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# PROPERTY RIGHTS: LEGAL GUARANTEES OF SECURITY IN UKRAINE UNDER MARTIAL STATE

**Purpose.** To establish the reasons for the failure to provide guarantees of property rights outside of legislative restrictions due to the legal regime of martial law.

**Methodology.** The systemic-legal approach was chosen as an integral method. Using its component – the comparative legal method, it was indicated that the imperativeness of guarantees decreased due to the lack of regulation of procedures and mechanisms of the institution of property rights. Using the component – the hermeneutic legal method, it was proven that the legislation regarding the institution of property rights is uncertain as one of the reasons for the failure to provide the specified guarantees. Using the component – the systemic-logical method allowed proposing specific changes to the current legal acts to eliminate gaps and inconsistencies of the regulatory and legal field with the conditions of the legal regime of martial law.

**Findings.** Reasons for the failure to provide guarantees of property rights outside of their legal restrictions are substantiated. The types of classification of guarantees of property rights in the conditions of the legal regime of martial law are determined. It is noted that the efficiency of changes in social relations under new threats requires dynamic changes in the norms of guarantees of property rights and the grounds for their restriction. This will reduce the declarative nature of the specified guarantees. The need to improve the categorical apparatus of guarantees of property rights is indicated. Proposals for amending existing legal acts to eliminate gaps and inconsistencies of legislation with the conditions of the legal regime of martial law are proposed and substantiated.

**Originality.** It is proposed to treat the institution of guarantees of property rights as a single system. As a component of this system, in addition to constitutional guarantees, it is proposed to consider a complex of legal mechanisms and procedures that should implement the specified guarantees. It is proposed to consider the mechanism of compensation for losses to owners of forcibly alienated property as a means of compensating for improper provision of property rights by a party to a social contract. This will strengthen the imperativeness of guarantees of property rights, which will protect Ukraine from claims on these grounds to international courts.

**Practical value.** The conclusions and proposals set out in this article regarding changes to the Legislation can be used by scientists to study the areas of ensuring guarantees of property rights and by lawmakers to improve legal norms.

**Keywords:** *property rights, legal guarantees, forced expropriation, martial law, refundment, compensation*

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**Introduction.** The problem of property rights under the conditions of the legal regime of martial law is that the guarantees of its provision, legal instruments and means of implementation were introduced in peacetime. Peacetime was characterized by a relatively slow change in social relations and therefore the institution of property rights did not require operational regulatory regulation.

The conditions of the legal regime of martial law [1] not only shifted the accents of the legal field but also violated the established systemic nature of the institution of property rights protection. The specified systemic nature is determined, in particular, by the inclusion of various branches of law in this issue – constitutional, administrative, civil, which must be adapted to the conditions of war in a coordinated manner. Also, during the challenges of war, not only national but also international law requires changes. This introduces uncertainty into legal relations. The specified uncertainty, in particular, is exacerbated even in the presence of the problem of jurisdiction of disputes regarding the requisition of property, due to both the public law and the private law nature of these cases. That is, these disputes may be subject to both administrative and civil jurisdiction.

In the new conditions, the current legal norms also create a significant level of uncertainty regarding the full implementation of the "balance of interests" of the parties to disputes regarding the forced alienation of property specified in the Legislation of Ukraine. The problem of legal certainty of guarantees of the right to property goes beyond the requirement to improve legislative norms in this area of law. Uncertainty causes inadequate

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provision of the specified guarantees, reducing the level of their imperativeness.

The implementation of restrictions on the right to property under the conditions of the legal regime of martial law also requires a complete and legally correct definition of the mechanisms and procedures for the alienation of property, since they acquire a new meaning as a systemic element of the institution of guarantees of the right to property.

The complexity of the problem of protecting the right to property also lies in the systemic relationship of this right with other fundamental human rights, which complicates the legal justification of the social necessity of the forced alienation of property. This confirms the need to harmonize the legal content of all legal categories regarding human rights related to the forced alienation of property under the legal regime of martial law.

The above-mentioned causes a scientific problem: identifying the cause-and-effect relationships of inadequate provision of guarantees of property rights in the modern realities of Ukraine and proposing ways to strengthen the imperativeness of these guarantees. The complexity of the problem is the basis for applying a systemic and methodological approach in the study.

The focus of scientists on the features of the implementation of property rights and, first of all, on the restrictions of this right under the legal regime of martial law, rather than on ensuring guarantees of this right and their acquisition of a declarative nature, did not provide the scientific community with the opportunity to study the specified issues in detail.

