

## Case Note

# PROTECTION OF PROPERTY RIGHTS DURING THE RUSSIAN-UKRAINIAN WAR: THEORETICAL AND LEGAL ANALYSIS

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**Summary:** 1. Introduction. – 2. Methodological Framework. – 3. Results. – 3.1 Features of legislative regulation of property rights in Ukraine in the context of Russian aggression. – 3.2. Legal characteristics of international legal acts on

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*the protection of property rights. – 3.3. Legal analysis of court decisions on the protection of property rights adopted by the courts of Ukraine and international and national judicial institutions. – 4. Discussion. – 5. Conclusions and Recommendations.*

**Keywords:** private property rights, war crime, Russian-Ukrainian war, protection of private property rights, private international law.

## ABSTRACT

**Background:** *This article presents a scientific and legal analysis of the provisions of the current legislation of Ukraine and international legal acts in the field of protection of private property rights during the Russian-Ukrainian war. Based on historical and legal analysis of scientific heritage and modern scientific theories in the field of protection of private property rights and the right of possession by all subjects of public life, the authors of this article provide generalisations and recommendations for improving the effectiveness of international protection mechanisms in this area.*

**Methods:** *The authors resort to numerous research methods, such as the method of philosophical dialectics and hermeneutics, historical, comparative, structural, and functional methods, analysis and synthesis, and induction.*

**Results and Conclusions:** *The article examines international and Ukrainian regulatory legal acts that substantiate the mechanisms of acquisition, possession, and disposal of property owned by a person on the right of private property. Particular attention is paid to the latest problems associated with bringing to the established international responsibility war criminals involved in causing property damage and moral damage to the civilian population in connection with the destruction of private property. The authors suggest improving the mechanisms for the protection of the rights of private property that has been destroyed or damaged as a result of war crimes committed by Russian invaders on the territory of Ukraine.*

## 1 INTRODUCTION

The problem of protecting property rights with legitimate legal instruments has been accompanying human civilisation since our initial self-awareness of our individuality as participants in social processes. J. Locke, an outstanding English philosopher and thinker, pointed out that ‘The primary goal of civil society is the protection of property’.<sup>1</sup> In another work, Locke considers the importance of the protection of property rights as one of the main functions of public authorities and notes that ‘... the great and foremost purpose of uniting people into commonwealths and putting themselves under government is the preservation of their property’.<sup>2</sup> V. Kisel studied the genesis of ideas about the essence of property rights and noted that

One of the critical questions that the doctrine of philosophy tried to answer was the question of the origin of property rights. In this context, the supporters of the most popular concept advocated the natural essence of the emergence of property rights. In particular, Montesquieu, Diderot, and Rousseau interpreted property as a natural

1 John Locke, *The Philosophical Works of John Locke*, vol 2 (Nabu Press 2010) 16.

2 John Locke, *The Works of John Locke*, vol 5 *Two Treatises of Government: In the Former, The False Principles and Foundation of Sir Robert Filmer, and His Followers, Are Detected and Overthrown: The Latter, Is an Essay Concerning the Original, Extent, and End, of Civil Government* (Printed by Thomas Davison 1823) 159

right that, along with freedom and equality, belongs to everyone from birth and is inalienable and sacred.<sup>3</sup>

R. Mykhaylenko considered the scientific contributions of J. Locke and G. W. F. Hegel to the study of the property doctrine and noted that Hegel deduced private property and justified its necessity from the social factor rather than from the natural one. Thus, Hegel did not see the principles of private property in nature but in natural law. The spiritual and social aspects of the human person took precedence in Hegel's legal conception, while J. Locke defined private property through the prism of the properties of 'people as people' rather than as members of a particular society. Hegel believed the foundation of private property was the 'second' nature of humans, namely their spiritual and social essence. Unlike J. Locke, who revealed the essence of private property through the prism of the nature of an individual, Hegel believed the individual freedom of a person constituted the starting point of private property rights only indirectly, namely as a 'reasonable' volition determined by the development of the 'objective spirit'.<sup>4</sup>

The scientific method of extrapolation allows the authors to proceed from the genealogical foundations of the concept of property to the present. There is a significant variety of scientific research on the raised issues at this stage.<sup>5</sup> Some scholars believe that property rights are guaranteed as an object of protection by an individual and the state, which is entrusted with this task as a legitimate entity and implements its will through the application of '...laws and judicial and other state bodies. It follows that natural property rights remain rights of free private property in civil society'.<sup>6</sup> The authors of this article hold to this statement since the primary role in the protection of property rights belongs to the state, which has legitimate instruments of coercion to fulfil the will of the law.

Following the logical law of sufficient grounds, it is necessary to substantiate the purely legal research section since the interpretation history of the genesis of the concept of property is marked by attempts to turn it into a discourse of economic science.

The theoretical and legal study of the genesis and dynamics of the development of ownership relations based on the law showed that property rights, as fundamental human rights, underwent a permanent transformation under the influence of social processes. In the modern sense, this right should be considered within the defined regulatory framework of international treaties (conventions). The essential document for this article is the Convention for the Protection of Human Rights and Fundamental Freedoms, where Art. 1, 'Protection of property', of the Additional Protocol defines the right of every person to possess particular property on legal grounds. Legal restrictions on such a right are introduced by reservations about the legitimate need for deprivation of legally acquired property '... in the public interest and subject to the conditions provided for by law and by the general principles of international law'.<sup>7</sup>

3 VY Kisel, 'The Genesis of Ideas about the Essence of Property Rights: History and Modernity' (2015) 1 Actual Problems of Historical and Legal Science 116.

4 Roman Mykhaylenko, 'Private Property in the Philosophical Tradition' (2016) 1 (11) Philosophical and Methodological Problems of Law 179.

5 Viktor Beschastnyi et al, 'Place of Court precedent in the system of law of the European Union and in the System of Law of Ukraine' (2019) 22 (6) Journal of Legal, Ethical and Regulatory 3; Larysa Nalyvaiko, Olena Marchenko and Vasyl Ilkov, 'Conceptualization of the Phenomenon of Corruption: International Practices and Ukrainian Experience' (2018) 172 (7-8) Economic Annals-XXI 33, doi: 10.21003/ea.V172-06.

6 Mykhaylenko (n 9) 178.

7 Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) <[https://www.echr.coe.int/documents/convention\\_eng.pdf](https://www.echr.coe.int/documents/convention_eng.pdf)> accessed 20 February 2023.

In the context of this study, it is necessary to analyse the protection of property rights and compensation for damages during the Russian-Ukrainian war, the state of protection of citizens from encroachment on the property right guaranteed by the Constitution and Laws of Ukraine. The war adjusted all legal relationships, including civil ones, changing the usual processes and mechanisms of regulating relations to more complex and, accordingly, problematic ones. In addition to this, new civil legal relations have emerged, which are not yet sufficiently regulated, although they are gradually adapting to the realities of today.

