other" (Lev 24:14); "Let no man offend his neighbor" (Lev 24:17) (In exercising his rights, a person is obliged to refrain from actions that could violate the rights of others, harm the environment or cultural heritage (Part 2 of Article 13 of the Civil Code of

Ukraine)); "If you will do my offices and observe my ordinances, and you will do them, you will live in the land safely, and the earth will give its fruits, and eat it to the full, and you will live safely in it" (Lev 24:18; 24:19) (Civilians the person exercising the right within the limits provided by the contract or acts of civil law (Part 1 of Article 13 of the Civil Code of Ukraine)) [7].

In the writings of A. Smith, one of the founders of economic theory, there is an indirect indication of this fact: "... the discretion of the higher order ... it is necessary to suppose a higher degree of perfection of moral and mental qualities, the combination of a brilliant head with a remarkable heart ...".

A. Marshall - the founder of a number of modern approaches in the economy: "Even by themselves purely economic relations in life imply honesty and truthfulness, and most of these relations assume if not the presence of nobility, then at least the lack of temper, the presence of feeling the pride inherent in every honest person paying for his obligations ... " [8: 1676].

Renowned modern economist R.H. Franck notes in this regard: "A person who cares exclusively about personal interest is in a certain social isolation, which negatively affects not only the state of the soul, but also its material well-being ...". On the other hand, he notes that "people who are able to take into account the interests of other people do not feel inconvenienced, even in material terms. If such people are able to recognize each other, then they are given favorable opportunities, which are deprived of the "opportunists" [9: 607].

The above facts of economics are in harmony with the new understanding of law - the right in the humanitarian sense. In this sense, the foundation of the legal system is the basic human rights, that is, rights that are mediated not only by legal, but also by moral (moral, ethical, social) norms. Usually the notion of "ethics", "morality" and "morality" are identified. The reason for this is the fact that these concepts in the etymological sense have the same meaning as the Greek, Latin and Slavic roots respectively. However, a number of well-known researchers distinguish between these particular concepts. For example, Theodore V. Adorno notes that "the word" morality "comes from the Latin *mores*, which means ..." morality ..." and that "... about morality should be thought of no differently than the rules of conduct that prevail in well-defined societies, clearly defined peoples ... ". At the same time, he defines ethics differently, noting that "... ethics "is a restless conscience of morality ...", and translates



the Greek word *ethos* as "the composition of the character", that is, "that one is separate" "How specific each one is created ..." [10: 232].

In the future, the concepts of "ethics", "morality" and "morality" in accordance with the generally accepted approach will be considered as synonyms (with the exception of special cases).

From the times of Kant's legal literature, as a rule, they are very cautious about the mention of morality (morality, ethics). Significant influence on this attitude to morality (ethics) was made by I. Kant. He sought to clearly distinguish between morality (ethics) and law, in many aspects considered these concepts as antipodes (although in some cases, and sought to find their relationship). For example, he noted the following: "Legislation that makes a duty a duty, and this debt is a motive, is an ethical law, the same law, which does not include this [condition] in the law, that is, it suggests another motive, is the legal law . Regarding the latter it is easy to understand ... that this legislation must compel, and not be an attractive charm ... " [11: 240].

The modern approach to the relationship between morality (morality, ethics) and law is not based on the emphasis on the existence of differences between them as components of a single institution of social norms, but on their interconnection and interconnectedness. One can agree with the fact that "it is practically impossible to name any sphere of social relations, in which, in the" pure "form, one or another type of social norms acted. The interaction of social regulators is inevitable in any field of human life ", " morality and law have no specific or spatially separated spheres of social relations, but act in a "single field" of social ties ... ". Currently, the direct connection of law and morality is carried out through the Institute of Human Rights and Citizen. Human rights are determined by the complex of social norms of the increased value, in which the legal and moral (moral, ethical) elements coexist, - legal rights are intertwined with legal moral and religious values. Paraphrasing the words of Theodore V. Adorno about ethics, morality can be called restless conscience of law [10: 232].

Consequently, human behavior in relation to its property is not determined by the action of one type of social norms (for example, the rules of law). Social norms are general rules of conduct that regulate social relations in order to regulate the life of society and its stabilization, which is why in a legal society, a democratic state, the harmonious interaction of law with other social norms is a necessary condition for its effectiveness. In accordance with the mechanism of its action, taking into account the

regulatory features, social norms are divided into: morality; traditions; manners; right.

