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Secção I

Investigação Científica*

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Ensuring property rights under martial law

Garantia dos direitos de propriedade ao abrigo da lei marcial

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ABSTRACT: The purpose of this article is to analyse the current state of ensuring property rights under martial law, highlighting the main groups of problems arising from it. The methodological basis of the research consists of general and special-legal methods of scientific knowledge, namely: dialectical method, systemic-structural method, logical-legal method, methods of comparison and analysis. The article provides a description of the current state and current issues arising from the provision of property rights under martial law. The proposed study provides a more comprehensive view of the picture of the provision of property rights under martial law, both with regard to individual problems of legal regulation and their interrelationship. Prospects for further research can be seen in the detailed analysis of the problems outlined in this article and the formulation of proposals for their solution in view of the current practice of law-making and law enforcement.

KEYWORDS: normative regulation; security and protection of property rights; material and procedural norms; ensuring the rights of users, possessors, owners of property.

RESUMO: Este artigo visa analisar o estado atual de garantia dos direitos de propriedade ao abrigo da lei marcial, destacando os principais grupos de problemas que dela decorrem. A base metodológica da investigação consiste em métodos gerais e especiais de conhecimento científico, nomeadamente: método dialético, método sistémico-estrutural, método lógico-jurídico, métodos de comparação e análise. O artigo descreve o estado atual e as questões decorrentes da concessão de direitos de propriedade ao abrigo da lei marcial. O estudo proposto fornece uma visão mais abrangente do quadro da concessão de direitos de propriedade ao abrigo da lei marcial, tanto no que diz respeito a problemas individuais de regulamentação legal como à sua inter-relação. As perspetivas de investigação adicional podem ser vistas na análise detalhada dos problemas delineados neste artigo e na formulação de propostas para a sua solução, tendo em conta a prática atual de elaboração de leis e de aplicação da lei.

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PALAVRAS-CHAVE: regulamentação normativa; segurança e proteção dos direitos de propriedade; normas materiais e processuais; garantia dos direitos dos utilizadores; possuidores; proprietários de bens.

Introduction

Property rights, as one of the priorities, are under the constant control of state and international entities, and an indicator of democracy and national wealth. Socio-economic and political trends and cataclysms leave their mark on approaches to the regulation of property rights, actually obliging the legislator and the scientific community to look for new approaches for the sustainable functioning of this institution. Among recent events that directly affected the functioning of the institution of property rights were: expanding the powers of administrative service centres; lifting the moratorium on the sale of agricultural land; introduction of the “Diya” application with wide possibilities for accessing information about existing property, which is contained in state registers of various profiles. However, the most striking changes were caused by Russia's armed aggression against Ukraine. Impossibility of free use of one's property, its loss or damage, closing of access to important Internet resources and registers related to the execution of transactions with property, delay in the payment of wages and social benefits – these are only a small part of the problems faced by Ukrainians.

The issues of overburdening of executive and judicial branches of government regarding documentation and registration of transactions with property, recording facts of destruction or damage to property, ensuring normal functioning of critical infrastructure facilities, administration of justice in cases related to property, and others were not less serious. In view of the above, authors consider it expedient to present own considerations regarding individual nuances of ensuring property rights under martial law. Given the fact that law-making and law enforcement in the legal regime of martial law are often accompanied by collisions and gaps, the scientific development of the outlined problems is one of the effective means of overcoming them (especially considering the fact that scientific doctrine has recently been recognized as a source of law in Ukraine).

The issues of securing property rights often become the subject of scientific research by scientists from civil, economic, administrative, constitutional and land law. Special attention is drawn to publications devoted to the improvement of legal regulation and bringing it into line with the requirements of the European Union. Illustrative examples in this area can be found in the work by T. V. Bodnar et al.,⁶ concerning issues of adaptation of the legislation of Ukraine on accounting and financial reporting to the standards of the European Union, development of economic legislation in terms of legal support and business risk management^{7,8}, by V. V. Nosik⁹, O. S. Kharchenko¹⁰, I. I. Karakash¹¹ – regarding land ownership, as well as developments by I.O. Kostyashkin et al¹²., regarding reforming the land market. Features of implementation and legislative intervention in property rights during martial law were analysed by Yu. O. Figel¹³, I. M. Prots¹⁴, A. M. Sychevska¹⁵, R. I. Melnyk and T. P. Chubko¹⁶, O. S. Frankov¹⁷ and A. A. Khrebtova and I. O. Taran¹⁸.

⁶ BODNAR, T. V., REZNIKOVA, V. V., PATSURIIA, N. B., RADZYVILIUK, V. V., and KRAVETS, I. M. Department of Eco Accounting and financial reporting of economic entities: adaptation of Ukrainian legislation to the standards of the European Union. *Law and Financial Markets Review*, 2020, vol. 14, n. 1, pp. 22-28.

⁷ BODNAR, T. V., REZNIKOVA, V. V., and KRAVETS, I. M. Concepts and Signs of Risk in Entrepreneurship. *Journal of Advanced Research in Law and Economics*, 2020, vol. 10, n. 2, pp. 468-476.

