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EXPROPRIATION FOR PUBLIC UTILITY IN THE EUROPEAN UNION AND THE REPUBLIC OF MOLDOVA - A COMPARATIVE ANALYSIS OF THE LEGAL FRAMEWORK AND ADMINISTRATIVE PRACTICE

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Abstract: *The concept of expropriation for public utility plays a pivotal role within the legal systems of democratic societies, serving as a legitimate tool through which public authorities can intervene in private property rights to fulfill public interest goals. This mechanism inherently involves a careful balancing act between the collective welfare and the safeguarding of individual rights, a process governed by nuanced legal frameworks at both the national and European levels.*

This study examines how the European Union addresses the issue of expropriation by analyzing relevant provisions from both foundational treaties and derived legislation, complemented by the interpretative role of the Court of Justice of the European Union. It delves into fundamental legal concepts—including the requirement of legality, the necessity of proportionality, the justification of public interest, and the obligation of fair reparation—while drawing illustrative examples from national

practices in countries such as France, Germany, and the United Kingdom.

Additionally, the article evaluates the Republic of Moldova's domestic legislation on expropriation, assessing its degree of convergence with European legal standards and identifying areas where further legislative alignment is needed. By adopting a comparative perspective, the study underlines the importance of harmonizing Moldovan regulations with EU principles in order to strengthen legal certainty and promote the effective protection of property rights within the context of Moldova's European integration efforts.

Keywords: *Expropriation; EU legal framework; institutional competence; normative alignment; fair compensation; legal proportionality.*

Introduction

Expropriation in the public interest is an essential legal institution involving a collision between the public interest and the fundamental right to private property. In all modern legal systems, property is guaranteed, but not absolute - it can be limited or forcibly transferred to the state when a public necessity so requires, but only under strictly regulated conditions. At the European level, the protection of property rights is enshrined both in international instruments (such as the "*European Convention on Human Rights, Protocol 1, Art.* 1"[1]) and in European Union law - the *"EU Charter of Fundamental Rights*[2] *"* provides in Article 17 that no one may be deprived of his or her property except for a purpose of public utility, under the conditions provided by law and with fair compensation. These general standards have profoundly influenced the national laws of European states.

This paper seeks to place the expropriation framework within the broader context of European Union law, while also offering a

[1] European Convention On Human Rights https://www.echr.coe.int/european-convention-on-human-rights

[2] Charter of Fundamental Rights of the European Union (2012/c 326/02) https://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=CELEX:C2012/326/02

comparative perspective on how this legal institution is addressed in several key jurisdictions—namely France, Germany, and the United Kingdom (whose legal model remains influential in European legal thought despite its exit from the EU). The analysis contrasts these approaches with the current legal situation in the Republic of Moldova, aiming to identify both shared foundations and national divergences. Based on this comparison, the study proposes pathways for legal harmonization, taking into account Moldova's EU integration trajectory and the imperative of aligning its domestic legal system with European legal benchmarks.

The research methodology is predominantly legal-comparative. Primary normative sources (constitutions, special laws on expropriation) have been examined and case law analysis, including judgments of the Court of Justice of the EU and, additionally, of the European Court of Human Rights, has been used to identify converging interpretations on the limits of expropriation. The aim is to provide an integrated picture of the general EU framework and national variations, highlighting the fundamental principles applicable (legality, public necessity, proportionality, compensation) and how they are implemented. Finally, the conclusions will summarize the results and formulate suggestions for improving the Moldovan regulatory framework in line with European best practices.

1. Research results

1.1. General framework of EU law on expropriation. In the legal order of the European Union, the right to property is acknowledged as a core fundamental principle. However, the detailed regulation of expropriation is primarily left to the discretion of individual Member States (Benedetti, 2022, p. 124). Although the EU Treaties do not include specific provisions on expropriation, the Charter of Fundamental Rights of the European Union—which holds the same legal value as the Treaties—explicitly provides in Article 17 that private property shall be

respected. It further states that any deprivation of property is only permissible for reasons of public interest, under conditions laid down by law, and with fair compensation. Before the Charter's adoption, the Court of Justice of the European Union had already recognized the protection of property rights as a general principle of EU law. This recognition was grounded in the shared constitutional traditions of the Member States and aligned with the values set out in the European Convention on Human Rights[1].

Therefore, while Member States retain competence over expropriation procedures, they are nonetheless bound by minimum EU standards: any expropriation measure must serve a legitimate public interest and must not result in a disproportionate or intolerable infringement that undermines the very essence of the right to property. [2]

In other words, although the European Union does not have a single expropriation law, the EU's influence manifests itself through two main channels: *1. Harmonization of principles* - the EU ensures that the principles of legality, public interest and proportionality in expropriation are recognized throughout the European area, both through the EU Charter and the case law of the CJEU; *2. European conditionality* - in the broader context of European integration and enlargement, candidate countries such as the Republic of Moldova are required to harmonize their legal frameworks concerning property rights with those established within the European Union. This alignment reflects one of the key conditionalities imposed by the EU, which places strong emphasis on the rule of law and the safeguarding of fundamental rights, including the right to property. The European Parliament has repeatedly underscored

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[1] Judgment of the Court of December 13, 1979. Liselotte Hauer v Land Rheinland-Pfalz. Reference for a preliminary ruling: Verwaltungsgericht Neustadt an der Weinstraße - Germany. Prohibition on new planting of vines. Case 44/79. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61979CJ0044#:~:text=4%20,PROTECTION%20OF%20HUMAN%20RIGHTS

[2] Ibid

that adherence to these values is essential for both current Member States and prospective partners[1].

