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АКТУАЛЬНІ ПИТАННЯ ЗАСТОСУВАННЯ ЦИВІЛЬНО-ПРАВОВИХ СПОСОБІВ ЗАХИСТУ ПРАВА ДЕРЖАВНОЇ ВЛАСНОСТІ В УМОВАХ КРИЗИ МІЖНАРОДНОГО ПУБЛІЧНОГО ПРАВА

Анотація. *Окупація півострову Крим та ведення військових дій на Сході України привели до глобальних порушень прав усіх категорій власників. Державна власність постраждала чи не найбільше, оскільки незаконно націоналізованими виявились цілісні майнові комплекси, підприємства, установи та організації. Вирішувати існуючий конфлікт між державами Україна та Російською Федерацією потрібно, звісно, публічно-правовим інструментарієм, проте фактична криза міжнародного публічного права, яку ми на сьогодні спостерігаємо, не дає можливості цього зробити. Основна мета – дослідити особливості застосування цивільно-правових способів захисту права державної власності в умовах кризи міжнародного публічного права, визначити проблеми, що супроводжують таке застосування, та намітити шляхи їх вирішення. При підготовці дослідження було використано загальнонаукові і спеціальні методи наукового пізнання, зокрема діалектичний, формально-логічний, порівняльно-правовий, системного аналізу тощо. В дослідженні вказується, що в процесі захисту державної власності наявне велике кола суб'єктів, які можуть бути до нього залучені. У питанні представлення прокурором інтересів держави у цій категорії справ встановлена неоднозначність судової практики. Також вказується на особливість представництва в суді інтересів держави в особі Кабінету Міністрів України та Національного банку України. Автор відзначає також актуальність питання підсудності спорів щодо майна, яке перебуває на території АР Крим. Дослідивши Закон України «Про забезпечення прав і свобод громадян та правовий режим на тимчасово окупованій території України» від 15.04.2014 р. та Конституцію Російської Федерації вказується на дуалістичність дії різних законів на одній території, що фактично унеможливлює виконати рішення суду, навіть якщо воно буде прийнято національним судом. Узагальненим автор робить висновок, що єдиною позицією всіх органів державної влади, що є суб'єктами управління державною власністю, має бути непогодження на компенсацію за націоналізоване майно від держави-агресора, адже повернути тоді його буде неможливо. Згода має бути дана лише на компенсацію за той дохід, який країна втратила в результаті неможливості використовувати свою власність. Уся національна та міжнародна судова практика має демонструвати таку волю українського народу.*

Ключові слова: *державна власність, захист прав, анексія території, націоналізація, цивільно-правові способи захисту прав.*

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CURRENT FEATURES OF THE APPLICATION OF CIVIL LAW METHODS FOR PROTECTION OF STATE PROPERTY RIGHTS UNDER THE CRISIS OF INTERNATIONAL PUBLIC LAW

Abstract. *The occupation of the Crimean peninsula and hostilities in eastern Ukraine have led to global violations of the rights of all categories of owners. State property has suffered the most, as entire property complexes, enterprises, institutions and organizations have been illegally nationalized. The main goal is to investigate the peculiarities of the application of civil law methods of state property rights protection in the crisis of public international law, to identify the problems that accompany such application, and to identify ways to solve them. While preparing the study general scientific and special methods of scientific cognition were used, in particular dialectical, formal-logical, comparative-legal ones, system analysis, etc. The research indicates that in the process of protecting state property, there is a wide range of entities that can be involved in it. The ambiguity of judicial practice has been established in the issue of representation of the state's interests by the prosecutor in this category of cases. It also points out the peculiarity of the representation in court of the interests of the state represented by the Cabinet of Ministers of Ukraine and the National Bank of Ukraine. The authors also note the urgency of the issue of jurisdiction over property disputes located in the territory of the Autonomous Republic of Crimea. Examining the Law of Ukraine "On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine" of 15.04.2014 and the Constitution of the Russian Federation indicates the dual nature of different laws in one territory, which virtually makes it impossible to be adopted by a national court. In general, the authors conclude that the only position of all public authorities that are subjects of state property management should be non-approval of compensation for nationalized property from the aggressor state, because then it will be impossible to return it. The consent should be given only for compensation of the income that the country has lost as a result of the inability to use its property.*

Keywords: state property, protection of rights, annexation of territory, nationalization, civil law methods of rights protection.