⁸ REZNIKOVA, V. V., KRAVETS, I. M., and SVIATOTSKYI, O. D. Risk management in business: *The problems of regulatory framework*. *Asia Life Sciences*, 2020, vol. 22, n. 2, pp. 625-638.

⁹ NOSIK, V. V. Land ownership of the Ukrainian people. Kyiv: Yurinkom Inter, 2006.

¹⁰ KHARCHENKO, O. S. Grounds for termination of ownership. Kyiv: Vydavnytstvo Yevropeyskoho Universytetu, 2009.

¹¹ KARAKASH, I. I. Land ownership and land use rights in Ukraine. Scientific and practical guide. Odessa: Feniks, 2003.

¹² KOSTYASHKIN, I. O., CHUDYK-BILOUSOVA, N. I., TARANENKO, L. S., ANDRUSHKO, A. V., and LOGINOVA, N. M. Land Ownership in Ukraine: Reform Issues. *Journal of Advanced Research in Law and Economics*, 2020, vol. 11, n. 4, pp. 1175-1183.

¹³ FIGEL, Yu. O. Restrictions on human rights under martial law. *Scientific Bulletin of the Lviv Commercial Academy. Series: Legal*, 2015, vol. 2, pp. 222-230.

¹⁴ PROTS I. M. Separate organizational and legal mechanisms for limiting the basic rights and freedoms of a person and a citizen under the legislation of Ukraine. *Comparative and Analytical Law*, 2020, vol. 1, pp. 381-384

¹⁵ SYCHEVSKA, A. M. Protection of the right of the owner in the conditions of the legal regime of martial law or state of emergency. *Journal of the Kyiv University of Law*, 2012, vol. 3, pp. 242-245.

¹⁶ MELNYK, R. I., and CHUBKO, T. P. Problems of limiting human rights and freedoms under the conditions of the special legal regime. *Bulletin of the Luhansk State University of Internal Affairs named after E.O. Didorenko*, 2016, vol. 1, pp. 125-134.

¹⁷ FRANKOV O. S. Protection of property rights under martial law. *Scientific Notes of the Lviv University of Business and Law*, 2022, vol. 34, 77-83.

¹⁸ KHREBTOVA, A. A., and TARAN, I. O. Property rights under martial law. *Scientific Bulletin of the Uzhhorod National University. Law Series*, 2022, vol. 70, pp. 210-213.

M.I. Demura¹⁹, I. Glowjuk et al.²⁰ and S.Y. Kravchuk²¹ and some others focus their attention on the comparison of the procedures of the criminal procedural law regarding the forced seizure of property in peacetime and wartime. At the same time, the actual issue of protecting or securing property rights is not analysed in detail. A.A. Khrebtova and I.O. Taran²² also raises the issue of forced expropriation of property, emphasizing the distinction between the concepts of “seizure” and “expropriation”, as well as the competence of subjects of authority within the framework of expropriation procedures. Civil aspects of compensation for damage caused to property rights are raised only in the publications of L. V. Mamchur and M. M. Tulchevska^{23,24} and V. S. Dmytryshyn²⁵, however, these publications are rather positive exceptions than a comprehensive presentation of the issue of securing property rights in wartime conditions. It is also necessary to pay attention to new research in the field of property law, which has already caught the wartime period^{26,27}. The main

¹⁹ DEMURA M. I. Changes in criminal procedural legislation in connection with the introduction of martial law on the territory of Ukraine. In: *Human rights and gender equality during hostilities on the territory of Ukraine: a collection of theses of reports of the participants of the scientific forum* (pp. 65-69). Lviv: Lviv State University of Internal Affairs, 2022.

²⁰ GLOWYUK I., TETERYATNIK G., ROGALSKA V., and ZAVTUR V. Special regime of pre-trial investigation, trial in conditions of war, state of emergency or in the area of anti-terrorist operation or measures to ensure national security and defense, repel and deter armed aggression of the Russian Federation and/or other states against Ukraine: *a scientific and practical commentary on Section IX-1 of the Criminal Procedure Code of Ukraine*. Lviv-Odessa-Dnipro: Odessa State University of Internal Affairs, 2022.

²¹ KRAVCHUK S. Y. The procedure for implementing the procedure of temporarily seized property in criminal proceedings and the features of its application. In: *Harmonization of the legislation of Ukraine with the law of the European Union: a collection of abstracts of reports of the III All-Ukrainian scientific conference dedicated to the 60th anniversary of the Khmelnytskyi National University* (pp. 118-122). Khmelnytskyi: Khmelnytskyi National University, 2022.

²² KHREBTOVA, A. A., and TARAN, I. O. Property rights under martial law. *Scientific Bulletin of the Uzhhorod National University. Law Series*, 2022, vol. 70, pp. 210-213.

²³ MAMCHUR L. V., and TULCHEVSKA M. M. Mechanism of execution of court decisions regarding compensation for damage caused to property during the armed conflict in Ukraine. In: *Theses of the VI Mogilian Legal Readings* (pp. 107-110). Mykolayiv: CHNU named after Peter's Tomb, 2020.

²⁴ MAMCHUR L. V., and TULCHEVSKA M. M. Peculiarities of compensation for damage caused to the property of individuals in the course of ATO/OOS. *Legal Scientific Journal*, 2021, vol. 1, pp. 92-95.