**Literature review.** To systematize scientific approaches in the specialized scientific literature, it is necessary to determine the use of mainly traditional functional or industry methods and the avoidance of the crisis approach. This is especially evident when considering doctrinal, methodological works before and after the start of a large-scale war. Thus, in the article by Dzera [2] dated 2019, it is indicated that in peacetime, the application of property rights norms "confirmed their high legal technique" and compliance with the state of social relations. Therefore, the improvements in legislative norms proposed in the article by Dzera [2] are aimed solely at ensuring the "stability of property relations". The need to expand the guarantees of property rights, which is substantiated by Dzera [2], has a sectoral focus, in particular in the field of anti-corruption law. The article by Hryniak [3] dated 2022 indicates the urgent need to improve the mechanisms for terminating the right to property, even in conditions of restrictions on the guarantees of this right. The comparative analysis of Hryniak [3] of the categories related to the termination of property rights and proving the necessity of all components of the complex of interrelated legal norms for the implementation of the procedure for the termination of the specified right is significant for the presented study. Having established the need to strengthen the imperativeness of the mechanisms for the termination of property rights to ensure public needs, Hryniak [3] points to the need to achieve a balance of private and national interests in this issue. The requirement to strengthen the imperativeness of the forced alienation of property indicates a failure to comply not only with the guarantees of property rights but also with the principle of voluntariness with respect to the property owner. That is, even the category of "balance" acquires a declarative nature. This is confirmed in the article by Bignyak [4], which examines the practice of the ECHR regarding the legality of interference with property rights and problems in achieving a balance of private and public interests. It is also noted that compliance with this balance is complicated by the lack of universal criteria for "fair balance" [4]. This increases the role of courts in examining the circumstances of specific cases. Based on the analysis of the practice of the ECHR Bignyak [4] also substantiated that the category of "public interest" should have an expanded interpretation.

When conducting a philosophical and legal analysis of the state of the institution of property under the legal regime of martial law, Vlasenko, et al. [5] indicated that this institution requires transformational changes, but it was not stated that given the dynamics of external challenges, these changes should become permanent. Special attention in the field of property rights, according to Vlasenko, et al. [5], is required by the legal relations of the state-citizen, the formalization in the norms of the Laws of types of violations of property rights under the legal regime of martial law.

Sydorovich [6] points out the importance of observing the guarantees of property rights as the basis of the doctrine and practice of law in this area, for the normalization of the functioning of economic, financial and other institutions. The legal support of the specified guarantees and the corresponding state of the institution of property rights should coincide [6]. Therefore, according to Sydorovich [6], methodological factors of established legal spheres, which concern property rights, should be promptly adapted to the conditions of the legal regime of martial law. This confirms the thesis of the presented article that the imperativeness of guarantees of property rights requires dynamic changes in their legal support in times of crisis.

Scientific and practical sources on this issue include the article by Dobriev [7], which considers constitutional guarantees of property rights on a sectoral basis. Dobriev [7] points out the close relationship between guarantees of property rights and other human rights, but does not indicate that this relationship complicates the legal justification of the forced alienation of property, which determines the declarative nature of the specified guarantees. These guarantees, according to Dobriev [7], should be strengthened by regulating their application in other branches of law.

Nechyporuk, et al. [8] compare guarantees of property rights in the Constitutions of Ukraine, Germany and Poland. It is noted that none of the basic laws contains a complete list of forms of ownership, formulates the content of the right of ownership, restrictions on its implementation, systematically defines the foundations of the right of ownership, means of ensuring the guarantee of the inviolability of this right, or pays attention to the guarantee of administrative support, in particular, alienation procedures. This uncertainty of the basic laws creates difficulties in ensuring guarantees of the right of ownership.

In scientific works devoted to comparative legal analysis of foreign and national experience in the field of guarantees of property rights, the lack of such experi-

ence in conditions of large-scale war is indicated. According to Matvieieva, et al. [9] the regulation of violations of guarantees of property rights under conditions of crisis in legal relations between the state and the citizen is exclusively the competence of national law. This thesis is not indisputable, but the presence of gaps in international law, caused by improper consideration of the war factor, does reduce the level of protection of citizens of Ukraine in this area. At the same time, Matvieieva, et al. [9] indicated that an overwhelming number of complaints from citizens of Ukraine to the ECHR regarding property rights concern violations of this right by the aggressor country.

In the study by Rieznikova, et al. [10] it is indicated that the conditions of the legal regime of martial law require rapid improvement of property rights norms. The importance of the issue of compensation for alienated property, the need to expand the powers of government representatives regarding property valuation, etc. is noted. This requires specification – both regarding the assessment procedure and regarding the expansion of the powers of government representatives, rather than increasing their level of competence in these matters. The article by Rieznikova et al. notes that the procedures for the forced alienation of property are complicated and this affects the realization of the rights of property owners [10].

Scientists consider the forced alienation of property as the termination of property rights against the will of the owner [10]. Although this thesis is too generalized, it confirms the non-compliance with the full guarantees of property rights, which often remains outside scientific consideration. Also, when studying the features of the forced alienation of property under the legal regime of martial law, scientific works indicate the need to conduct a property assessment [11]. This is not facilitated by procedural problems. In particular, the Report on the Assessment of Property does not have legal consequences for the parties to the legal relationship.