INTRODUCTION

The issue of state property rights protection has recently become rather important. Since 2014 not only private and collective owners have violated their property rights, but also the state as the owner. We consider the occupation of part of the territory of Ukraine and the conduct of hostilities in eastern Ukraine. The aggression of the Russian Federation against Ukraine is the basis for the violation of the rights of all owner categories [1]. In addition to the negative social effects, these events caused disproportionate damage to national economic interests. Thus, the Cabinet of Ministers of Ukraine in June 2014

determined that the amount of damage caused to the state of Ukraine only by the annexation of Crimea is about 1 trillion 80 billion UAH, without taking into account the cost of minerals and lost profits [2]. This amount has sufficiently increased till present.

Military action in eastern Ukraine is also causing great damage. At the presentation of their study at the Ukrainian Crisis Media Center, Atlantic Council analysts reported that infrastructure losses due to hostilities in eastern Ukraine were estimated at about $ 9.5 billion [3]. All damages must be compensated. Such conflicts should be resolved by public law tools at the political level. However, as we can see, no negotiations and Norman formats have yielded a positive result, so the owners are forced to use private law tools to obtain at least some solution to the issue of property rights violations. Fortunately, under national law public law entities have this opportunity. This is noted in their research and such scientists as V. Borisova [4], V. Dolgopolova [5], V. Yarotsky and D. Spesivtsev [6]. The practice of applying the rules of civil law allows to establish the causes of problems with the tools used, as well as to identify ways to solve them. The analysis of judicial practice also shows that there is no single concept among the judiciary for resolving disputes related to violations of state property rights. This determines the relevance of the chosen research topic.

Issues of protection of state property rights have been studied by such national and foreign researchers as E. Bernarda [7], O. Bignyak [8], V. Borisova [4], V. Butnev [9], A. Vershinin [10], O. Gulida [11], L. Dolgopolova [5], S. Domuschi [12], R.O. Stefanchuk [13], O. Karmaza [14], V. Krivenko [15], O. Pervomaisky [16], R. Stefanchuk [13], D. Spesivtsev [6], Ye. Sukhanov [17], Ye. Kharitonov [18], A. Yarema [15], V. Yarotsky [6] and others.

Despite the large number of scientific publications on the property rights protection in general, the protection of state property rights cannot be considered sufficiently studied. With Ukraine's independence and the construction of a market economy, scholars focused on private property and its protection, while state property actually remained in the shadows. We associate the problem of lack of attention primarily with a certain negative attitude towards it by the population, which perceives it as forcibly taken from private owners in Soviet times. Now the attitude to state property is gradually changing, as it has become one of the forms of property rights, far from dominant in the economy of our state. Its purpose has also changed radically, today it is the foundation of economic security of our state, as well as the implementation of its social functions. The importance of the role it plays creates the need to protect it in all possible forms and ways. Judicial protection of violated rights is perhaps of paramount importance, O. Karmaza points out in her study, noting: "In the arsenal of state remedies designed to guarantee human rights and freedoms, the legitimate interests of society and the state, the courts play a leading role" [14].

The purpose of the study is to investigate the peculiarities of the application of civil law methods of state property rights protection in the crisis of public international law, to identify problems that accompany such application, and to identify ways to solve them.

1. MATERIALS AND METHODS

General scientific and special methods of scientific cognition were used in the study, in particular dialectical, formal-logical, comparative-legal, system analysis, etc. The

dialectical method is aimed at creating an unambiguous, static picture of the world. It is described by the fact that it considers things and phenomena in isolation from each other, reduces the variety of forms of movement to one form, such as mechanical, and denies the contradictions of movement and development. The dialectical method of cognition of legal phenomena provides a scientific analysis of the concepts of property protection, forms and methods of protection, the grounds for seeking protection. The formal logical method is used in the formulation of the concepts of violation of the law, the subjects of the application for protection, etc. The main formal logical research methods include: the method of classification, generalisation, and typology, inductive and deductive research methods, construction of concepts, argumentation, logic and some others. Logical methods are based on the requirements and principles of formal logic. Formal logic studies the following forms of thinking: concepts, judgments, proofs, arguments, justifications, etc., given their logical structure, despite their specific content. Logic examines forms of thinking in terms of their structure and describes the most correct methods of thinking.