²⁵ DMYTRYSHYN V. S. Peculiarities of acquisition and protection of intellectual property rights in conditions of military aggression. In: *The European choice of Ukraine, the development of science and national security in the realities of large-scale military aggression and global challenges of the 21st century* (pp. 741-745). Odesa: Helvetica, 2022.

²⁶ BOYKO, I. Y., and TARASENKO, L. L. Patent law in the conditions of war: legal opportunities for the protection and restoration of Ukraine. *Law and Society*, 2022, vol. 3, pp. 38-44.

²⁷ FURASHEV V. M., PETRYAYEV S. Yu., and BARYUASH V. A. Creation, protection, protection and commercialization of objects of intellectual property rights. Kyiv: KPI named after Igor Sikorsky, 2022.

drawback of most of the early studies^{28,29,30,31} carried out within the framework of the outlined problems is the lack of factual material and the impossibility of predicting all the main and accompanying problems regarding the provision of property rights that arise as a result of the introduction of the legal regime of martial law. The analysis of acts of authorities and court decisions, which are directly related to the provision of property rights in the conditions of martial law, enables the authors to demonstrate plausible conclusions and provide adequate proposals.

The purpose of the article is to establish the features of property rights under martial law. In order to present the proposed material more effectively, the issue submitted for consideration will be highlighted in relation to the current legal positions of the Supreme Court. The object of the study will thus be the material and procedural aspects of judicial enforcement of property rights under martial law. The article attempts to solve the following tasks:

- analysis of guaranteed material and procedural opportunities for property rights protection under martial law conditions;
- peculiarities of judicial protection of property rights, taking into account restrictions on the implementation of the procedural rights of participants regarding participation in meetings and collection of evidence;
- legal guarantees to ensure the rights of users, possessors, and owners of property.

Materials and Methods

The methodological basis of the proposed scientific publication was a set of general and special legal methods of scientific knowledge, the use of which ensured the scientific reliability of the obtained results and the effective solution

²⁸ FIGEL, Yu. O. Restrictions on human rights under martial law. *Scientific Bulletin of the Lviv Commercial Academy. Series: Legal*, 2015, vol. 2, pp. 222-230.

²⁹ PROTS I. M. Separate organizational and legal mechanisms for limiting the basic rights and freedoms of a person and a citizen under the legislation of Ukraine. *Comparative and Analytical Law*, 2020, vol. 1, pp. 381-384.

³⁰ SYCHEVSKA, A. M. Protection of the right of the owner in the conditions of the legal regime of martial law or state of emergency. *Journal of the Kyiv University of Law*, 2012, vol. 3, pp. 242-245.

³¹ MELNYK, R. I., and CHUBKO, T. P. Problems of limiting human rights and freedoms under the conditions of the special legal regime. *Bulletin of the Luhansk State University of Internal Affairs named after E.O. Didorenko*, 2016, vol. 1, pp. 125-134.

of the tasks set by the authors. The article is based on general methods of scientific knowledge – analysis and comparison. The first one was used to establish problematic aspects of ensuring property rights under martial law in acts of law-making and law enforcement (on the example of judicial decisions of courts of first instance of various specializations and the Supreme Court). The second was used in the context of establishing common and distinctive features in the views of scientists, as well as the practice of higher courts of Ukraine. To achieve the set objectives, the dialectical method was used, which made it possible to consider the change in approaches to ensuring property rights in relation to the political, social and economic processes taking place in society since the introduction of the legal regime of martial law on the territory of Ukraine. The system-structural method was also used in this publication. With the help of the latter, a connection was established between the requirements and restrictions introduced during the establishment of the legal regime of martial law and the main points regarding the normal functioning of the institution of property rights. The logical-legal method made it possible to analyse the content of the norms of the current legislation regarding the forms, conditions, and procedure for ensuring property rights under martial law.

Current legal acts and law enforcement practice of the Supreme Court were chosen as the theoretical base of the study. The authors conclusions are supported by references to the positions of scientists the subject of whose research was ensuring the right of ownership in the conditions of extraordinary legal regimes and which acted as a quality foundation for further research works. The proposed study conventionally consisted of several independent stages, each of which was accompanied by the application of a constellation of the above methods and the analysed literature.

At the first stage of the research, a theoretical base was prepared: materials were collected from official notifications of state authorities, which relate to the procedure for recording notifications about damaged and destroyed property, as well as the possibility of restoring title documents and receiving appropriate compensation, assistance, or benefits from the state. Further, the court decisions on civil, economic and administrative cases of the courts of first instance and cassation, which are based on the dispute about the right of ownership or arise from it, are analysed. As a result, two groups of relations

were distinguished – legal relations of a material and procedural nature, which are related to the provision of property rights under the conditions of the legal regime of martial law. At the third stage, the characterization, and authors' assessment of the existing urgent issues were provided ensuring the right of ownership, it is also supported by the positions of scientists who spoke about this subject of research. At the last, final stage of the research work, on the basis of the results obtained in the course of it, the authors' conclusions were formulated, which are the final result and reflect the current trends of scientific research devoted to ensuring property rights in martial law. The authors also outlines issues that have not yet been covered in scientific literature.

