



**Volodymyr NAHNYBIDA, Zhanna CHORNA, Svitlana LOZINSKA,  
Roksolana IVANOVA, Volodymyr BOBRYK**

*Protection of rights of ownership under Ukrainian and European law: theory and  
practice*

# Secção I

## Investigação Científica\*

---

\* Os artigos presentes nesta secção foram sujeitos a processo de revisão segundo o método *blind peer review*.



## Protection of rights of ownership under Ukrainian and European law: theory and practice

### Proteção dos direitos de propriedade no Direito Ucrâniano e Europeu: teoria e prática

Volodymyr NAHNYBIDA<sup>1</sup>  
Zhanna CHORNA<sup>2</sup>  
Svitlana LOZINSKA<sup>3</sup>  
Roksolana IVANOVA<sup>4</sup>  
Volodymyr BOBRYK<sup>5</sup>

**ABSTRACT:** The relevance of this scientific research in the protection of rights of ownership is determined by the specifics of enshrining regulatory provisions in the current legislation, as well as in connection with the active use of rights of ownership and the mechanism for its protection on the Internet platform and in social media. The purpose of this research is a detailed study of the theoretical and practical segment of the mechanism for implementation of the protection of rights of ownership of individuals, as well as a study, on the basis of this research. The regulatory and legal provisions were analysed, the main approaches responsible for the mechanism for implementation of the protection of rights of ownership of individuals were discovered, and the main problems preventing the proper effective functioning of this mechanism in the protection of rights of ownership of individuals were identified.

**KEYWORDS:** Notarial aspects in a property rights; European Court of Human Rights practices; Internet platform; methods of protection of rights of ownership; judicial practices, legal mechanisms.

**RESUMO:** A relevância desta investigação científica na proteção dos direitos de propriedade é determinada pelas especificidades da consagração das disposições regulamentares na legislação em vigor, bem como no que se refere ao exercício ativo dos direitos de propriedade e ao mecanismo de sua proteção no Plataforma na Internet e nas redes sociais. O objetivo desta pesquisa é um estudo detalhado do segmento teórico e prático do mecanismo de implementação da proteção dos direitos

---

<sup>1</sup> Ph.D in Law, Department of Private International Law and Legal Problems of European Integration, Academician F.H. Burchak Scientific-Research Institute of Private Law and Entrepreneurship of the National Academy of Law Sciences of Ukraine, Kyiv, Ukraine, e-mail: volodymyr.nahnybida@gmail.com

<sup>2</sup> Ph.D in Law, Associate Professor at the Department of Civil Law and Procedure, Leonid Yuzkov Khmelnytskyi University of Management and Law, Khmelnytskyi, Ukraine, e-mail: chorna.zhanna@yahoo.com

<sup>3</sup> Ph.D in Law, Associate Professor at the Department of International and European Law, Leonid Yuzkov Khmelnytskyi University of Management and Law, Khmelnytskyi, Ukraine, e-mail: svitlanalozinska@aol.com

<sup>4</sup> Ph.D in Law, Associate Professor at the Department of International and European Law, Leonid Yuzkov Khmelnytskyi University of Management and Law, Khmelnytskyi, Ukraine, e-mail: rokсоланаivanova52@gmail.com

<sup>5</sup> Senior Researcher at the Department of Private Law Problems, Academician F.H. Burchak Scientific-Research Institute of Private Law and Entrepreneurship of the National Academy of Law Sciences of Ukraine, Kyiv, Ukraine

de propriedade das pessoas físicas, bem como um estudo, com base nesta pesquisa. Foram analisados os dispositivos normativos e legais, descobertos os principais enfoques responsáveis pelo mecanismo de implementação da proteção dos direitos de propriedade das pessoas físicas, e os principais problemas que impedem o bom funcionamento efetivo desse mecanismo na proteção dos direitos de propriedade das pessoas físicas foram identificados.

**PALAVRAS-CHAVE:** Aspectos notariais nos direitos de propriedade; práticas do Tribunal Europeu dos Direitos Humanos; plataforma da Internet; métodos de proteção dos direitos de propriedade; práticas judiciais; mecanismos legais.

## Introduction

In order to consider the main subject matter of the conducted research related to the protection of rights of ownership in more detail, there are several key steps. First of all, it is necessary to give a comprehensive definition of this type of law. Some scholars define the right of ownership as a set of certain legal norms, the purpose of which is to regulate property relations. This right also includes the establishment of a special legal regime, the availability of methods to acquire rights of ownership, etc.<sup>6</sup>. Also, the right of ownership can be interpreted as the right vested in persons in order to use this right to meet their own interests. This is important in emerging relations of this kind, with the provision of legal obligations by other persons. That is, the right of ownership in this definition is a subjective right<sup>7</sup>. First, it should be noted that subjective right in itself is granting a certain person with the freedom to act within the possible options of conduct, and subjective right operates in accordance with the inclusion of certain elements. If we consider the elements characterizing subjective right, it is necessary to note the possibility of the person by vesting the right to his own actions to demand similar positive conduct from the legally obliged person by vesting the right to use methods of state coercion in case of failure to perform specific agreements and obligations, as well as the possibility to obtain social benefits in the event of the use of this right.