It is equally important to consider the role of the European Convention on Human Rights (ECHR), which, although it operates under the Council of Europe and not directly under EU law, holds significant influence. All EU Member States and the Republic of Moldova are signatories to the ECHR, and Article 1 of Protocol No. 1 outlines core principles regarding expropriation—specifically, the necessity of a legal basis, the pursuit of a legitimate public interest, and the requirement of fair compensation to maintain a "just balance[2]."

Together, EU law and the legal standards of the Council of Europe form a cohesive normative framework that guides property rights protection. A key distinction lies in the enforcement mechanism within the EU: the Court of Justice of the European Union has the authority to ensure consistency across Member States. Where an expropriation measure touches upon EU competences—such as projects funded by the Union, transnational infrastructure developments, or the application of the EU Charter of Fundamental Rights—the CJEU may intervene to invalidate national measures that contravene the principles of legality, proportionality, or equitable compensation.

1.2. Fundamental principles of expropriation: legality, public utility, proportionality, compensation

An analysis of the European framework and the traditions of the Member States reveals four fundamental principles which condition any expropriation measure:

1. **Principle of legality** - expropriation must have its basis in a previously adopted law, which explicitly lays down the conditions and procedure to be followed. This principle provides protection against administrative arbitrariness. Already the "*French Declaration of the*

[1]Ibid

[2] Right To Property In The Context Of Article 1 Protocol 1 To The European Convention On Human Rights And Freedoms rm.coe.inteur-lex.europa.eu.

Rights of Man and of the Citizen of 1789"[1] stipulates that no one may be deprived of his property except "*in cases where public necessity, legally established, clearly requires it*". Therefore, the existence of a law (in the formal sense) or of a legal decision by the competent authorities (under the conditions laid down by law) is an absolute prerequisite. In all the countries analyzed, the legal framework is set at a high level: national constitutions contain provisions on expropriation, and special laws detail the procedure. For example, the Constitution of the Republic of Moldova[2] explicitly states that no one can be expropriated except under the conditions of the law and for a specific cause of public utility. Similarly, in the United Kingdom, although there is no written constitution, the exercise of the power of compulsory purchase requires an Act of Parliament or specific statutory authorization, which means that any expropriation is based on dedicated legislation (such as the Town and Country Planning Act 1990 etc.) enacted by the relevant legislature .[3]

2. Public-interest purpose - an expropriation cannot be ordered for the benefit of a private interest or in the absence of a public-interest justification. This principle is closely linked to legality, as the law must define the cases of public necessity which may justify expropriation. In France, the concept of "*utilité publique*" underpins the whole procedure: expropriation is possible only after a formal declaration of public utility, issued by the competent administrative authority following a public inquiry. Germany uses the term "*public good*" (öffentliche Wohl) in the Basic Law, which stipulates that expropriation is only permissible for the

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[1] https://www.conseil-constitutionnel.fr/le-bloc-de-constitutionnalite/declaration-des-droits-de-l-homme-et-du-citoyen-de-1789).%E2%80%9D

[2] Constitution of the Republic of Moldova No 1 of 29-07-1994, Published : 29-03-2016 in Official Gazette No 78 art. 140 https://www.legis.md/cautare/getResults?doc_id=111918&lang=ro

[3] Compulsory purchase in England and Wales https://en.wikipedia.org/wiki/Compulsory_purchase_in_England_and_Wales#:~:text=Compulsory%20purchase%20is%20the%20power,overriding%20or%20compelling%20public%20interest

public good[1] . Even in the case law of the CJEU we find this requirement: in the *Hauer* case (1979), the Court stated that restrictions on the right to property must actually correspond to objectives of general interest pursued by the Community[2] . Concrete examples of public interest include: the construction of infrastructure (roads, railways, utility networks), national defense works, urban and regional development projects, preservation of cultural heritage or environmental protection. The list remains open, as the definition of legitimate public interest evolves with the needs of society. The important thing is that in each individual case the authority must demonstrate that there is a real and present public purpose, not merely hypothetical or disguised, otherwise the expropriation becomes illegal.

3.Proportionality principle - even if there is a legitimate public purpose, the measure of expropriation must be proportionate to that purpose. Proportionality involves two major aspects: necessity and balance. On the one hand, expropriation must be necessary - i.e. the desired end could not be achieved by a less intrusive measure on property rights (e.g. a voluntary purchase, a land swap or the establishment of an easement right could be alternatives, where possible). On the other hand, a fair balance must be struck between the public interest and the rights of the owner, so that the burden imposed on the latter is not excessive or disproportionate to the public benefit. ECtHR case law has developed this fair balance test, for example in the case "*James and others v. United*

[1] Basic Law of the Federal Republic of Germany constitutions.wordpress.com

[2] Document 61979CJ0044. Judgment of the Court of December 13, 1979. Liselotte Hauer v Land Rheinland-Pfalz. Reference for a preliminary ruling: Verwaltungsgericht Neustadt an der Weinstraße - Germany. Prohibition on new planting of vines. Case 44/79. European Court Reports 1979 -03727 ECLI identifier: ECLI:ECLI:EU:C:1979:290 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61979CJ0044#:~:text=4%20,PROTECTION%20OF%20HUMAN%20RIGHTS https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61979CJ0044#:~:text=4%20,PROTECTION%20OF%20HUMAN%20RIGHTS

Kingdom (1986)"[1] emphasizing that a deprivation of property without reasonable compensation or procedural safeguards may upset the balance and violate Article 1 of Protocol 1 (right to property)[2] . The CJEU, in the same vein, has pointed out that the interference must not affect "*the very substance of the* **property** *right*"[3] , i.e. must not become an intolerable burden for the owner. (Sluysmans, & Waring, 2016, pp.276-300).