Results and Discussion

The declaration of martial law on the entire territory of Ukraine caused significant changes in the usual way of life: prohibitions and restrictions affected all spheres of human activity. The state, ensuring the implementation of the provisions of the third article of the Constitution of Ukraine³², against its own will, left without proper legal protection the right to property, which, although it is not classified as a primary right, but which is an important aspect of democratic processes in Ukraine. In this regard, both the individual convictions of citizens and the slogans of certain political forces began to fill the mentioned gaps in the regulatory framework, which also led to an increase in the number of victims and complicated the process of legal resolution of conflict situations. The most aggressive (as applied to property rights) were the initiatives (however without legislative recognition) regarding the expropriation of the property of officials who allowed the misuse of humanitarian aid, the confiscation of cars for their further transfer to the needs of the Armed Forces of Ukraine from drivers who were detained for driving a vehicle means in a state of alcoholic, narcotic or other intoxication, etc. The issue of implementation of civil and business agreements and fulfilment of non-contractual obligations turned out to be no less controversial. Payment of loans, communal services, taxes on real estate, foreclosures on mortgages with forced eviction, state registration of property rights, entering data on formed land plots into the State Land Cadastre, leasing

³² Constitution of Ukraine. 1996. Available from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

land for commercial agricultural production and many others – all this required normalization in view of the realities of wartime. In addition to the regulation of material legal relations, which was discussed above, the process of implementing such relations also required appropriate corrections.

In view of the above, authors consider it necessary to separately consider the innovation of Ukrainian legislation regarding the normative regulation of social relations in the context of the introduction of the legal regime of martial law in Ukraine. For this, authors will take as a basis the division of legal norms (and the relations arising from them) into material and procedural ones, distinguishing, accordingly, the material and procedural aspects of ensuring the right of ownership. The material aspects of ensuring property rights should be revealed from the standpoint of today's current issues:

1. Receiving compensation for requisitioned, destroyed and damaged property (within non-contractual obligations).

2. Proper execution and provision of proper execution of contracts and other positive obligations.

Article 41 of the Constitution of Ukraine³³ establishes that “no one can be unlawfully deprived of the right to property”. The ownership is inviolable. Constitution of Ukraine³⁴ also stipulates that “forcible alienation of objects of private property rights can be applied as an exception and exclusively for reasons of public necessity on the grounds established by law, and on the condition of prior and full reimbursement of their value. Compulsory expropriation of such objects followed by full compensation of their value is allowed only in the conditions of war or state of emergency”. In the conditions of martial law, the possibility of forced expropriation of property with preliminary full reimbursement of its value or with subsequent full reimbursement of its value, as well as seizure of property without reimbursement of such value is also provided for.

The procedure for forced alienation and confiscation of property under martial law is regulated by Law of Ukraine No. 4765-VI “On the transfer, forced alienation or seizure of property under the legal regime of martial law or state of

³³ Constitution of Ukraine. 1996. Available from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

³⁴ Constitution of Ukraine. 1996. Available from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

emergency”³⁵ and Resolution of the Cabinet of Ministers of Ukraine No. 998 “Some issues of full compensation for property forcibly alienated under the legal regime of martial law or state of emergency”³⁶. Mechanisms for forced alienation and confiscation of property under martial law are currently insufficiently developed with respect to movable property and the procedure for receiving compensation for its use, as well as in the event that it has been damaged or destroyed. The legislation does not consistently define objects and forms of ownership of property that can be seized. The problem also exists in the fact that the formal bureaucracy for obtaining an act of forced alienation or confiscation of property, as well as carrying out its corresponding assessment in accordance with the requirements of the current legislation, is stretched over time, and also deprives the authorities (the National Police, the National Guard, certain military Armed Forces of Ukraine, who perform an urgent military task) the ability to use the property of legal entities or individuals in urgent cases³⁷. However, this situation generally meets the requirements of the Constitution to ensure the right to property.

In contrast to this, the legislation has developed a consistent procedure for the expropriation of land plots under martial law. O. S. Kharchenko³⁸ and I. I. Karakash³⁹, considering the possibility of requisitioning land plots in the conditions of a state of emergency and martial law, draws attention to the peculiarities of the administrative procedure for the expropriation of individually determined things that are immovable property. The authors independently provide an assessment of existing procedures for judicial termination of land ownership under martial law. Both authors agree that the existing procedure is associated with a significant number of complications both in terms of the procedure itself and time consumption, and therefore, its implementation in

³⁵ Law of Ukraine No. 4765-VI “*On the transfer, forced alienation or seizure of property under the legal regime of martial law or state of emergency*”. 2012. Available from <https://zakon.rada.gov.ua/laws/show/4765-17#Text>.

³⁶ Resolution of the Cabinet of Ministers of Ukraine No. 998 “*Some issues of full compensation for property forcibly alienated under the legal regime of martial law or state of emergency*”. 2012. Available from <https://zakon.rada.gov.ua/laws/show/998-2012-%D0%BF#Text>.