Since the full-scale invasion and introduction of martial law in Ukraine shifted the focus to more important problems of the state, today, looting and the activities of 'black' realtors have increased. Accordingly, the problem of protecting private property and compensation for damages has become even more urgent. It should be added that the issue of protection of private property under the above circumstances is regulated by laws, liability is established, and legal mechanisms are available for compensation of damage. The most problematic is compensation for damage to private property as a result of direct military actions of the Russian Federation, namely as a result of rocket and artillery shelling of cities and villages and open clashes between the Ukrainian military and invaders. Such costs and damages are inevitable in the course of the war. Although the right to property is an inviolable right guaranteed by both international and national law, in such a case, a clear and regulated mechanism for the protection of private property and compensation for damage should be in place. At the same time, the persons who will make the compensation, as well as the order and terms of such compensation, should be established. In part, Ukraine has experience in such matters due to the hostilities in the Donetsk and Luhansk regions since 2014. Therefore, the Verkhovna Rada of Ukraine has already begun to adapt the legislation to new realities with the aim of legal regulation of newly created civil legal relations.

Given the fact that this article is one of the first to raise issues of the protection, preservation and restitution of property rights under the conditions of the Russian-Ukrainian war, its purpose is to identify related problems to the practical implementation of new provisions of domestic and world legislation in the regulation of property relations and develop effective tools for their solution. This process is long-term and requires an in-depth analysis of the problem from 2014 to today.

## 2 METHODOLOGICAL FRAMEWORK

The authors of this article fulfilled the set tasks by resorting to the methodological framework of general scientific and special scientific direction, which ensured compliance with the fundamental principles of scientific knowledge, such as objectivity, cognition, a creative approach to the problem, a combination of theory and practice based on the laws of dialectics and logic, the specificity of truth, etc. The method of philosophical dialectics and other means of scientific research are the leading methodological instruments applied in this article; they helped to determine general trends and individual features of the legal regulation of property relations during the Russian-Ukrainian war.

The method of hermeneutics was used to achieve a professional understanding of the genesis of property rights and the ways of transforming this legal institution. The authors pay particular attention to the features of scientific and practical changes in approaches to understanding property rights and the legal content of interstate measures aimed at their restoration in case of violation. The historical and comparative method was applied to present the multidisciplinary legal nature of the concept of property rights. The comparative legal method provided for the comparison and legal analysis of updated regulatory legal acts of Ukraine and the countries of the democratic world in the field of regulation of property relations under special conditions.

The structural and functional methods provided access to an understanding of the internal structure of the integral concept of property rights, which made it possible to substantiate the inseparable dialectical connections between its components. Analysis and synthesis as a system of scientific and logical methods made it possible to elaborate an integrated approach to the analytical and legal assessment of the processes of restitution of violated property rights under specific conditions, which are military operations in the territory of Ukraine. The method of induction allowed the authors to combine individual elements of the progressive destructive process, such as illegal damage of the legal phenomenon of property rights, into a holistic, scientifically substantiated knowledge of the general condition and ways of restoring private property rights violated by Russia's military aggression.

### 3 RESULTS

#### 3.1 Features of legislative regulation of property rights in Ukraine in the context of aggression

Having chosen the path of independent statehood, Ukraine, with the adoption of the Constitution, declared general equality before the law of all subjects of property rights on the principles of the rule of law. The provisions of the Basic Law guarantee the rule of law in Ukraine. Other provisions of this document entrust the state with the tasks of protecting the rights and ensuring equality before the law of all subjects of property rights. The Basic Law also declared the right to possess, use, and dispose of their property, including the results of their intellectual and creative activities.

The principal limitation in the relations of change of ownership is the constitutional guarantee that 'no one shall be unlawfully deprived of the right of property. The right of private property is inviolable.'<sup>8</sup> However, the ongoing full-scale war unleashed by the Russian Federation against Ukraine has significantly changed the current world order regarding the mere procedure for owning and disposing of property in terms of deprivation in this area.

A selective logical and legal analysis of domestic and foreign documents of the period from the beginning of the armed aggression of the Russian Federation to the present showed that the reason for this approach on the part of legitimising legal restrictions on the acquisition, use, and disposal ( in the broad sense of this concept) of objects of property rights by controlled subjects of most countries of the democratic world was the provision of possible compensation for material losses and moral damage caused to Ukraine and its citizens by hostilities at the expense of the aggressor country. The above refers to the objects of property rights with the participation of Russian owners both in the territory of Ukraine and in other democratic countries.

A selective analysis of international measures to assist Ukraine in countering Russian military aggression showed the high effectiveness of the sanctions and restrictive measures imposed by the G7 and the EU in support of Ukraine. Such actions contributed to the attraction of significant amounts of financial, military, and humanitarian assistance.

However, this study shows that the international situation in the direction of anti-aggressive cooperation has the following distinct features:

- gross disregard for the principles of international law by the Russian Federation;

8 Constitution of Ukraine No 254 k/96-BP of 28 June 1996 (as amended 1 January 2020) <<https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>> accessed 20 February 2023.

- ineffectiveness of the international security system;
- open support of the aggression of the Russian Federation against Ukraine by the leaders of individual EU member states;
- ambiguity of approaches to the recognition of the Russian Federation as a state sponsor of terrorism by the leaders of several UN member-states;
- inconsistencies of the imposed sanctions with the threats, including nuclear ones, that have arisen in the global security system;
- the provision of necessary assistance (especially military) to repel the aggressor effectively is not sufficiently active nor timely, and complete.

However, the administrative legislative and executive bodies are changing the legislation very quickly in this challenging situation, adapting it to the requirements of wartime. It is worth noting that the restrictive and confiscatory measures taken against the property of representatives of the aggressor country have a dualistic nature. On the one hand, it is compensation for losses caused by aggressive actions at the expense of seized funds and property. On the other hand, these measures indicate the state's implementation of constitutional guarantees regarding the inviolability of property rights and their complete and timely restoration in case of violation.<sup>9</sup>

The authors of this article have conducted a theoretical and legal analysis of the regulatory framework for ensuring the preservation of the property of the Ukrainian people and each citizen, which shows that numerous legislative acts provide the implementation of constitutional guarantees of property rights. The authors of this article believe the Law of Ukraine 'On the Basic Principles of Forcible Seizure of Objects of Property Rights of the Russian Federation and its Residents in Ukraine'<sup>10</sup> comes to the fore among other legislative acts. The said Law determines the legal grounds for forced seizure of the objects of property rights of the Russian Federation as a state-aggressor and its residents for reasons of social necessity, including cases of military necessity.