In practice, the principle of proportionality translates into a requirement that the expropriation be limited to what is necessary (e.g. expropriate only the area of land indispensable for the public project, no more) and that the procedure should provide the affected person with the possibility to challenge the measure or to obtain a (judicial) reassessment of its necessity. (Jourdan, Czapracka., Killick, Komninos, & Citron, 2023).

4. **The right to just compensation (compensation)** - any lawful expropriation entails an obligation on the expropriating authority to pay adequate compensation to the expropriated owner. This principle is vital to morally and legally validate the forced transfer of property: the loss suffered by the individual must be materially compensated. The principle is expressly enshrined in most European constitutions. For example, Art. 17 of the "*French Declaration of 1789*" requires "*just and prior*

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[1] Case Of James And Others V. The United Kingdom (Application no. 8793/79) https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57507%22]}

[2] Right To Property In The Context Of Article 1 Protocol 1 To The European Convention On Human Rights And Freedoms rm.coe.int

[3]Document 61979CJ0044. Judgment of the Court of December 13, 1979. Liselotte Hauer v Land Rheinland-Pfalz. Reference for a preliminary ruling: Verwaltungsgericht Neustadt an der Weinstraße - Germany. Prohibition on new planting of vines. Case 44/79. European Court Reports 1979 -03727, ECLI identifier: ECLI:EU:C:1979:290 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61979CJ0044#:~:text=OBSERVANCE%20OF%20THE%20RIGHT%20TO,INTERFERENCE%20WITH%20THE%20RIGHTS%20OF https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61979CJ0044#:~:text=OBSERVANCE%20OF%20THE%20RIGHT%20TO,INTERFERENCE%20WITH%20THE%20RIGHTS%20OF

compensation"[1] , and the Constitution of the Republic of Moldova takes this phrase almost literally, requiring "*just and prior* compensation"[2]. The German Basic Law (Grundgesetz) provides that the nature and extent of the compensation shall be determined by law, that the compensation shall reflect a fair balance between the public interest and the interests of those affected, and that in case of disagreement on the amount, it shall be open to challenge before the courts[3] . In practice, "fair compensation" is usually interpreted as the equivalent of the *market value of* the expropriated asset (value determined at the time of expropriation, taking into account its economic utility). The legal systems provide for valuation mechanisms - technical expertise, committees of valuers or specialized courts. But there are also variations: in the UK, the Land Compensation Act 1961 and other acts provide that the owner is entitled to the market value of the property and to additional compensation for removal or loss of benefit (e.g. a "*home loss payment*" as an additional lump sum for disturbance of the home)[4] . It is also important to note the prior nature of compensation, which is explicitly required in some systems (France, Moldova): ideally, compensation should be paid before or at the latest at the time of transfer of the property, so as not to leave the owner in an uncertain situation. Other countries accept payment within a reasonable period thereafter, possibly with compensatory interest, especially if there are disputes requiring judicial settlement.

These four principles constitute the basic pillars of any expropriation regime compatible with European standards. They are

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[1] https://www.conseil-constitutionnel.fr/le-bloc-de-constitutionnalite/declaration-des-droits-de-l-homme-et-du-citoyen-de-1789).%E2%80%9D

[2] Constitution of the Republic of Moldova No 1 of 29-07-1994, Published : 29-03-2016 in Official Gazette No 78 art. 140 https://www.legis.md/cautare/getResults?doc_id=111918&lang=ro

[3] Basic Law of the Federal Republic of Germany constitutions.wordpress.com

[4] Compulsory purchase in England and Wales https://en.wikipedia.org/wiki/Compulsory_purchase_in_England_and_Wales#:~:text=Today%2C%20the%20Land%20Compensation%20Act,Compensation%20is%20often%20also

interrelated and are designed to ensure that expropriation remains an exceptional measure, used responsibly and with respect for fundamental rights.

1.3. The role of the CJEU in standardizing the interpretation of property rights and the conditions of expropriation.

Although the responsibility for regulating expropriation primarily falls under the jurisdiction of individual Member States, the Court of Justice of the European Union (CJEU) plays a decisive role in promoting consistency across the EU with regard to the protection of property rights and the permissible boundaries of expropriation (Golden, Szabó, & Erne, 2025).This harmonizing function is particularly important in the context of fundamental rights.

One of the most influential rulings in this domain was delivered in the "Hauer v. Land Rheinland-Pfalz case (1979)", where the CJEU affirmed that the right to property forms an integral part of the EU's legal order, grounded in the shared constitutional traditions of Member States and further reinforced by the European Convention on Human Rights[1]. In that judgment, the Court laid down essential safeguards: any restriction of property rights, whether through expropriation or other limitations such as usage prohibitions, must be justified by a legitimate objective serving the common interest of the Community and must not represent a disproportionate interference relative to the pursued aim.

Through such jurisprudence, the CJEU has, since the 1970s, embedded the principles of legality, public interest, and proportionality

[1] Judgment of the Court of December 13, 1979. Liselotte Hauer v Land Rheinland-Pfalz. Reference for a preliminary ruling: Verwaltungsgericht Neustadt an der Weinstraße - Germany. Prohibition on new planting of vines. Case 44/79. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61979CJ0044#:~:text=4%20,PROTECTION%20OF%20HUMAN%20RIGHTS

into the EU's interpretation of property rights, contributing to a coherent and rights-based framework across the Union[1].

Thus, since the 1970s, the Court has integrated the principles of legality, public interest and proportionality into the notion of property protection at EU level.

