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Protection of property rights under special legal regimes

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Abstract

In the scientific article, based on the analysis of scientific sources, the provisions of the current legislation and the practice of its application, with the help of general scientific and special methods of knowledge, the essence of property rights is revealed, and their characterization is carried out. It has been proven that the conceptual principles and provisions of the legislation, which should be relied upon when solving issues related to property rights, along with the norms of private and public law, are also contained in the provisions of international humanitarian law, which regulates the relevant legal relations in conditions of war. Attention is focused on the fact that in the event of a military conflict, the state is obliged to introduce appropriate legal mechanisms for compensation of the value of property, housing, land, in case of failure to ensure the possibility of returning to it or its destruction. It was concluded that it is necessary to develop and introduce a comprehensive law that will take into account all aspects of legal relations regarding ownership, use and disposal of property by individuals and legal entities.

Keywords: protection of rights; private property; real estate; territorial relations; special legal regimes.

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Protección de los derechos de propiedad bajo regímenes jurídicos especiales

Resumen

En el artículo científico, con base en el análisis de las fuentes científicas, las disposiciones de la legislación vigente y la práctica de su aplicación, con la ayuda de métodos científicos generales y especiales de conocimiento, se revela la esencia de los derechos de propiedad y se caracteriza su llevado a cabo. Se ha comprobado que los principios conceptuales y las disposiciones de la legislación, en las que se debe confiar para resolver cuestiones relacionadas con los derechos de propiedad, junto con las normas de derecho público y privado, también están contenidas en las disposiciones del derecho internacional humanitario, que regula las relaciones jurídicas pertinentes en condiciones de guerra. Se centra la atención en el hecho de que, en caso de conflicto militar, el Estado está obligado a introducir mecanismos legales apropiados para la compensación del valor de la propiedad, la vivienda, la tierra, en caso de que no se garantice la posibilidad de regresar a ella o se destruya. Se concluyó que es necesario desarrollar una ley integral que tenga en cuenta todos los aspectos de las relaciones jurídicas en cuanto a la propiedad, uso y disposición de bienes por parte de personas físicas y jurídicas.

Palabras clave: protección de derechos; propiedad privada; bienes inmuebles; relaciones territoriales; regímenes jurídicos especiales.

Introduction

In today's conditions in Ukraine, the constitutional provision defined in Art. 3 that the establishment and provision of human rights and freedoms is the main duty of the state (Constitution of Ukraine, 1996).

The practical value of any individual right is the transformation of the possibilities defined in the legal norms into reality. Property law is one of the most important institutions for any legal system, legal regulation of property relations determines the content and direction of legal regulation of social relations as a whole. Such regulation is largely determined by the properties and social importance of the property itself.

Important and relevant for Ukraine in today's conditions is the issue of the protection of rights in the field of land legal relations, thanks to which it is possible to observe the real level of effectiveness of land legal norms and legislative guarantees for the protection of the subjective rights and legitimate interests of land owners and land users, since any legal relations constitute mechanism of action of legal norms.

The emergence of disputed land legal relations is primarily related to the violation of the subject's legal rights by other persons. Therefore, persons who have had their rights violated have all the legal grounds and opportunities to protect them in the manner provided for by the current legislation of Ukraine (OPENING OF THE LAND MARKET: WHAT ARE THE GUARANTEES OF THE PROTECTION OF LAND RIGHTS?).

Among the threats to the realization of property rights in Ukraine in the conditions of the war period should be attributed: looting; high risks due to distribution of weapons to civilians, damage to property owners; using the situation for illegal actions regarding the re-registration of property; failure to fulfill the terms of the contract due to force majeure and much more.

All of these circumstances encourage not only scientific research, but also the development of real mechanisms for solving these and other issues related to the realization of property rights by individuals and legal entities.

1. Methodology of the study

In the process of analyzing the problems included in the subject of the scientific article, in accordance with the purpose and tasks of the research, taking into account its object and subject, general scientific and special methods of scientific knowledge were used. The most important general scientific method is the dialectical method of cognition, which made it possible to trace the peculiarities of normative legal regulation of property right relations in Ukraine and the practice of its implementation.