It should be noted that the right of ownership can be interpreted from the point of view of different approaches. The first approach is the centralized extended approach. Considering this approach, the concept of ownership in general is defined as the attitude of the person to a certain property as to his

---

<sup>6</sup> RYZHIK, A.V. *Institutionalization of the interests of owners in Russian civil law*. Moscow: Russian Academy of Advocacy and Notary, 2017.

<sup>7</sup> MINNIKES, I.V. Ownership as a set of powers. *Journal of Law*, 2017, vol. 1, pp. 2-9.

own property and granting him with the right to own, dispose and use such property, as well as to prevent interference of third parties. That is, from the point of view of the centralized extended approach, the right of ownership includes not only possession, use and disposal, but also such additional element as preventing other persons (third parties) from interfering with the use of a certain property. We also should consider the limited centralized approach. This approach limits the right of ownership to only two or three powers. So, for example, the legislation of Germany provides that a person has the right to dispose of property at his own discretion and to prevent other persons from interference<sup>8</sup>. A similar approach is used in the French politics<sup>9</sup>: A person has the right to use and dispose of property in an absolute manner<sup>10</sup>.

There is also a decentralized approach to defining the right of ownership. According to this approach, the owner has the right to perform any actions that are not contrary to the legislation and do not infringe rights of any person. Thus, there is no definite list of actions in respect of ownership; it should be noted that it is virtually impossible for the legislator to regulate every range of actions in respect to a particular property; this practice is used, for example, in the politics of the United States of America. An important aspect that should be described is the relationship between the concepts of ownership and right of ownership, since they are not identical. The very concept of ownership is more commonly defined as a result of appropriation, that is, the appropriation has already been achieved<sup>11</sup>. In general, the concept of ownership can be characterized as a kind of socio-economic relationship that arises between private and public persons for the purpose of the use certain material benefits.

In Ukraine, the approach to determining ownership is predominantly centralized. The State Registration Service is responsible for maintaining the State Register of Real Property Rights. The registration of property rights is mandatory and requires submission of documents to the relevant authority. The centralized approach to property registration aims to provide a transparent and

---

<sup>8</sup> German Civil Code of 1900, 2021. Available from: <<http://surl.li/acivs>>

<sup>9</sup> SALHI, B., RIGUEN, R., KACHOURI, M., JARBOUI, A. The mediating role of corporate social responsibility on the relationship between governance and tax avoidance: UK common law versus French civil law. *Social Responsibility Journal*, 2019, vol. 16, no. 8, pp. 1149-1168.

<sup>10</sup> French Civil Code of 1804, 2021. Available from: <<https://pandia.ru/text/77/231/34260.php>>

<sup>11</sup> DERBYSHEV, D.A. and TIMOFEEVA, R.I. Delimitation of the concepts of intellectual rights and property rights. *Fundamental and Applied Research in the Modern World*, 2016, pp. 16-3, pp. 154-156.

reliable system for protecting property rights and preventing disputes over ownership. However, there have been some challenges in implementing this system effectively, including corruption and bureaucratic hurdles.

Considering the concept of the right of ownership, it should be mentioned that it should be considered through the prism, as said above, of subjective law for a more accurate and broader understanding of this type of right. That is, the right of ownership is a certain conduct of a person within the framework of the legislation, the rights and functions of which include the possession, disposal and use of the property for his own benefit within the framework of specialized regulatory provisions<sup>12</sup>.

### **Materials and Methods**

A number of various methodological approaches were used in a process of conducting this research on the protection of rights of ownership in Ukrainian and European law. Both theoretical and practical aspects were studied. The use of the theoretical methodological approach was important as the main theoretical aspect of the work. In order to reveal all theoretical aspects of this scientific research in a high-quality and consistent manner, such methodological approach as the method of analysis of scientific publications was used, which is helping to reveal not only the theoretical component of the work, but also the practical component of the research based on the study of publications of national and foreign scientists, and scientific comments to legal acts. Consequently, the formal law method was used in this scientific research, thanks to which it is possible to analyse the regulatory legal acts enshrined in the legislation of Ukraine and the EU countries. Theoretical aspects of scientific research were identified in the article, including the methods of analysis and comparative analysis. These methods were used to evaluate the effectiveness of the protection of the right of ownership in the policies of EU countries and Ukraine, and to determine which policy is of the highest quality in its implementation. The findings of the research allowed for the identification of conflicts in the current legislation of Ukraine and the proposal of new effective methods to resolve them.