Second, with the entry into force of the "*Lisbon Treaty of* 2009"[2] and the "*Charter of* Fundamental *Rights*"[3] becoming binding, the CJEU has started to directly apply the provisions of the Charter, including Art. 17 on property rights, in cases under EU law. For example, if a Member State implements an EU-funded policy or project involving expropriation, affected persons can invoke the EU Charter and the Court can verify whether the conditions of legality and compensation are met. The CJEU ensures that the application of secondary EU law (regulations, directives) does not contravene the right to property; in conflicting situations, the Court has been willing to interpret secondary legislation in the light of the Charter to avoid unjustified interference with property.

Another aspect of the role of the CJEU is to provide judicial guidance to national courts through the preliminary questions procedure. National courts confronted with expropriation disputes that raise questions of interpretation of EU law (e.g. the compatibility of a national expropriation law with the fundamental principles recognized by the EU) can ask questions to the Court of Justice. By providing answers, the CJEU contributes to uniform interpretation. Even if there is not an

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[1] Judgment of the Court of December 13, 1979. Liselotte Hauer v Land Rheinland-Pfalz. Reference for a preliminary ruling: Verwaltungsgericht Neustadt an der Weinstraße - Germany. Prohibition on new planting of vines. Case 44/79. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61979CJ0044#:~:text=4%20,PROTECTION%20OF%20HUMAN%20RIGHTS

[2]Treaty Of Lisbon **https://Www.Europarl.Europa.Eu/Factsheets/Ro/Sheet/5/Tratatul-De-La-Lisabona**

[3] Charter of Fundamental Rights of the European Union (2012/c 326/02) https://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=CELEX:C2012/326/02

abundance of direct expropriation cases before the CJEU (given that, repetitively, the matter is a matter of national autonomy), the Court has indirectly influenced standards: for example, referring to compensation, the CJEU has confirmed in various contexts that, where EU law provides for compensation (e.g: expropriations in the context of trans-European transport networks or environmental restrictions equivalent to expropriation), compensation must be "*real and actual*", not illusory, taking into account the real value of the asset lost - in line with ECHR case law and the practices of most states.

Last but not least, the CJEU acts as a factor of positive pressure: its judgments serve as benchmarks for national legislators. Member States, knowing that possible deviations from the principles of property protection could be sanctioned in Luxembourg, have an incentive to keep their legislation in line with European requirements. For example, in the area of proportionality, CJEU decisions have reinforced the need for States to provide effective legal remedies. Thus, all comparative jurisdictions allow access to justice for those expropriated (challenging the public benefit or the amount of compensation), which also reflects the influence of the CJEU's interpretations of the right to an effective remedy (Art. 47 of the EU Charter[1] , in conjunction with Art. 17).

The CJEU does not unify the expropriation regime in law (there is no "European code on expropriation"), but it does provide a conformity filter: any national expropriation practice must fall within the limits of respect for property rights as they are uniformly understood in the European area. Through its consistent case law, the Court has helped to define a common European jurisprudence in this field, alongside the national courts and the ECHR, all converging towards similar solutions on public necessity, proportionality and fair compensation.

[1] Charter of Fundamental Rights of the European Union (2012/c 326/02) https://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=CELEX:C2012/326/02

1.4. Comparative legislative analysis: France, Germany, United Kingdom vs. the Republic of Moldova.

The national expropriation regulations present, in substance, similar principles imposed by the European legal tradition, but differ in terms of implementation, procedures and institutions involved. (Hernández-Alemán, Cruz-Pérez, & Santamarta, 2022). We will analyze in turn the situation in *France, Germany and the United Kingdom* and compare it with the framework in the *Republic of Moldova*, highlighting the common points and particularities of each.

1. France. France has one of the oldest and most well-structured expropriation legislations, influencing the systems in continental Europe (including Romania and, indirectly, Moldova). (Jourdan, Czapracka, Killick, Komninos, & Citron, 2023). The basic principles are constitutionally anchored in the constitutional bloc: "*Article 17 of the Declaration of the Rights of Man and of the Citizen of 1789*", integrated into the current Constitution by the preamble, establishes the inviolability of property and the strict conditions of expropriation - public necessity, legally established, and prior and fair compensation . [1]

The legislative development started with the *1810 law on expropriation in the public interest (adopted under Napoleon*), which created a procedural framework designed to stop abuses by the administration and introduce judicial review. Today, the expropriation regime is codified in the "*Code of Expropriation for Cause of Public Utility"* (code promulgated in its updated form in 2015), which details the procedure in two stages: 1. *The declarative phase*, in which an administrative decision is issued declaring the project to be of public utility - this involves a public inquiry, consultation of interested parties and analysis of alternatives; if the DUP is issued, it constitutes the legal basis for expropriation; 2. *The enforcement phase*, during which expropriation is actually carried out either amicably (through the purchase of the asset by the authority at a negotiated price) or, in the

[1] https://www.conseil-constitutionnel.fr/le-bloc-de-constitutionnalite/declaration-des-droits-de-l-homme-et-du-citoyen-de-1789).%E2%80%9D

absence of agreement, by a decision of the expropriation judge (a specialized court, usually within the high court), who pronounces the transfer of ownership and sets the amount of compensation. Characteristic of France is therefore the predominant role of the administrative authority in establishing public utility and the strong role of the judiciary in determining compensation and finalizing the transfer. The compensation must *in principle* be paid *before the actual repossession of the property* (before or at the same time), in the form determined by the judge (as a rule, a sum of money equivalent to the market value; in certain cases compensation in kind may be offered - other land in exchange). The owner is also entitled to compensation for collateral losses (e.g. loss of use, removal). French legislation also provides for post-expropriation mechanisms, such as the obligation that the expropriated property must be used in accordance with its declared purpose, otherwise the owner has the theoretical possibility of retrocession (if the public utility has not been realized). Thus, the French system is highly formalized, emphasizing prior control of the public interest and prompt compensation, fully reflecting the fundamental principles of expropriation.