In accordance with the provisions of Part 2 of Art. 2 of this Law, the forcible seizure of objects of property rights of the Russian Federation and its residents is carried out without any compensation (reimbursement) of their value due to the ongoing full-scale war launched by the Russian Federation against Ukraine and the Ukrainian people. The authors of this article believe that the category of 'Ukrainian people' used by the legislator to conclude this rule of law embodies all the features of the right holder and the right user, which are fully applied to everyone who has lost their property or whose property is damaged as a result of the hostilities committed by the invaders.

The Law of Ukraine 'On Amendments to Certain Laws of Ukraine Regarding the Regulation of the Legal Regime in the Temporarily Occupied Territory of Ukraine'<sup>11</sup> occupies an important place among the normative legal acts that regulate legal relations in the field of property rights, which made significant corrections to a number of normative legal acts in the regulation of the legal relations we are investigating. Thus, the Law of Ukraine 'On Ensuring Civil Rights and Freedoms, and the Legal Regime on the Temporarily Occupied

9 Viktoriya V Korolova and others, 'International legal aspects of migration in the EU: Policies and standards' (2022) 72 (246) *International Social Science Journal* 1071, doi: 10.1111/issj.12376.

10 Law of Ukraine No 2116-IX 'On the Basic Principles of Forcible Seizure of Objects of Property Rights of the Russian Federation and its Residents in Ukraine' of 3 March 2022 [2022] *Official Gazette of Ukraine* 33/1720.

11 Law of Ukraine No 2217-IX 'On Amendments to Certain Laws of Ukraine Regarding the Regulation of the Legal Regime in the Temporarily Occupied Territory of Ukraine' of 21 April 2022 [2022] *Official Gazette of Ukraine* 40/2147.

Territory of Ukraine<sup>12</sup> explicitly stated that compensation for material and moral damage caused as a result of the temporary occupation to the state of Ukraine, legal entities, public associations and citizens of Ukraine, foreigners and stateless persons, fully relies on the Russian Federation as the occupying power. At the same time, it is noted that the state of Ukraine must contribute to the implementation of such compensation in all possible ways within the framework of the law.

The above-mentioned changes in the legislation apply only to temporarily occupied territories. At the moment, the compensation mechanism for the damage caused as a result of the armed aggression of the Russian Federation on the territory of Ukraine, in all regions, has not yet been settled. The draft law on compensation for damage caused to the victims as a result of armed aggression of the Russian Federation<sup>13</sup> has only passed the first reading and is being worked out by the relevant committees. Adoption of this Law is very important, as it proposes to define the concept of 'property damage', as well as to provide a list of sources of compensation for damage. The main source of such compensation is the funds and other property of the aggressor state and its residents, other persons whose illegal actions led to armed aggression against Ukraine. Also, the draft law provides for the creation of a special state institution – the compensation fund, and the monopolisation by this institution of the functions of retrieving Russian assets as a source of compensation for damages. It can be implemented thanks to the Law of Ukraine 'On the Basic Principles of Forcible Seizure of Objects of Property Rights of the Russian Federation and its Residents in Ukraine', which was mentioned above. Also, targeted grants, contributions of individuals and legal entities, and other sources that are not prohibited by legislation will also be included as sources of compensation.

The draft law on compensation for damage and destruction of certain categories of real estate objects as a result of hostilities, terrorist acts, and sabotage caused by military aggression of the Russian Federation<sup>14</sup> is still under consideration, too. In the future, subject to the adoption of the Law, issues regarding the procedure for paying victims compensation for their lost houses will be settled. The Law will also apply to unfinished residential buildings.

In this aspect, it is also worth paying attention to the procedure for determining damage and losses caused to Ukraine as a result of the armed aggression of the Russian Federation,<sup>15</sup> which, in combination with the above-mentioned legal acts, will create a comprehensive and effective mechanism for compensation for damage to private property.

Thus, the provisions of these Laws will entitle each victim of Russian aggression to substantiate their claims on the basis of the Civil Code of Ukraine (hereinafter – the CC)<sup>16</sup> and, of course, these Laws. Specific articles of the CC provide a legal justification for the internal structure of

12 Law of Ukraine No 1207-VII 'On Ensuring Civil Rights and Freedoms, and the Legal Regime on the Temporarily Occupied Territory of Ukraine' of 15 April 2014 (as amended of 01 January 2023) <<https://zakon.rada.gov.ua/laws/show/1207-18#top>> accessed 20 February 2023.

13 Draft Law of Ukraine No 7385 'On Compensation for Damage Caused to the Victims as a Result of armed aggression of the Russian Federation' of 17 May 2022 <<https://itd.rada.gov.ua/billInfo/Bills/Card/39602>> accessed 20 February 2023.

14 Draft Law of Ukraine No 7198 'On Compensation for Damage and Destruction of Certain Categories of Real Estate Objects as a Result of hostilities, terrorist acts, and sabotage caused by military aggression of the Russian Federation' of 24 May 2022 <<https://itd.rada.gov.ua/billInfo/Bills/CardByRn?regNum=7198&conv=9>> accessed 20 February 2023.

15 Resolution of the Cabinet of Ministers of Ukraine No 326 'Procedure for Determining Damage and Losses Caused to Ukraine as a Result of the armed aggression of the Russian Federation' of 20 March 2022 (as amended of 11 November 2022) <<https://zakon.rada.gov.ua/laws/show/326-2022-%D0%BF#Text>> accessed 20 February 2023.

16 Civil Code of Ukraine No 435-IV of 16 January 2003 (as amended of 01 January 2023) <<https://zakon.rada.gov.ua/laws/show/en/435-15?lang=uk#Text>> accessed 20 February 2023.

property rights as an independent legal institution. First, the above is indicated by Chapter 1, 'Ownership', of the Third Book, 'Ownership and Other Proprietary Rights', of the CC.

In this regard, it is necessary to provide a legal definition of property rights and characterise their types and the acquisition of the legitimate status of the owner. In the context of the above, the authors provide their understanding of particular provisions of the Civil Code of Ukraine, such as Arts. 316-319, which reflect the upward positions of the legislator towards the approaches to the interpretation of this category. Art. 316 interprets the concept of the right of ownership as the right of a person to free possession of the subject of a right that does not depend on the will of other persons.

In accordance with the provisions of Art. 317 of the CC, the content of the right of ownership is the legitimate possession of a specific object of the right of ownership by the owner as an exclusive opportunity belonging to him or her alone. According to Part 1 of Art. 318, 'Subjects of the Right of Ownership', the subjects of property rights are the Ukrainian people and other participants in civil relations defined by Art. 2 of the CC. The provisions of Art. 319 define the content of the right of ownership as the possibility of owners to possess, use, and dispose of their property at their discretion and their right to perform any actions regarding their property that do not contradict the law.