---

<sup>12</sup> YULBERDINA, L.R. and LATYPOVA, D.R. Property and property right: The problem of the correlation of concepts. *Integration of Sciences*, 2017, vol. 3, pp. 40-42.

In turn, being guided by the above, the tasks and objectives of the scientific research can be identified:

- to determine the theoretical aspect of the mechanism for the protection of the right of ownership of individuals, to define this concept and identify ways to implement this mechanism for protection of the right of ownership of individuals;
- an important component is the study of the legislation of Ukraine and the EU countries where there is an opportunity to see which methods of the protection are enshrined in their regulatory legal acts, as well as how effectively the enshrined provisions are implemented;
- on the basis of the research of the theoretical and practical components of the study, it is possible to identify, first of all, the problems in the protection of the right of ownership, and, as a result, to determine the methods of solving the problems facing such implementation and provision of recommendations.

So, the scientific research takes place in the following stages:

1. The first stage of the research is demonstrating its theoretical component, which is based on the study of all aspects of protection of the right of ownership of individuals, its current mechanism and the ways of implementation of this mechanism.

2. The second stage is providing an opportunity to begin to reveal the practical component of the study, which is based on the research of Ukrainian and European experience in the implementation of policies in the protection of the right of ownership of individuals, which is researched through the study of the legislation of the EU countries and Ukraine.

3. The third stage, which is the final one in the scientific research, is providing a study of the problems of protection of the right of ownership, as well as problems related to the issues of the illegal takeover of real estate and companies, intellectual property law and corporate law. Having studied all the practical and theoretical components, it is possible to provide certain recommendations on their basis in order to eliminate conflicts of law and increase the effectiveness of the policy for the protection of the right of ownership of individuals.

## Results



First, it should be noted that protection in general is one of the main elements in the process of exercising a subjective right in the event of obstacles on the way to exercising this right<sup>13</sup>. In the event of certain obstacles for the individual in the process of exercising the right, a new subjective right arises as a result, namely, the right to protection, the purpose of which is to ensure the implementation of all measures and methods of protection of a legal nature<sup>14</sup>. If we consider the concept of the "right to protection" in general, it should be characterized as the use of the opportunity to use specialized law enforcement measures in order to restore the infringed right. And, considering the concept of the "right to protection" from the point of view of subjective law, it can be noted that this right includes, first of all, the possibility of the person to take his own positive actions, as well as the right to demand the appropriate model of conduct from the obligated person. It also should be noted that in the case of the use of the right to protection, the restoration of the infringed right is not one of the methods of protection, but it is the purpose of the use of this type of right, that is, the right to protection.

One of the basic rights to protection is the protection of the right of ownership as it is this "subtype" that is the basis of productive activities. That is, in the event of a weak development of the institution of protecting the right of ownership, resources are being used with a lower efficiency, or rather even with minimal efficiency, since the resource beyond the minimum can be appropriated by another person that has a higher potential for the use of violent actions. To ensure effective regulation of the protection of the right of ownership, the institution must include a clear classification and specification of this right. This involves ensuring proper protection both in terms of ownership of the person's assets and the transfer of this right from one person to another. Additionally, an important task of the institution's operation should be the restoration of the infringed right. When considering the concept of "classification and specification of the right of ownership," it is essential to focus on several key characteristics. These include establishing the object of the right, the holder of the right, determining the content of the right of ownership, and establishing the degree of

---

<sup>13</sup> ABAKUMOVA, E.B. State legal protection of the rights of entrepreneurs in public legal relations. *Actual Problems of Economics and Law*, 2018, vol. 4, pp. 828-841.

<sup>14</sup> ROMANOVA, V.V. Legal responsibility of the state. *Legal Science and Law Enforcement Practice*, 2016, vol. 3, pp. 23-29.

exclusion. Another crucial component is the establishment of the guarantor of this right of ownership. By taking these characteristics into account, a more comprehensive and precise understanding of the right of ownership can be achieved, which can contribute to the development of effective legal mechanisms for its protection.

Therefore, considering such a concept as the right of ownership, it is worth first of all to define it as one of the main components of the institution of objective law, which is the basis for the subjective right of ownership and the corresponding powers. Considering, in turn, the mechanism for protection of the right of ownership, it should be defined as a set of legal, economic, administrative and other means, due to which the state has the right to influence the emerging legal relations of holders of the right of ownership in order to ensure the observe of the legitimate interests of holders of the right and protect the right of ownership of persons. It should be noted in this mechanism for protection of the right of ownership that each authorized person has the right to an independent choice of protection, except for the cases set forth in regulatory legal acts, according to which the right of ownership can be protected on behalf of another person. In general, there are several ways to apply for protection within the right of ownership. It is necessary at first to find out between which holders of the right unauthorized use of an asset was carried for the benefit of potential violators of the right of ownership.

Thus, if we consider an individual as a potential violator, the methods of protection can include the use of technical means, which is carried out due to the installation, for example, of a security system or a lock; also, such methods as the owner's application to a state or private law enforcement service should be mentioned among the methods of protection.