In the article by Skrynnikova [12] it is indicated that the next compensation can be carried out after the abolition of the legal regime of martial law, but the problem of the depreciation of the national currency by this time and the need to take this depreciation into account in the compensation procedures is bypassed. Also, the problem of proper standardization of the procedure for property valuation and the lack of legally defined sources of financing that would guarantee the payment of such compensation in full remains outside the scope of consideration. This is confirmed in the scientific work of Fedchyshyn and Bondar [13] where it is indicated that fair compensation in case of forced alienation under the legal regime of martial law is a problematic issue, in particular, due to the complications of assessing the value of property. The reason for this is noted by scientists in the absence of special legislation with a detailed description of the mechanisms of assessment and compensation [13]. That is, scientists consider the assessment exclusively as a stage of receiving monetary compensation for alienated property. However, this is part of a broader legal problem, which can be considered as compensation for improper provision of guarantees of property rights by a party to a social contract between a citizen and the state, in particular, as "liability for inaction" available in international law. "Inaction" can be considered as improper regulation of procedures and mechanisms of compensation, in particular, regarding the settlement of problems of valuation of alienated property.

The normative scientific sources include a thorough review of Hryhorchuk, et al. [14] of the norms of national and international law in the field of guarantees of property rights. Indicating that the war changed legal relations in this area, significantly complicating them, Hryhorchuk, et al. [14] do not indicate the directions of adaptation of national and international law. Indicating the existence of guarantees of property rights, they do not indicate their provision by appropriate mechanisms [14]. In the article by Bondarenko [15], while studying the regulatory and legal field of property rights guarantees, it is indicated that military actions have led to a violation of the integrity of the system of legal relations in this area. The analysis of restrictions in this area does not indicate how these restrictions affect the provision of property rights guarantees, and the cause-and-effect relationships that lead to the violation of these guarantees are not investigated.

As a review of literary sources shows, scientists directly or indirectly indicate that the conditions of the legal regime of martial law have violated the system and integrity of the institution of guarantees of property rights. The cause-and-effect relationships of improper provision of guarantees in the realities of modern Ukraine, directions for improving the mechanisms for restoring the violated right, are often left out of consideration. This necessitates the need for additional research in this area.

**The purpose of the article** is to stablish the reasons for the failure to provide guarantees of property rights beyond legislative restrictions as a result of the legal regime of martial law

The tasks set include identifying the reasons for the strengthening of the declarative nature of guarantees of property rights, mechanisms and procedures for their provision; expanded consideration of guarantees of property rights as a social contract and the possibility of liability for its non-compliance; developing proposals for improving legislation in this area.

**Methods.** The use of a systemic-legal approach in the presented study is due to the complexity of the problem, the coverage of various branches of law: constitutional, administrative, civil, etc. The systemic legal approach allowed treating the institution of guarantees of property rights as a single system, and the legal mechanisms and procedures for implementing guarantees of property rights as components of this system. This approach is based on the following components: methods of scientific knowledge and formal legal methods. Thus, the use of the comparative legal method indicated a decrease in the imperativeness of guarantees to property owners due to the lack of regulation of the procedures and mechanisms of the institution of property rights. Using this method, it was proven that the lack of regulation of compensation for the cost of forcibly alienated property leads to the fact that the "requisition" procedure acquires signs of confiscation. The comparative legal method also allowed us to establish the non-adaptability of legal norms not only to the cardinal changes in social relations with the beginning of large-scale hostilities, but also to changes of a permanent nature. This

proved the need for prompt improvement of legal norms that regulate the problems of the institution of property rights. Using the hermeneutic legal method, the uncertainty of the legislation regarding the institution of property rights has been proven as the reason for the failure to provide guarantees for this right. The use of the systemic-logical method made it possible to propose specific changes to existing legal acts to eliminate gaps and inconsistencies in the regulatory and legal field with the conditions of the martial law legal regime.

**Findings.** In accordance with the functional purpose of the guarantees of securing property rights in the conditions of the legal regime of martial law, they can be divided into material and procedural ones. According to the formal-legal approach, they can be classified as fixed in mandatory norms or formulated in a permissive form. Under the conditions of implementation, they can be defined as organizational and managerial or procedural. According to the types of guarantees of property rights, they can be divided into: institutional, which are manifested in the activities of state and regional institutional structures, local self-government bodies; normative and legal; procedural and registration based on state registers and cadastres; international law, in particular the Decision of the ECHR; compensation, in particular, special funds. Thus, the guarantees of securing property rights form not only a multifaceted system, but are a formalization of the social contract in this legal sphere.

However, as mentioned above, a large-scale war caused a violation of the integrity of the specified system. This led not only to the uncertainty of legislation regarding the guarantees of property rights, but also indicated the need for dynamic changes in their legal protection. The dynamism of changes in the limitation of guarantees is conditioned by the dynamism of social relations. Thus, if previously forced expropriation of property was limited to areas close to hostilities, today "social necessity" requires the expropriation of private property in the deep rear, in particular, to meet the needs of anti-aircraft defence. Also, dynamic changes are caused by the expansion of types of property that can be subject to forced alienation. In particular, this concerns intellectual property of military technologies and other types of property that are beginning to determine the social necessity of their alienation.

Generalizations of judicial practice regarding the provision of guarantees of the right to property, given in the decisions of the Supreme Court of Ukraine (SC), indicate the insufficiency of the legal provision of this right, in particular, because the Supreme Court was involved in the settlement of these issues. Thus, the Resolution of the Cassation Economic Court of the Supreme Court No. 925/323/24 [16] states that although the right of ownership is not absolute, interference with this right must comply with the principles of legal certainty and proportionality. Therefore, there is a need to study the certainty of the set of norms that regulate the guarantees of property rights, and to establish whether the specified proportionality can be achieved due to the uncertainty of the property alienation procedures.

