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PROTECTION OF THE PROPERTY RIGHTS UNDER PRACTICE OF THE EUROPEAN COURT OF HUMAN RIGHTS AND REGULATION PROBLEMS IN LITHUANIA AND UKRAINE

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LIST OF ABREVIATIONS

ECtHR - European Court of Human Rights;

ECHR - European Convention on Human Rights and Fundamentual Freedoms;

CC - Civil Code;

CPC - Civil Procedural Code;

CoE - Council of Europe.

INTRODUCTION

The right to property is the broadest right in rem in its content, as well as one of the oldest rights known since Roman times. This right is one of the fundamental human rights, which gives wide powers to the owner and determines the personal well-being of the person, moreover, the right to property is the basis of the state economy. As about clear definition, it is hard to choose one, that will cover all of the aspects of the notion 'property rights'. Some scholars even believe, that the whole concept defines itself best without any additions, that means property rights are rights on property. Leblang, says, that if someone has property right over something, person should be able to declare that thing belongs to him, and society will agree with that declaration. In Ukraine, