

# THE RIGHT TO PRIVATE PROPERTY UNDER MARTIAL LAW IN UKRAINE

KATERYNA NEKIT<sup>1</sup>

**Abstract:** In Ukraine, the inviolability of the right to private property is guaranteed by the Constitution. However, under martial law, introduced in Ukraine as a result of aggression by the Russian Federation, restrictions on private property rights and even forced alienation of property for the needs of the state are allowed. This paper aims to determine the peculiarities of the legal regulation of private property relations under the legislation of Ukraine and to study the reasons for limiting property rights under martial law in Ukraine. Furthermore, it looks into the mechanisms for restoring property rights and issues in the field of implementation and protection of property rights under martial law. Such cases of restriction of private property rights as forced alienation of property and impossibility of disposal of property under martial law are being highlighted. The article also analyzes the problems of compensation for damage caused to property in terms of the war.

**Keywords:** The right to private property, requisition, forced alienation, martial law, war, restriction of property rights, compensation for damage.

## 1. INTRODUCTION

The right to private property holds a special place in a variety of human rights. From ancient times, the right to private property was considered necessary to ensure social unity and was perceived as the embodiment of the ideas of justice. Nowadays the importance of the right to private property for the development of the individual and society is unquestionably recognized.

In Ukraine, the final step towards recognizing the importance of property rights in the human rights system was ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (hereinafter referred to as Convention), which deals with the right of private individuals to peacefully enjoy their possessions and prohibit deprivation of possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The Convention was ratified by Ukraine on July 17, 1997 and entered into force for Ukraine on September 11, 1997 (Verkhovna Rada of Ukraine, 1997). After the ratification of the Convention and the adoption of the Law of Ukraine “On Enforcement of Judgments and Application of the Case Law of the European Court of Human Rights” (Verkhovna

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<sup>1</sup> Dr. of Science, Professor of Civil Law Department of National University “Odessa Law Academy”, Odessa, Ukraine. Guest researcher at the Institute for SME research and entrepreneurship (ifm) at the University of Mannheim (Germany) katerinanekit@gmail.com. ORCID: 0000-0002-3540-350X.

Rada of Ukraine, 2006), the Convention and the case law of the European Court of Human Rights have become binding in Ukraine.

Thus, today the Convention is part of Ukrainian legislation and its provisions play a significant role in national law in resolving various disputes. According to the Law of Ukraine “On Enforcement of Judgments and Application of the Case Law of the European Court of Human Rights” of 23 February 2006, courts must apply not only the Convention but also the case law of the European Court of Human Rights as a source of law.

Apart from international guarantees of the right to private property, the main source for regulation of private property relations in Ukraine is the Constitution of Ukraine, which prohibits any violations of the right to private property apart from cases directly established by law. Thus, despite a very careful approach to protection of the right to private property, it still can be limited in cases when interests of state or society should be protected. Therefore, in modern law, ownership is complemented by a necessary social function performed by the owner for the public benefit. This approach led to the realization of the need to limit the absolute right of ownership in the public interest. The owner is obliged to take into account not only his or her personal interest, but also the interests of society. The right of ownership is considered inextricably linked with the duties of a person, first of all, in connection with the principle of social limitation of the right to private property (Nekit, 2021b).

Despite the recognition of the possibility and necessity in some cases to limit the right to private property in the public interest, such cases of restrictions of the property rights are recognized as exceptional. Such restrictions should be based on the balance of interests of the person, society and the state. Thus, forced alienation of private property under martial law can be attributed to the cases of such a need to balance the interests of a person, society and the state.

## **2. THEORETICAL FRAMEWORK AND METHODOLOGY**

The issue of the right to private property limitation has been the subject of researchers' attention for a long time. Thus, G. Hegel noted that private property can be limited only in exceptional cases, and such restrictions can be based only on the reasonable approach of the state as a whole, not be determined by the wishes of private individuals. Speaking about the need for private property, G. Hegel considered it through the prism of the attitude of a person to property. He noted that through property a person expresses the freedom. This, according to the philosopher, is the importance of private property. The state can make exceptions to this rule, but only the state can make such exceptions (Hegel, 1990).

The doctrine of necessity of the right to private property has been developed at the end of 19<sup>th</sup> – beginning of 20<sup>th</sup> century. Thus, G. Shershenevich noted that the right to private property must be implemented in accordance with the procedure established by law. This means that the right to private property can be limited, but such limitations can

only be established by law or contract, and after their termination, the right of ownership must be renewed in its initial form (Shershenevich, 2020).

In modern law, as a result of the influence of numerous socio-philosophical doctrines aimed at finding the best model of social relations, the theory that ownership is a relationship between people, and not just a person's relationship to things, has spread. Ownership is complemented by a necessary social function performed by the owner for the public benefit. This approach led to the awareness of the need to limit the absolute right of ownership in the public interest. Therefore, the owner was obliged to take into account not only his personal interest, but also the interests of society. The right to property is considered inextricably linked with the duties of a person, first of all, in connection with the principle of social limitation of the right to private property (Vetrova, 2006).

In the Ukrainian doctrine, the issues of the inviolability of property rights and the need for its limitations were considered by O. Rozgon, who devoted her PhD thesis to the researching the limitations of property rights (Rozgon, 2005). O. Dzera has some works on the inviolability of property rights in the context of European standards for the protection of property rights (Dzera, 2005). N. Kuznetsova, considering property as the basis of civil society and a democratic state, pointed to the limitation of the owner's freedom of discretion in exercising his right to property, in particular, the need to refrain from actions that could violate the rights of others, cause damage to the environment or cultural heritage (Kuznetsova, 2011).

Since the occupation by the Russian Federation of a part of the territory of Ukraine, and later the outbreak of a full-scale war, scientific studies of restrictions on human rights, including the right to private property, in terms of armed conflict and under martial law began to appear in Ukrainian doctrine. Among the works devoted to the limitation of human rights and freedoms under martial law, we can mention findings of R. Melnyk and T. Chubko (2016), I. Glowiyuk, H. Teteryatnik, V. Rogalska and V. Zavrur (2022), O. Frankov (2022). The report of Yu. Naumenko "Violation of property rights in terms of the armed conflict in the East of Ukraine and methods of their protection" (2020) is of particular importance for the protection of the owners' rights. The report highlights the available mechanisms for obtaining compensation for destroyed property, mechanisms for restoring property rights, as well as Ukrainian court practice in cases regarding receiving compensation for destroyed/damaged property and the practice of the European Court of Human Rights in similar international armed conflicts.