The legal uncertainty of expropriation procedures is also evidenced by Resolution of the Supreme Court of Ukraine No. 916/1964/23 [17], which states that the Act on Compulsory Expropriation of Property is not a legal document. This reduces the possibility of protecting the rights of property owners in legal proceedings and, accordingly, requires additional measures to regulate the specified procedures.

Resolution of the Cassation Economic Court of the Supreme Court No. 910/1930/23 [18] indicates the legality of forced alienation of securities (shares) under the legal regime of martial law. First, it shows that there should be a standardized list of types of property that can be forcibly alienated, that is, this issue is not legally defined. Secondly, it shows that changes in the legislation regarding property rights should be dynamic, in particular, because the permanent appearance of new circumstances requires rapid improvement of regulatory measures.

Also, the presence of systemic problems in the corpus of national laws and, accordingly, judicial practice is evidenced by the research of Ukrainian scientists [19] and the position of Ukraine according to the International Property Rights Index (IPRI) [20]. According to IPRI, in 2025, Ukraine took 104th place out of 126 possible. Ukraine's assessment of the level of protection of property rights is 46.57 % lower than the average value among the countries of the rating. The assessment of the component "Legal and political environment" is lower than the average value by 73.44 % [20]. This is a statistical reinforcement of the thesis about the existence of systemic problems in this area using empirical data, but there is a need to reinforce this assessment with a comparative legal comparison of legal norms in the field of guarantees of property rights. This will also make it possible to establish the cause-and-effect relationship between legal uncertainty and a reduction in the level of property rights in Ukraine.

Legal conflicts are caused, in particular, by the vague definition in the Legislation of the main categories relating to property rights. An exception is the definition of Part 2 of Article 1 of the Law of Ukraine No. 4765-VI [21] of the concept of "expropriation of property", which applies exclusively to property in state ownership. Therefore, the issue of expropriation of property is not considered in the presented study. Here and further in the presented study, the scientific and legal category "property" means an object to which a valuation can be applied and which gives rise to legal relations regarding its possession, use and disposal. These legal relations in the regulatory and legislative field determine the right of ownership.

The legal category of "compulsory alienation" of property is defined in Part 1 of Article 1 of the Law of Ukraine No. 4765-VI [21] and is based on the following theses. First, this category is regulated as "deprivation of the owner of the right of ownership". Secondly, the property passes into the ownership of the state. Thirdly, this property provides for the needs of the state under the legal conditions of martial law or a state of emergency.

Difficulties for the legal system are created by the lack of a legal definition of property that can be forcibly alienated or seized under the legal conditions of martial law. Thus, Article 353 of the Civil Code of Ukraine (CCU) [22] indicates that property is subject to forcible alienation, but it is not specified which one. At the same time, in the right field, property can be either a separate object or its collection. This concept also includes prop-

erty rights and obligations. Therefore, arbitrary interpretation of property that can be alienated in the "public interest" creates grounds for legal conflicts.

Article 1 of the Law of Ukraine No. 4765-VI [21] does not indicate the method and time of compensation for the value of alienated property, therefore the border with the category of "confiscation" is blurred. This is confirmed in Article 96-8 of the Criminal Code of Ukraine (CCU) "Confiscation of property consists in the forced gratuitous seizure of all or part of the property into the ownership of the state" [23].

The legal category of "requisition" is defined as the alienation of property for the needs of the state in an extrajudicial (administrative) order by decision of a government body [24]. Requisition under Article 353 of the Civil Code of Ukraine (CCU) [22] is identified with forced alienation: "property may be forcibly alienated from the owner... with prior and full compensation for its value (requisition)". But the CCU [22] lacks both the legal procedure for these actions and the way to restore the right of ownership. The "subsequent full compensation for the value of forcibly alienated property" stated in Part 2 of Article 353 of the CCU [22] is not supported by the regulation of the procedure for assessing this property, the conditions and terms of compensation. The total volume of alienated property will not allow for the rapid use of budgetary resources for this purpose, and the hopes of some scholars to use reparations from the aggressor country for this purpose are doubtful.

Also, the level of legal certainty is insufficient due to inconsistencies and gaps in the regulatory and legal framework. For example, the Ukrainian legislation does not provide a definition of the legal category "inviolability", which is a feature of the right of ownership under Article 41 of the Constitution of Ukraine [25] and Part 1 of Article 321 of the Civil Code [22]. This category actually contradicts Part 3 of Article 321 of the Civil Code [22], which indicates the possibility of forced alienation of property. The category of "balance" of public interests and the right to private property should be specified in the legal field, primarily for cases when the specified right is inextricably linked with other human rights [21], primarily the right to life, in particular, if the use of property subject to forced alienation is the main factor in the owner's livelihood. This creates difficulties in ensuring the inherent features of the right to property as a phenomenon. According to the "procedural" criterion - in the legal conditions of martial law, judicial algorithms and mechanisms for protecting the rights of the owner are insufficiently regulated. According to the criterion of "compliance of actions" of institutional structures there is inconsistency of the powers of the specified structures and their actions in the specified area. According to the criterion of "adaptability" – the process of legal transformation of guarantees does not respond properly to the conditions of the legal regime of martial law. The "implementation potential" is also low, since guarantees are declared, but are not sufficiently provided with resources, tools and mechanisms.