Using the method of systemic structural analysis, individual ways of protecting property rights were studied as a component of the general system of ways of protecting property rights, structural and substantive features of protective property rights were analyzed. Comparatively, the legal method was used to investigate different approaches to the characterization and classification of ways to protect property rights from infringement. The logico-legal method made it possible to identify the shortcomings of the current legislation and its drafts and justify the need to improve its prescriptions.

The results of the dogmatic (formally logical) analysis were used in highlighting the content load of concepts and terms used by the legislator in normative acts, as well as in the formulation of conclusions and proposals taking into account the requirements for the consistency, reasonableness and consistency of judgments within the framework of general theoretical and civil law constructions using conceptual apparatus of relevant branches of science.

2. Analysis of recent research

Within the framework of civil science, the issues of the realization of the right to property were highlighted in the works of many modern works (Dzera *et al.*, 2004; Zadorozhny, 1996; Shevchenko, 1996; Baranov *et al.*, 2020; Gurlington *et al.*, 2011), a thorough analysis of which makes it possible to find out and assess the state of the researched problem, to outline and investigate the issues that have arisen at the current stage of reforming the theory of civil law, to propose ways to solve them.

At the same time, the study of the latest literature gives reason to conclude that there is an insufficient number of studies on the content and limits of the implementation of property rights under martial law, and the existing scientific works are either devoted to a wider range of problems, or highlight other aspects of property relations.

In addition, part of the works, the subject of which were the issues of property rights, to some extent lost their relevance due to changes in the legislation. Thus, the issue of the realization of property rights in the conditions of emergency legal regimes, on the example of Ukraine, is undoubtedly of scientific and practical interest.

The purpose of the article is to determine the content and modern normative and legal mechanisms for the regulation of the protection of property rights in the conditions of martial law in Ukraine.

3. Results and discussion

3.1. The content of the right of ownership and the limits of its implementation

Regardless of the form of government and the dominant political ideology, the Constitution of every democratic state contains provisions that to some extent recognize the fundamental principles of the exercise of the right to property in general and such a form as the right to private property, as well as their protection. In the Constitution of Ukraine, the issue of property is devoted to art. Art. 13, 14, 41, 85, 92, 116, 142 and 143 (Constitution Of Ukraine, 1996). Civil legislation should comprehensively regulate relations of all forms of ownership.

There is an opinion among scientists that the content of the right of ownership is completely exhausted by the powers of the owner to possess, use and dispose of the property. In particular, Y.M. Shevchenko draws attention to the fact that “the disclosure of the content of the right of ownership does not end with the determination of the powers that belong to the owner. It does not constitute the essence of property rights” (Shevchenko, 1996: 18).

The essence of the right of ownership, according to the correct opinion of the scientist, lies in the state of appropriation, the attitude of a person to a thing as his own. Only then the powers of possession, use and disposal acquire a socially significant expression, reveal what position the owner occupies among other persons in relation to the thing. Only the owner of the thing can transfer such powers to another person without losing the attachment to the property (Shevchenko, 1996). These points are decisive for identifying the legal and, therefore, the social nature of property rights in every society.

Thus, the right of ownership should be understood as a system of legal norms that regulate relations regarding the possession, use and disposal of the property of its owner.

It is logical to assume that if Ukraine is on the path to creating the conditions necessary for the next formation of a modern model of a market-type economy, then understanding the modern content of private property law and trends in its evolution becomes an auxiliary element in reforming the property system as a whole. Of course, private property can be considered as a material, property object appropriated (by law and in fact) by an individual (not society, not the state).

If such appropriation, ownership extends to the objects of one's own work, to a share of income from collective production, then private property becomes synonymous with the property of a citizen, an individual. In this case, its origin and functioning are natural and socially just. Therefore, private property by its nature is such that it cannot belong to everyone, it is also individualized depending on the person to whom the object of law belongs. Private property has been opposed to public, primarily state, property since ancient times. Despite all its shortcomings, it plays one of the key roles in human progress.