The comparative legal method was used in the study of the statute of limitations in cases of violation of state property rights, as well as to consider the legislation on the prosecutor's participation in this category of cases. The comparative legal method involves comparing single-line legal concepts, phenomena, and processes, as well as clarifying the similarities and differences between them. In this method, conclusions by analogy are widely used, based primarily on similar features of the facts under study. This allows to transfer features from one phenomenon under study to another, eliminates the eclectic combination of elements of different legal systems without delving into the features of their genesis, the dynamics of functioning and prospects for evolution. The use of the method of systematic analysis allowed to determine the most acceptable civil law methods of protection of state property rights in the crisis of public international law. The application of a systematic approach in legal science is a fundamental methodological orientation of the study of legal phenomena, their interpretation, and construction of a theoretical model of the studied complex of phenomena, according to which society itself is considered as objectively existing, natural, complex, polystructural, and adaptive object. This method adapts dynamic system objects, which constitute a form of human life as a biological species. There are five basic principles of a systems approach. The first is integrity, which allows to consider both the system as a whole and at the same time as a subsystem for higher levels. The second is the hierarchy of the structure, i.e. the presence of many elements located on the basis of the subordination of the elements of the lower level to the elements of the higher level. The implementation of this principle can be considered on the example of any particular organisation, system, or phenomenon. Any organisation is an interaction of two subsystems: control and managed. The third principle is the principle of structuring, which allows to analyse the elements of the system and their interrelation within a particular structure. As a rule, the process of functioning of the system is determined not only by the properties of its individual elements, but also by the properties of the structure itself. The fourth principle is the principle of multiplicity, which allows to use many cybernetic, economic, and mathematical models to describe individual elements, and the system as a whole.

2. RESULTS AND DISCUSSION

Historically, the mechanism of property rights protection has played an important role in the development of society and in the process of state formation. Even in the system of Roman law, its protection was given much attention. The most important civil law methods of property rights protection were property claims, in particular, there was vindication (*rei vindicatio*), negatory (*actio negatoria*), the claim of the Publician (*actio Publiciana*), the claim for prohibition (*actio prohibitoria*), and private [19]. In addition to general lawsuits filed for any violation of property rights, lawsuits were also filed against the violator personally in accordance with the nature of his actions, namely – *actio legis Aguiliae*, *actio furti*, *actio iniuriarum*, etc. It should be noted that the modern mechanism of property rights protection is based on the basic principles developed in the Roman Empire, and Ukraine is no exception [18]. Examining the norms of the civil legislation of Ukraine, we will be able to make sure that the methods of civil protection provided by it quite strongly resonate with the corresponding methods of Roman civil law.

Before moving on to the immediate object of our study, let's define the concepts used. Thus, it will be necessary to explore the concept of property rights protection, forms and methods of protection, as well as directly the civil law method. Therefore, the concept of property rights protection does not have a clear legislative definition. Chapter 29 of the Civil Code of Ukraine[1] establishes only the principles of protection of property rights. Scientists also interpret it differently. Ye. Kharitonov believes that "protection of property rights – is a set of legal remedies used by the court, authorized by the state authorities or the owner to ensure the implementation and restoration of the violated property rights" [9]. Ye. Sukhanov defines the concept of property rights protection as a set of civil remedies (methods) that are used in connection with the commission of offenses against property relations [17].

Both definitions are given differently, but fairly accurately reflect the essence of the concept. Ye. Sukhanov based his definition on the cause-and-effect relationship between certain events. Ye. Kharitonov laid a different principle in the construction of his definition of the concept and pointed to the essence of the phenomenon, the subjects that influence it, as well as the purpose of the subjects. We are more impressed by this very concept of understanding the term. The only thing we would like to clarify is that the reason for seeking protection is not only a violated right, but also a non-recognized or disputed one. Therefore, the protection of property rights, in our opinion, should be considered as a set of legal remedies used by the court, authorized by the state authorities or the owner to ensure the implementation of unrecognized or disputed rights, as well as restoration of violated property rights. We believe this version will present the whole set of reasons that determine the right to protection.