In the Western doctrine, in the field of protection of property rights during military conflicts and in occupied territories, the works of L.G. Loucaides (2004), M.M. Molango (2009), H. Das (2004), and M. Taylor (2021) are of particular interest. The mentioned scholars analyze the problems of protection of property rights and compensation for damage caused to owners during hostilities from the international humanitarian law perspective. In particular, M. Taylor (2021) in his work mostly focuses on the crime of pillage and related regulation of property during armed conflict under international humanitarian law.

Nevertheless, the problem of restrictions and protection of property rights under martial law in Ukraine remains insufficiently covered. Therefore, this article aims to determine the reasons for limiting property rights under martial law in Ukraine, the mechanisms for restoring property rights and problems in the field of implementation and protection of property rights under martial law. To achieve this goal, general scientific and special research methods are used. Methodological basis for the study was a dialectical method that allowed to review the issues in their development and interconnection. Method of analysis and synthesis as long as empirical method are used to reveal peculiarities of compensation for the damage caused to the property under martial law. The main method of the research is formal-dogmatic as the paper mostly focuses on the study of normative legal acts which provide the frame for realization of the right to private property in Ukraine as well as mechanisms of compensation for the force alienation of the property under martial law and ways to restore property rights. Comparative method is used to study international experience regarding compensation for the damage caused to the property under martial law.

### **3. CONSTITUTIONAL GUARANTEES OF THE RIGHT TO PRIVATE PROPERTY IN UKRAINE**

In Ukraine, property relations are regulated by various branches of law, which allows us to speak about the complex nature of this institution, which covers a set of rules that establish general principles of ownership, regulate and protect the ownership of individuals (Novoselova, 2001).

However, the constitutional provisions that establish the legal regime of property relations are of special importance. The Constitution of Ukraine (Verkhovna Rada of Ukraine, 1996), being the basis of all legislation of Ukraine, defines the basic principles of regulation of property relations.

The Constitution of Ukraine not only enshrines the basic principles of regulation of property relations, but also provides some rules on subjects, objects, features of certain types of property rights. In particular, Art. 13 of the Constitution of Ukraine enshrines the principle of equality of all subjects of property rights, the essence of which is that all subjects of property rights are guaranteed equal freedom in exercising their property rights, equal opportunities to acquire or renounce property rights, etc. In addition, all subjects of property relations are guaranteed equality in the protection of their rights in case of violation. This principle enshrined in the Constitution is in fact repeated in Part 2 of Art. 318 of the Civil Code of Ukraine (Verkhovna Rada of Ukraine, 2003a), according to which all subjects of property rights are equal.

Art. 13 of the Constitution of Ukraine enshrines a number of other important provisions. In particular, it enshrines the principle of restricting the freedom of the individual in the interests of society, according to which property should not be used to the detriment of man and society, i. e. the essence of this principle is that the owner's freedom regarding the property is allowed to the extent that it does not harm other people and society as a whole.

The principle of restricting the freedom of the individual by the interests of society, enshrined in Art. 13 of the Constitution of Ukraine, is detailed at the level of the Civil Code of Ukraine, in particular, Part 5 of Art. 319 of the Civil Code of Ukraine stipulates that the owner may not use the right of ownership to the detriment of the rights, freedoms and dignity of citizens, the interests of society, to worsen the environmental situation and natural qualities of the land.

Art. 24 of the Constitution of Ukraine enshrines the principle of non-discrimination, according to which there can be no privileges or restrictions on the grounds of race, color, political, religious and other beliefs, gender, ethnic and social origin, property status, place of residence, language or other characteristics. This principle is reflected in Part 2 of Art. 317 of the Civil Code of Ukraine, according to which the content of property rights is not affected by the place of residence of the owner and the location of the property.

A number of fundamental provisions on property rights are enshrined in Art. 41 of the Constitution of Ukraine. In particular, it provides for the right of everyone to own, use and dispose of their property, to acquire the right to private property in the manner prescribed by law, and the right of every citizen to use objects of state and communal property in accordance with the law.

In addition, Art. 41 of the Constitution enshrines the principle of inadmissibility of deprivation of property rights, except as provided by law, and the principle of inviolability of property rights. Thus, in accordance with Art. 41 of the Constitution, compulsory alienation of objects of private property rights can be used only as an exception for reasons of public necessity, on the basis and in the manner prescribed by law, and with prior and full reimbursement of their value. Compulsory alienation of such objects with the subsequent full reimbursement of their value is allowed only in conditions of martial law or state of emergency. Confiscation of property may be applied only by court decision in cases, to the extent and in the manner prescribed by law.

These principles are reflected in Art. 3 and Art. 321 of the Civil Code of Ukraine. Art. 3 of the Civil Code of Ukraine enshrines the principle of inadmissibility of deprivation of property, except as provided by the Constitution of Ukraine and the law, which implies the need to provide owners with the opportunity to use their property in their interests, without the threat of its arbitrary seizure, prohibition or restrictions on use. In Art. 321 of the Civil Code of Ukraine the principle of inviolability of property rights is detailed, according to which no one can be unlawfully deprived of property right or restricted in its implementation other than by a court decision adopted on lawful grounds. Seizure of property in the public interest is also allowed only in cases directly established by law and with mandatory prior equivalent compensation.

Thus, the Constitution of Ukraine enshrines the basic principles of legal regulation of property relations, which are further detailed at the level of the Civil Code of Ukraine and special laws and regulations, the provisions of which may not contradict those enshrined in the Constitution, and therefore plays a leading role in determining the approach to regulation of property relations in Ukraine.

#### **4. GENERAL PROVISIONS ON THE RIGHT TO PRIVATE PROPERTY UNDER CIVIL LEGISLATION OF UKRAINE**

The right to private property is enshrined in Art. 325 of the Civil Code of Ukraine, however, it does not encompass a special definition of the concept of private property right and only stipulates that the subjects of private property rights are individuals and private legal entities. Such an approach is not surprising, because in essence any type of ownership and any form of ownership, no matter how high is the level of socialization in a given case, can exist only if someone refers to the property as to his or her own, and someone - as to something which belongs to other people. Without this condition, there is no ownership at all. From this point of view, any form of ownership is private (Tolstoy, 1992).

Thus, the right to private property is opposed to other types of property rights in fact only because private entities cannot own certain types of objects (defense, military, space, etc.), so with the exception of these groups of objects there are factors to recognize the presumption of private ownership (Alekseev, 2007).