³⁷ Constitution of Ukraine. 1996. Available from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

³⁸ KHARCHENKO, O. S. Grounds for termination of ownership. Kyiv: Vydavnytstvo Yevropeyskoho Universytetu, 2009.

³⁹ KARAKASH, I. I. Land ownership and land use rights in Ukraine. *Scientific and practical guide*. Odessa: Feniks, 2003.

wartime conditions is not effective. Restoring or compensating the affected owners of property that was destroyed or damaged as a result of the ongoing armed aggression is important for the social and economic revival of the country. At the same time, many important factors must be taken into account, including:

- effective allocation of funds taking into account priority and priority in meeting the needs of both the state as a whole and individual individuals and legal entities – owners, possessors, or users of property (taking into account the powers arising from the right of economic administration and operational management);
- introduction of quick and effective mechanisms for assessing the damage caused by the aggressor;
- taking into account the opportunities of citizens to provide legal documents for movable and immovable property;
- taking measures to prevent misuse of funds and their actual receipt to the recipient.

Among the measures taken by the state, the following stand out: the expansion of the functionality of the “Diya” application, other applications of various profiles, the creation of the National Council for the Recovery of Ukraine from the Consequences of the War⁴⁰, the expansion of the powers of law enforcement officers, experts, local state administrations (military administrations) and village executive committees, of settlement and city councils regarding the documentation of the facts of offences and cases of destruction/damage to property, the functioning of the State Register of Property Damaged and Destroyed as a result of hostilities, terrorist acts, sabotage caused by the military aggression of the Russian Federation, as well as the introduction of mechanisms for determining damage and losses caused to Ukraine as a result armed aggression of the Russian Federation.

Certain aspects of the protection of property rights are defined based on the principles of the United Nations Charter⁴¹, Universal Declaration of Human

⁴⁰ Decree of the President of Ukraine No. 266/2022 “*Issues of the National Council for the Recovery of Ukraine from the Consequences of the War*”. 2022. Available from <https://zakon.rada.gov.ua/laws/show/266/2022#Text>.

⁴¹ United Nations Charter. 1945. Available from <https://www.un.org/en/about-us/un-charter/full-text>.

Rights⁴², Budapest Memorandum⁴³, Act of the Conference on Security and Cooperation in Europe (Helsinki Declaration)⁴⁴, Treaty on friendship, cooperation and partnership between Ukraine and the Russian Federation⁴⁵. However, these acts are not directly causally related to the possibility and procedures of compensation for property damage. On March 20, 2022, the Procedure for determining damage and losses caused to Ukraine as a result of the armed aggression of the Russian Federation was approved⁴⁶. The provision of the said normative legal act concerns, first, damages caused in the social, economic, military, law enforcement, housing, and land spheres. In relation to business entities, criteria can be applied based on the type of economic costs in connection with the losses of enterprises of all forms of ownership as a result of the destruction and damage to their property and the lost profit from the impossibility or obstacles in the conduct of economic activity. A separate point for business entities is compensation for losses of the land fund, infrastructure of transport and telecommunication networks, losses of energy infrastructure, etc. For individuals, the situation is much worse.

Regarding the latter, only the following basis for compensation applies: losses of the housing stock and objects of housing and communal services, objects of unfinished construction of residential real estate, summer cottages and garden houses are compensated in view of the actual costs incurred for their restoration. Thus, this clause only deals with real damages, but not with lost profit, and also does not provide for the possibility of compensation for moral damages. As for the latter, this statement is not categorical, since here it is possible to refer to the general principles of compensation for moral damage. In addition, compensation for moral damage should not necessarily be related

⁴² Universal Declaration of Human Rights. 1948. Available from https://zakon.rada.gov.ua/laws/show/995_015#Text.

⁴³ Budapest Memorandum. 1994. Available from https://zakon.rada.gov.ua/laws/show/998_158#Text.

⁴⁴ Act of the Conference on Security and Cooperation in Europe (Helsinki Declaration). 1975. Available from <https://www.osce.org/files/f/documents/5/c/39501.pdf>.

⁴⁵ Treaty on friendship, cooperation and partnership between Ukraine and the Russian Federation. 1998. Available from https://zakon.rada.gov.ua/laws/show/643_006#Text.

⁴⁶ Resolution of the Cabinet of Ministers of Ukraine No. 326 “*On the approval of the Procedure for determining damage and losses caused to Ukraine as a result of the armed aggression of the Russian Federation*”. 2022. Available from <https://zakon.rada.gov.ua/laws/show/266/2022#Text>.

to property damage (which is evidenced by current judicial practice, as well as the provisions of Article 23 of the Civil Code of Ukraine)^{47,48,49,50,51}.

From the resolution of the Plenum of the Supreme Court of Ukraine No. 4 “On judicial practice in cases of compensation for moral (non-property) damage”⁵² moral damage should be understood as losses of a non-property nature as a result of physical suffering or other negative phenomena caused to an individual by illegal actions or inaction of other persons. According to the current legislation, moral damage can be expressed as: humiliation of honour and dignity, violation of life ties due to the impossibility of continuing an active public life, violation of relations with surrounding people, occurrence of other negative consequences. Clause 5 of the above-mentioned resolution additionally clarifies the general grounds of civil liability when resolving a dispute on compensation for moral (non-property) damage. The more detailed content and procedure for compensating material damage is defined in the decisions of the Supreme Court^{53,54}.