There is a point of view where form of subjective rights protection is understood as a set of internally organized organizational measures for the protection of subjective rights, which take place within a single legal regime [10]. The form of protection, according to A. Vershynina, is a procedure or type of jurisdictional action to protect rights in general and due to the type of protection activities [10]. O. Bigniak's opinion is

[1] Civil Code of Ukraine. (2003, September). Retrieved from https://zakon.rada.gov.ua/laws/show/435-15/ed20201016#Text

rather interesting too. He characterizes the form of legal protection as the one "aimed at restoring (recognizing) violated (disputed) rights and legitimate interests" [8].

We believe that all the positions of these authors are true, but we are convinced that certain forms of protection should also be based on the concept of establishing the essence of the phenomenon, the subjects related to it, as well as the purpose of their activities. Taking this into account we propose to understand the form of rights protection as a set of internally organized organizational measures to protect subjective rights, carried out by courts, authorized state bodies or legal entities independently and carried out within a single legal regime.

The method of the right protection is the actions provided by the law which are directed on protection of this right. Such actions are the final acts of protection in the form of substantive legal actions or jurisdictional actions to remove obstacles to the exercise of their rights or the cessation of offenses, the restoration of the situation that existed before the violation [20]. The method, according to O. Gulida, embodies the goal to be achieved by the subject of protection, hoping to stop the violation of their rights or compensation for damages incurred in connection with the violation of these rights [11].

Analyzing the method of protection of directly subjective civil law and interest, it should be considered as a system of lawful, ie defined or allowed by law, actions of the subjects of protection and substantive legal effect of these actions, which prevents, eliminates or compensates for violations, non-recognition or challenging subjective civil law and interest [7]. Also, some civilians understand the way to protect subjective civil rights and interests is a type of substantive legal claims that can be made by a person in court [15]. There is also an opinion that the method of protection of subjective civil law and interest is a substantive measure, ie enshrined substantive measures of a coercive nature, through which the restoration (recognition) of the violated (disputed) right and influence on the offender [13]. We are mostly impressed by the first definition given by Ye. Bernada, because it reflects the essence of the concept. The positive thing is that the author deciphers the system of legal actions as those defined or allowed by law. This is fully in line with the constitutional norm on the protection of rights, according to which everyone is guaranteed the protection of their rights, freedoms and interests from violations and unlawful encroachments by any means not prohibited by law[1]. That is, the construction of this constitutional norm provides for the possibility of applying methods of the right protection, including those not provided by procedural norms.

Direct civil law methods of property rights protection establishes Art. 16 of the Civil Code of Ukraine, namely: 1) recognition of the right; 2) recognition of the transaction as invalid; 3) termination of the action that violates the right; 4) restoration of the situation that existed before the violation; 5) compulsory performance of duties; 6) change of legal relationship; 7) termination of the legal relationship; 8) compensation for damages and other methods of compensation for property damage; 9) compensation for moral (non-pecuniary) damage; 10) recognition of illegal decisions, actions or omissions of a body of state power, a body of power of the Autonomous Republic of Crimea or a

[1] Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text

body of local self-government, their officials and executives[1]. Taking into account the fact that the state is equal to other parties to civil law relations, we claim that it has the same right to legal protection and can use all the above civil law methods to protect their violated, disputed or unrecognized rights. Of course, each of these methods will be characterized by different efficiency, and therefore more or less used. But in order to determine the effectiveness of such methods, it is necessary to characterize the subjects who will participate in the protection procedures.

Thus, the peculiarity of the process of protection of state property is the presence of a wide range of entities that can be involved in it. First of all, these are the prosecutor's offices that represent and protect the rights and interests of the state. In particular, according to part 3 of the Order of the General Prosecutor's Office of Ukraine "About the organization of activity of prosecutors concerning representation of interests of the state in court and at execution of court decisions" from 09/21/2018 No 186, the representative function of prosecutor's office is realized by preparation and presentation of claims; interference in cases initiated by lawsuits (applications) of other persons; initiating the review of court decisions; participation in proceedings; participation in enforcement proceedings in the execution of decisions in cases in which the prosecutor represented the interests of the state [21].