For the legal relations between the state and citizens of Ukraine, restrictions on guarantees of property rights can be considered as a direct result of military actions or as their indirect consequence. An indirect consequence is understood, in particular, as the forced alienation or seizure of property for the purpose of using it to counter the aggressor. Therefore, under Article 6 of the Law of Ukraine No. 389-VIII as amended on 04.03.2026 [26], the constitutional rights of citizens are limited for the duration of the martial law regime. Thus, under Part 4 of Article 8 of the Law of Ukraine No. 389-VIII [26], the military command and military administrations are granted the right to forcibly alienate property belonging to private individuals. However, the Law of Ukraine No. 389-VIII [26] and other legal documents lack a mechanism and procedural regulation of the extent to which a particular right or rights of property may be limited. The procedure for this alienation, documentation and guarantees of compensation to citizens are not regulated by the Law of Ukraine No. 389-VIII [26]. Although Part 3 of Article 15 of the aforementioned Law indicates the obligation to comply with state guarantees defined by the laws of Ukraine, these guarantees are not specified.

According to the Law of Ukraine No. 389-VIII [26], the effects of Article 41 of the Constitution of Ukraine [25] are limited and the forced alienation of private property rights is regulated. However, according to Article 56 of the Constitution of Ukraine [25], the right to compensation for it cannot be limited. Also, in accordance with Article 22 of the Civil Code of Ukraine [22], losses for violation of a person's civil rights must be compensated. The legal category of "damages" is defined in Part 2 of Article 22 of the Civil Code of Ukraine [22]. In particular, losses include lost profits as a result of the forced alienation of private property during the legal regime of martial law. The legislation avoids the problem of compensation for losses from the forced alienation of property that was used as the main means of earning its owner. Also, compensation for these losses is not regulated as a tool for compensating for improper provision of guarantees of property rights. But the legislation states that only the value of the alienated property is taken into account in compensation. Thus, in Article 1166 of the Civil Code [22] liability for property damage is determined, but there is no regulation of the differences between the legal categories of "property damage" and "property losses". It will also postpone the attribution of the forced alienation of private property during the legal regime of martial law to "property damage".

The fact that guarantees of property rights can be interpreted as preventive obligations and as positive obligations of the state also creates a legal problem. This will form different approaches to the implementation of these guarantees. Neither international legislation – the first protocol to the European Convention on Human Rights (hereinafter referred to as the Convention) nor other documents of international law [22], nor national legislation, have established clear procedural requirements for the implementation of guarantees in the context of preventive or positive obligations of the state. This causes uncertainty in their provision in the legal field and, accordingly, the acquisition of declarative nature by guarantees. Thus, although Article 41 of the Constitution of Ukraine [25] states that the condition for the forced alienation of property is "prior and full compensation" of its value, a number of laws, in particular, Part 2, Article 3 of the Law of Ukraine No. 4765-VI [21], Part 2, Article 353 of the Civil Code of Ukraine

[22] indicate the possibility of subsequent compensation" of the value of the forcibly alienated property.

The Resolution of the Supreme Chamber of the Supreme Court of 05/12/2022 in case No. 635/6172/17 states that the right to compensation for lost property under the legal regime of martial law is associated with a compensation mechanism [19], which confirms the legal relationship between guarantees of property rights and compensation for forced deprivation of property rights. Full compensation for the value of forcibly alienated property is not possible without its assessment. However, the legislation of Ukraine has not yet properly formalized either the procedure for compensation for forcibly alienated property, nor a proper assessment of its value, nor the procedure for receiving compensation for alienated property. Thus, although clause 2 of the Resolution of the Cabinet of Ministers of Ukraine No. 1440 of 10.10. 2003 in the version dated 08/11/2022 "On Approval of National Standard No. 1 "General Principles of Property and Property Rights Valuation" [27] provides for property valuation, but the legal field has not yet defined the nature of this valuation. In particular, this Resolution indicates the possibility of property valuation by: its market value; nominal value, taking into account not only physical and functional wear and tear, but also economic wear and tear caused by the action of socio-economic factors; special value, which is determined by "atypical motivation or special interest of the potential user". But it has not yet been determined at what value and for what period of time the valuation should be carried out. Also, for the estimated value in such conditions, there is not even an algorithm for its establishment, the mandatory nature of which is required by clause 2 of the aforementioned Resolution [27]. In such conditions, the possibility of involving unqualified government officials in the assessment, specified in the law, calls into question the implementation of property rights guarantees.