2. Germany. In Germany, the legal framework for expropriation is mainly established by the "*Federal Constitution - Basic Law (Grundgesetz)"*. Article 14 of the Grundgesetz enshrines the right of ownership and inheritance, stating that *"expropriation is permitted only in the public interest"*, must be ordered by law or on the basis of a law, which will also determine the manner and amount of compensation, which must reflect a fair balance between the general and private interest[1] . If the compensation awarded does not satisfy the owner, he has the right to apply to the ordinary courts for a judgment on the amount[2] .

This constitutional provision provides a uniform general framework at federal level. However, the practical implementation of

[1] World Constitutions https://constitutii.wordpress.com/

[2] Verfassung der Deutschen Demokratischen Republik, 7. Oktober 1949 https://constitutii.wordpress.com/wp-content/uploads/2024/01/constitutia-ddr-1949.pdf

expropriation also depends on federal and Land legislation: there are sector-specific federal laws allowing expropriation (e.g. in the field of construction - the *Baugesetzbuch* contains sections on expropriation for urban development plans, in the field of transport - special laws for highways, railways, etc.) as well as Land laws on expropriation procedure in general. The typical German procedure involves an *administrative decision on expropriation* issued by a competent authority (usually at Land level, there are *expropriation commissions* or regional authorities managing the process). Before issuing this decision, the authority must try to obtain the property amicably (by purchase at market price). If this fails, the forced procedure is initiated, where the authority issues an expropriation order, while fixing the amount of compensation in accordance with the law. The dissatisfied owner can challenge both the merits of the expropriation (lack of public interest, lack of proportionality) and the amount of compensation before administrative (for the legality of the decision) and civil (for the assessment of the compensation) courts. The German system is characterized by a particular concern for the fairness of compensation - the principle of equitable balance is expressly enshrined in the Constitution[1] , and practice shows that compensation tends to be awarded at market value, sometimes also including compensation for possible economic losses caused by expropriation. Unlike in France, prior payment is not necessarily required, but property generally does not pass to the state until the compensation awarded is made available (or recorded) - this follows from the rule of law and effective judicial review.

Another distinctive feature in Germany is the concept of "*Aufopferungsentschädigung*" (compensation for special sacrifice), which applies in situations where a legal measure of the state, without being formally an expropriation, seriously affects property (a restriction of use, for example); in such cases, the courts may award compensation under the principle of equality before public burdens. This concept shows

[1] Ibid

the openness of German law to protect property not only in the case of forcible transfer, but also to interference equivalent in effect. On the whole, German expropriation law faithfully reflects the principles of legality-public interest-compensation, with an emphasis on rigorous procedures and an effective right of action for the affected owners. (Jourdan, Czapracka, Killick, Komninos, & Citron, 2023).

3. United Kingdom. The United Kingdom (particularly England and Wales) has a system of expropriation known as *compulsory purchase*. Unlike in France and Germany, the UK framework does not start from a constitutional text (the UK not having a codified written constitution and not having a classical bill of rights including property rights; also the EU Charter is no longer applicable after Brexit). However, equivalent principles have been formed through common law and parliamentary legislation over more than two centuries. Any expropriation in the UK requires *statutory authority* - in other words, only if an Act of Parliament has conferred on a public body the power to expropriate can it take place[1] . Parliament has passed numerous Acts over the years granting such powers to local authorities, government agencies or other entities for various public purposes (town planning, transportation, utilities, etc.). A reference framework act is the *Compulsory Purchase Act 1965*[2] , supplemented by the *Acquisition of Land Act 1981*[3] and subsequent legislation as well as specific regulations (e.g. *Town and Country Planning Act 1990*[4] for expropriations for planning purposes). The UK procedure usually starts with the making of a *Compulsory Purchase Order* by the authority requiring the land (e.g. a

[1] Compulsory purchase in England and Wales https://constitutii.wordpress.com/wp-content/uploads/2024/01/constitutia-ddr-1949.pdf

[2] Compulsory purchase act 1965 https://www.legislation.gov.uk/ukpga/1965/56/contents

[3] Acquisition of land act 1981 https://www.legislation.gov.uk/ukpga/1981/67/contents

[4] Town and country planning act 1990 https://www.legislation.gov.uk/ukpga/1990/8/contents

local council). This order must be approved or confirmed by a central government minister (e.g. the Secretary of State) to ensure that there is a "*compelling case in the public interest*" - a compelling public interest justifying expropriation[1] . The affected owner has the opportunity to object, in which case a public inquiry may be held, led by an independent inspector, who reports to the Minister. Once the order is confirmed, the transfer of the property to the expropriating authority can be effected through various legal mechanisms (e.g. the issuing of a *General Vesting Declaration*, which heralds the passing of title). As regards compensation, UK law provides for comprehensive compensation: the owner receives the market value of the property (valued according to the principles of the *Land Compensation Act 1961*, section 5, which states that the value is to be calculated as in the case of a voluntary sale on the open market[2]). In addition to this price, there are other heads of compensation: e.g. *disturbance compensation* (for the inconvenience of moving, loss of income during the relocation of the business, etc.), *home loss payment* for owner-occupiers (an additional statutory sum, currently about 10% of the value of the property, with a cap)researchbriefings.files.parliament.ukresearchbriefings.files.parliament.uk, compensation for transaction costs (legal fees, stamp duty) etc. If the owner considers that the offer of compensation is not satisfactory, he is entitled to apply to the Lands Chamber of the Upper Tribunal (formerly the Lands Tribunal) for judicial determination of the amount[3] .