O. S. Frankov⁵⁵ notes that the legislation provides for the limitation of property rights, but under certain procedural conditions. The analysis of the relevant literature gives reasons to determine that the specified conditions should be considered as follows: making such a decision exclusively by the court; the legality, reasonableness, and motivation of such a decision; strict observance of the procedure for the implementation of procedural actions that limit the right of ownership. The above provisions related to non-contractual

⁴⁷ Resolution of the Grand Chamber of the Supreme Court No. 635/6172/17. 2022. Available from <https://reyestr.court.gov.ua/Review/104728593>.

⁴⁸ Resolution of the Supreme Court No. 641/4272/19. 2022. Available from <https://reyestr.court.gov.ua/Review/106164655>.

⁴⁹ Decision of the Ivano-Frankivsk City Court of the Ivano-Frankivsk Region No. 344/5555/22. 2022. Available from <https://reyestr.court.gov.ua/Review/105546152>.

⁵⁰ Decision of the Khmelnytskyi City and District Court No. 686/19819/21. 2022. Available from <https://reyestr.court.gov.ua/Review/106530668>.

⁵¹ Civil Code of Ukraine. 2003. Available from <https://zakon.rada.gov.ua/laws/show/435-15#Text>.

⁵² Plenum of the Supreme Court of Ukraine No. 4 “On judicial practice in cases of compensation for moral (non-property) damage”. 2019. Available from <https://zakon.rada.gov.ua/laws/show/v0004700-95#Text>.

⁵³ Resolution of the Grand Chamber of the Supreme Court No. 216/3521/16-ts. 2020. Available from <https://reyestr.court.gov.ua/Review/91644731>.

⁵⁴ Resolution of the Great Chamber of the Supreme Court No. 752/17832/14-ts. 2020. Available from <https://reyestr.court.gov.ua/Review/95177479>.

⁵⁵ Frankov O. S. Protection of property rights under martial law. *Scientific Notes of the Lviv University of Business and Law*, 2022, vol. 34, pp. 77-83.

(non-contractual) liability. Another aspect related to property rights concerns the procedure and conditions for the execution of civil and economic agreements in wartime conditions.

One of the most unsettled was the sphere of legal relations arising from mortgage contracts and tax obligations. In this regard, the legislator made special reservations. According to Law of Ukraine No. 2120-IX “On the introduction of amendments to the Tax Code of Ukraine and other legislative acts of Ukraine regarding the effect of norms during the period of martial law”⁵⁶ the Verkhovna Rada of Ukraine passed Chapter VI “Final Provisions” Law of Ukraine No. 38 “On Mortgage”⁵⁷ to be complemented with paragraph 5-2 with the following content: “During the period of martial law, state of emergency in Ukraine and in the thirty-day period after its termination or cancellation in relation to immovable property (real estate) owned by individuals and mortgaged under consumer loans , the effect of Article 37 (in the part of exercising the right of the mortgagee to acquire ownership of the subject of mortgage), Article 38 (in the part of exercising the right of the mortgagee to sell the subject of mortgage), Article 40 (in the part of eviction of residents from residential buildings and premises transferred to a mortgage) is suspended , in respect of which there is a court decision to foreclose on such objects), Articles 41, 47 (in the part of the sale of the subject of the mortgage on electronic auctions) of this Law”. The aforementioned provisions provided for a certain kind of postponement of the performance of contractual obligations, but did not terminate their effect and, accordingly, only delayed the negative consequences that may occur in the event of non-performance or improper performance of the contract. According to the conclusions of the Supreme Court, the aforementioned norms of Law of Ukraine No. 38 “On Mortgage”⁵⁸ do not lose their validity, while their effect is suspended by a special law for a certain

⁵⁶ Law of Ukraine No. 2120-IX “On the introduction of amendments to the Tax Code of Ukraine and other legislative acts of Ukraine regarding the effect of norms during the period of martial law”. 2022. Available from <https://zakon.rada.gov.ua/laws/show/2120-20#Text>.

⁵⁷ Law of Ukraine No. 38 “On Mortgage”. 2003. Available from <https://zakon.rada.gov.ua/laws/show/898-15#Text>.

⁵⁸ Law of Ukraine No. 38 “On Mortgage”. 2003. Available from <https://zakon.rada.gov.ua/laws/show/898-15#Text>.

period, namely the period of martial law and a thirty-day period after its end. Similar positions are also provided for in other decisions of this court^{59,60}.