The right to private property in Ukraine is guaranteed at the level of the Constitution, as it is the basis of any market society. As it was mentioned before, in accordance with Art. 41 of the Constitution of Ukraine, the right to private property is inviolable. Compulsory alienation of objects of private property rights may be used only as an exception for reasons of public necessity, on the basis and in the manner prescribed by law, and subject to prior and full reimbursement of their value. Compulsory alienation of such objects with the subsequent full reimbursement of their value is allowed only under martial law or state of emergency. For example, a special procedure for the alienation of land and privately owned real estate is established by the Law of Ukraine "On the alienation of land, other privately owned real estate, for public needs or for reasons of public necessity" of November 17, 2009 (Verkhovna Rada, 2009).

According to Ukrainian legislation, subjects of private property rights may be individuals, i. e. citizens of Ukraine, foreign citizens and stateless persons who have equal rights, unless otherwise is established by law. Such a rule reflects the principle of equality, enshrined in Art. 319 of the Civil Code of Ukraine. Other group of subjects of the right to private property includes private legal entities regardless of their organizational and legal form, i. e. legal entities of public law are not subjects of the right to private property.

The object of private property rights can be any property, except that withdrawn from circulation. In Ukraine, depending on turnover capacity all objects of civil legal relations are divided into three groups:

- a) objects in free circulation - the majority of objects that can be freely transferred from one person to another;
- b) objects restricted in civil circulation (limited turnover) - such objects may belong only to such participants that meet the requirements established by

- law, or their acquisition (alienation) is allowed only on the basis of special permits. Types of such objects are established by law;
- c) objects withdrawn from civil circulation - such objects cannot be the subject of transactions and can be only in state or communal property, or in the property of the Ukrainian people. Types of such objects are also directly established by law.

Thus, in accordance with Part 2 of Art. 325 of the Civil Code of Ukraine, individuals and private legal entities may be owners of any property, except for certain types of property, which according to the law may not belong to them. The list of types of property that cannot belong to individuals and private legal entities was approved by the Resolution of the Verkhovna Rada of Ukraine “On the Right of Ownership of Certain Types of Property” of June 17, 1992 (Verkhovna Rada of Ukraine, 1992), which stipulates that the mentioned entities may not own:

- 1) weapons, ammunition (except for hunting and pneumatic weapons and ammunition to it, as well as sports weapons and ammunition to it, which are acquired by public associations with the permission of law enforcement agencies), combat and special military equipment, rocket and space complexes;
- 2) explosives and means of explosion, all types of rocket fuel, as well as special materials and equipment for its production;
- 3) combat poisons;
- 4) narcotic, psychotropic, potent toxic drugs (except for those received by citizens on prescription);
- 5) anti-hail installations;
- 6) state standards of units of physical quantities;
- 7) special technical means of secretly obtaining information;
- 8) electric shock devices and special means used by law enforcement agencies, except for gas pistols and revolvers and ammunition for them, charged with tear gas and irritants.

The same resolution approved a special procedure for the acquisition of ownership of certain types of property by certain subjects of legal relations. Such property, which may be purchased only with the permission of the relevant authorities, includes firearms, gas pistols and revolvers and certain types of air guns, historical and cultural monuments, and radioactive substances.

The mentioned Resolution at the first glance may seem to contradict to the adopted after the Russian invasion in Ukraine Order of the Ministry of Internal Affairs of Ukraine approving the Procedure for obtaining firearms and ammunition by civilians who participate in repelling and deterring armed aggression of the Russian Federation and/or other states of March 7, 2022 (Ministry of Internal Affairs of Ukraine, 2022). According to this Order civilians got the right to obtain firearms and ammunition, that created the impression that weapon and ammunition may belong to individuals on the right to private property, which would mean weapon can be an object of civil turnover and be freely transferred from one individual to another. However, the detailed analysis of the mentioned Order leads to the

conclusion that individuals do not get the right of ownership to the weapon, obtained to counter aggression. Such weapon and ammunition are transferred only for temporary use with a specific aim and for the period of the state of war, which was implemented in Ukraine from February 24, 2022. After the end of this period or in case an individual ceases to take part in confronting armed aggression, such weapon and ammunition should be returned to the National Police of Ukraine. Such an approach makes it clear that there cannot be the right of ownership to weapon and ammunition in Ukraine.

At the same time, the Draft Law “On the Right to Civilian Firearms” is being discussed since June 2021. In case of the adoption of this law, firearms will become a part of civilian turnover and individuals will get the right to have weapon in private property. However, as of November 2022, the law has not yet been adopted.

The specifics of the right to private property also determines the existence of special grounds for the acquisition and termination of the right to private property. In particular, the special grounds for acquiring the right to private property should include: 1) acquisition of the right of ownership to a newly created or reworked thing; 2) appropriation of publicly available gifts of nature; 3) acquisition of ownership of a movable thing, which the owner abandoned; 4) acquisition of ownership of the find; 5) acquisition of ownership of a stray pet; 6) acquisition of ownership of the treasure; 7) acquisition of property rights under the acquisitive prescription; 8) acquisition of property rights in the case of privatization of state property and property in communal ownership. Also, some grounds for termination of ownership are applicable only to the right to private property, such as requisition, confiscation, redemption of cultural heritage, termination of ownership to property that cannot belong to an individual, and so on (Chapters 24-25 of the Civil Code of Ukraine).

An important principle of the right to private property is the unlimited amount of property that may belong to a person, enshrined in Art. 325 of the Civil Code of Ukraine, according to which the composition, quantity and value of property that may be owned by individuals and private legal entities are not limited. This principle, was enshrined in Ukrainian civil legislation only after the adoption of the new Civil Code of Ukraine in 2003. In Soviet times the provisions of civil legislation were aimed at limiting the amount of property that could be owned. Today, on the contrary, Civil Code of Ukraine emphasizes the possibility of owning an unlimited amount of any legally acquired property.

## **5. RESTRICTIONS OF THE RIGHT TO PRIVATE PROPERTY UNDER MARTIAL LAW IN UKRAINE**

As it was mentioned before, the absolute nature of the right to private property does not mean the inability to limit it in case interests of the state or society require such limitation. The possibility of restricting the right to private property at the national level is enshrined in the Art. 41 of the Constitution of Ukraine (Nekit, 2021a). However, such restrictions may be imposed only by law. The basis for limiting the right to property in terms of the war in Ukraine became the Law of Ukraine "On Approval of the Decree of the President of Ukraine "On the Introduction of Martial Law in Ukraine" dated February 24, 2022 (Verkhovna Rada of Ukraine, 2022). Art. 3 of the specified Decree establishes



the possibility of limiting the constitutional rights and freedoms of a person and a citizen, provided for in Articles 30 - 34, 38, 39, 41 - 44, 53 of the Constitution of Ukraine, as well as the introduction of temporary restrictions on the rights and legitimate interests of legal entities during the period of the legal regime of martial law within the limits and to the extent necessary to ensure the possibility of introducing and implementing measures of the legal regime of martial law.