The provisions of the Constitution of Ukraine have been extended and substantiated in the CC, where Art. 321 provides for the inviolability of the property right and determines the circumstances under which this right may be limited or violated. A person may be deprived of the property right or limited in its exercise only on the grounds of and by the procedure established by law. The compulsory expropriation of objects of the right of private property may be applied only as an exception for reasons of social necessity, on the grounds of and by the procedure established by law, and on the condition of advance and complete compensation of their value, except for the cases established by para. 2 of Art. 353 of the CC. The CC defines the Ukrainian people as the holders (subjects) of property rights (Art. 324), and private owners can be individuals and legal entities (Art. 325), the state (Art. 326), and territorial communities (Art. 327).

It follows from the above that the generalised victims of aggressive military actions on the part of the Russian Federation are the Ukrainian people, who personify the material damage caused to citizens, legal entities, territorial communities, and the state. Thus, it is inadvisable to divide the process of protection of property rights into the categories of right holders during the war period. However, one should characterise the actions taken to protect the inalienable property right violated by the invaders as a holistic mechanism that acquired specific features after the full-scale Russian invasion of Ukraine.

In order to comply with a comprehensive approach to the study of the legal protection of property rights (in the broad sense of this category), it is necessary to resort to the legal characteristics of the regulatory and judicial documents put into effect by the participating countries in the anti-Russian coalition. To provide a uniform understanding of the concept of legal characteristics, the authors of this article suggested focusing on the definition by M. Hryhorchuk<sup>17</sup> provided in the monograph *Legal protection of economic entities: theory and practice*. Hryhorchuk defines the concept of legal characteristics as a measure of the competence of the subjects of protection within the legal influence of the primary source, which is the constitutional legal order.

17 Myroslav Vasylyovych Hryhorchuk, *Legal Protection of Economic Entities (Theory and Practice)* (KROK 2020) 47.



## 3.2 Legal characteristics of international legal acts on the protection of property rights

Given the problems associated with compensation for damage caused to Ukraine and its people by the Russian aggressor, it is necessary to turn to the rules of international law. The following regulatory legal acts govern the procedure for bringing a guilty person to a particular type of liability in the event of specific circumstances that enforce coercive measures to restore possession of destroyed or damaged objects of property rights. The procedure for asserting the violated property right is determined by international legal acts for the international community and Ukraine, where the previously cited Convention for the Protection of Human Rights and Fundamental Freedoms and the Geneva Conventions for the Protection of War Victims play the central stage.

The authors of this article conducted a historical and legal analysis of the implementation of the Geneva Conventions for the Protection of War Victims. The analysis showed that the ratification of this document faced some resistance from the Soviet regime in force at that time, as evidenced by the provisions of the Decree of Presidium of the Supreme Council of the Ukrainian SSR<sup>18</sup> 'On the ratification of the Geneva Conventions of 12 August 1949, for the protection of war victims'. Even though the positions of the Ukrainian state leadership of those times regarding the ratification of the provisions of these Conventions were highly justified, approaches to the protection of civilians during the war were ambiguous since the Ukrainian side indicated reservations to Arts. 11 and 45 of this document, which concerned the protection of civilians in time of war.

It would be logical to conclude that the content of the concept of 'protection of the civilian population' should include issues related to the protection of property rights. The Law of Ukraine 'On Lifting the Reservations of Ukraine to the Geneva Conventions for the Protection of War Victims of August 12, 1949'<sup>19</sup> was adopted in order to bring the legal position of the domestic legislation of independent Ukraine into line with international standards. The authors of this article believe it is advisable to provide a theoretical and legal analysis of particular provisions of the Geneva Conventions at this research stage. These provisions prohibit the destruction and deprivation of property in the occupied territory by signatory states of this landmark document. In particular, Art. 53 determines that any destruction by the occupying power of real or personal property belonging individually or collectively to private persons or the state is prohibited unless it is a necessity of military operations.

Part 1 (General Provisions) of the Fourth Convention (Implementation of the Convention) defines that states parties to this Convention shall be bound to follow the prescribed procedure for bringing war criminals to justice. Thus, in accordance with Art. 146, the high contracting parties shall legitimise any legislation necessary to impose effective penal sanctions for persons violating the provisions of this Convention.

Each high contracting party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such violations and shall bring such persons before its courts. At the same time, the principal role in bringing them to the responsibility established by law is entrusted to national courts, and the nationality of criminals is not considered. It is allowed to transfer war criminals on the basis of law to another interested state party to the Convention.

18 Decree of the Presidium of the Supreme Council of the Ukrainian SSR 'On the Ratification of the Geneva Conventions of 12 August 1949 on the Protection of War Victims' of 3 July 1954 <<https://zakon.rada.gov.ua/laws/show/114%D0%B0-03#Text>> accessed 20 February 2023.

19 Law of Ukraine No 3413-IV 'On Lifting the Reservations of Ukraine to the Geneva Conventions on the Protection of Victims of War of 12 August 1949' of 8 February 2006 [2006] Official Gazette of Ukraine 9/514.

Pursuant to Art. 147, the grave violations referred to above shall be those committed against persons or property protected by this Convention, such as the capture of prisoners and extensive destruction and deprivation of property, not justified by military necessity. Art. 148 allows no high contracting party to absolve itself or any other high contracting party of any liability provided for each of the high contracting parties in respect of violations referred to in the preceding article.

The signal of the Russian Federation was quite obvious but left unnoticed by the world security system. Thus, on 12 November 2019, the Russian Federation adopted a law on the refusal to recognise the additional protocol to the Geneva Convention for the Protection of War Victims. The consequence of such actions is that Russia has *de jure* and *de facto* refused to recognise international law on refraining from attacking civilian objects and other restrictions specified by this Convention. It also means that Russia has withdrawn from the jurisdiction of the UN special commission for consideration of violations of the rights of civilians during military conflicts, to which it is a party.

The authors analysed the algorithm of actions of the Russian Federation in the direction of renouncing international law in terms of causing no harm to other countries by armed aggression and provided a retrospective conclusion of such a situation. Thus, the context of the measures taken by Russia is its state policy of seizure of Ukraine, which involves non-recognition of the instruments of legal deterrence of military actions and protection of property rights of all participants in public relations (especially the civilian population of Ukraine).

An additional analytical and legal study of selected protocols to the Geneva Conventions shows that international law has deeply and comprehensively analysed the threats to the population, such as the risk of loss of life or the destruction of property belonging to citizens as private property and located on the territories where hostilities take place.