At the current stage of the development of legal relations, the situation is changing quite quickly, the concept of ownership is changing, developing, and today the scope of the institution of private property law in Ukraine is approaching the standards used in the market economy of the most developed countries.

In general, in civil law science, it is customary to distinguish the right of ownership in an objective and subjective sense (Dzera *et al.*, 2004). So, in an objective sense, the right of private property of citizens is a set of legal norms that establish and protect the ownership of property for consumer and financial and production purposes by citizens and ensure that the owners-citizens exercise the right to own, use and dispose of this property at their discretion, to use it for any purpose, unless otherwise provided by law.

The right of private property in the subjective sense is the right provided and guaranteed by law of the owner-citizen to possess, use and dispose of the property belonging to him at his discretion and for any purpose, unless otherwise provided by law (Dzera *et al.*, 2004).

Systemic transformational processes in Ukraine, caused in particular by the state of war in Ukraine, make it necessary to fundamentally reform the legislative framework and adapt it to today's conditions.

If the Law of Ukraine «On Property» defined ownership as «law-regulated social relations regarding the ownership, use, and disposal of property» (On Property, Law of Ukraine, 1991), and this definition was more than once subjected to fair criticism for the efforts of the authors of the Law to give a universal interpretation of the concept of ownership in an objective and subjective sense, the current Civil Code of Ukraine operates on the principles of the primacy of private law and human rights, so that the right of ownership is defined as «the most complete right that a person has to property» (Civil Code Of Ukraine, 2003).

The content of the right of private property includes the rights to own, use and dispose of one's property. It should be noted that according to Art. 319 of the Civil Code of Ukraine “the owner has the right to take any actions regarding his property that do not contradict the law.” There is every reason to consider this interpretation of the right of private property successful under the given conditions and at the given stage of development of the Ukrainian legal system (Civil Code Of Ukraine, 2003).

Therefore, the content of the right of private property consists of the following powers: possession, use and disposal of a thing (property) by the owner. These powers are universal, as they cover all the actions that the owner has the right to perform in relation to the property belonging to him, that is, they characterize the statics of the right of ownership, and not its dynamics.

The transformational processes in the economy of Ukraine, the redistribution of property, which continues, spreading and gradually covering more and more significant objects, drawing into its orbit an ever-growing circle of subjects, require a clear regulation of legal relations of property, a clear regulatory definition of concepts and categories that can be attributed to the institution of private property rights.

Sharing in general the opinion of H. Zadorozhny that at the moment the legal regime of property in its various forms and types is not sufficiently regulated by national legislation (Zadorozhny, 1996, p. 106), we can state that at present the categorical conceptual apparatus and scientific toolkit for fully ensuring the regulation of property rights relations.

The powers of possession, use and disposal defined by the Civil Code of Ukraine only legally establish the right of the owner to perform certain actions, and therefore they should be distinguished from the specific actions by means of which they are realized.

Taking this into account, the difference between the content of the subjective right and its implementation lies primarily in the fact that the first includes only the possible behavior of the authorized person, while the implementation of the right is the content of real, concrete actions related to the transformation of this possibility into reality.

Part three of Art. 319 of the Civil Code guarantees all owners equal conditions for the realization of their rights, which is one of the manifestations of the principle of equality of all subjects of property rights before the law (Civil Code of Ukraine, 2003). It is the duty of the state to provide all subjects with equal conditions for the realization of the right to property, which consists in the fact that no subject can be granted benefits, preferences or create more favorable conditions compared to others.

An important criterion for delineating the boundaries of the right of ownership is the obligation, formulated briefly - ownership obliges (Part 4 of Article 319 of the Civil Code of Ukraine) (Civil Code of Ukraine, 2003). The essence of this principle is that the realization of a separate private interest in order to prevent an arbitrary and unproductive attitude of the owner to the property belonging to him must be subordinated to the general public good, and all forms of ownership must be oriented, including, to the satisfaction of public needs.