If such a potential violator is the state, the resort to the Constitutional Court can be a method of protection. It should also be noted that this method is universal for other potential violators of the right of ownership as well. Among the special methods of protection of the right of ownership, we should mention the protection of the right to assets within organizations, that is, the protection from the use of assets by employees for purposes not intended by the owner. This method of protection is implemented through the introduction of corporate legislation, the use of incentive contracts, or the physical protection of assets

from their misuse. We should also note such a method of protection of the right of ownership as recognition of the right as absent. Scientists have different opinions as to the nature of this method, and there are two key positions: an independent method of protection and a negatory method of protection. An important argument in favour of the opinion that this method is independent is the foreign legislation, namely the German civil legislation, under which the recognition of the right as absent is equated to an independent claim for correction in the register<sup>15</sup>. As to this method in general, it should be stressed that the recognition of the right as absent is not the same as deprivation of the right of ownership, in connection with which it should also be considered as a negatory method of protection of the right of ownership.

The emergence of the Internet platform and social media has revolutionized the way people interact with each other and access information. These platforms have provided a new space for people to exercise their rights, including the right of ownership. However, this has also given rise to new challenges and issues, particularly in terms of the protection of these rights.

One of the key issues is the potential for infringement of intellectual property rights, including copyright and trademarks. The ease with which content can be shared and reproduced on the Internet has created a new challenge for the protection of these rights. In addition, the use of user-generated content, such as photos and videos, raises questions about ownership and control over these materials.

Another issue is the potential for privacy violations, including the unauthorized use of personal data and the use of surveillance technologies. As users of these platforms share personal information and engage in online activities, there is a risk that their rights to privacy may be compromised.

Furthermore, the concentration of power in the hands of a few large tech companies has raised concerns about the potential for these companies to abuse their dominant position and engage in anti-competitive behaviour. This has led to calls for greater regulation and oversight of these platforms to ensure that they do not violate the rights of their users.

---

<sup>15</sup> Ibid. 3.

In this context, the protection of rights of ownership is crucial to ensure that individuals and businesses can exercise their rights in a fair and just manner. This requires a comprehensive legal framework that can address the complex issues raised by the Internet platform and social media, while also balancing the interests of different stakeholders. Such a framework should provide effective mechanisms for the protection of intellectual property rights, privacy, and competition, while also promoting innovation and creativity in the digital sphere.

## Discussion

In general, the concept of the protection of property should also be considered in the example of the provisions enshrined in Ukrainian and European legislation. So, this right is regulated by the Civil Code of Ukraine. Legislative methods for protecting legal rights are enshrined in various forms. These methods include the termination or alteration of legal relationships, invalidation of rights or transactions, compensation for property and non-property damages, termination of any action that violates the legal right, and the restoration of a situation to its state prior to the offense. Moreover, one can resort to the compulsory fulfilment of obligations or recognition of decisions and actions by local self-government bodies as illegal. These legislative methods are essential in safeguarding legal rights, and their implementation can help prevent or mitigate losses caused by legal violations<sup>16</sup>. These methods are universal, but the legislator also provides other methods to implement the protection of the right of ownership. So, for example, the above-mentioned negatory claim is also one of the methods of protection of the right of ownership, the purpose of the use of which is to overcome obstacles arising in case of the use or disposal of property if these offences are not related to the deprivation of the right of ownership in any way<sup>17</sup>. It should also be noted that the functions of protection of the right of ownership can be performed through notarial actions. This method of protection in Ukraine is regulated by the Civil Code of Ukraine and the Law of Ukraine “On Notaries”. According to the provisions of the Civil Code of Ukraine, notaries have the right to protect civil

---

<sup>16</sup> Civil Code of Ukraine of 2003, 2021. Available from: <<http://surl.li/kixz.>>

<sup>17</sup> Ibid. 9.

subjective rights in cases that are directly set forth in the provisions of the code. Also, the fact should be noted that although the activity of notaries at the law enforcement level is aimed at protecting the subjective rights of the parties to civil legal relations, notaries, in turn, exercise or protect the rights of the parties to such legal relations in the performance of each notarial action<sup>18</sup>. It is also worth considering the methods that have been enshrined in the provisions of European legislation. So, for example, such a method of protection of the right of ownership as a negatory claim has become widely used and is enshrined in the Civil Code of Germany, the Civil Code of Italy<sup>19</sup>, as well as the Civil Code of Quebec. Such a method of protection as a vindication claim, due to which the owner has the right to claim property from another person's illegal possession, is actively used in the Netherlands<sup>20</sup>. But, for example, the law of Great Britain does not provide for such methods of protection as the negatory claim and vindication claim. The right of ownership is protected in Great Britain through the use of individual claims concerning offences, for example, a claim concerning a violation of ownership of real estate can be used<sup>21</sup>. Also, among other methods of protection under English law, we should mention the use of penalties, compensation for losses, vesting the right to self-help, compensation for damage, a claim for the return of things that were provided for use under a contract and other methods enshrined in the provisions of English law. It should be noted that it is the countries of the European Union that are leading among the countries of the world in the rating of the protection of the right of ownership, in particular, Finland, Switzerland, Norway, Denmark, Sweden and others<sup>22</sup>.