Thus, Part IV, 'Civilian Population', of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977<sup>20</sup> introduced the following penal restrictions:

- According to Art. 48 (Basic rule), the high contracting parties shall direct their operations only against military objectives and distinguish between military and civilian objects and the civilian population and combatants.
- According to Art. 49 (Definition of attacks and scope of application), the provisions of this Section apply to all objects, regardless of their location (land, air, sea), which may affect the civilian population or civilian objects on land. The same restrictions apply to the occupying power who carry out attacks from the sea or the air against objectives on land but do not otherwise affect the rules of international law applicable in armed conflict at sea or in the air (part 3).
- Art. 51 (Protection of the civilian population) guarantees general protection against the dangers arising from military operations to the civilian population and individual civilians. In order to ensure this protection, the following rules, which are complementary to other applicable rules of international law, shall be respected in all circumstances (part 1). The civilian population and civilian individuals shall be adequately protected against any violation of these prohibitions, and non-compliance with the rules of international law shall not

20 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977 (as amended 8 December 2005) <[https://zakon.rada.gov.ua/laws/show/995\\_199#top](https://zakon.rada.gov.ua/laws/show/995_199#top)> accessed 20 February 2023.

release the parties to the military conflict from their legal obligations with respect to the said category of population, including the obligation to take preventive measures provided for in Art. 57.

- According to Art. 54 (Protection of objects indispensable to the survival of the civilian population), parties to the conflict are prohibited from attacking, destroying, or rendering useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works in order to prevent their use by the civilian population or the adverse party as a means of subsistence. This does not take into account the motives and purpose of causing a famine among the civilian population or forcing them to move away or any other motive.
- Art. 57 (Precautions in attack) stipulates that parties to the conflict shall take care of the safety of the civilian population, civilians, and civilian objects when conducting military operations (part 1). However, the following strict restrictions have been imposed on the scale of damage to the civilian population and infrastructure from attacks: take all feasible precautions in the choice of means and methods of attack to avoid, and in any event to minimise, incidental loss of civilian life, injury to civilians, and damage to civilian objects (para. A of part 2).
- According to Art. 91, a party to the conflict which violates the provisions of the Conventions or this Protocol shall, if it has caused damage, be liable to pay compensation. It shall bear full responsibility under international law for all acts committed by its armed forces and people belonging to them.

Summarising the analysis of the provisions of international humanitarian law, it is necessary to systematise the restrictive and preventive elements regarding the inviolability of property rights under hostilities or in occupied territories, etc. The authors of this article believe that such a system has the following elements:

1. the gradation of people present during the conduct of military operations on civilians and combatants;
2. the application of the principle of necessity to limit acts of a violent nature;
3. the search for a balance between the destructive impact of military operations and real circumstances, considering the danger to the civilian population and property;
4. alleged legitimate influence by instruments of legal coercion through the application of restriction of freedom and compensation for damages caused by criminal acts (war crimes).

### 3.3 Legal analysis of court decisions on the protection of property rights, adopted by the courts of Ukraine, international and national judicial institutions

A selective analysis of court decisions on the claims for property protection showed that judicial practice had been characterised as ambiguous during the Russian-Ukrainian military conflict (from 2014 to the present day). The authors of this article believe that the lack of case law was the reason for the courts to deliver judgments against the favour of persons who lost property due to the beginning of hostilities in the Luhansk or Donetsk regions. However, it is possible to take a favourable view of the courts' attempts to investigate the cases of violated property rights as deeply as possible and apply adequate measures of

state coercion to restore the ownership of property damaged or destroyed by hostilities. The substantive argumentation of the authors' judgments is obtained as a result of a selective legal analysis of court decisions on the protection of property rights of citizens who suffered losses from military actions in the Luhansk and Donetsk regions in 2014–2016.

Thus, on 28 February 2020, the Artemivsk Municipal District Court in Donetsk Oblast delivered a judgment in civil case No. 757/16104/18-ts<sup>21</sup> on a claim of PERSON\_1 to the Cabinet of Ministers of Ukraine, the State Treasury Service of Ukraine for compensation for material and moral damage. In support of the claim, PERSON\_1 ('the applicant') noted that he was the owner of a household located at the address of ADDRESS\_1 until 2015. This household suffered damages caused by artillery shelling in 2014–2017. At that moment, the household was in an uninhabitable state.

The court held the dismissal of the claim of PERSON\_1 to the Cabinet of Ministers of Ukraine and the State Treasury Service of Ukraine for compensation for material and moral damage. The motivational part of this judgment is as follows: the applicant did not provide satisfactory evidence that the value of the damaged property, taking into account the amended claim, was UAH 577,618.86; therefore, for the above reasons, the court held that there were no legal grounds for satisfying the claim of PERSON\_1. Claims for non-pecuniary damage in the amount of UAH 100,000 are determined as received by damage to property as a result of a terrorist act; therefore, their satisfaction should also be denied. The judgment entered into force.<sup>22</sup>

On 24 March 2021, the Donetsk Court of Appeal delivered a judgment in a civil case (application No. 22-ts/804/709/21)<sup>23</sup> on the appeal of the representative of the Cabinet of Ministers of Ukraine and the representative of PERSON\_1 against the decision of the Druzhkivka City Court in Donetsk Oblast as of 11 December 2020 (presided by Judge A. L. Hontar in the city of Druzhkivka of Donetsk Oblast), in a civil case No. 242/68/19 on a claim of PERSON\_1 to the State of Ukraine represented by the Cabinet of Ministers of Ukraine and the State Treasury Service of Ukraine for compensation for material and non-pecuniary damage.

Claims under the lawsuit were that PERSON\_1 ('the applicant') and her family left their place of residence in the village of Pisky in 2014 in connection with the hostilities during the anti-terrorist operation. In mid-2016, the applicant learned that the house belonging to her on the basis of the right of ownership was destroyed due to the hit of an artillery shell. The applicant asked to recover the damage caused by a terrorist act in the form of destruction of a house and outbuildings in the amount of UAH 2,296,674 and non-pecuniary damage in the amount of UAH 250,000 from the State of Ukraine in the person of the Cabinet of Ministers of Ukraine and the State Treasury Service.

By the judgment of the Druzhkivka City Court as of 11 December 2020, the claims were partially satisfied. The Court recovered monetary compensation in the amount of UAH 120,000 from the State of Ukraine, represented by the Cabinet of Ministers of Ukraine, at the expense of the State Budget of Ukraine in favour of PERSON\_1. However, PERSON\_1 was denied in satisfaction of claims for non-pecuniary damage. The Court of Appeal held the dismissal of the appeals of the representative of the Cabinet of Ministers of Ukraine and the representative of PERSON\_1. The Court of Appeal also upheld the judgment of the Druzhkivka City Court as of 11 December 2020.