The most radical case of limitation of the right to private property under martial law is forced alienation of private property (requisition). In such case owners can be deprived on their private property, although they have right to get compensation for it. However, the implementation of this rule in practice may face many difficulties.

Requisition as a way to terminate the right to private property is provided for in Art. 353 of the Civil Code of Ukraine, according to which "in the event of a natural disaster, accident, epidemic, epizootic and under other extraordinary circumstances, for the purpose of public necessity, property may be forcibly alienated from the owner on the basis and in the manner established by law, on condition of prior and full reimbursement of its value. In terms of war or a state of emergency, property may be compulsorily alienated from the owner, followed by full reimbursement of its value." Therefore, as a general rule, within the framework of requisition, forced alienation of property is carried out on the conditions of preliminary reimbursement of the value. However, martial law is an exceptional situation where property can be compulsorily alienated even without prior compensation. In such a case, the person is either reimbursed for the value of the requisitioned property later, or the requisitioned property is returned, provided that it was preserved and that the person applied to the court for its return (Part 6 of Article 353 of the Civil Code of Ukraine). Therefore, in terms of war or emergency, private owners become very vulnerable. Determining the value of requisitioned property can be especially problematic.

The specifics of forced alienation of private property under martial law are detailed in the Law of Ukraine "On the Legal Regime of Martial Law" (Verkhovna Rada of Ukraine, 2015) and the Law of Ukraine "On the Transfer, Forced Alienation or Seizure of Property Under the Legal Regime of Martial Law or State of Emergency" (Verkhovna Rada of Ukraine, 2012).

According to Art. 23 of the Law of Ukraine "On the Legal Regime of Martial Law", forced alienation of privately or communally owned property under martial law, in case the previous full compensation of the value of such property has not been carried out, entails the subsequent full compensation of its value in the manner determined by law. If the property that was forcibly expropriated from legal entities and individuals remains after the abolition of the legal regime of martial law, the former owner or a person authorized by the owner has the right to demand the return of such property appealing to the court. The former owner of the property forcibly alienated under martial law may demand another property, which would replace the alienated property, if possible. In May 2022, the specified article of the Law of Ukraine "On the Legal Regime of Martial Law" was supplemented with a provision according to which, in case of confiscation of property

(assets) to the state revenue as a sanction, provided for in Clause 1-1 of the first part of Article 4 of the Law of Ukraine "On Sanctions" (Verkhovna Rada of Ukraine, 2014c), compensation of its value is not carried out. This provision encompasses the assets of those, who support Russian aggression.

It should be noted that the possibility of applying sanctions was provided by the Law of Ukraine "On Sanctions" earlier, because in accordance with Art. 1 of the mentioned Law, sanctions may be applied by Ukraine against a foreign state, a foreign legal entity, a legal entity under the control of a foreign legal entity or a non-resident individual, foreigners, stateless persons, as well as entities that carry out terrorist activities. After the beginning of the Russian armed aggression, the Law of Ukraine "On Sanctions" was supplemented with a provision that allows the confiscation of assets belonging to a natural or legal person, as well as assets that such a person can directly or indirectly (through other natural or legal persons) dispose of.

At the beginning of September 2022, the first case of the application of such sanctions and confiscation of the property of a Russian citizen who supported the actions of the aggressor country that threaten the territorial integrity, sovereignty and independence of Ukraine, took place. In particular, the Supreme Anti-Corruption Court of Ukraine established a connection between the defendant's activities as the ultimate beneficial owner of a number of legal entities engaged in the production of unmanned aerial vehicles for the Russian army, and the fact of the use of such vehicles during the Russian armed aggression against Ukraine. According to the results of the case, the court charged a number of movable and immovable property in the city of Zaporizhzhia, which belonged to the defendant, to the state income (Higher Anti-corruption court of Ukraine, 2022).

In more detail, the procedure for forced alienation of property is regulated by the Law of Ukraine "On the Transfer, Forced Alienation or Seizure of Property Under the Legal Regime of Martial Law or State of Emergency". First of all, it should be noted that the mentioned Law defines the differences between forced alienation and seizure of property. Forcibly alienated can be private or communal property, and in accordance with Art. 3 of the specified Law, forced alienation of property under the legal regime of war or state of emergency can be carried out with a preliminary full compensation of its value or with a subsequent full compensation of its value. The property of state-owned enterprises, state-owned economic associations, which are deprived of the right of economic management or operational management of individually determined state-owned property for the purpose of transferring it for the needs of the state under the conditions of a legal regime of war or a state of emergency, can be seized. The value of such property is not reimbursed.

According to Art. 4 of the Law of Ukraine "On the Transfer, Forced Alienation or Seizure of Property Under the Legal Regime of Martial Law or State of Emergency", the last changes to which took place in July 2022, forced alienation or confiscation of property in connection with the introduction and implementation of measures of the legal regime of martial law is carried out by the decision of the military command, agreed, respectively, with the Council of Ministers of the Autonomous Republic of Crimea, regional, district,

Kyiv or Sevastopol city state administration or the executive body of the relevant local council, except for cases of forced expropriation of property privatized during the period of martial law, which is allowed only in areas where hostilities are taking place, and is carried out by decision of the Commander-in-Chief of the Armed Forces of Ukraine, without the consent of the specified authorities. In areas where hostilities are taking place, forced alienation or seizure of property is carried out by decision of the military command, also without prior agreement with the specified authorities.

During the forced alienation of property, a corresponding act is drawn up, which must state:

- 1) the name of the military command and body that approved the decision on forced alienation or seizure of property, or the military command or body that made such a decision;
- 2) information about the owner(s) of the property (for legal entities - full name, location and identification code; for individuals - surname, first name, patronymic, permanent place of residence and identification number in the State Register of Individuals - Taxpayers and other mandatory payments, except for persons who, for religious or other reasons, refused to have an identification number, which has a corresponding mark in their passport);
- 3) information on the document which confirms the ownership (if available);
- 4) a description of the property sufficient for its identification. For immovable property, information about the location (address) must be indicated, for movable property like vehicles - information about the registration number of the vehicle, model, chassis number, year of manufacture and other registration data;
- 5) the amount of funds paid (in case of previous full reimbursement of the value of the property).