Another reason for the complication of confirming the value of forcibly alienated property is that the procedure for state registration of rights to real estate has undergone significant changes since Ukraine gained independence. Until 2013, the documents confirming the right to ownership of land plots were state acts, the data on which are stored in the State Land Cadastre, and in the case of real estate – certificates of ownership and acts of the technical inventory bureau. After the specified period, the right to ownership of real estate was determined by entering the fact of its acquisition in the electronic State Register. At present, the data of the State Land Cadastre cover only 71 % of land (42.7 million hectares). The relevance of this data is often questionable, since the acts of ownership for ~200,000 land plots contradict the data of the Land Cadastre and the Register of Rights. Under the legal regime of martial law, the possibilities of processing data on property rights in the process of its alienation are limited due to the loss of personnel of state information resources, loss of equipment due to bombing and missile strikes, low efficiency of communication resources in areas close to hostilities, etc. The assessment of alienated property is also complicated by the restriction of access to state registers and cadastres and the reduction in the number of notaries and registrars for the period of the legal regime of martial law.

The legal complication is also created by the uncertainty of the procedure, amount and time of payment of compensation, since in paragraph 2 of Resolution No. 1440 [27] there are no rules on taking into account the change in value in the event of untimely payment of compensation. Also, there is not only a lack of standardization of the procedure for receiving compensation, but also a lack of clear conditions and requirements for its provision. This is confirmed by the Resolution of the Grand Chamber of the Supreme Court dated September 13, 2023 in case No. 757/64569/16-ts, which did not satisfy the plaintiff's claims for compensation for alienated property due to the lack of documentary confirmation of the fact of alienation, although obtaining this confirmation was made impossible by wartime circumstances.

A number of regulatory provisions regulating the subsequent compensation of the value of forcibly alienated property confirm the complexity of this procedure and its significant extension in time. Thus, the Resolution of the Cabinet of Ministers (CM) of Ukraine No. 998 of 31.10.2012 [28] indicates that the former owner must submit an application for subsequent compensation of the value of the property. This application is recorded, considered and a decision is made on it by the authority. When making a decision on payment, the amount of this payment must be taken into account in the estimate for the next budget period or for five budget periods after the abolition of the legal regime of martial law. The depreciation of the specified amount due to inflation is not taken into account, as the forced alienation of property acquires the characteristics of confiscation, but under Article 41 of the Constitution of Ukraine [25] confiscation of property is carried out exclusively by court decision. The considerable time required for the judicial procedure makes it impossible to promptly expropriate property under the legal regime of martial law.

The problem of "full" compensation is also complicated by the different categories of expropriated property, each of which may require a special legal mechanism [29]. In particular, with regard to the expropriation of land, the compensation process is complicated by the lack of a unified register of expropriated lands [30], the problem of returning land plots to owners, which arises due to the loss of soil fertility due to mining, the impact of phosphorus bombs, burning with "Solntsepok" flamethrowers, etc.; the difficulty of documenting their value, and so on.

The Resolution of the Grand Chamber of the Supreme Court of Ukraine (SCU) of 4.09.2019 in case No. 265/6582/16-c (14-17cs19) [31] indicated the absence of legal grounds for the automatic liability of the state to pay compensation for property damage during the period of the legal regime of martial law. The aforementioned Resolution indicated that Article 1177 of the CCU [22] does not guarantee a "legitimate expectation" for this. At the same time, the SCU Resolution stated that individuals have the right to claim compensation referring to the state's inability to form an effective compensation mechanism in accordance with Article 1 (Protocol No. 1-1) of the Convention.

As a basis for legal guarantees regarding property rights, scholars [32] often refer to the European Convention on Human Rights, which is the basis for the

practice of the European Court of Human Rights, but new circumstances that have arisen during a large-scale war require changes to the aforementioned Convention.

This not only complicates the provision of full and timely compensation for alienated property, but also makes it impossible to use a compensation mechanism for improper provision of guarantees of property rights by a party to a social contract. The parties to this contract are the state and the owners of private property. Under this social contract, each of the parties acquires rights and obligations. The state, as a party to the social contract, guarantees the inviolability of property rights, and property owners undertake to refrain from causing harm to other citizens, society, or the natural environment in the process of exercising this right. Guarantees of property rights should acquire signs of liability for their violation. These signs under international law should include "liability for inaction" and, accordingly, be compensated to the affected party to the contract.

One of the institutions for the implementation of guarantees of property rights is the judicial branch of government, which, under Article 1 of the Code of Administrative Procedure of Ukraine [33], is entrusted with the tasks of protecting the rights of both individuals and legal entities. The use of the judicial control mechanism should ensure guarantees of property rights even in conditions of legal uncertainty, establish the legality of regulatory documents of the executive branch in this area; renew the rights of owners, etc. The European Court of Human Rights, in the uncertainty of the national regulatory and legal field, indicated the possibility of the judicial system to implement the concept of "margin of appreciation" (which is similar to the Ukrainian concept of "freedom of discretion"). In particular, this concerns the specification of the public interest and the level of ensuring property rights under the legal regime of martial law. This is complicated by the fact that the legal category of "public needs", "public interest" or "public necessity" (Part 3 of Article 321 of the Code of Civil Procedure [22], Articles 350-353 of the Code of Civil Procedure [22], Part 1 of Article 39 of the Criminal Code of Ukraine), which justifies the forced alienation of property, is an evaluative concept, the definition of which is absent in the legislation. This places additional responsibility on the judicial branch. Therefore, the legal category of "public necessity", which is relied on in actions aimed at the forced alienation of property, should not be only declarative. It should be caused by specific military needs, and not by theoretical expediency, which becomes the basis for the depreciation of the right to property guaranteed by the Constitution of Ukraine.