21 Case No 757/16104/18-ts (Artemivsk Municipal District Court in Donetsk Oblast, 28 February 2020) <<https://reyestr.court.gov.ua/Review/88085237>> accessed 20 February 2023.

22 Ibid.

23 Case No 242/68/19 (Donetsk Court of Appeal, 24 March 2021) <<https://reyestr.court.gov.ua/Review/95767645>> accessed 20 February 2023.

In support of this judgment, the Court of Appeal states that ‘similar conclusions’ are contained in the decision of the Grand Chamber of the Supreme Court of 4 September 2019 (case No. 3265/6582/16-ts) and decisions of the Supreme Court composed of the panel of judges of the First Court Chamber of the Civil Court of Cassation of 25 March 2020 (case No. 757/61954/16-ts) and of 18 March 2020 (case No. 243/11658/15-ts). This judgment was appealed to the Supreme Court. The cassation appeal was motivated by the fact that the first-instance court and the Court of Appeal incorrectly applied the provisions of the Law of Ukraine ‘On Combating Terrorism’, the Code of Civil Protection of Ukraine, and the case law of the European Court of human rights.

The courts violated part four of Art. 58 of the Civil Procedure Code of Ukraine regarding the determination of the state representative in the case. The violation of the applicant’s rights by the state represented by the Cabinet of Ministers of Ukraine in accordance with its powers was not proven. The legal relations in dispute have no grounds to assert a legitimate expectation of receiving compensation from the state for property damage since there are no conditions and an appropriate mechanism for reimbursement for such damage. The amount of compensation determined by the courts is excessive.

In the cassation appeal, the Cabinet of Ministers of Ukraine points out the need to deviate from the conclusion of the Grand Chamber of the Supreme Court, set out in the judgment of 4 September 2019, in case No. 265/6582/16-ts. The Supreme Court, composed of the panel of judges of the Third Court Chamber of the Civil Court of Cassation, held to dismiss the cassation appeal of the Cabinet of Ministers of Ukraine. The Supreme Court also upheld the judgment of the Druzhkivka City Court in Donetsk Oblast as of 11 December 2020 and the judgment of the Donetsk Court of Appeal as of 24 March 2022.<sup>24</sup>

This court judgment is considered to have signs of case law since the Court of Appeal uses the phrase ‘similar conclusions are contained in the decisions of the Supreme Court’ when delivering the judgment. The authors of this article consider that Ukrainian justice is gradually moving to the same-type assessment of similar legal relations, which may make it possible to introduce the category ‘judicial precedent’ as a basis for decision-making in such legal relations.

The subject of this article obliges the authors to carry out legal monitoring of the current state-restrictive measures for the protection of property under conditions of the Russian-Ukrainian war. The authors find out that compensation mechanisms for the damage caused by Russian aggression are being developed in Ukraine through the application of existing legal instruments and the elaboration of new forms for restoring the violated poverty rights. In this regard, it is advisable to provide examples of the use of judicial instruments to ensure the compensation for losses caused by the Russian invaders to the civilian population and the state by selling property and confiscating funds from people who cooperate with the aggressor state or have a share in the business entities owned by Russians.

Thus, officers of the Economic Security Bureau of Ukraine (hereinafter – ESB) exposed a citizen of the Russian Federation who avoided paying taxes. As noted, the offender concealed the actual amount of income received from the lease of commercial real estate in one of the regions of Ukraine and failed to pay 18.6 million in taxes. The court held to seize bank accounts, land plots, and commercial real estate. The estimated value of the seized property was almost UAH 1.3 billion.

V. Melnyk, the director of the ESB, notes

ESB examines the activities of 21,700 companies whose beneficial owners are citizens of the aggressor country. Analysts see the priority in high-net-worth companies and

24 Case No 242/68/19 (Civil Cassation Court of the Supreme Court of Ukraine, 22 September 2021) <<https://reyestr.court.gov.ua/Review/99926446>> accessed 20 February 2023.

integral property complexes that can benefit the state. The primary tasks of the ESB are to prosecute violators, seize their property, prevent this property from being re-registered to other companies, and turn this property for the good of Ukraine. This will help to restore the economy of our state and destroyed settlements or for the needs of the Armed Forces.

As reported, the estimated total value of assets in all criminal proceedings for which the ESB has secured the seizure is UAH 30 billion.<sup>25</sup>

'Assets of Ukrainian companies owned by Russian "Gazprom", "Rosneft", and "Rosatom" in the amount of UAH 2.1 billion (more than USD 71 million) have been seized in Ukraine,' said the Security Service of Ukraine. At the department's initiative, the seizure was imposed on the corporate rights and real estate of 11 enterprises, the final beneficiaries of which were these three Russian state corporations. Furthermore, 46 objects of real estate owned by enterprises were also seized.<sup>26</sup>

The High Anti-Corruption Court of Ukraine confiscated the assets of Putin's oligarch Vladimir Yevtushenkov. This was the first such decision of the Ukrainian court. In particular, the High Anti-Corruption Court of Ukraine confiscated 17 real estate objects with a total area of almost 100,000 square meters.

Moreover, the following shares of the oligarch in several Ukrainian companies were confiscated:

- 42.09% in LLC 'Elektrozavod-VIT' (Zaporizhzhia)
- 59.2% in LLC 'ITM-Ukraine' (Kyiv)
- 59.2% in LLC 'Smart Digital Solutions' (Kyiv)
- 42009% in LLC Scientific and Engineering Center 'ZTZ-Service' (Zaporizhzhia)
- 34.21% in JSC 'Ukrainian Research Design and Technological Institute of Transformer Construction' (Zaporizhzhia).<sup>27</sup>

This list is not exhaustive but demonstrates the determinative position of Ukraine regarding the forced seizure of property and funds of Russian oligarchs who stay on the territory of Ukraine and whose profits are directed to support Russian aggression.

Ukraine, as a candidate for accession to the European Union, is consistently working to develop an effective mechanism for restoring the state's economy and protecting the subjective right of a person. The authors of this article analysed court documents of the European Court of Human Rights (hereinafter – ECtHR) in which Ukraine is the defendant and found that many problems remained unresolved. These problems are due to the imperfection of the current domestic legislation in the field of compensation for private property damages caused by the armed aggression of the Russian Federation in the Luhansk and Donbas regions and throughout Ukraine that has lasted more than eight years.

25 'In Ukraine, the property of a Russian was seized for €1.3 billion' (Ukrinform, 29 June 2022) <<https://www.ukrinform.ua/rubric-economy/3517909-v-ukraini-arestovali-majno-rosianina-na-13-milarda.html>> accessed 20 February 2023.