Therefore, the right of ownership combines for the owner the pleasant benefit of owning property with an aggravating obligation - careful treatment of property, payment of taxes, fees, other mandatory payments that ensure the development of the state and society.

Part five of Art. 319 of the Civil Code prohibits the owner from using the right of ownership to the detriment of the rights, freedoms and dignity of citizens, public interests, worsening the ecological situation and natural qualities of the land. Therefore, the observance of the rights and legally protected interests of other persons - citizens, legal entities and the state - is the next criterion for determining the limits of subjective property rights, which corresponds to Part 2 of Art. 13 of the Civil Code of Ukraine (Civil Code of Ukraine, 2003).

The presence of the specified provision is dictated by the social interdependence of subjective rights, therefore the process of realizing property opportunities should take place taking into account the fact that other persons are the bearers of similar or similar rights, and therefore, when using the property, the owner should not cause material or moral harm to others, their rights, freedoms, dignity, life and health.

The fundamental basis of the need to apply legal restrictions is the general norms of international law - Part 2 of Art. 29 of the 1948 UN General Declaration Of Human Rights (General Declaration Of Human Rights, 1948), Art. 4 of the UN “International Covenant on Economic, Social and Cultural Rights” of 1966 (International Covenant On Economic, Social And Cultural Rights, 1966), “Convention for the Protection of Human Rights and Fundamental Freedoms” of 1950 (Convention On The Protection Of Human Rights And Fundamental Freedoms Human Liberty, 1950), according to which the state can impose only such restrictions on rights as are determined by law, and only insofar as this is compatible with their nature, solely for the purpose of promoting the general welfare in a democratic society.

In order to comply with the obligations accepted before the international community, the prescriptions of the above documents were implemented into the domestic legislation - Art. 64 of the Constitution of Ukraine allows restriction of basic rights and freedoms only in cases regulated by it, for example, in conditions of war or emergency (Constitution of Ukraine, 1994).

From the extended interpretation of the general principles of limitation of the right (Articles 13 and 41 of the Constitution of Ukraine, Part 7 of Article 319, Part 1 and Part 2 of Article 321 of the Civil Code of Ukraine) (Constitution of Ukraine, 1994; Civil Code of Ukraine, 2003) it follows that their foundation is based on the principle of combining private and public interests, with the latter clearly taking precedence.

The basis of the rights-limiting mechanism is the need to ensure national security, maintain public order, protect health, morals of the population, and protect the rights and legitimate interests of society. However, the public interest is not considered better than a private one, therefore, economically effective protection mechanisms have been introduced to protect the rights of the owner when using his property for public benefit. They are applied in the case of expropriation of a plot of land, a house, things of special cultural and historical value, or any other property for a socially useful purpose.

3.2. Procedural procedure for forced alienation and confiscation of property under martial law in Ukraine

Article 41 of the Constitution of Ukraine defines that «no one can be unlawfully deprived of the right to property. The right to private property is inviolable. Forced expropriation of objects of private property rights may be applied only as an exception for reasons of public necessity, on the basis and in the manner established by law, and on the condition of prior and full reimbursement of their value. Forced expropriation of such objects with subsequent full compensation of their value is allowed only in the conditions of war or emergency» (Constitution Of Ukraine, 1994).

As a general rule, ownership is exercised freely, but under certain conditions, the owner's activities may be limited or terminated, or he may be obliged to allow other persons to use his property, but only in the cases and in the manner established by law.

In particular, according to the Law of Ukraine «On the Legal Regime of Martial Law», martial law is a special legal regime introduced in Ukraine or in some of its localities in the event of armed aggression or threat of attack, danger to the state independence of Ukraine, its territorial integrity, and provides for the provision of appropriate to state authorities, military command, military administrations and local self-government bodies, the powers necessary to avert the threat, repulse armed aggression and ensure national security, eliminate the threat of danger to the state independence of Ukraine, its territorial integrity, as well as the temporary, threat-induced, restriction of constitutional rights and human and citizen freedoms and the rights and legal interests of legal entities with an indication of the period of validity of these restrictions (On The Legal Regime Of Martial State, Law of Ukraine, 2015).