Pursuant to Tax Code of Ukraine⁶¹ [44], during the time of martial law, the period specified by the Tax Code of Ukraine and other legislation is suspended, the monitoring of compliance with it is carried out by the controlling bodies specified by the tax law. The mechanisms established by Tax Code of Ukraine can also be considered effective in this regard concerning benefits regarding the fulfilment of the tax obligation, suspension of payment of environmental tax and tax on real property, except for a land plot, as well as on non-residential real estate objects, including their shares, located in the territories which hostilities are or were conducted on, or in the territories temporarily occupied by the armed forces of the Russian Federation. There is also no charge for land (both in the form of land tax and rent for state and communally owned land). Additional provisions on receiving compensation and social assistance are provided in the form of exemption from paying rent for the use of subsoil for natural gas extraction, simplification of the system of calculating rent for the sale of volumes of natural gas pumped into gas storage facilities, changes in the procedure for inclusion in the tax credit of value added tax when carrying out an operation for the purchase of goods that were subsequently destroyed as a result of martial law, failure to carry out checks by the controlling authorities on taxpayers who reported the loss of primary documents, establishing specifics regarding the implementation of state control, supervision, and surveillance in the field of pricing.

Law of Ukraine No. 2145-IX “On amendments to certain legislative acts of Ukraine on creating conditions for ensuring food Security in martial law”⁶², which entered into force on April 7, 2022, also made its corrections to the procedure for realizing the right to own property during the introduction of the legal regime

⁵⁹ Resolution of the Supreme Court No. 464/3789/17. 2019. Available from <https://reyestr.court.gov.ua/Review/81046506>.

⁶⁰ Resolution of the Supreme Court No. 296/7213/15. 2022. Available from <https://reyestr.court.gov.ua/Review/105011832>.

⁶¹ Tax Code of Ukraine. 2011. Available from <https://zakon.rada.gov.ua/laws/show/2755-17#Text>.

⁶² Law of Ukraine No. 2145-IX “On amendments to certain legislative acts of Ukraine on creating conditions for ensuring food Security in martial law”. 2022. Available from <https://zakon.rada.gov.ua/laws/show/2145-20#Text>.

of martial law. Among the innovations of this law, which are related to the provision of property rights under martial law, the following should be included:

- automatic renewal for one year of contracts for the use of agricultural land of all forms of ownership;
- simplifying the procedure for leasing land for commercial agricultural production during martial law;
- limiting the term of concluding contracts for the lease of agricultural land for a period of one year with the establishment of the amount of the rent not higher than eight percent;
- narrowing of the lessee's rights regarding the possibility of receiving compensation for land improvement costs;
- simplification of the procedure for the formation of land plots;
- establishment of the legal possibility for tenants and sub-lessees to temporarily transfer their rights to a land plot;
- expanding the powers of district military administrations regarding the lease of state and communal property for agricultural land.

In addition, during the war period, the free transfer of state communal property to private property is prohibited, as well as the formation of land plots (with certain exceptions), unfinished land auctions are cancelled. Although the mentioned benefits are not directly related to the provision of property rights in the conditions of martial law, however, in case of violation of the mentioned norms and obligations in peacetime, most of them are qualified either as tax offences or, if we take into account civil obligations regarding various types of contractual payments (for example, rent), then these can be qualified as unreasonably preserved property, and in the case when we are talking about improper registration of objects of ownership (currently relevant only for land plots) or rights to them, – as a violation of administrative legislation.

At the next stage, authors will consider changes to procedural legislation, as well as individual issues of implementation of procedural norms. One of the primary issues concerns the presence or absence of judicial immunity of the Russian Federation. The jurisdiction of the courts of Ukraine extends to any legal dispute and any criminal accusation. Article 124 of the Constitution of

Ukraine⁶³ also provides that in cases provided for by law, courts also consider other cases. Article 79 Law of Ukraine No. 2709-IV “On private international law”⁶⁴ establishes that any state can be a defendant in a case in Ukrainian courts only if the competent body of that state in Ukraine gives its consent. For a long time, the courts refused to satisfy claims against the Russian Federation due to this legislative provision^{65,66,67,68,69}. However, starting in April 2022, the Supreme Court created a legal position that radically changed the situation. According to the stated position of the Supreme Court, applying the principle of “delict exception”, domestic courts have the right to consider any dispute that arose on the territory of Ukraine or to which a citizen of Ukraine is a party, even if the dispute concerns other country^{70,71,72,73}.

This provision actually gave the “green light” to Ukrainian courts to resolve and consider cases against the Russian Federation. Most of the documents being available in the Unified State Register of Court Decisions, which are directly related to the provision of property rights under martial law (that is, do not raise the issue of compensation for moral damage), are cases regarding compensation for damages and lost profits. Among other points arising from the application of procedural legislation is the conduct of procedural actions taking into account the restrictions introduced in connection with the introduction of the legal regime of martial law. Accordingly, the right to participate in the court

⁶³ Constitution of Ukraine. 1996. Available from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

⁶⁴ Law of Ukraine No. 2709-IV “On private international law”. 2005. Available from <https://zakon.rada.gov.ua/laws/show/2709-15#Text>.

⁶⁵ Resolution of the Supreme Court No. 201/9754/17. 2022. Available from <https://reyestr.court.gov.ua/Review/105110284>.

⁶⁶ Resolution of the Supreme Court No. 357/13182/18. 2020. Available from <https://reyestr.court.gov.ua/Review/89928706>.

⁶⁷ Resolution of the Supreme Court No. 280/1380/19. 2020. Available from <https://reyestr.court.gov.ua/Review/92747065>.

⁶⁸ Resolution of the Supreme Court No. 711/17/19. 2020. Available from <https://reyestr.court.gov.ua/Review/89509134>.