26 'The Security Service of Ukraine reported the seizure of assets of Rosneft, Gazprom and Rosatom' (*Radio Svoboda*, 8 July 2022) <<https://www.radiosvoboda.org/a/news-sbu-aresht-aktyvy-roskompaniyi/31935305.html>> accessed 20 February 2023.

27 Aljona Mazurenko, 'For the first time, VAKS confiscated the fortune of a Russian oligarch: one of the pillars of Putin's regime' (*Ukrainska Pravda*, 1 September 2022) <<https://www.pravda.com.ua/news/2022/09/1/7365681>> accessed 20 February 2023.

The current additional regulatory framework is supplemented by the above laws, bylaws, and several other documents, which introduce measures for protecting property rights. Thus, the authors of this article refer to the Law of Ukraine 'On Ensuring Civil Rights and Freedoms, and the Legal Regime on the Temporarily Occupied Territory of Ukraine',<sup>28</sup> where Part 2 of Art. 1 stipulates that the date of the beginning of the temporary occupation of certain territories of Ukraine by the Russian Federation is 19 February 2014. This means that individuals and legal entities whose property rights have been violated (real or other property has been destroyed or damaged as a result of hostilities, terrorist acts, or sabotage caused by the military aggression of the Russian Federation) have the right to submit an information report about damaged and destroyed real estate from the date of the introduction of martial law,<sup>29</sup> whatever the place of residence or stay of a person or the location of a legal entity.

The above acquires a tangible embodiment in the context of the provisions of Art. 5 (Protection of human and civil rights and freedoms in the temporarily occupied territory) of this Law. Para. 9 of Art. 5 of this Law stipulates that

The Russian Federation as the state that carries out the occupation shall be fully compensated for material and non-pecuniary damage caused by the temporary occupation to the state of Ukraine, legal entities, public associations, citizens of Ukraine, foreigners, and stateless persons. The State of Ukraine shall contribute by all possible means to the compensation of material and non-pecuniary damage by the Russian Federation.

At the same time, the development of mechanisms for the compensation for damage requires considering mistakes in this field. That is why it would be appropriate to give the following suggestions for improving legislation in this area:

1. Create a single authority that will be responsible for the compensation mechanism for damage to private property.
2. Adopt a special law that will regulate the activities of the above-mentioned authority and relations in this sphere.
3. The grounds for receiving compensation should contain only two points: the fact of committing aggression and the fact of causing damage as a result of hostilities which were the result of this aggression. The victims will not need to prove every single fact of violation of the laws and customs of war by the military personnel of the aggressor state, the absence of military necessity in their actions, and the causal relationship between their actions and the damage caused. At the same time, it will be possible for the courts not to consider the cases of each of the victims separately but to group their claims and apply to the courts with collective claims for compensation for damages caused by hostilities in a certain territory.
4. Develop in detail methods for calculating and determining the amount of compensation.
5. Subjects of evaluation activity and specialists in the field of construction (if the matter directly concerns real estate) should be involved in the calculation and determination of the amount of compensation.

Bipolar positions of regulatory legal acts, bureaucracy, and overregulation of those processes that should work as an integral system for the restoration of the violated property right

28 Law of Ukraine No 1207-VII (n 17).

29 Decree of the President of Ukraine No 64/2022 'On the Imposition of Martial Law in Ukraine' of 24 February 2022 (as amended of 14 February 2023) <<https://zakon.rada.gov.ua/laws/show/64/2022#Text>> accessed 20 February 2023.

are sometimes the factors that encourage victims of military aggression to search for the protection of their rights in the ECtHR. Such a situation largely spoils the image of Ukraine at the interstate level and guarantees of legality and the formation of the state governed by the rule of law remain declarations that have no confirmations.

Analysing the case law of the ECtHR, the authors of this article did not find judgments on the violation of property rights of persons affected by Russian aggression after 24 February 2022. The authors of this article selected and analysed the court judgments relating to the confirmation or refutation of the results of domestic proceedings in view of compliance with substantive and procedural law, as well as the compliance of court decisions with the factual circumstances of the case.

It is worth noting that the domestic courts and the ECtHR require a sufficient evidence base regarding the legitimate ownership of the property to deliver a judgment in favour of the applicant who claims compensation for the destruction or damage of the property. After all, there is a significant number of refusals to satisfy claims against Ukraine precisely because the applicants do not provide convincing evidence of ownership.

Such an example was the judgment of the ECtHR of 2016, which did not satisfy the complaints of three residents of the Luhansk region (the cities of Trokhizbenka and Yasynuvata), who sued Ukraine and Russia for the property damage as a result of artillery shelling in the anti-terrorist operation zone (applications No. 5355/15 – *Lisnyy v. Ukraine and Russia*, No. 44913/15 – *Piven v. Ukraine*, No. 50853/15 – *Anokhin v. Ukraine and Russia*).

In the Decision on admissibility, the First Section of the ECtHR in the case of *Lisnyy v. Ukraine and Russia*, application no. 5355/15<sup>30</sup> puts forward the following demands:

para. 27. The applicants were required to provide sufficient evidence in support of their complaints under Art. 1 of Protocol No.1 to the Convention about the destruction of property in the context of an armed conflict. The same approach is applicable to complaints under Arts. 2, 6 (1), 8, 10, and 13 of the Convention.

para. 30. It should be noted, however, that the applicants did not provide any reasons for which they had failed to submit any relevant documents in support of their complaints under the Convention. Nor had they informed the Court of any attempts they might have made to obtain at least part of the documentary evidence to substantiate their allegations. Thus, the ECtHR established the following: pursuant to paragraph 1 of Rule 44c of the Rules of Court, where a party fails to add the evidence or provide the information requested by the Court or to communicate relevant information of its own motion or otherwise fails to participate effectively in the proceedings, the Court may draw such inferences as it deems appropriate (see also *Savriiddin Dzhurayev v. Russia*, application no. 71386/10).

para. 31. In these circumstances, and in the application of Rule 44C § 1 of its Rules, the Court concludes that their complaints have not been sufficiently substantiated (for a similar approach, see *Ponometryov and Others v. Bulgaria* (dec.), 5335/05, 10 February 2009).

Para. 32. Consequently, the application is manifestly ill-founded and must be rejected in accordance with Art. 35 §§ 3 (a) and 4 of the Convention.