The development of the institution for the protection of the right of ownership is marked by its enshrinement in an international legal act, which gives it universal value. This act is Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms. The protocol states that every individual, whether a person or a legal entity, has the right to

---

<sup>18</sup> MARCHENKO, V. The food is served by the notary for the subjective civil rights. *Entrepreneurship, Statehood and Right*, 2020, vol. 3, pp. 31-35.

<sup>19</sup> GRAZIADEI, M. The European Court of Justice at Work: Comparative Law on Stage and Behind the Scenes, *Journal of Civil Law Studies*, 2020, vol. 13, no. 1, article 2.

<sup>20</sup> Dutch Civil Code of 2011, 2021. Available from: <<http://surl.li/acivv>>

<sup>21</sup> IMAMOVA, D. I. Legal framework for the protection of property rights. *Economics and Law*, 2021, vol. 5, pp. 23-27.

<sup>22</sup> Rating of the countries of the world according to the index of property rights protection, 2021. Available from: <<https://gtmarket.ru/ratings/international-property-right-index>>

use property without interference, and that no one can be deprived of their property or right except in accordance with the law<sup>23</sup>. It should also be noted that, according to this provision, state authorities must act on legal grounds, or more precisely, their interference in the unhindered use of the property must have legal grounds. It should be noted that the right of ownership in the context of the study of Article 1 of Protocol No. 1 is interpreted quite broadly, and the very concept of ownership in this provision is interpreted quite broadly. Also, this article is the only article of the Convention and the Protocols thereto, which describes in detail the property right and the right of ownership and also regulates and guarantees the rights of not only individuals but also of legal entities. As said above, the very concept of the “right of ownership” can be interpreted from the point of view of various approaches. So, for example, if we consider this right in Article 1 of Protocol No. 1 from the point of view of a centralized extended approach, the right of ownership is an absolute right, that is, the right whose absolute nature ensures freedom from interference, and also gives the right not to be limited to two or three powers, but provides much more. It should be noted that we can also see such an approach as the decentralized approach in the interpretation of the right of ownership in this article. That is, from the point of view of this approach, the right of ownership gives a person the opportunity to take any actions in relation to his property, except for those that may be contrary to the legislation. In general, the described approach set out in the provision of Article 1 of Protocol No. 1 should be generalized into a classic approach to an understanding of the right of ownership. This classic or traditional approach helps to reflect the actual role of various participants in the process.

For a deeper study of the institution of protection of the right of ownership, we should consider the practice of the European Court of Human Rights on this matter. First of all, it should be noted that the activities of the European Court of Human Rights are related to the consideration of disputes and cases, the purpose of which is to protect the rights of a person or a citizen of a state that has ratified the European Convention for the Protection of Human Rights and

---

<sup>23</sup> Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms of 1952, 2021. Available from: <<http://www.echr.ru/documents/doc/2440801/2440801.htm>>



Fundamental Freedoms<sup>24</sup>. As said above, the right of ownership is enshrined in Article 1 of Protocol No. 1, and the provision enshrined in the regulatory legal act is the only economic right guaranteed by the European Convention. In Ukraine, there is a law according to which the courts are obliged to be guided by the principles used by the European Court of Human Rights in its practice, including the principles of protection of the right of ownership, in the performance of their direct duties, i.e., the administration of justice<sup>25</sup>. In the enshrined regulatory legal provision, the legislator also directly indicates that the sources of law are both the Convention for the Protection of Human Rights and Fundamental Freedoms and the practice of the European Court of Human Rights.

When the European Court of Human Rights deals with cases related to protecting the right of ownership, it considers two essential elements. The first factor is whether the current legislation is in line with the control of property use for the intended purpose. The second factor is the level of guarantee provided by the legislator in controlling property use for meeting common interests. Therefore, while protecting the right of ownership, the Court aims not only to ensure its classical protection but also to address the economic requirements that arise directly from this right. As an example of the above, we can cite the inability of a person to use his own property because of the deterioration of the environmental condition or damage to such property during hostilities, failure to enforce court decisions on a dispute for a long period of time, punishment in the form of a demand for an increase in taxation or imposition of penalties, etc. We should note the fact that the interpretation of Article 1 of Protocol No. 1 in the practice of the European Court of Human Rights has become so extensive that the European Court of Human Rights has the right to demand state intervention in the case in order to protect the right of ownership in an extrajudicial proceeding if the person acts for the benefit of the state.