The legal framework does not regulate not only the need to compensate victims for inadequate guarantees of property rights. Even the payment of compensation for the value of forcibly alienated property is complicated by the contradictions and fragmentation of the Ukrainian legislation in this area. This requires a significant change in legal approaches to increasing the imperativeness of guarantees of property rights and the protection of property owners.

To partially resolve this problem, the following is proposed:

1. Replacing the legal norm of "full compensation for the value" of forcibly alienated property with the norm of "full compensation for the market value in amounts sufficient to purchase the same property at the time of compensation for forcibly alienated private property rights to ensure public interests". This is due to the fact that the declared guarantees of "full compensation" may contradict the realities of delayed payments, which will lead not only to a depreciation of the compensation but also to a critical accumulation of state obligations to the owners for the economy.

2. Introduction into the regulatory and legal field of Ukraine of a unified methodology for assessing the value of forcibly alienated property based on the market price at the time of alienation and taking into account inflation for extending the term of compensation payment. Independent experts should be involved in the assessment procedure, with the owner being given the right to an alternative examination at his own expense.

3. A legislative framework should also be created to simplify the procedure for pre-trial appeal of actions during the forcible alienation of property. To this end, a commission should function in regional institutional structures to consider complaints from owners regarding these actions. This will help relieve the burden on judicial authorities.

4. Standardization of the procedure for documenting forcible alienation with the involvement of state digital resources, in particular, the formation of a single register of state forcibly alienated property.

5. To solve the problem of overloading the judicial system with cases, primarily regarding the loss of property, and, in particular, the forced alienation of property, an approach is proposed to divide the owners' applications into groups, taking into account the legal norms on which they are based, and to form a single legal decision for each group and implement it during the subsequent judicial procedure. This is not identical to case law, since the expediency of considering applications by the specified groups is characteristic of a limited period of time. The specified mechanism requires legislative approval.

It is also proposed to make amendments to the current legal acts. These changes do not contradict international law documents, in particular, the Convention for the Protection of Human Rights and Fundamental Freedoms and Protocol No. 1-1 thereto. There are also no contradictions with the Constitution of Ukraine, Article 41 of which, where the right to property is guaranteed, directly indicates that: forced alienation of property for the purpose of public necessity occurs "on the basis and in accordance with the procedure established by law". Therefore, improving the provisions of the law contributes to the normalization of this procedure. These changes do not require additional budget expenditures, except for protocol ones, since they are based on existing norms in Ukrainian legislation.

Thus, the following additions are proposed:

- to Part 2 of Article 15 of the Civil Code [22] – "and the need to prevent the threat of an emergency, reduce risks and eliminate its consequences or the urgent need to repel armed aggression and eliminate the threat to national security and (or) the threat to the independence of the state". This addition regulates the public necessi-

ty. The specification of the public necessity strengthens the guarantees of property rights;

- to Part 2 of Article 22 of the Civil Code [22] – "clause 3. losses that an individual or legal entity suffered as a result of the forced alienation of private property during the legal regime of martial law". The inclusion of this clause in Part 2 of Article 22 of the Civil Code regulates the payment of compensation for the forced alienation of private property with the specification of compensation in other provisions of the specified article;

- to Part 1 of Article 22 of the Civil Code of Ukraine [22] "A person who has suffered damage as a result of a violation of his rights, defined by the laws of Ukraine and international documents ratified by Ukraine, which relate, among others, to human rights". This regulates compensation for damages not only for forcibly alienated property but also for the complex impact of this action on other human rights. This extends the guarantees of the right to property to other human rights;

- to Part 1 of Article 316 of the Civil Code of Ukraine [22] – "The right to property is the right of a person to property... (and further in the text)". In this case, the identification of property and "things" is removed from the text of the article, since property can be intellectual property (which is not a thing), an inextricably linked set of things, for example, a land plot with a house on it, etc.;

- to Part 6 of Article 319 of the Civil Code of Ukraine [22] "The state shall not interfere with the exercise of the right of ownership by the owner except in cases of justified public necessity". This provision reinforces the need to substantiate public necessity and reinforces guarantees of the right of ownership as a systemic concept;

- to Part 1 of Article 412 of the Civil Code of Ukraine [22] – "clause 4 in connection with public necessity during the legal regime of martial law with full prior compensation for its market value". The above regulates the type of assessment of the value of alienated property, specifies the procedure for forced alienation, and provides compensation for failure to comply with guarantees of the right of ownership;

- to Article 1173 of the Civil Code of Ukraine [22] Part 1-1 "Compensation for damage caused to the owner of property in a state of extreme necessity in conditions of an emergency or military action must be carried out in full, sufficient to purchase the same property at the time of compensation for the forcibly alienated objects". This reinforces the imperative of full compensation for losses;

- to the Resolution of the Cabinet of Ministers of Ukraine No. 326 "On Approval of the Procedure for Determining Damage and Losses Inflicted on Ukraine as a Result of the Armed Aggression of the Russian Federation" [34] – Part 5 "losses resulting from the deprivation of an individual or legal entity of the right to property ownership and the transfer of this property to the ownership of the state for use for military purposes. The assessment of losses is carried out by entities engaged in valuation activities. Regional state and military administrations are responsible for determining the specified losses". Determining those responsible for assessing losses ensures the legal significance of this procedure. This reinforces the imperative nature of property rights guarantees.