According to O. Pertsov, the prosecutor “appeals to the court in the interests of the state, in a statement of claim or other statement, the complaint proves what is the violation of state interests, their protection, the statutory grounds for appeal to the court, and states the body authorized by the state to functions in disputed legal relations” [22]. The ambiguity of the case law on the prosecutor's representation of the state's interests in court can be seen in the example of the decision of the Commercial Court of Cassation in the Supreme Court in case No4 / 166 "B" of October 2, 2018, the decision of the Commercial Court of Cassation in the Supreme Court in case No923 / 129/17 of 5 December 2018 and the decision of the Supreme Commercial Court of Ukraine in case No911 / 79/14 of 21 July 2015. Thus, according to the first resolution, the prosecutor may represent the interests of the state in court in exceptional cases that are expressly provided by law. At the same time, courts must assess exceptional cases, taking into account the presence (justification by the prosecutor) of a violation or threat of violation of the interests of the state. The legal position of the Armed Forces of Ukraine is based on the fact that the interests of the state should be protected primarily by the relevant subjects of power, and not by the prosecutor. To ensure that the interests of the state do not remain unprotected, the prosecutor plays a subsidiary role, replacing in the proceedings the relevant subject of power, which is either absent or, contrary to the law, does not provide protection or does so improperly. In each such case, the prosecutor must state (and the court must verify) the reasons that prevent the protection of the interests of the state by the proper subject, and which are the grounds for the prosecutor to go to court. The following ruling states that, in considering each case separately, the Court must assess the extent to which the prosecutor's participation in the proceedings complies with the principle of equality of parties. The prosecutor may represent the interests of the

[1] Civil Code of Ukraine. (2003, September). Retrieved from https://zakon.rada.gov.ua/laws/show/435-15/ed20201016#Text

state in court in exceptional cases that are expressly provided by law. The extended interpretation of cases (grounds) for the prosecutor to represent the interests of the state in court does not comply with the adversarial principle, which is one of the principles of justice. Similarly, in cases of representing the interests of the state in court, the prosecutor actually replaces in the proceedings the relevant subject of power, which is either absent or, contrary to the law, does not provide protection or does so improperly.

It is important to note the peculiarities of representing the interests of the state in court acting on behalf of the Cabinet of Ministers of Ukraine and the National Bank of Ukraine, because it can be carried out only by the Prosecutor General or Regional Prosecutor's Office only by written order or order of the Prosecutor General or his first deputy. Similarly, while confirming their authority in court, prosecutors must take into account these requirements of the law.

The issue of statute of limitations in cases of violation of the state property rights is also extremely relevant, as the practice of the Supreme Court on this issue has changed significantly. It will be recalled that earlier the position of the Supreme Court of Ukraine was as follows: the statute of limitations began to count from the moment when a legal entity or a subject of governmental powers committed an offense. Nowadays according to the decision of the Grand Chamber of the Supreme Court in case No469 / 1203/15-ts of May 22, 2018 [23], the statute of limitations is calculated from the moment when the person whose right has been violated or the prosecutor learned about such violation. Analyzing these changes, they should be considered positive, as it helps not to lose the statute of limitations in cases of long-term concealment of violations of state property rights, however, the implementation of the updated rule should be considered difficult, as the question remains how a prosecutor can learn about violations when the function of prosecutorial oversight no longer exists

It should also be borne in mind that the participation of the prosecutor in the court is purely representative, and the party to the dispute in its purest form cannot be called that. If the Cabinet of Ministers of Ukraine is on the plaintiff's side; the central body of executive power, which ensures the formation and implementation of state policy in the field of state property management; ministries, other executive bodies and state collegial bodies, the State Property Fund of Ukraine; bodies that ensure the activities of the President of Ukraine, the Verkhovna Rada of Ukraine and the Cabinet of Ministers of Ukraine; bodies that manage state property in accordance with the powers defined by certain laws; state business associations, state holding companies, other state economic organizations (hereinafter – economic structures), state enterprise, institution, organization or business association, 100 percent of shares (bonds) which belong to the state or other business company, 100 percent of shares (bonds) owned by the state; or the National Academy of Sciences of Ukraine, branch academies of sciences – all these items are subjects of management of state property objects, and therefore the full-fledged and authorized party in civil proceedings.