An example of the above is the case of *Zolotas v. Greece* from the practice of the European Court of Human Rights. The essence of the dispute

---

<sup>24</sup> VOLODIN, A.B. Protection of property rights in the practice of the European Court of Human Rights. *Prospects for the Development of Science in the Modern World*, 2018, pp. 18-22.

<sup>25</sup> Law of Ukraine No. 3477-IV "On the execution of decisions and application of the practice of the European Court of Human Rights" of 2006, 2021. Available from: <<https://zakon.rada.gov.ua/laws/show/3477-15#Text>>

was that citizen Zolotas did not carry out any transactions with funds in his bank account in the period from 1981 to 2003. According to Greek law, after the 20-year period of passive depositing funds the money from such accounts is automatically transferred to the state treasury. The judicial authorities dismissed the claim of citizen Zolotas, so he turned to the European Court of Human Rights, which ruled that the state was obliged to bear positive obligations to protect the right of ownership of its citizens, and, on this basis, the state was obliged to inform the citizen about the expiration of the period of depositing his funds to prevent such negative consequences as the cancellation. There was a similar case in the practice of the Ukrainian courts, namely, the case in which the plaintiff deposited funds in the amount of USD 11,639 in the Finance and Credit Bank. The defendant, in turn, refused to return the funds on the date established by the agreement between them, justifying such refusal by the fact that the executed agreement did not specify the method of return of the funds<sup>26</sup>. Based on the practice of the European Court of Human Rights in the case of *Zolotas v. Greece*, the Dzerzhynskiy District Court of the City of Kharkiv was guided in its decision by the following: according to Article 830 of the Civil Code of Ukraine, if a person depositing funds in a bank transfers the bank the right to use such funds, the bank is obliged to keep them, but if the bank uses the funds for its own purposes, it must return these funds to the person in an equivalent amount. Also, in the event of any threat that undermines the stability of the agreement between them, the bank is obliged to inform the person in order to take preventive measures in accordance with the legislation and to preserve its right of ownership. It should also be noted that the Supreme Court of Ukraine has repeatedly noticed violations of the Convention by the courts, and the proposed method of getting out of this situation is to reduce the number of cases of non-enforcement of decisions of the courts, both national and the European Court of Human Rights. This can be achieved through the adoption of a special law, which can regulate the process of making decisions by the European Court of Human Rights<sup>27</sup>.

---

<sup>26</sup> Case No. 638/3309/15-c. *Unified State Register of Judgments*, 2021. Available from: <<https://www.uacourt.openregister.info/nevyznachena-kategoriya--2?document=44979829>>.

<sup>27</sup> KOCHARYAN, S. Protection of the practice of judges of Ukraine, the practice of SPSP for an hour to look at the right violation of the right of power. *Entrepreneurship, Statehood and Right*, 2021, vol. 2, pp. 49-54.



For a more detailed study of the operation of the institution of protection of the right of ownership and the concept of the right of ownership as such, the legal positions of the Supreme Court of Ukraine should be considered. First of all, we should consider the position regarding the right of ownership, which has long been established in the practice of the Supreme Court. This position forms the idea that state registration does not seem to be a way of acquiring the right but is only a way of getting the proof that real rights to property have been acquired. Also, it should be noted based on this position that it does not provide a person with the possibility to apply to the court with a request to recognize the right of ownership to unfinished construction, which has not been commissioned in the manner provided for by law<sup>28</sup>. We should also consider another legal position of the Supreme Court of Ukraine, which states that property must be acquired lawfully, that is, the grounds on which the property is acquired must not be contrary to legal norms and infringe on anyone's rights and interests<sup>29</sup>. The next legal position is related to the continuity of ownership. It states that a person has the right to own an object for a certain period, and the factors that cannot interrupt this ownership are the transfer for temporary use to another person, loss of ownership contrary to his own free will and its return within a period of one year or filing of a claim for its return, as well as filing of a claim by the successor<sup>19</sup>. And the last, no less important legal position of the Supreme Court is the position related to the expiration of the period of possession. It states that when the person concludes an agreement with the owner of the property for a certain period, and no claims were filed with demands for its return upon the expiration of the term of the agreement, this property may be acquired by the person through usucapion after fifteen years after the expiration of the statute of limitations<sup>30</sup>.