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[1] David Elvin QC, CPO: compelling case, human rights and alternatives https://www.landmarkchambers.co.uk/wp-content/uploads/2020/07/CPO-compelling-case-human-rights-and-alternatives.pdf

[2] Compulsory purchase in England and Wales https://en.wikipedia.org/wiki/Compulsory_purchase_in_England_and_Wales#:~:text=Today%2C%20the%20Land%20Compensation%20Act,Compensation%20is%20often%20also

[3] Compulsory purchase in England and Wales https://en.wikipedia.org/wiki/Compulsory_purchase_in_England_and_Wales#:~:text=must%20pay%20the%20compensation%20figure,to%20the%20Court

A specific feature of the English system is that, technically, the authority can take possession of the property before the final determination of compensation, provided it makes an offer and pays an initial sum, with any differences being settled by the court. However, failure to pay compensation within a reasonable time would violate the obligations imposed by law and by the *Human Rights Act 1998,*[1] which has incorporated into domestic law the provisions of the ECHR, including the right to property implicit in Art.1, Protocol 1[2] . In the light of the ECHR, the UK courts oversee that expropriations respect "*fair balance*" - for example, an expropriation without any compensation would be considered unlawful and contrary to human rights. Therefore, although the procedures are different, in principle the UK adheres to the same requirements: *genuine public purpose, clear legal authority and adequate compensation.*

4. The Republic of Moldova. The Republic of Moldova, with a legal system influenced by the continental European tradition and in particular by the Romanian one, has integrated the fundamental principles of expropriation into its post-independence legislation from an early stage. At constitutional level, Article 46 para. (2) of the Constitution states: *"No one may be expropriated except for a cause of public utility, established according to law, with just and prior compensation*"[3] . This text, adopted in 1994, brings Moldova into line with French-Romanian standards and in fact corresponds to the model laid down in the "*Declaration of 1789"* and the "*Constitution of Romania (Art. 44 para. 3)*". In order to implement these principles, Moldova has adopted " *Law No. 488-XIV of 08.07.1999 on expropriation for reasons*

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[1] Human Rights Act 1998 https://www.legislation.gov.uk/ukpga/1998/42/contents

[2] h ttps://researchbriefings.parliament.uk/

[3] Constitution of the Republic of Moldova No 1 of 29-07-1994, Published : 29-03-2016 in Official Gazette No 78 art. **140** https://www.legis.md/cautare/getResults?doc_id=111918&lang=ro

of public utility "[1] . This law (similar to a large extent to the Romanian Law no. 33/1994 at that time) defines expropriation as *"the forced transfer of property and patrimonial rights from private to public ownership, for the realization of public utility works of national or local interest, under the conditions of the law, with just and prior compensation".*[2] The law expressly lists what can be the object of expropriation in the national or local interest - mainly immovable property (land, buildings) and certain special categories of property (e.g. inventions of importance for national security, natural resources in danger of extinction, etc.), reflecting both European influence and local particularities. The procedure foreseen by Moldovan law consists of several steps: 1. *Declaration of public utility* - this is done by Government decision for works of national interest or by decision of the local public authority for works of local interest, which identifies the real estate to be expropriated; *2. Notification and possible negotiation* - the owners are informed about the intention of expropriation, a voluntary transaction may ***be*** proposed; ***3****. Application for expropriation in court* - if no amicable agreement is reached, the expropriator (the state, represented by the authorized body) applies to the court for expropriation. The court will verify the fulfillment of the legal conditions (including the existence of a public utility declared under the law) and, if it deems them to be met, will issue an expropriation judgment, ordering the transfer of the property to state ownership and ordering the payment of the compensation established. The law requires that compensation must be "just and prior", which means that the court must set a fair amount (usually based on the market value, as determined by expert appraisal) and that it must be offered to the owner before or at the latest

[1] Law No. 488-XIV of 08.07.1999 on expropriation for public utility reasons Published : 20-04-2000 in the State Gazette No. 42-44 art. 311 amended LP59 of 20.03.25, MO154-156/27.03.25 art.173; in force 01.04.25 https://www.legis.md/cautare/getResults?doc_id=147849&lang=ro#

[2] Ibid

at the time of transfer of ownership (Hernández-Alemán, Cruz-Pérez, & Santamarta, 2022).

If immediate possession is necessary (e.g. in cases of emergency or national security), the law provides for the possibility of temporary possession or requisition, but subject to compensation. A detail worth mentioning: recently, in order to facilitate major infrastructure projects , the aim has been to *speed up expropriation procedures* - legislative amendments have been initiated to shorten time limits and simplify formalities[1] . For example, the updated Moldovan legislation exempts expropriation compensation from taxation (in order not to diminish the compensation received by the owner)[2] , in line with the practices of some countries that treat compensation as tax neutral. Overall, the regime in the Republic of Moldova is in line with the Franco-Romanian model: there is a control of public utility by prior administrative act, court intervention to validate expropriation and determine compensation, and the constitutional guarantee of compensation before actual deprivation. As practical challenges, Moldova has sometimes faced difficulties in implementation - for example, contested property valuations, protracted processes for determining compensation or budgetary delays in paying compensation - which require attention to ensure the effectiveness of the legal principles set out.

1.5. Legislative and enforcement similarities and differences.

Comparative analysis of the four legal systems (France, Germany, the United Kingdom and the Republic of Moldova) reveals a common

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[1] Informative Note to the draft law on amending some normative acts (speeding up expropriation procedures) https://justice.gov.md/sites/default/files/document/attachments/2_nota_informativa_proiect_lege_modificare_lege_expropriere.pdf

[2] People whose property will be expropriated will be exempt from paying income tax on the compensation received https://www.justice.gov.md/ro/content/persoanele-ale-caror-bunuri-vor-fi-expropriate-vor-fi-scutite-de-la-plata-impozitului-pe#:~:text=Persoanele%2C%20ale%20c%C4%83ror%20bunuri%20vor,expropriate%20nu%20vor%20fi%20impozitate

core of principles, but also a number of notable differences in the way expropriation is legislated and enforced.