During martial law, the Ukrainian legislation provides for the possibility of: 1) forced alienation of property with preliminary full compensation of its value or with subsequent full compensation of its value; 2) confiscation of property without reimbursement of its value.

At the same time, it is worth distinguishing between the concepts of alienation and seizure of property. Thus, according to the Law of Ukraine «On Transfer, Forced Expropriation or Expropriation of Property in the Conditions of the Legal Regime of War or State of Emergency»: forced expropriation of property is the deprivation of the owner of the right of ownership of individually determined property that is in private or communal ownership and which is transferred to property of the state for use under the conditions of the legal regime of war or state of emergency, subject to the previous or subsequent full reimbursement of its value; confiscation of property – deprivation of state enterprises, state economic associations of the right of economic management or operational management of individually determined state property with the aim of transferring it for the needs of the state under the conditions of the legal regime of war or state of emergency (On The Transfer, Forced Alienation Or Seizure Of Property In The Conditions Of The Legal Regime Of Martial Or State Of Emergency, 2012).

Also, it should be noted that forced alienation or confiscation of property in connection with the introduction and implementation of measures of the legal regime of martial law is carried out by the decision of the military command, agreed, respectively, with the Council of Ministers of the Autonomous Republic of Crimea, regional, district, Kyiv or Sevastopol city state administration or by the executive body of the relevant local

council (On The Transfer, Forced Alienation Or Seizure Of Property In The Conditions Of The Legal Regime Of Martial Or State Of Emergency, 2012).

Compensation for forcibly expropriated property in the conditions of the legal regime of martial law is carried out: by the military command or the body that made the decision on such expropriation, at the expense of the state budget before the signing of the act by preliminary full reimbursement of its cost; during five subsequent budget periods, the legal regime of emergency - during one subsequent budget period after the cancellation of the legal regime of martial law or state of emergency at the expense of the state budget, with subsequent full reimbursement of its cost.

Part 2 of Art. 353 of the Civil Code of Ukraine establishes that in conditions of war or a state of emergency, property can be forcibly expropriated from the owner with subsequent full compensation of its value, and in the event of the return of the property to a person, the right to ownership of this property is restored, and at the same time, he undertakes to return the sum of money or a thing received by it in connection with the requisition, less a reasonable fee for the use of this property (Civil Code Of Ukraine, 2003).

3.3. Normative legal regulation of property rights in Ukraine under martial law

The military aggression of the Russian Federation against Ukraine, which began on February 24, 2022, opened a new angle of civil and legal problems faced by the state of Ukraine in general and each individual citizen. The reasons for the introduction of martial law are related to the violation of individual rights, including the restriction of property rights (destruction of property, damage, depreciation, unavailability of property for use, having to bear additional expenses for emigration, including internal, for housing rent etc).

This, in turn, leads to the emergence of new civil legal relations, because property suffers, individuals or legal entities cannot meet their obligations, etc. The provisions of the Central Committee of Ukraine provide that the rights and freedoms of a person are an integral part of his existence, and therefore require appropriate protection in case of encroachment on them.

The conceptual principles and provisions of the legislation, which should be relied upon when solving the above-mentioned issues, are contained not only in the norms of private, but also of public law, and in some places also in the norms of humanitarian law, since in the period of war, humanitarian law applies alongside «peaceful» law (as norms special and general).

It should be noted that the Civil Code of Ukraine does not contain the specifics of restitution under martial law, which may raise questions about this method of protection. Draft Law No. 5177 (Draft Law No. 5177,

2022) does not resolve this issue. In particular, it is indisputable that the implementation of this law will require spending from the state budget of Ukraine.

In our opinion, the complex of these costs should include not only funds intended for compensation to owners whose property rights have been violated, but also funds for maintaining commissions, registers, property valuations, etc. From the above, we can see the imperfection of the provisions relating to restitution as a result of armed aggression.