Actual redundancy of property encumbrance with respect to a particular debtor deprives the effectiveness of success in other situations, providing the effect of legal norms. As a result, the judicial system of the state can in practice become overloaded with the declared requirements, most of which can not be fulfilled in real terms, despite all their legality. It discredits the judicial system and the very idea of law, which is inadmissible in a lawful state [12].

The European Court of Human Rights, considering the case, is related to the failure to comply with the financial difficulties of the state causing damage, a judicial decision regarding the victim of a "mass casualty" - the Chernobyl disaster, stating: "The Court reiterates that paragraph 1 Article 6 of the Convention establishes for everyone the right to apply to the court in the event of any dispute regarding his civil rights and obligations; it thus includes the "right to a court", one aspect of which is the right to access to justice, which constitutes the right to initiate legal proceedings in civil matters. However, such a right would have been imagined if the legal system the State party to the European Convention had assumed that a judicial decision which had come into force and enforceable remained inoperative in relation to one party to the detriment of its interests. It is inconceivable that Article 6 § 1 of the Convention, with a detailed description of the parties procedural guarantees, is a fair, public and reasonable consideration, which would not provide protection for the enforcement of court decisions; the interpretation of the Convention solely within the framework of ensuring only the right to apply to the court and the procedure of trial would most likely lead to situations incompatible with the rule of law which the States parties to the European Convention have undertaken to observe by signing the Convention. The enforcement of a judgment given by any court must therefore be regarded as part of the trial in the context of the Convention. The respondent State authority cannot rely on inadequate funding as a justification for non-payment of a debt established by a court decision. It is anticipated that the delay in the execution of a court decision under certain circumstances may be justified.

### **Conclusions.**

Failure to fulfill a legal property obligation violates one more fundamental right - the right of private property. This right is enshrined in Art. 1 Protocol No. 1 of the European Convention on Human Rights:

"Every natural or legal person has the right to respect for his or her property. No one shall be deprived of his property except in the interests of society and under the conditions provided for by law and the general principles of international law ..." [13].

For each property right and property duty there must be an actual opportunity for their realization. This position of the European Court fully corresponds to the point of view of G. Ellinec, the classicist of German theoretical and legal thought, according to which "every right is a valid right ..." [14: 583], that is, the right, which is only proclaimed and whose realization is impossible in practice, is not a full-fledged right.

Consequently, the modern approach to the relationship between morality (morality, ethics) and law is based not on the emphasis on the existence of differences between them as components of a single institution of social norms, but on their interconnection and interdependence.

The absence of the realization of the economic risks of the necessary property to satisfy the creditor's property claims is a certain limitation of the rule of law principle. Therefore, the rule of law is obliged to take measures, including those of a legal nature, to mitigate such effects of economic risks. The basic rights and freedoms of a person are the highest value, and therefore require not only legal consolidation, but also effective implementation, which should be considered as a certain mechanism.

## References

- [1]. Griбанов VP. Limits for Implementation and Protection of Civil Rights. Moscow: Statute; 2001.
- [2]. Belyanskaya OV. Immediate Implementation of the Rights and Freedoms of the Individual: Monograph. Tambov: Pershina; 2005.
- [3]. Dzeri OV, Kuznetsova NS, Lutsa VV, coordinators. Scientific and Practical Commentary of the Civil Code of Ukraine. Vol. 2. Kiev: Yurincom Inter; 2006.
- [4]. Elliger K, Wilhelm R, editors. Biblia Hebraica Stuttgartensia. 5th revised ed. Stuttgart: Adrian Schenker; 1977.
- [5]. Modern Hebrew New Testament. Stuttgart: The Bible Society in Israel. Revised edition; 2010.
- [6]. Constitution of Ukraine adopted by the Verkhovna Rada on 1996 Jun 28.
- [7]. Civil Code of Ukraine adopted on 2003 Jan 16, 2003. Kiev: Truth; 2003.
- [8]. Marshall A. Principles of Economics. 8th ed. London: Macmillan and Co.; 1920. Available from: <http://oll.libertyfund.org/title/1676>.

- [9]. Frank RH. Microeconomics and Behavior. New York : McGraw-Hill Irwin; 2010.
- [10]. Adorno TW. Problems of Moral Philosophy. Oxford: Polity; 2001.
- [11]. Kant I. Metaphysics of Morals. Moscow: Sobre; 1994.
- [12]. Kovalevsky ML. Legal Significance of Economic Risks and Their Connection with Property. Actual Problems of Science and Practice of Commercial Law. Moscow: Walters Clouver. 2005; 5.
- [13]. European Convention for the Protection of Human Rights and Fundamental Freedoms.
- [14]. Ellinek G. General Theory of the State. 2nd ed. St. Petersburg; 1908.