The completed act is signed by the owner or his/her legal representative and authorized persons of the military command and the body that approved the decision on the forced alienation of the property, or the military command or body that made such a decision, and is sealed with the seals of the military command and/or the specified bodies. From the date of signing of such an act, the right to private property ceases and the right of state ownership of forcibly alienated property arises. During the forced alienation of property, an assessment of such property must be carried out, which is attached to the act of forced alienation of property. Forced alienation of property under martial law can occur even in the absence of the owner, in which case the act of forcible alienation is drawn up without the participation of the owner or his legal representative, but the latter have the right to review it.

The procedure for property assessment is defined in Art. 8 of the Law of Ukraine "On the Transfer, Forced Alienation or Seizure of Property Under the Legal Regime of Martial Law or State of Emergency", according to which the assessment of property subject to forced alienation is carried out in accordance with the procedure established by the legislation on property and property assessment and professional assessment activities.

According to Art. 5 of the Law of Ukraine "On Appraisal of Property, Property Rights and Professional Appraisal Activity in Ukraine", the subjects of appraisal activity are:

- 1) business entities - individuals registered in accordance with the procedure established by law, as well as legal entities, regardless of their organizational and legal form and form of ownership, which carry out economic activity, in which at least one appraiser works, and who received a certificate of the subject of evaluation activity;
- 2) state authorities and local self-government bodies that have been authorized to carry out appraisal activities in the process of performing the functions of management and disposal of state property and (or) communally owned property, which have appraisers as their employees.

It is obvious that in terms of war it is not always possible to appeal to the services of special subjects of appraisal activity when there is a need for forced alienation of property. In the case it is impossible to involve business entities in the process of property assessment, such assessment is carried out by state authorities or local self-government bodies in agreement with the owner. In case the owner refuses to participate in such an agreement or is absent, these bodies have the right to conduct such an assessment independently. In order to protect the interests of the owner, it is established that the property assessment, which was the basis for reimbursement, can be challenged in court.

As mentioned earlier, the value of property alienated for state needs can be compensated before or after the abolition of the legal regime of martial law. Preliminary reimbursement of the cost is carried out by the military command or the body that made the decision on such alienation, at the expense of the state budget before signing the act. If no previous compensation has taken place, it can be claimed within the next five budget periods (i.e. within five years) after the abolition of the legal regime of martial law.

The procedure for receiving compensation for forcibly alienated property is provided for in Art. 11 of the Law of Ukraine "On the Transfer, Forced Alienation or Seizure of Property Under the Legal Regime of Martial Law or State of Emergency", according to which preliminary full compensation of the value of forcibly alienated property is carried out on the basis of a document containing a conclusion on the value of the property on the date of its assessment. In order to receive the next full compensation for property forcibly alienated under martial law, its former owner or a person authorized by him/her after the cancellation of the legal regime of martial law must apply to the competent authority at the place of alienation of the property with an application, to which should be attached a deed and a document containing a conclusion about the value of the property.

Peculiarities of considering applications and making payments for the purpose of subsequent full compensation for property forcibly alienated under martial law or a state of emergency are determined in the Resolution of the Cabinet of Ministers of Ukraine "Some issues of implementation of full compensation for property forcibly alienated under the legal regime of martial law or a state of emergency" from October 31, 2012 (Cabinet

of Ministers of Ukraine, 2012). The specified Resolution determines the procedure for submitting an application for payment of compensation and requirements for its content. In particular, such an application is submitted to the territorial center of procurement and social support at the place of alienation of property. An act of forced alienation of property and a conclusion on the value of such property must be attached to the application. Acceptance and consideration of such an application cannot be rejected. The application must be considered within ten working days from the day of its submission, but in the event of a need to verify the facts stated in the application and clarify additional circumstances, the application can be considered within one month.

In addition to the demand for payment of compensation for forcibly expropriated property (if it has not been carried out beforehand), the owners have the opportunity to demand the return of such property, if it was preserved after the end of martial law. In this case, the owners have to apply to the court with a demand for its return on the basis of Part 6 of Art. 353 of the Civil Code of Ukraine. Renewal of ownership is based on a court decision that has entered into force. At the same time, the owner must return the amount of money, if such compensation was received, with the deduction of a reasonable fee for the use of this property.

Another type of restrictions on property rights under martial law can be considered limitation of the ability to dispose of property due to abolishing the access to state registers. In particular, from the beginning of the war, access to state registers, including the State Register of Real Property Rights, was suspended in order to prevent interference and abuse by the aggressor. Accordingly, the owners lost the opportunity to dispose of their property, since any actions regarding real estate are impossible in the absence of access to the State Register of Rights to Real Estate. Gradually, access to state registers was restored, first for officials of the Ministry of Justice and its territorial bodies and state registrars, then for notaries in accordance with a specially defined procedure. But as of September 2022, some restrictions on ownership still remain. In particular, the Resolution of the Cabinet of Ministers of Ukraine "Some issues of state registration and functioning of unified and state registers, the holder of which is the Ministry of justice, in terms of martial law" from March 6, 2022 (Cabinet of Ministers of Ukraine, 2022) established that in terms of martial law and within one month from the day of its termination in the field of state registration of property rights to immovable property and their encumbrances is prohibited:

- 1) state registration of property rights to immovable property and their encumbrances on the basis of contracts certified by a notary in the period from February 25, 2022 to the day of its inclusion in the list of notaries. This provision is apparently aimed at preventing the registration of rights arising from agreements concluded by the parties during the blocking of the registers, if such an agreement was notarized and later the notary who certified it was included in the list of notaries who are allowed to perform registration actions;
- 2) state registration of the acquisition of property rights to immovable property earlier than the end of one month from the date of state registration of the previous acquisition of the rights to such property, if each such acquisition was made on the basis of a contract or due to the transfer of property to a legal

- entity as a contribution to the authorized capital or in connection with the departure of the founders (participants) of the legal entity;
- 3) state registration of the ownership to immovable property on the basis of a mortgage contract under a consumer loan, except the case when the object of the mortgage is immovable property, defined in the Law of Ukraine "On Mortgages" (Verkhovna Rada of Ukraine, 2014b).

For a certain period of time, this Resolution also prohibited state registration of fiduciary ownership (trust) on the basis of contracts on the alienation of real estate or the establishment of fiduciary ownership of real estate, which were concluded on behalf of an individual - the alienator (trust founder) on the basis of a power of attorney, which significantly complicated the owners' ability to dispose of their property, and affected a fairly significant category of citizens, taking into account the number of persons who left the country, were an internally displaced person or were part of the armed forces. The specified provision was canceled in the new version of the said Resolution dated June 29, 2022.