At present, the prospects for restoring the violated rights of owners who suffered losses from military operations look rather bleak. There is a situation when the methods of protection in peaceful life, vindication and negative lawsuits, etc. have given way to other problems that are more relevant now and need to be discussed (Zheltukhin, 2002).

We believe that in the context of the subject of the impact on private property rights of circumstances related to martial law, in order to study the specifics of the protection of this right, attention should be paid to such aspects as: types of violations of property rights observed during the period of military operations; the grounds for protecting the right of ownership and liability in case of its violation; methods of protection and analysis of draft laws; conditions of liability, the amount of compensation and the procedure for determining it; sources of compensation; requisition of property; recognition of the fact of a person's death (many issues depend on this, including property rights, inheritance rights, etc.).

No less debatable is the issue of compensation for damage to owners in the post-war period, when calculating the amount of which damage to the life and health of natural persons in connection with destruction, damage, loss by other means, in particular, kidnapping, looting, forced displacement within the borders of Ukraine, should be taken into account or abroad.

Along with the above-mentioned direct losses, it should also be noted the moral damage caused to individuals by the various consequences of armed aggression, as well as the indirect losses of business entities caused by the war, for lost profits. These are other losses from downtime, a significant drop in the value of surviving, but significantly depreciated property assets (Zheltukhin, 2022).

In this case, the answer is obvious, because it is the aggressor state that must bear all the negative consequences of the war it started, including compensation for property and non-property losses to individuals and legal entities. Actually, this is the official position of the authorities. In particular, Part 4 of Art. 2 of the Law of Ukraine «On Peculiarities of State Policy and Ensuring State Sovereignty of Ukraine in the Temporarily Occupied Territories of Donetsk and Luhansk Oblasts» imposes responsibility for material or non-material damage caused as a result of military aggression against the Russian Federation.

The provisions of the latest legislative acts should be formulated in the same vein, in particular the Law of Ukraine «On the Organization of Labor Relations in the Conditions of Martial Law», the Law of Ukraine «On the Basic Principles of Forcible Expropriation in Ukraine of Objects of Property Rights of the Russian Federation and its Residents», the Civil Code of Ukraine, etc.

It should be noted that there are many significant gaps in the draft law on compensation for damage and destruction of certain categories of real estate objects as a result of hostilities, acts of terrorism, and sabotage caused by the military aggression of the Russian Federation (Draft Law No. 7198, 2022). The said draft law is aimed exclusively at the settlement of issues related to the compensation of the value of destroyed or damaged property, which is too narrowly interpreted by the draft. The document does not refer to damages as such. That is, the terms used in the draft law refer to «compensation».

Considering all the norms of the draft law as a whole, it can be considered only as part of a certain mechanism of compensation for damage caused by the destruction or damage of property as a result of the armed aggression of the Russian Federation. The document has neither the direct establishment of the guilty person, nor the direct establishment of any composition of the offense, the determination of a specific guilty person, nor any connection with the judicial mechanism of protection.

The negative points of the draft law include the fact that it deals exclusively with immovable property, priority is given to compensation for lost or destroyed real estate of the housing stock. Also in Art. 2 of the draft law states that only natural persons are directly entitled to receive compensation. On the other hand, neither legal entities nor natural persons – entrepreneurs are mentioned as recipients of compensation.

At the same time, in separate articles of the document, the executive bodies of village, settlement, and city councils, which are the customers of financing the construction of new facilities instead of those that were destroyed, are still recognized as recipients of compensation.

We also consider the provision of this draft law to be quite specific, which refers to the termination of ownership of destroyed or damaged property. In particular, it is noted that the state registration of the relevant fact of termination of ownership of the real estate object will be carried out only after receiving compensation.

At the same time, no terms have been defined when exactly this will happen after the termination, and why is it tied to compensation, if in this situation the fact of destruction of property is already clearly stated as the basis? In addition, if the procedure of the termination of the right of ownership will be made after receiving compensation, the deadline for applying to the state registrar and other facts are equally unclear.