Similarities.

– all jurisdictions require the existence of a *public purpose* as the basis for expropriation. Whether called public necessity, public good or public interest, the teleological criterion is paramount (Golden, Szabó, & Erne, 2025). No system allows expropriation purely arbitrary or for the private benefit of others. This convergence is due to both mutual historical influence (the French Declaration of 1789 having echoes in modern constitutions[1] , including that of Moldova[2]) and international obligations (the ECHR requires legitimacy of purpose).

– ***Compensation to the expropriated owner*** is an invariable element in all systems, albeit with procedural nuances. The idea of fair compensation for loss has become a general European standard[3] . Even in the absence of an express constitutional provision (the case of the UK), legal practice and human rights imperatives have led authorities to provide fair compensation, otherwise expropriation would be unconstitutional (in countries with written constitutions) or incompatible with the rule of law.

The principle of legality and judicial review is also common. Everywhere, expropriation is carried out on the basis of the law and under the supervision of a court of law or a judicial body (either for validation or at least for the calculation of compensation). This ensures that owners have access to an appeal and an independent assessment of their case, as due process standards require. (Hernández-Alemán, Cruz-Pérez, & Santamarta, 2022, p.194)

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[1] T. Stahi, The evolution of the concept of expropriation for reasons of public utility and the regulation of expropriation in comparative law https://ibn.idsi.md/ru/vizualizare_articol/147463/gscholar

[2] Constitution of the Republic of Moldova No 1 of 29-07-1994, Published : 29-03-2016 in Official Gazette No 78 art. 140 https://www.legis.md/cautare/getResults?doc_id=111918&lang=ro

[3] Basic Law of the Federal Republic of Germany https://constitutii.wordpress.com/

– Another common element is the attempt to *avoid forced expropriation* if possible. In all four systems there is either a legal obligation or common practice that the authority first tries voluntary acquisition or a negotiated solution. Only in the absence of agreement is expropriation resorted to, reflecting the last resort nature of this measure.

Legislative and enforcement differences.

– ***constitutional vs. customary framework*.** Whereas France, Germany and the Republic of Moldova (similarly Romania) enshrine the conditions of expropriation in the Constitution, the UK relies on ordinary law and common law principles, supplemented by obligations under the ECHR. This does not mean less protection in the UK, but formally there is a difference: there is no supreme domestic text guaranteeing compensation, for example, but in practice the same result is achieved through legislation and case law.

– ***the "prior" aspect of compensation*.** Continental jurisdictions tend to require compensation *prior to* (or concurrent with) the transfer of ownership - e.g. France and Moldova explicitly require prior character. Germany requires a law providing for compensation, but does not specify textually that it must be paid in advance, although practice and the principle of fair balance imply that it should not be unduly delayed. In the UK, payment is often post-possession (especially when the amount is challenged in court), but there is an obligation to provide a sum as soon as title passes and to pay interest, otherwise the authority risks sanctions and the "*Art.1 Prot.1 ECHR*". The difference therefore lies in the timing of the set-off: the French/Moldovan model favors a set-off before the seizure of the property, whereas the Anglo-Saxon model accepts a somewhat *ex post* set-off, provided that the right to set-off is secured.

– ***administrative vs. judicial procedure*.** In France, the initial emphasis is on an administrative procedure, followed by the intervention of a specialized judge for compensation only. In Germany, the administrative order of expropriation can be challenged in court, but no trial is required to issue the order. In Moldova, on the contrary, a court judgment is required to finalize the expropriation if there is no amicable agreement - the court plays a central role, as in Romania. In the United

Kingdom, the procedure is administrative (order confirmed by the Minister), with a possible subsequent appeal to the court only on the compensation side. These variants show differences in institutional design: civil law countries sometimes involve the courts more in approval, while common law countries separate the role - the administration decides on necessity, the court only remedies possible abuses.

– ***scope of expropriation.*** Comparative laws differ on what can be expropriated and for what precise purposes. Moldova (and Romania) have detailed lists in the expropriation law of works considered of public utility (roads, energy networks, defense works, etc.) and the categories of property that can be expropriated. France takes a more general approach - any project declared to be in the public interest can justify expropriation, there is no exhaustive list, but case law has developed criteria. Germany similarly leaves the definition quite broad ("*public good*"), but special laws concretize it. In the UK, '*public benefit*' is a flexible concept; it has ranged from major infrastructure to urban regeneration projects, neighborhood regeneration - virtually any '*overriding public interest*' can be accepted, which has given a wide margin to authorities, tempered by government policy (guidelines requiring justification of the public case). Thus, we can speak of a difference between an enumerative (Eastern Europe in particular) and a principled (Western Europe) vision in defining public utility.

– ***calculation of compensation and items included.*** All countries give market value as a benchmark, but the UK stands out by consistently including additional costs (relocation costs, inconvenience bonus, etc.), formalized by law[1] . France and Germany sometimes provide such additional amounts by case law (interest, possibly damages for lost benefit between expropriation and payment). Moldova (and Romania)

[1]Compulsory purchase in England and Wales https://en.wikipedia.org/wiki/Compulsory_purchase_in_England_and_Wales#:~:text=Today%2C%20the%20Land%20Compensation%20Act,Compensation%20is%20often%20also

have a simpler model, focused on the value of the asset; for example, there is no express provision for compensation for the "ordeal" of relocation or loss of clientele of a business - although such damages can be claimed separately in court, they are not automatically included. This highlights a difference in the comprehensiveness of the concept of full compensation.