While examining the question of whether public authorities and state institutions, enterprises, companies and societies that do not own state property, but which were only in their operational management or full economic management in the territory of the Autonomous Republic of Crimea, can protect state property rights, should be answered unequivocally that these entities can only represent the state in the procedure of violated,

disputed or unrecognized property rights protection. They, as the titular owners, are also not deprived of legally secured opportunities to independently file claims for protection of rights to this property.

If we analyze the causes of damage to the state as the owner in the territory of the Autonomous Republic of Crimea, it should be noted that the annexation of our peninsula was accompanied by the adoption of certain government decisions by illegal authorities. In particular, the resolution of the Verkhovna Rada of the Autonomous Republic of Crimea "On the independence of Crimea" from 17.03.2014, which states that: "State property of Ukraine, which is on the day of this Resolution in the Republic of Crimea, is state property of the Republic of Crimea [24]. Another resolution of the Verkhovna Rada of the ARC "On nationalization of enterprises and property of maritime transport under the control of the Ministry of Infrastructure of Ukraine and the Ministry of Agrarian Policy and Food of Ukraine located in the Republic of Crimea and the city of Sevastopol" illegally nationalized state property (integral property complexes) state enterprises. Due to these illegal decisions, most of the state property was illegally nationalized, which caused great damage to the state economy. Realizing the complexity and duration of court proceedings, if the parties to the case are the state of Ukraine and the state of the Russian Federation, O. Pervomaisky believes that potentially possible participants in court proceedings may be the so-called business entities that (Ukrainian), on the one hand, suffered (losses), and, on the other hand, the Russians, whose actions caused such damage [16]. We completely share this position of the scientist, believing that nowadays this is almost the only possible way out of the situation. However, the issue of jurisdiction should be raised in this regard, as it is not possible to apply any court proceedings without resolving them.

Examining the issue of jurisdiction over disputes over property located in the territory of the Autonomous Republic of Crimea, we should mention the Law of Ukraine "On ensuring the rights and freedoms of citizens and the legal regime in the temporarily occupied territory of Ukraine" from 15.04.2014 No1207-VII[1]. This law refers to the temporary occupation of the territory of Ukraine and emphasizes that this territory is subject to the Constitution and Laws of Ukraine. Courts in different categories of cases are clearly established, to which cases are transferred from the courts of the Autonomous Republic of Crimea and which will consider the relevant cases. However, in Art. 65 of the Constitution of the Russian Federation provides that the Republic of Crimea is part of the federation. Such a dual nature of the operation of different laws in the same territory makes it virtually impossible to enforce a court decision, even if it is taken by a national court.

O. Pervomaysky considers the recognition of the decision of the ARC authority and (or) the Sevastopol city authority as illegal among the most promising civil law methods of state property rights protection. As these bodies have made illegal decisions on nationalization, they are responsible for the violation of property rights of the state of Ukraine, according to the author. In this regard, we believe that this method has been

[1] Law of Ukraine No 201207-VII “On ensuring the rights and freedoms of citizens and the legal regime in the temporarily occupied territory of Ukraine”. (2014, April). Retrieved from https://zakon.rada.gov.ua/laws/show/1207-18

possible from the first stage of redistribution of property in the republic. It will be recalled that this stage was characterized by the immediate nationalization of state property of the largest national companies, such as Chornomornaftogaz, Ukrtransgaz, railways, ports, and shipping companies. However, it was not possible to implement it. It would be recalled that the Russian constitution recognized Crimea as part of the federation, so companies that did not re-register before March 1, 2015 in accordance with Russian law were deprived of the right to operate in Russia and were subject to liquidation. We have not found any court case concerning the invalidation of the decision of the ARC authority and (or) the Sevastopol city authority. As a result we conclude that, unfortunately, the provisions of the Law adopted in Ukraine "On ensuring the rights and freedoms of citizens and the legal regime in the temporarily occupied territory of Ukraine" remained declarative.

If a decision is supposed to be challenging or not recognizing the property right of the state of Ukraine to a specific property, objects or integral property complexes, it is also possible to apply such a method of property rights protection as the recognition of this right. In the case when illegal decisions contributed to the acquisition of state property of Ukraine by economic entities of the Russian Federation, the appropriate ways to protect the property rights of the state of Ukraine or the title rights of Ukrainian economic entities are vindication lawsuits.