Currently, there are also restrictions on access to the State Register of Real Estate in certain administrative-territorial units, defined in the Order of the Ministry of Justice "On approval of the List of administrative-territorial units, within which user access to unified and state registers, the holder of which is the Ministry of justice of Ukraine, is terminated under martial law" (Ministry of justice of Ukraine, 2022). Such an approach is justified given the fact that in areas where active hostilities are ongoing, it is extremely difficult to ensure an adequate level of security and control. Therefore, the restriction of the rights of owners in these regions is explained by the need to ensure the balance of private and public interests and to some extent is also aimed at the protection of property rights.

## **6. PECULIARITIES OF COMPENSATION FOR THE DAMAGE CAUSED TO THE PROPERTY UNDER MARTIAL LAW**

Protection of right to private property under martial law is also complicated, and owners do not always have guarantees of protection of their violated rights. Thus, since the beginning of the Russian armed aggression, hundreds if not thousands of civilian objects have been damaged or destroyed, among them a large part of privately owned objects. According to preliminary data, as of September 1, 2022, the total number of destroyed or damaged objects of the housing stock in Ukraine is about 135.8 thousand buildings, of which 119.9 thousand are private (individual) houses; 15.6 thousand apartment buildings; 0.2 thousand dormitories. The total area of damaged or destroyed objects is 74.1 million square meters, which is 7.3% of the total area of the housing stock of Ukraine. According to preliminary estimates, the value expression of direct losses for the housing stock is \$50.5 billion (KSE Institute et oth., 2022).

Of course, under such circumstances, a question arises regarding the protection of the violated property right and receiving compensation for damaged or destroyed property.

However, it is obvious the complexity of this issue, because the mechanism of property rights protection in this case is extremely problematic to implement.

The basic principles of protection of the owners' rights during hostilities and in occupied territories are established by international humanitarian law. The main regulatory acts in this area are Hague Regulations (1907) and Geneva Convention (1949), which contain specific provisions concerning private property in occupied territories. According to the mentioned acts, taking of private property must be justified by a legitimate military necessity. Private property cannot be taken for the occupant's own enrichment. Additionally, an individual deprived of his property under such circumstances is entitled to compensation from the occupant. The occupant can prove the necessity in causing damages ("except where such destruction is rendered absolutely necessary by military operations"), and it has met the requirement of proportionality (Molango, 2009).

In the practice of the European Court of Human Rights (hereinafter referred to as the ECtHR), there has been a position for a long time regarding the responsibility of States for violations of rights in occupied territories or as a result of military actions. Thus, in the cases of *Loizidou v. Turkey* (ECtHR, 1995), *Cyprus v. Turkey* (ECtHR, 2001), *Ilashku and others v. Moldova and Russia* (ECtHR, 2004), *Katan and others v. the Republic of Moldova and Russia* (ECtHR, 2012), etc., the Court established an exception to the principle of limiting the State's jurisdiction to its own territory. In particular, such an exception occurs when, as a result of legal or illegal military actions, the State exercises effective control over the territory outside its national territory. In such a case, the State is obliged to ensure in such territory the rights and freedoms set forth in the Convention, including the right to property. Thus, in the occupied territories (in particular, in the territories of the so-called "LPR" and "DPR"), the responsibility for the violation of property rights rests with the Russian Federation. However, at the same time, the so-called "principle of positive obligations" of the State has developed in the practice of the ECHR. This principle means that the State must take all available legal and diplomatic measures against foreign states and international organizations in order to continue guaranteeing rights and freedoms under the Convention (*Ilashku and others v. Moldova and Russia*, *Katan and others v. Moldova and Russia*). Therefore, if it is proven that the applicant did not take appropriate measures to ensure the guarantees of the rights of the owners in the territories of military operations, claims may be addressed against Ukraine.

The protection of property rights violated in terms of active hostilities is especially problematic. In such a case, the main question is who should be responsible for such violations, since it is impossible to determine who had control over the territory where the destruction occurred. Thus, in *Georgia v. Russia* the ECtHR has developed a position that in the case of military operations, including, for example, armed attacks, bombings or shelling carried out in the course of an international armed conflict, one cannot speak of "effective control" over specific area. The very fact of armed confrontation and hostilities between enemy armed forces seeking to establish control over the area in terms of chaos meant that there was no control over the area (ECtHR, 2021). In turn, such a position means the impossibility of assigning responsibility to the aggressor in accordance with

Art. 4 of the Geneva Convention on the Protection of the Civilian Population in Time of War (United Nations, 1949).

At the same time, violations of property rights during the period of occupation may be addressed to the occupying country, since the latter is responsible for ensuring human rights during the period of occupation. This is provided, in particular, by Art. 5 of the Law of Ukraine "On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine" (Verkhovna Rada of Ukraine, 2014a), according to which compensation for material and moral damage caused as a result of the temporary occupation to the state of Ukraine, legal entities, public associations, citizens of Ukraine, foreigners and stateless persons is fully entrusted to the Russian Federation as the occupying state. However, the mechanism for implementing such requirements, taking into account the exclusion of the Russian Federation from the Council of Europe, will obviously be extremely difficult.

Apart from international rules, there are opportunities to protect property rights violated under martial law at the internal level. It is possible to claim the compensation for property damage not only from the aggressor but also from the state of Ukraine. In 2022, the Supreme Court of Ukraine established that damage caused to an individual as a result of the illegal actions of any other person (entity) can be compensated by a decision of a court of Ukraine (according to the principle of general tort), and therefore, any dispute that arose on the territory of Ukraine among its citizens, even if this dispute arose with a foreign country, including the Russian Federation, can be considered and resolved by a court of Ukraine as a proper and competent court. At the same time, the decision of the Supreme Court dated April 14, 2022 No. 308/9708/19, nullifies the judicial immunity of a foreign state (the Russian Federation), provided as a general rule in Art. 79 of the Law of Ukraine "On Private International Law" (Verkhovna Rada of Ukraine, 2005), since in this case, armed aggression indicates that a foreign state has exceeded its sovereign rights (Supreme Court, 2022b). Thus, claims for damages against the Russian Federation are legitimate, but the question arises regarding the enforcement of decisions made by Ukrainian courts in such cases, especially their enforcement on the territory of other states.