– ***the length and efficiency of proceedings*.** Although difficult to quantify here in detail, it is known that French and Romanian/Moldovan procedures can be quite lengthy, due to formalism (public inquiries, procedural deadlines, possibly multiple appeals). Germany has a reputation for a faster procedure, because after the administrative order, if the owner does not contest promptly, the state can proceed. The UK, although the administrative procedure can be lengthy (especially with public consultation and possibly public inquiry), has mechanisms to speed up for priority projects (e.g. special orders of Parliament for large projects such as HS2 - the high speed rail). Moldova has also tried to speed up its legislative procedures recently[1] . However, it should be emphasized that increased speed should not prejudice the rights of owners; it is a different balancing exercise managed by each state.

In conclusion, *convergences* dominate over differences in expropriation: all the countries analyzed adhere to a common set of legal requirements (publicity, compensation, judicial review) and purpose (public utility). *The differences* lie mainly in the *mode of institutional organization and legal techniques*: constitutional codification vs. ordinary legislation, judicial vs. administrative procedure, details on the assessment of compensation and the management of particular situations. These differences are influenced by the legal culture (civil law vs. common law), historical experiences (France having the revolution that

[1] Informative Note to the draft law on amending some normative acts (speeding up expropriation procedures) chrome-extension://efaidnbmnbmnnnibpcajpcglglclefindmkaj/https://justice.gov.md/sites/default/files/document/attachments/2_nota_informativa_proiect_lege_modificare_lege_expropriere.pdf

sacralized property, UK having an evolutionary continuity) and current priorities (e.g. transition countries like Moldova emphasize alignment with established models and avoidance of abuses that existed in the previous Soviet period).

Conclusions

To summarize the conclusions, the regulation of expropriation in European Union law and in the legislations of the Member States examined is based on a common set of fundamental principles - legality, the existence of a legitimate public purpose, proportionality in achieving the purpose and the obligation of fair compensation to the owner. This essential core is firmly established both by high-level written rules (constitutions, EU Charter, international treaties) and by the converging case law of the European (CJEU and ECHR) and national courts. This ensures a uniform basic protection of property rights throughout Europe, while expropriation remains a public policy instrument available to States, but subject to democratic guarantees and the rule of law.

The comparative analysis showed that the Republic of Moldova, through its Constitution and its special law on expropriation, has aligned its regulatory framework with these European standards. The principles on paper are virtually identical to those in France or Germany, reflecting a de jure harmonization already largely achieved. However, de facto harmonization, in day-to-day application, still requires further work. Good practices can be drawn from the experience of Western countries which could be adopted or strengthened by Moldovan legislation and administration:

1. The Moldovan legislation could benefit from more precise guidelines (possibly at regulatory level) on the assessment of public need, in order to avoid formal declarations of public utility without a solid rationale. France provides a useful example where public utility is subject to prior investigation and a proportionality test. Introducing similar (though not as elaborate) consultative procedures could increase the legitimacy of expropriation decisions and reduce subsequent challenges.

2. To truly ensure *"just compensation"*, Moldova could establish standard assessment methodologies, neutral expert panels or guidelines on the factors to be taken into account (following the German or British model). It could also consider the explicit inclusion of additional compensation where appropriate - e.g. compensation for relocation, loss of business clientele, notarial costs. These elements, if not expressly provided for, may leave landlords partially dissatisfied and prone to litigation.

3. Drawing inspiration from recent reforms in other countries, shorter deadlines for procedural steps could be put in place without removing safeguards. For example, the UK imposes a 3-month deadline for the authorities to pay the compensation set, otherwise interest and possible legal action will follow. Establishing clear time limits in Moldovan law for each phase (declaration of public interest, referral to court, delivery of judgment, payment of compensation) would increase procedural discipline. At the same time, the creation of a specialized panel of judges or panels dedicated to expropriations (on the model of the French expropriation judge) could speed up the resolution of cases and standardize practice.

4. Expropriation procedures, being intrusive, require transparency. Measures such as online publication of public utility decisions, detailed information to each owner about their rights (e.g. an expropriation guide, similar to the *"compulsory purchase and compensation"* guides offered to citizens in the UK[1]), could prevent conflicts by clarifying expectations and obligations.

5. As the Republic of Moldova moves further down the road of European integration, terminological and conceptual harmonization with relevant EU legislation would be useful. Although the EU does not

[1]Compulsory purchase and compensation: guide 4 - compensation to residential owners and occupiers https://www.gov.uk/guidance/compulsory-purchase-and-compensation-guide-4-compensation-to-residential-owners-and-occupiers#:~:text=Compulsory%20purchase%20powers%20can%20support,projects%20in%20the%20public%20interest

directly have an expropriation directive, there are sector-specific regulations (e.g. in the field of trans-European transport infrastructure) that impose compensation and consultation standards. By ensuring that national legislation does not conflict with these, Moldova facilitates its participation in European projects. At the same time, cooperation with Member States (exchange of experience, training for officials involved in expropriations, etc.) can help to align practices at a common level.

In the light of the above, we can conclude that expropriation remains an area where the fine balance between the public interest and individual rights needs to be constantly recalibrated. Europe offers a model of balance: private property is firmly protected, but does not become an insurmountable obstacle to the development of public projects designed to serve the common good. The solution lies in clear legislation, fair and swift enforcement, and generous and fair compensation to those affected - because, ultimately, the moral legitimacy of expropriation derives from the fair treatment of expropriated owners. The Republic of Moldova, sharing the traditions of European law, has the necessary foundation to guarantee this balance and, by following successful examples and uniform European jurisprudence, can ensure even greater convergence of its practice with that of EU Member States. In this way, expropriation truly becomes a legal tool of community progress, used responsibly, and not a source of inequity or protracted litigation.

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