Thus, having considered one of the latest legal positions of the Supreme Court of Ukraine in the area of property law, we can conclude that in order to choose the correct method of protection, one should analyse the judicial practice and consider all aspects of the evidence base, in particular, taking into

---

<sup>28</sup>Resolution of the Supreme Court No. 910/10987/18 of 2020, 2021. Available from: <[http://search.ligazakon.ua/l\\_doc2.nsf/link1/VS200028.html](http://search.ligazakon.ua/l_doc2.nsf/link1/VS200028.html)>

<sup>29</sup>Resolution of the Supreme Court No. 910/17274/17 of 2018, 2021. Available from: <<https://zakononline.com.ua/court-decisions/show/82095858>>

<sup>30</sup>Resolution of the Supreme Court No. 923/82/19 of 2020, 2021. Available from: <<https://zakononline.com.ua/court-decisions/show/87478664>>

account the conclusions made by the Supreme Court Ukraine. We would also like to draw attention to such an important aspect as the problem of the implementation of protection of the right of ownership, in particular, the protection of intellectual property rights. With the development of a digital society and the introduction of digitalization policies in many areas of life, the importance of providing persons with high-quality legal protection is also increasing. First of all, an analysis of the current legislation defines them as public law, rather than private law in their essence. Also, considering the methods of protection of intellectual property rights enshrined in the Civil Code of Ukraine<sup>31</sup>, it should be noted that they are not differentiated from the protection of intellectual property rights, but are of obligatory legal nature, which makes it possible to provide protection of these rights only in a relative legal relation. Therefore, it is necessary to consider the proposal to form property law protection, the differentiation of which will be extended exclusively within the framework of the protection of intellectual property rights. An illegal takeover of real estate and companies is also a relevant issue. The main purpose of such takeovers is to create the illusion of good faith in person's intentions so that there is no possibility to challenge these actions and return the parties to their original positions in the future. An illegal takeover is carried out in the following manner: first, the target of the illegal takeover, real estate or a company, is selected, then information is collected about the target of the illegal takeover, the collected information is analysed, the method of illegal takeover is selected, and, finally, the illegal takeover itself takes place. In order to eradicate this problem, the following recommendations are offered: first – direct prevention of such activities, that is, it implies the identification and elimination of weak points of possible targets of the illegal takeover; second – legal protection, which includes the optimization of all basic documents that could be compromising in their nature for the performance of illegal takeover; and the last – installation of technical means or physical guard to control the property. At the moment, illegal takeovers of intellectual property also play an important role. The targets of the illegal takeover of intellectual property are often trademarks, databases, production secrets, programmes and other objects that may be intellectual

---

<sup>31</sup> Ibid. 9.

property. The scheme of the illegal takeover of intellectual property is similar to the usual illegal takeovers. Therefore, in order not to avoid illegal takeovers and to protect intellectual property, it is necessary to take precautions. In order to protect intellectual property, it is necessary to reform the Civil Code of Ukraine, which regulates the norms of cases and measures of infringement of intellectual property rights, and it is also proposed to introduce into the legislation the liability for illegal registration of patents in order to protect intellectual property rights; reforming the legislation in such an effective manner will help to resist illegal takeovers and to build sound legal protection.

Further research can be conducted to advance the understanding of the mechanism for the protection of rights of ownership of individuals on the Internet platform and social media by focusing on several key areas. First, empirical studies can be conducted to identify the types of ownership rights that are most frequently violated on these platforms and the specific mechanisms that are used to violate these rights. This can include conducting surveys or using data analytics to identify patterns in the types of violations that occur.

Second, legal analysis can be conducted to assess the adequacy of existing laws and regulations in protecting ownership rights on the Internet platform and social media. This can include comparative analyses of different legal frameworks, as well as assessments of the effectiveness of current legal measures in different jurisdictions.

Third, research can be conducted to identify effective strategies for preventing and remedying violations of ownership rights on these platforms. This can include analyses of the effectiveness of different types of technological tools for preventing infringement, as well as assessments of the effectiveness of different types of legal remedies in different contexts.

Fourth, interdisciplinary research can be conducted to identify the broader social and economic implications of violations of ownership rights on the Internet platform and social media. This can include analyses of the impact of these violations on individual privacy, freedom of expression, and economic growth, as well as assessments of the broader societal implications of these issues.

Overall, further research in these areas can help to advance our understanding of the complex mechanisms for the protection of rights of

ownership on the Internet platform and social media, and can help to identify effective strategies for preventing and remedying violations of these rights.

## **Conclusions**

The research on the protection of the right of ownership has identified and considered numerous aspects, including different approaches to interpreting this right. The centralized extended approach, which grants the owner the right to own, dispose of, and use the property, as well as prevent interference from third parties, was one of the approaches considered. Another approach is the limited centralized approach, which limits the right of ownership to only two or three powers. The decentralized approach was also discussed, according to which the owner has the right to perform any actions that comply with the legislation and do not infringe on the rights of any person. Overall, the findings of this study shed light on the theoretical and practical aspects of the protection of ownership rights under Ukrainian and European law.

It was considered that one of the key points in the history of the development of the institution for the protection of the right of ownership is its enshrining in an international legal act, which makes this institution equal with a universal value. It is Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms that enshrines the provision indicating that every person, both an individual or a legal entity, has the right to the unhindered use of property, and no one can be deprived of this right or property, except as provided for by law. This article is the only article of the Convention and the Protocols thereto, which describes in detail the property right and the right of ownership and also regulates and guarantees the rights of not only individuals but also of legal entities.

The practical aspects of this study on "Protection of rights of ownership under Ukrainian and European law: theory and practice" highlight the importance of considering the practice of the European Court of Human Rights in disputes over the protection of the right of ownership and the rejection of this practice in Ukraine. The legal positions of the Supreme Court of Ukraine were also analysed, providing a detailed understanding of the operation of the institution of protection of the right of ownership in Ukraine. Furthermore, the study focuses on the concept of illegal takeover, which involves the takeover of

property, companies, and intellectual property. This work proposes methods that can be employed to protect property from illegal takeover, making it a valuable contribution to the legal protection mechanisms in civil law.

## REFERENCE

ABAKUMOVA, E.B. State legal protection of the rights of entrepreneurs in public legal relations. *Actual Problems of Economics and Law*, 2018, vol. 4, pp. 828-841.

Case No. 638/3309/15-c. *Unified State Register of Judgments*, 2021. Available from: <<https://www.uacourt.openregister.info/nevyznachena-kategoriya-2?document=44979829>>.

Civil Code of Ukraine of 2003, 2021. Available from: <<http://surl.li/kixz>>

DERBYSHEV, D.A. and TIMOFEEVA, R.I. Delimitation of the concepts of intellectual rights and property rights. *Fundamental and Applied Research in the Modern World*, 2016, pp. 16-3, pp. 154-156.

Dutch Civil Code of 2011, 2021. Available from: <<http://surl.li/acivv>>

French Civil Code, 1804. 2021, Available from: <[pandia.ru/text/77/231/34260.php](http://pandia.ru/text/77/231/34260.php)>

German Civil Code, 1900. 2021, Available from: <[surl.li/acivs](http://surl.li/acivs)>

GRAZIADEI, M. The European Court of Justice at Work: Comparative Law on Stage and Behind the Scenes, *Journal of Civil Law Studies*, 2020, vol. 13, no. 1, article 2.

IMAMOVA, D. I. Legal framework for the protection of property rights. *Economics and Law*, 2021, vol. 5, pp. 23-27.

KOCHARYAN, S. Protection of the practice of judges of Ukraine, the practice of SPSL for an hour to look at the right violation of the right of power. *Entrepreneurship, Statehood and Right*, 2021, vol. 2, pp. 49-54.

Law of Ukraine No. 3477-IV "On the execution of decisions and application of the practice of the European Court of Human Rights" of 2006, 2021. Available from: <<https://zakon.rada.gov.ua/laws/show/3477-15#Text>>

MARCHENKO, V. The food is served by the notary for the subjective civil rights. *Entrepreneurship, Statehood and Right*, 2020, vol. 3, pp. 31-35.

MINNIKES, I.V. Ownership as a set of powers. *Journal of Law*, 2017, vol. 1, pp. 2-9.

Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms of 1952, 2021. Available from: <<http://www.echr.europa.org/documents/doc/2440801/2440801.htm>>

Rating of the countries of the world according to the index of property rights protection, 2021. Available from: <<https://gtmarket.ru/ratings/international-property-right-index>>

Resolution of the Supreme Court No. 910/10987/18 of 2020, 2021. Available from: <[http://search.ligazakon.ua/l\\_doc2.nsf/link1/V5200028.html](http://search.ligazakon.ua/l_doc2.nsf/link1/V5200028.html)>

Resolution of the Supreme Court No. 910/17274/17 of 2018. 2021. Available from: <<https://zakononline.com.ua/court-decisions/show/82095858>>

Resolution of the Supreme Court No. 923/82/19 of 2020, 2021. Available from:  
<<https://zakononline.com.ua/court-decisions/show/87478664>.>

ROMANOVA, V.V. Legal responsibility of the state. *Legal Science and Law Enforcement Practice*, 2016, vol. 3, pp. 23-29.

RYZHIK, A.V. Institutionalization of the interests of owners in Russian civil law. Moscow: Russian Academy of Advocacy and Notary, 2017.

SALHI, B., RIGUEN, R., KACHOURI, M., JARBOUI, A. The mediating role of corporate social responsibility on the relationship between governance and tax avoidance: UK common law versus French civil law. *Social Responsibility Journal*, 2019, vol. 16, no. 8, pp. 1149-1168.

VOLODIN, A.B. Protection of property rights in the practice of the European Court of Human Rights. *Prospects for the Development of Science in the Modern World*, 2018, pp. 18-22.

YULBERDINA, L.R. and LATYPOVA, D.R. Property and property right: The problem of the correlation of concepts. *Integration of Sciences*, 2017, vol. 3, pp. 40-42.

Data de submissão do artigo: 13/03/2023

Data de aprovação do artigo: 16/05/2023

Edição e propriedade:

**Universidade Portucalense Cooperativa de Ensino Superior, CRL**

Rua Dr. António Bernardino de Almeida, 541 - 4200-072 Porto

Email: [upt@upt.pt](mailto:upt@upt.pt)