However, another circumstance virtually eliminates any decision of the ECtHR to restore property rights violated due to the Russian military aggression against Ukraine. The authors of this article refer to the decree of the President of the Russian Federation, V. V. Putin, on the non-fulfilment of the ECtHR decisions adopted after 15 March 2022. These circumstances

30 *Lisnyy and two other applicants v Ukraine and Russia* App no 5355/15 (ECtHR, 5 July 2016) <<https://rm.coe.int/16-lisnyy-and-others-v-ukraine-and-russia-uaa/16806b5961>> accessed 20 February 2023.



are stated in an article by O. Pavlysh.<sup>31</sup> The Russian Federation announced its withdrawal from the Council of Europe on 15 March. The Committee of Ministers of the Council of Europe adopted a resolution on the expulsion of Russia from the organisation in accordance with Art. 8 of the Charter (Gross violation of the provisions of the Charter). The Committee used a formal-coercive mechanism and unilaterally terminated Russia's membership in the organisation. On 11 June, Putin signed laws on the establishment of a deadline for the implementation of ECtHR resolutions in the Russian Federation. Under these laws, ECtHR rulings issued after 15 March 2022 have no force in the Russian Federation.

## 4 DISCUSSION

Problems related to the protection of property rights have always been socially sensible and are in the field of scientific interest of many domestic jurists. The breadth of scientific views in this field is represented by Ukrainian scholars, such as Z. Romovska,<sup>32</sup> I. Dzera,<sup>33</sup> R. Stefanchuk,<sup>34</sup> O. Hnativ,<sup>35</sup> and others. The authors of this article addressed the judgments expressed by individual scholars, highlighting their views and providing quotes.

I. Dzera defines the protection of property rights as a system of active measures applied by the owner, competent state, or other bodies.<sup>36</sup> Such a system aims to eliminate violations of property rights and impose an obligation to the offender to restore the violated right. R. Stefanchuk considers the protection of the right as a type and extent of possible or mandatory influence on social relations that have been illegally influenced in order to restore the violated, unrecognised, or disputed right.<sup>37</sup> Z. Romovska defines the essence of legal protection (protection of the right) as the implementation of the measure of state coercion chosen by the law enforcement agency. Romovska also highlights the need to consider legal protection in dynamics as a process that has its beginning (expressed by filing a lawsuit) and completion (execution of a court ruling).<sup>38</sup> O. Hnativ believes the aim behind the protection of property rights is to restore the violated right and terminate the action that violates the right. Legal relations regarding the protection of property rights are manifested in the use of the remedies provided for by law chosen by the authorised subject, depending on the purpose of protection.<sup>39</sup>

The current analysis of the above scientific approaches to understanding the protection of property rights showed that scientists ignored a crucial characteristic of any process. This characteristic is continuity in time and jurisdictional coverage. Since scientists have not reached a common understanding of the essence and content of the concept of protection of property rights and ignored particular aspects of the functioning of the mechanisms for the restoration of the violated right, the authors of the article propose a jointly developed definition.

31 Oleksij Pavlysh, 'Russia Left the Council of Europe, the Answer is Obvious: Putin Reacted to Akhmetov's Claim Against Russia' (*Ukrainska Pravda*, 27 June 2022) <<https://www.epravda.com.ua/news/2022/06/27/688598>> accessed 20 February 2023.

32 Zoryslava Vasyliivna Romovska, *Protection in Soviet Family Law* (Vyshha Shkola 1985).

33 Iryna Oleksandrivna Dzera, *Civil Legal Means of Property Rights protection in Ukraine* (Jurinkom Inter 2001).

34 Ruslan Oleksijovych Stefanchuk (ed), *Civil Law of Ukraine* (Pravova jednistj 2009).

35 Oksana Boghdanivna Hnativ, 'Protection of Property Rights in Civil Law' (PhD (Law) thesis, Ivan Franko National University of Lviv 2014).

36 Dzera (n 38) 85.

37 Stefanchuk (n 39) 116.

38 Romovska (n 37) 63.

39 Hnativ (n 40) 17.

Thus, the protection of property rights is a permanent, coordinated system of state-legal actions introduced to regulate the legal grounds for the acquisition, disposal, and possession of objects of the material world and to prevent violation of the owner's right. The main features of the protection of property rights, based on the scientific studies of the above-mentioned researchers and our analysis, can be attributed to: state guarantee; the need to use state coercion to protect property rights in cases established by law; the need to restore the violated right as a logical conclusion of the process; generality; its equality for all subjects; full protection (the owner whose rights have been violated has the right not only to demand the restoration of the state that existed before the violation and termination of the violation, but also the right to compensation for property and moral damage caused to him/her).

The scientific research of these and other authors is necessary for the improvement of the legal regulation of the protection of property rights. It is possible in the close cooperation of the lawmaker and researchers to cover the full range of relations and not miss details which could later hinder the process of protecting property rights. Yes, of course, the positions of different scientists differ, but the truth is born in such contradictions and discussions, which subsequently turns into a rule of law.

## 5 CONCLUSION AND RECOMMENDATIONS

The conducted historical-legal and logical-legal analysis of the theoretical component and material support of property protection processes in the context of the Russian-Ukrainian war showed that international legal instruments for the protection of the right are practically ineffective, and the measures introduced by individual states are limited to their jurisdictional influence. The authors of this article refer to Russia's total refusal to comply with all ECtHR decisions. It is necessary to understand that the recovery of funds as compensation for losses caused by Russia's hostilities on the territory of Ukraine is impossible. The aggressor country does not intend to return to the course of international law, which forces the world order to face the problem of satisfying the legitimate claims of people whose property has been destroyed or damaged by the actions of the invaders.

Under such conditions, it is necessary to develop new, persuasive mechanisms for forcing the guilty party to comply with the rules of international law. The authors of this article consider the seizure and confiscation of the assets of the aggressor country located on the territory of the member states of the anti-Putin coalition to be the most effective measures. The authors also believe it is necessary to carry out similar measures systematically in Ukraine, identify and seize property belonging to Russia or persons who conduct business activities in Ukraine, and finance aggression against Ukraine at the expense of the profits received. The authors of this article do not deny that such conclusions are debatable. However, this approach can be the most effective given the ineffectiveness of interstate legal instruments of private international law.

The presented material combines theoretical and practical components and thus has an interdisciplinary nature. Given this reason, the expressed authors' generalisations can be widely used in science and practice. Since property rights are exercised in the new socio-political conditions, the conclusions drawn can help develop new scientific and theoretical approaches to the analysis and characteristics of instruments for the protection of property rights.

The historical-legal and logical-legal assessment of court rulings of various instances will contribute to an understanding of the effectiveness of legal enforcement and remedial measures for the protection of the violated property rights, which gives this study a particular applied significance. The suggested measures as an updated framework in the field

of protection of property rights can be considered in the scientific (conceptual studies) and legislative (collaboration of additional regulations) spheres. It is also advisable to apply them in practice as a means of restoring the lawful possession of the property.

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