It should be noted that the vindication claim in the days of the Roman law protected the owner from infringements of the rights which consisted of actions of other person who kept his property illegally. This method is provided by the Civil Code of Ukraine[1], which contains rules that allow you to claim property from illegal possession. In particular, Art. 330 of the Civil Code of Ukraine provides that if the property is alienated by a person who did not have the right to do so, a bona fide purchaser acquires ownership of it, if in accordance with Art. 388 of the Civil Code of Ukraine such property cannot be demanded from it. At the same time, Art. 388 of the Civil Code also provides that if the property under the repayment agreement is acquired from a person who had no right to alienate it, about which the purchaser did not know and could not know (bona fide purchaser), the owner has the right to demand this property from the purchaser only if the property left the possession of the owner or the person to whom he transferred the property into possession, not of their own volition otherwise. Therefore, the plaintiff may file a vindication lawsuit against a bona fide purchaser in order to claim illegal possession of his property. That is, a vindication claim is a non-contractual requirement of the owner to claim his property from someone else's illegal possession. The property must be individually identified and returned. Examples of the success of such a return are already in national practice. In particular, thanks to the active position of the Prosecutor's Office of the Autonomous Republic of Crimea, on March 6, 2019, the Commercial Court of Kyiv region satisfied the claim of the Deputy Prosecutor of the city of Yalta. The court invalidated the decision of the village council, which illegally allocated to the use of a private enterprise land plot of 0.16 hectares, located in the Autonomous Republic of Crimea, Yalta, Kurpaty village, and obliged to return it to state

[1] Civil Code of Ukraine. (2003, September). Retrieved from https://zakon.rada.gov.ua/laws/show/435-15/ed20201016#Text

ownership. This case was considered on a new basis after the cancellation on September 21, 2018 by the Supreme Court of court decisions, which unreasonably denied the claim of the Deputy Prosecutor of the city of Yalta. It is important that due to the procedure of resumption of lost court proceedings initiated by the Prosecutor's Office of the Autonomous Republic of Crimea, the courts satisfied the claims of prosecutors to return real estate to state ownership with a total value of about UAH 4.5 million. Compared to the total amount of damage caused by the occupation of Crimea, this amount seems too meager. But its presence, in our opinion, is of fundamental importance, as it indicates the possibility of defending the violated rights of the state as the owner.

Compensation for damage in the category of cases under investigation also has its own characteristics. V. Yampolsky's research tells about the inexpediency of initiating the opening of cases for lawsuits arising from labor relations (in terms of reinstatement at work or payment of appropriate amounts from enterprises registered in the Crimea); on consumer protection; about compensation for damage. The scientist points out that "under certain conditions, such court decisions can be enforced through international agreements concluded between Russia and Ukraine. In particular, the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, adopted in Minsk on 22.01.93, which provides for the possibility of recognition and enforcement of judgments rendered in civil and family cases, as well as sentences in civil proceedings. The issue of recognition and enforcement of the above categories of decisions is regulated by Sec. III of the Convention, which establishes the procedure for recognizing decisions that have entered into force, depending on whether they require enforcement. A decision that does not require enforcement, in accordance with Article 52 of this document is recognized in the territory of any state party to the convention without special proceedings. However, this rule shall not apply if there is a judgment of a court of that country previously rendered in the same dispute between the same parties and it has entered into force, or the case in question under the convention or the law of that country falls within the exclusive jurisdiction of its courts". In connection with the mentioned above V. Yampolsky considers it expedient to initiate consideration of civil cases on claims on recovery of alimony from a resident of the peninsula, who received a passport of a citizen of the Russian Federation; arising in connection with real estate in the Crimea; regarding the acceptance of the inheritance by the heirs; to carriers arising from contracts of carriage of goods, passengers, luggage, mail. In this regard, we consider the author's position to be correct, insisting on the effectiveness of compensation for damage caused by the defendant's involvement in the state of the Russian Federation [25].

A positive example of this protection method for us is the case considered by the Permanent Court of Arbitration in The Hague on the claim of former Yukos shareholders, represented in the process by Group Menatep Limited (GML), to Russia, according to which the Russian Federation must pay compensation losses of 50.02 billion USA dollars [16]. Of course, consideration of such cases in international courts is possible only after passing all effective national courts [26].

International case law is aware of claim cases for compensation for damage caused by the occupation. Similar lawsuits were filed by Cypriot citizens against Turkey in connection with the events of 1974. The decision of the Grand Chamber of the ECHR in the case of Dimopoulos and Others v. Turkey (2014) awarded the applicants EUR 90

million in damages [20]. In the decision of the Grand Chamber in Georgia v. Russia (3213255/07), the European Court of Human Rights ruled that Russia should pay Georgia EUR 10,000,000 in respect of non-pecuniary damage caused to a group of at least 1,500 Georgian nationals [27]. Seeing real examples of court decisions, we hope that Ukraine will be able to return the occupied territories and the Russian Federation will reimburse the losses caused by the occupation. There are a sufficient number of mechanisms for this, because if the defendant does not want to comply with court decisions, it is always possible to recover the property belonging to the occupier. The only position of all public authorities that are subjects of state property management should be that we do not agree to compensation for nationalized property, because then it will be impossible to return it, we must agree to compensation for the income that the country lost in as a result of the inability to use this property.

If we talk about the situation with the violation of state property rights in eastern Ukraine, it is important to note that in the occupied territories there are 388 state-owned enterprises, 4500 state-owned objects (real estate) [28]. In general, according to experts, about 50% of the industrial potential of Donbass has been lost. The equipment of individual enterprises was exported to the territory of the Russian Federation or dismantled for scrap metal. Therefore, the state's losses from the inability to use its property or its physical destruction are enormous. It is important that the civil law remedies described above in the study of the occupied Crimea are possible and entirely appropriate for the state property situation in Donbas.

CONCLUSIONS

The occupation of part of the territory of Ukraine and the conduct of hostilities in the east of our state have intensified the issue of the need to protect state property rights as never before. Despite the fact that all categories of owners are harmed, losses due to violations of state property rights directly affect the national security of our country. Nowadays experts estimate the state's losses of about 3 trillion hryvnias. Taking into consideration that self-defense within a non-jurisdictional form of rights protection is virtually impossible in the current situation; it is on judicial protection that the greatest hopes are put. The state, as a party to civil law relations, has an equal subjective right to protection along with other participants, so all methods of protection with greater or lesser effectiveness can be used to protect the right of state property. The study points to the peculiarity of the process of state property protection, which consists of a large number of entities that can be involved in it. The ambiguity of judicial practice has been established in the issue of representation of the state's interests by the prosecutor in this category of cases. It also emphasizes the obligation of the Prosecutor General of Ukraine to speak on behalf of the state in court representing the Cabinet of Ministers of Ukraine and the National Bank of Ukraine or the Regional Prosecutor's Office only by written instruction or order of the Prosecutor General or his first deputy or deputy in action.

It is insisted that the issue of statute of limitations in cases of violation of state property rights is also extremely relevant, as the Supreme Court's practice on this issue has changed significantly: previously the statute of limitations began to count from the moment a legal entity or government official now the statute of limitations is deducted from the moment when the person whose right has been violated or the prosecutor has

learned about such violation. The authors assess these changes positively, however, considers the implementation of the updated rule difficult, as the function of prosecutorial supervision no longer exists, and therefore the prosecutor has limited opportunities to learn about violations. In the study of the subjects of petitions for rights protection, the authors point out that public authorities and state institutions, enterprises, companies and societies that do not own state property, as titular owners, have legally secured opportunities to independently file claims for protection of rights to this property.

Analyzing the direct civil law methods of state property rights protection, in particular the recognition of the decision of the ARC authority and (or) the Sevastopol city authority as illegal, we noted its inefficiency due to the redistribution of property in the republic. Studying examples of successful return of state property by the Prosecutor's Office of the Autonomous Republic of Crimea, the fundamental importance of such cases was pointed out, as they testify to the possibility of defending the violated rights of the state as the owner. It is a general conclusion that the only position of all state authorities that are subjects of state property management should be non-approval of compensation for nationalized property from the aggressor state, because then it will be impossible to return it. We must agree to compensation for the income that the country has lost as a result of the inability to use its property. And all national and international jurisprudence must demonstrate such a will.

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