**Conclusions.** To achieve the goal of the study, it is indicated that even with forced regulatory restrictions on constitutional guarantees of property rights, there are other valid reasons for their non-enforcement. The inconsistency of legal norms, the presence of gaps in the legal field, which caused the uncertainty of the regulatory and legal field regarding the provision of guarantees of property rights are among the reasons. This uncertainty is confirmed by applying a comparative law approach to current legal norms. In order to fulfil the tasks set, it is proposed to consider a mechanism for compensating for the loss of property by its owners as a result of forced alienation as compensation for improper provision of guarantees of property rights by a party to a social contract, in particular, as "liability for inaction". This will not require additional budgetary resources and does not contradict international law. This will also protect Ukraine from possible claims by former property owners to the ECHR for justified claims for compensation for the full range of losses due to improper provision by the state of the guarantees provided by it.

The results of the research in this area include, in particular, the justification that in the event of improper regulation of the procedures for the forced alienation of property in certain cases, this alienation takes on the characteristics of confiscation. It has been proven that this strengthens the declarative nature of the norms guaranteeing the inviolability of property rights.

In order to expand the thesis available in specialized scientific works about the violation of the integrity of the institution of guarantees of property rights due to the conditions of the legal regime of martial law, it is proposed to treat this institution as a single system. As a component of this system, in addition to constitutional guarantees, it is proposed to consider a complex of legal mechanisms and procedures that should implement the specified guarantees. This justified the interpretation of property rights guarantees not only as declarative norms enshrined in national legislation and international legal documents ratified by the Verkhovna Rada of Ukraine, but also as systemic legal institutions of the imperative implementation of these guarantees.

It is noted that the immutability of social relations in peacetime determined the appropriate level of property rights guarantees. Under conditions of war and post-war technological and social development, the institution of guarantees must acquire a dynamic nature. Only in this way can their imperativeness be ensured.

Types of classification of guarantees for ensuring property rights under the legal regime of martial law according to their purpose are determined.

It is proposed to replace the legal norm "full compensation for the cost" of forcibly alienated property with the norm "full compensation for the market value in amounts sufficient for the acquisition of the same property at the time of compensation for forcibly alienated objects of private property rights to ensure public interests". This reinforces the imperative of property rights guarantees.

Practical results include the substantiation of changes to the legislation to introduce effective mechanisms for the protection of property rights and compensation in the event of forced alienation of property. Also, to elimi-

nate gaps and inconsistencies in the regulatory and legal field with the conditions of the martial law legal regime, specific changes to existing legal acts are proposed.

The prospect of further research is to expand the legal justification of the systematic nature of property rights guarantees and their study as conditions of a social contract.

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## Право власності: правові гарантії забезпечення в Україні в умовах воєнного стану


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**Мета.** Встановлення причин незабезпечення гарантій права власності поза законодавчими обмеженнями внаслідок правового режиму воєнного стану.

**Методика.** Інтегральним методом обрано системно-правовий підхід. За використання його складової, порівняльно-правового методу, вказано на зменшення імперативності гарантій внаслідок неврегульованості процедур і механізмів інституту права власності. За використання складової – герменевтичного правового методу – доведено невизначеність законодавства щодо інституту права власності як однієї із причин незабезпечення вказаних гарантій. Використання складової – системно-логічного методу – дозволило запропонувати конкретні зміни до діючих правових актів для усунення прогалин і невідповідності нормативно-правового поля умовам правового режиму воєнного стану.

**Результати.** Обґрунтовані причини незабезпечення гарантій права власності поза їх правовими обмеженнями. Визначені види класифікації гарантій забезпечення права власності в умовах правового режиму воєнного стану. Зазначено, що оперативність змін суспільних відносин за нових загроз вимагає динамічних змін норм гарантій права власності й підстав їх обмеження. Це зменшить декларативність вказаних гарантій. Вказано на необхідність удосконалення категоріального апарату гарантій права власності. Запропоновані й обґрунтовані пропозиції зміни діючих правових актів для усунення прогалин і невідповідності законодавства умовам правового режиму воєнного стану.

**Наукова новизна.** Запропоновано трактувати інститут гарантій права власності як єдину систему. Складовою цієї системи, окрім конституційних гарантій, запропоновано розглядати комплекс правових механізмів і процедур, що мають реалізовувати вказані гарантії. Запропоновано розглядати механізм відшкодування збитків власникам примусово відчуженого майна як засіб компенсування неналежного забезпечення права власності стороною суспільного договору. Це посилить імперативність гарантій права власності, шо убезпечить Україну від позовів на цих підставах до міжнародних судів.

**Практична значимість.** Висновки та пропозиції, викладені в цій роботі, щодо змін Законодавства можуть бути використані науковцями для дослідження напрямів забезпечення гарантій права власності й законотворцями для вдосконалення правових норм.

**Ключові слова:** *право власності, правові гарантії, примусове відчуження, воєнний стан, відшкодування, компенсація*