The shortcomings of the draft law should also include: avoidance of such a method of protecting property rights as restitution; the absence of any provision regarding compensation that can be settled under insurance contracts; limitation of the limitation period of three years is not justified by anything.

The above shows that the specified draft law requires a significant and comprehensive revision of the mechanisms for securing and restoring the violated ownership right to destroyed or damaged property.

We also consider it important for the realization of the right of ownership in Ukraine to regulate the issue of termination/restoration of the right of ownership, its dispute under the legislation of the aggressor state, in the territory where there was property of private individuals who de facto are not considered owners, but are legally considered to be them. There are also problems related to corruption risks, for example, transferring the issue of property rights protection to commissions as certain administrative entities, the creation of which in wartime conditions seems dangerous.

Legal mechanisms for the protection of lost, destroyed, destroyed property, including property located in uncontrolled territory, are the subject of discussions in scientific circles.

In recent years, land reform based on the principles of openness, deregulation and competition has been actively implemented in Ukraine. However, the wartime makes adjustments to all spheres of the country's life, and, therefore, the regulation of land relations also shifts to «wartime rails» (Hruba, 2022).

It should be noted that land ownership is a complex and multifaceted phenomenon, which is interpreted in both broad and narrow terms. In a broad interpretation, the right to own land involves a set of legal norms that establish the ownership of land to certain physical and legal entities, the state, determine the scope and content of the rights of land owners, as well as the methods and limits of the realization of such rights (Shemshuchenko, 1996); in the second, it is the right to own, use and manage land plots (Part 1 of Article 78 of the Land Code of Ukraine) (Land Code Of Ukraine, 2001).

All lands located within the territory of Ukraine constitute a single land fund of the country. Chapter VII (Land Code of Ukraine, 2001) is devoted to substantive management in the field of land use and protection in the Civil Code of Ukraine. Management of land resources (land fund) is also an important aspect of land relations, which determines the system of political, socio-economic, legal and administrative measures aimed at organizing the use of land.

The rules for regulating land relations in peacetime, when the procedures for granting land plots last for months, in the conditions of martial law prove their inability and unadaptability to new realities.

Solving many tasks of the functioning of the economy of Ukraine during the war period, ensuring man-made security, protecting the internally displaced population, etc. directly depend on the speed of making administrative decisions regarding the formation and provision of land plots for the appropriate purpose, carrying out land management and registration of land rights (Explanatory note to draft law No. 7289, n/d).

The issue of eliminating the negative consequences of hostilities for the transport infrastructure also requires an immediate solution. About 85% of Ukraine's foreign trade in peacetime passed through seaports, the activities of which were blocked at the beginning of the war, and the infrastructure of which is at risk of damage due to the attacks of the aggressor. Thus, there is an urgent need for the urgent development of new logistics routes that will allow meeting the transport needs of producers of agricultural products, metallurgical enterprises, enterprises of the fuel and energy sector and other sectors of the economy.

This requires, among other things, the ultimate simplification of procedures for granting land plots and permitting procedures in construction for the placement of new river ports (terminals), railway logistics centers (production and transshipment complexes) (Explanatory note to the draft law No. 7289, n/d).

During the period of martial law introduced in Ukraine, the legislation regulating land relations underwent repeated changes. The legislator has already managed to loosen certain restrictions introduced at the beginning of the martial law, and for certain legal relations caused or changed by the war - provided for new regulation.

In particular, the possibility of indemnifying the owners/users of land plots caused by the war is determined by the Resolution of the Cabinet of Ministers of Ukraine "On approval of the Procedure for determining the damage and losses caused to Ukraine as a result of the armed aggression of the Russian Federation" No. 326 dated 20.03.2022 (Resolution of the cabinet of ministers of ukraine No. 326, 2022).