With regard to the possibility of filing claims for compensation for property damage caused under martial law to the state of Ukraine, the main problem is that, as of today, there is no special law that would determine the procedure for compensation for such damage. This problem has existed for a long time and is related to the category of "legitimate expectations". Back in 2014, the ECtHR made a decision in the case of *Petylovanyy v. Ukraine*, where the plaintiff was denied satisfaction of his claims on the grounds that his claim was not based on a right properly enshrined in national legislation. In this case, the applicant complained that he did not receive compensation for the damage, namely, he was not compensated by the state for property damage as a victim of a crime, although such compensation is provided for by Article 1177 of the Civil Code of Ukraine. However, the Court refused to satisfy the demand, referring to the fact that in accordance with part 2 of Art. 1177 of the Civil Code of Ukraine, the conditions and procedure for compensation for property damage caused to an individual, who was victim of a crime, are established by law, but such a law has not been enacted. Thus, the ECtHR concluded that "entitlement



to compensation from the State to victims of crime under the above article of the Code was never intended to be unconditional” (ECtHR, 2014). And since the applicant did not have a sufficiently established claim for the purposes of Article 1 of Protocol No. 1, he cannot claim that he had a "legitimate expectation" of obtaining effective enjoyment of a property right (ECtHR, 2014).

The worst thing in this case is that instead of taking into account the conclusions of the ECtHR in order to develop special legislation that would allow the exercise of the right to demand from the State compensation for damage caused as a result of a crime, including war crimes, the mentioned decision of the ECtHR became the basis for the decisions of national courts to refuse satisfaction claims for damages based on Art. 1177 of the Civil Code of Ukraine. In particular, in 2019, the Supreme Court of Ukraine refused to satisfy the demands of the victim of a crime, stated on the basis of Art. 1177 of the Civil Code of Ukraine with reference to the case of *Petylovanyy v. Ukraine* and the fact that the legislation of Ukraine does not provide for the procedure for compensation by the State for damage caused by a crime (Supreme Court, 2019). In 2022, in terms of the war, national courts use same approach regarding compensation for damage caused by war crimes. Thus, in the Resolution of the Supreme Chamber of the Supreme Court of May 12, 2022, in case No. 635/6172/17, it is noted that the right to receive compensation for damage caused by a crime depends on the mechanism for such compensation, which must be established by law. In turn, the law, which would regulate the procedure for compensation from the funds of the State Budget of Ukraine for damage caused by a terrorist act, has not been enacted. Moreover, the legislation of Ukraine lacks not only the procedure for payment of the specified compensation, but also the clear conditions necessary to declare a property claim against the State for the provision of such compensation. Therefore, the right to compensation by the State in accordance with the law for damage caused by a terrorist act, provided for in Article 19 of the Law of Ukraine "On Combating Terrorism" (Verkhovna Rada of Ukraine, 2003b), does not give rise to a legitimate expectation of receiving such compensation from the State of Ukraine without a special law (Supreme Court, 2022a).

None the less, the analysis of the ECtHR practice reveals, that it is possible to appeal the Court not only after exhausting all national remedies. Thus, in the case of *Sargsyan v. Azerbaijan* (ECtHR, 2015), the Court found that the Government of Azerbaijan had failed to fulfill its burden of proving that the applicant had an effective legal remedy, the use of which could ensure the rectification of the situation regarding his complaints submitted with reference to the Convention and would have sufficient chances of success. Thus, there were no effective remedies under Azerbaijani law which would be accessible and sufficient in practice. In *Sandu and others v. Russia and Moldova* (ECtHR, 2018), the Court also concluded that, to be effective, a remedy must be capable of directly redressing the contested state of affairs and must offer a reasonable prospect of success. In the case of *Akdivar and others v. Turkey* (ECtHR, 1998), the Court stated that there is no obligation to use means that are inadequate or ineffective. Thus, when considering the issue of exhaustion of domestic legal remedies, the Court must take into account the duration of consideration of cases on compensation for damage caused during aggression by the Russian Federation (cases on compensation for damage caused as part of an anti-terrorist operation have been

going on for several years and there is still no positive judicial practice on this issue) and the ineffectiveness of the investigation of crimes based on the facts of damage or destruction of property. Taking these facts into account should result in the recognition of the absence of effective remedies within the national jurisdiction (Naumenko, 2020). Consequently, the applicants have no obligation to exhaust domestic remedies (see the case of *Katan and others v. Moldova*). However, it is important to apply to the authorized bodies with a corresponding statement about destruction or damage of property.

The experience of Bosnia and Herzegovina and Kosovo might be of interest in the matter of protecting the rights of owners injured as a result of military actions. In these countries, special ad hoc bodies were created to restore the rights of owners: The Commission for Real Property Claims of Displaced Persons and Refugees in Bosnia and Herzegovina and the Housing and Property Directorate and Housing and Property Claims Commission in Kosovo. These organizations were created with the support of the UN as temporary ad hoc bodies of sui generis. They function as mass claims resolution bodies of a largely administrative nature. Commissions consist of local and international members. This approach provides important advantages. The presence of international commissioners guarantees impartial and fair claims adjudication in accordance with international standards, and the involvement of local adjudicators ensures full conformity with local legal standards and systems and helps to achieve a proper integration of the final decisions into the domestic legal order (Das, 2004).

The experience of the Commissions in obtaining evidence of ownership of the owners' property can be useful for Ukraine. Given the circumstances under which the owners left their homes, many of them did not have proper proof of ownership. Nevertheless, the Commissions decided not to rely solely on oral arguments, but allowed all available written evidence to be submitted. At the same time, the organizations took on a fact-finding role. The Commissions have collected all extant cadastral and census records and entered these data into a uniform database, against which claims can easily be checked (Das, 2004).

Nowadays in Ukraine, the issue of evidence can be solved more effectively thanks to the creation of a special register of property destroyed and damaged as a result of Russian aggression. The information about the damaged or destroyed property can be submitted to the registry through the Diya electronic portal. As of August 2022, more than 256,000 reports of damaged property were submitted to the registry. The register will be filled with data based on the results of inspections of buildings by special commissions created by local self-government bodies or military-civilian administrations (Ministry of digital transformation of Ukraine, 2022).

In case the experience of the countries of the former Yugoslavia will be implemented in Ukraine, the Ukrainian legislator should take into account two important circumstances. First, the mechanism for restoration of owners' rights in Bosnia and Herzegovina and Kosovo was able to ensure only the restitution of property rights, but not compensation. Since previous plans to create a fund to pay compensation to owners were not implemented due to the lack of funds. Secondly, at the first stages of the work of the Commissions,

the owners were faced with the problem of implementing the decisions made by the Commissions, since the national legal system did not provide for the mechanism for the implementation of these decisions. Therefore, in case of implementing a similar mechanism for renewing the rights of owners, the Ukrainian legislator must simultaneously adopt the relevant normative acts regarding the implementation of the decisions of the institution created for this purpose.

As of November 2022, the Verkhovna Rada registered the Draft Law on Compensation for Damage and Destruction of Certain Categories of Immovable Property as a Result of Hostilities, Terrorist Acts, and Sabotages Caused by the Military Aggression of the Russian Federation No. 7198 of March 24, 2022, however, no changes occurred in the process of its adoption since April 2022. When working on draft laws in the field of compensation for damaged or destroyed property as a result of Russian aggression, it is worth taking into account the experience of other countries in this matter. In particular, in 2006, Georgia adopted the Law "On property restitution and compensation to persons injured on the territory of Georgia as a result of the conflict in the former South Ossetian Autonomous Region" (hereinafter - the Law). The Law provides for the so-called property restitution - the return to the legal owner of housing or other immovable property on the territory of Georgia, lost as a result of the conflict. In Art. 5 of the Law the right of all forcibly displaced persons and other persons to return to their original residence is recognized. Owners of housing or other immovable property lost on the territory of Georgia as a result of the conflict have the right to receive the immovable property or, in the event of the impossibility of returning that housing or other immovable property, the right to receive adequate housing of the same value, and in the event of the impossibility of providing adequate housing in return - the right to receive compensation for property damage. Same like in Bosnia and Herzegovina and Kosovo, the task of paying compensation is entrusted to the Commission for Restitution and Compensation, which consists of representatives of the Georgian and Ossetian parties to the conflict, as well as subjects of international law.

The unrecognized Turkish Republic of Northern Cyprus also passed a law on restitution and compensation to property owners. According to the Law for the Compensation, Exchange and Restitution of Immovable Properties, which are within the scope of sub-paragraph (b) of paragraph 1 of Article 159 of the Constitution, owners can submit applications regarding movable and immovable property, which are considered by special Immovable Property Commission. The commission can make a decision on the restitution of real estate, offer the applicant another real estate in exchange, or make a decision on the payment of compensation. At the same time, the applicant may also demand compensation for damages caused by the loss of the opportunity to use real estate, and moral damages (The Republican Assembly of the Turkish Republic of Northern Cyprus, 2005).

As we can see, the methods of solving issues related to the protection of the rights of owners affected by military conflicts in most countries with similar experience are similar. In particular, this concerns the adoption of a special law on restitution or compensation for damage and the creation of a special body responsible for processing applications. This experience should be followed by Ukraine, starting first of all with the adoption of special

legislation on the restoration of the rights of owners and compensation for the damage caused to them.

## 7. CONCLUSIONS

The right to private property in accordance with the legislation of Ukraine is one of the fundamental human rights, which is guaranteed at the level of the basic law of Ukraine - the Constitution of Ukraine. Ukraine guarantees the inviolability of the right to private property and the inadmissibility of deprivation of the right to property, except in cases established by law. Thus, the right to private property may be restricted or terminated only in cases and in the manner prescribed by law. Such an approach guarantees the owner's rights, but at the same time establishes that the right to private property is not unlimited and should be balanced with the interests of the whole society.

Restrictions on the use of property related to public necessity, as well as cases where such property harms individuals, society, worsens the environmental and economic situation, etc. are allowed. Deprivation of the right to private property is allowed only in exceptional cases specified by law and, as a rule, subject to prior fair compensation.

In terms of the war in Ukraine the Law of Ukraine "On Approval of the Decree of the President of Ukraine "On the Introduction of Martial Law in Ukraine" dated February 24, 2022 gives grounds for the limitation of the right to private property, including forced alienation of private property (requisition). As a rule, such alienation is made on the basis of previous and full compensation of the expropriated property. However, in some cases it is possible to compensate the value of property alienated for state needs after the abolition of the legal regime of martial law. There are several special laws in Ukraine, which regulate the mechanism and procedure of the forced alienation of the property in terms of the war. In particular, it is the Law of Ukraine "On the Legal Regime of Martial Law" and the Law of Ukraine "On the Transfer, Forced Alienation or Seizure of Property Under the Legal Regime of Martial Law or State of Emergency".

Restrictions of the right to private property under martial law are reflected also in the limitation of the ability to dispose of property due to abolishing the access to state registers. At the beginning of the war access to state registers, including the State Register of Real Property Rights, was suspended in order to prevent interference and abuse by the aggressor. Accordingly, the owners lost the opportunity to dispose of their property, since any actions regarding real estate are impossible in the absence of access to the State Register of Rights to Real Estate. Gradually, access to the State Register of Rights to Real Estate was renewed, but some restrictions remain as well as the access remain closed in certain administrative-territorial units, where active hostilities are ongoing, as it is impossible to provide the appropriate control over the actions regarding private property in those areas.

Another issue which arises regarding the right to private property in terms of the war is compensation for damage caused in terms of the war. The possibilities of owners to protect their rights are restricted as there is no special law, which regulates the procedure

of compensation by the State the damage caused to victims of crimes. Despite the fact the possibility to get compensation from the State for the damage caused by a crime if the offender was not identified or found is provided by the Civil Code of Ukraine, the absence of a special law, which would establish the mechanism for such compensation, in fact nullify the right to claim the compensation from the State. The established practice of the Supreme Court of Ukraine, based on the decision of the ECtHR in the case *Petlyovanyy v. Ukraine*, according to which in such cases the owner cannot claim that he had a "legitimate expectation" of obtaining effective enjoyment of a property right, was extrapolated to the claims for compensation of the damage caused by war crimes. At the same time, violations of property rights during the period of occupation may be addressed to the occupying country, since according to Ukrainian legislation, the latter is responsible for ensuring human rights during the period of occupation. However, the mechanism for implementing such requirements, taking into account the exclusion of the Russian Federation from the Council of Europe, will obviously be extremely difficult. Thus, the protection of property rights in terms of the war remains an extremely problematic issue, as mechanisms for compensation for property damage are very difficult to implement. None the less, till September 2022 it remained possible to appeal to the ECtHR with a lawsuit against the aggressor country to protect the violated property right, since despite the exclusion of the Russian Federation from the Council of Europe, the Court will consider cases submitted before September 16, 2022.

Also, in Ukraine, in order to effectively protect the rights of owners affected by Russian armed aggression, it is necessary to adopt special legislation aimed at ensuring restitution or payment of compensation for damaged or destroyed property, as well as the creation of special institutions for the purpose of considering the relevant statements of owners and the mechanism for implementing the decisions of such institutions.

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