⁶⁹ Resolution of the Supreme Court No. 711/16/19. 2020. Available from <https://reyestr.court.gov.ua/Review/90143663>.

⁷⁰ Resolution of the Supreme Court No. 913/260/21. 2022. Available from <https://reyestr.court.gov.ua/Review/105069594>.

⁷¹ Resolution of the Supreme Court No. 911/1378/21. 2022. Available from <https://reyestr.court.gov.ua/Review/105793099>.

⁷² Resolution of the Supreme Court No. 910/10135/20. 2022. Available from <https://reyestr.court.gov.ua/Review/105301172>.

⁷³ Order of the Chairman of the Supreme Court No. 29/0/8-22 “On the establishment of a special mode of operation of the Supreme Court under martial law”. 2022. Available from <https://zakon.rada.gov.ua/>.

session and to consider the case within the terms specified by the law, which are guaranteed by the procedural legislation^{74,75,76,77}, was subject to a certain limitation.

In March 2022, the Council of Judges of Ukraine published a letter-recommendation, which certain features of the consideration of court cases are indicated in. In particular, courts are recommended to postpone the consideration of cases (except for urgent court proceedings) and remove them from consideration as much as possible, to take into account the fact that numerous participants in court proceedings do not always have the opportunity to submit an application for postponement of the consideration of the case through the meeting in connection with the objective reasons caused by the introduction of martial law. Cases that are not urgent under normal circumstances are recommended to be considered only with the written consent of all participants in the court proceedings. In addition to it, as regards the return of procedural documents, leaving them without movement, as well as the establishment of various deadlines, it is necessary to extend them at least until the end of martial law^{78,79}. Collecting evidence to solve the case also remains problematic. Since part of the information that has important evidentiary value is entered in state registers, access to which is currently closed (including the suspension of the automated system of the State Land Cadastre and the Public Cadastre Map^{80,81}), it is necessary to search for alternative evidence or methods of proof.

⁷⁴ Resolution of the Supreme Court No. 913/260/21. 2022. Available from <https://reyestr.court.gov.ua/Review/105069594>.

⁷⁵ Resolution of the Supreme Court No. 911/1378/21. 2022. Available from <https://reyestr.court.gov.ua/Review/105793099>.

⁷⁶ Resolution of the Supreme Court No. 910/10135/20. 2022. Available from <https://reyestr.court.gov.ua/Review/105301172>.

⁷⁷ Order of the Chairman of the Supreme Court No. 29/0/8-22 “*On the establishment of a special mode of operation of the Supreme Court under martial law*”. 2022. Available from <https://zakon.rada.gov.ua/>.

⁷⁸ Decree of the President of Ukraine No. 64/2022 “*On the introduction of martial law in Ukraine*”. 2022. Available from <https://zakon.rada.gov.ua/laws/show/64/2022#Text>.

⁷⁹ Decree of the President of Ukraine No. 341/2022 “*On the extension of martial law in Ukraine*”. 2022. Available from <https://zakon.rada.gov.ua/laws/show/573/2022#Text>.

⁸⁰ Resolution of the Supreme Court No. 918/796/21. 2022. Available from <https://reyestr.court.gov.ua/Review/105767618>.

⁸¹ Order of the State Geocadastre No. 7-a “*On the suspension of the automated system of the State Land Cadastre and the Public Cadastre Map*”. 2022. Available from <https://zakon.rada.gov.ua/>.

Conclusions

Ensuring the right to property is one of the important aspects of sustainable socio-economic and political development of market economy states, including Ukraine. Striking changes and problems caused by Russia's armed aggression require quick adaptation of Ukrainian legislation to the realities of wartime. If until recently the issue of requisition and confiscation of property for the needs of the army, approaches to determining the level of property damage in connection with military actions, the possibility of establishing tax benefits for both citizens and legal entities were the subject of isolated scientific studies, then at present scientists are given the opportunity to work with visual material. Despite this, current publications lack comprehensiveness, the authors consider the main aspects of ensuring property rights in martial law using the example of individual situations or legal norms. analysis of the current state of ensuring property rights under martial law, highlighting the main groups of problems arising from it.

As part of the study, the authors have characterized the current state and current problems arising from the provision of property rights under martial law. The security and protection of property rights during the introduction of the legal regime of martial law is related to the need to make changes to substantive and procedural legislation and concerns the following issues concerning: compensation for requisitioned, destroyed and damaged property; proper execution and provision of proper execution of contracts and other positive obligations.; adjustment of the mechanisms of registration of rights to objects of ownership, obtaining and restoration of title documents in conditions of lack of access to registers; provision of benefits and postponement of obligations; expanding the competence of the subjects of authority regarding the assessment of property damage; jurisdiction of disputes against the Russian Federation; problematic aspects of access to justice and implementation of procedural actions in wartime conditions. The proposed study provides a more comprehensive view of the picture of the provision of property rights under martial law, both with regard to individual problems of legal regulation and their interrelationship. Prospects for further research can be seen in the detailed analysis of the problems outlined in this article and the formulation of proposals

for their solution in view of the current practice of law-making and law enforcement.

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