The procedure provides for the possibility of determining damage and losses caused to Ukraine as a result of the armed aggression of the Russian Federation. In particular, the Order establishes the main indicators for assessing losses of the land fund, namely: actual costs for the reclamation of lands that were disturbed as a result of hostilities, construction, arrangement and maintenance of engineering and technical and fortification structures, fences, border signs, border crossings, communications for arrangement of the state border; damages caused to the owners and others.

Regional and Kyiv city state administrations (during the period of martial law – military administrations) will be responsible for determining damage and losses, which will be carried out on the basis of the methodology. The

relevant methodology must be approved by order of the Ministry of Agrarian Policy, in agreement with the Ministry of Reintegration of the Temporarily Occupied Territories of Ukraine, within six months from the date of entry into force of the Order (Resolution of the Cabinet of Ministers of Ukraine No. 326, 2022).

In general, the Verkhovna Rada of Ukraine adopted the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine Regarding the Peculiarities of Regulating Land Relations in Martial Law” (Project Law No. 7289, 2022). This draft law is designed in a special way to liberalize land relations, to adapt them to wartime conditions, and its purpose is to establish special rules for the ownership and use of land that will provide for the most urgent needs in wartime conditions. According to the authors, the draft law will contribute to speeding up management decision-making and solve a number of important issues for farmers, metallurgists, etc.

As we can see, the legislator systematically approached the settlement of land relations under martial law, foreseeing both many simplifications to ensure the functioning of the agrarian sector of the economy and the accelerated restoration of Ukraine’s infrastructure, as well as significant restrictions. Such restrictions serve the purpose of minimizing the number of abuses, the probability of which, in the absence of proper control, is greater in the conditions of martial law.

Summing up, we note that the number of adopted laws is not capable of regulating all the issues outlined by us in the scientific article, but one law is needed that will take into account all aspects of legal relations regarding property rights and determine an effective legal mechanism for regulating such relations.

It should be emphasized that the practice of the European Court of Human Rights contains many decisions according to which even if a certain state does not control part of its territories, it is not released from fulfilling its obligations under the Convention and its protocols. The right of a victim of an armed conflict to compensation for destroyed or damaged property stems from the protection of property rights.

That is, the private aspect means that the compensatory principle is involved, which means that not a part should be restored, but everything that was lost by a person. In the event of a military conflict, the state is obliged to implement appropriate legal mechanisms for compensation of the value of property, housing, land, in case of failure to ensure the possibility of returning to it or its destruction.

Conclusions

The following conclusions can be drawn on the basis of the conducted research.

The content of the right of private property consists of the following universal powers - possession, use and disposal of a thing (property) by the owner, which cover all actions that the owner has the right to perform in relation to the property belonging to him, that is, they characterize the statics of the right of ownership, and not its dynamics.

The basis of the rights-restrictive mechanism of ownership, use and disposal of a thing (property) is the need to ensure national security, maintain public order, health protection, morals of the population, protection of the rights and legitimate interests of society. At the same time, the public interest is not considered a priority over individual private interest, therefore, to protect the rights of the owner, economically effective protection mechanisms must be introduced when using his property for public benefit.

The conceptual principles and provisions of the legislation, which should be relied upon when solving issues related to property rights, are contained not only in the norms of private and public law, but also in the prescriptions of international humanitarian law, which regulates the relevant legal relations in conditions of war.

In the conditions of the extraordinary legal regime, generated by military actions on the territory of Ukraine, it is necessary to develop and introduce one comprehensive law that will take into account all aspects of legal relations regarding the ownership, use and disposal of property by individuals and legal entities, in particular, will determine effective legal mechanisms for compensation of the cost of property, housing, land, in case of failure to ensure the possibility of returning to it or its destruction.

The right of a person affected by an armed conflict to compensation for destroyed or damaged property stems from the protection of property rights, that is, the application of the compensatory principle, according to which all that was lost by the person must be restored, not a part. In the event of a military conflict, the state is obliged to implement appropriate legal mechanisms for compensation of the value of property, housing, land, in case of failure to ensure the possibility of returning to it or its destruction.

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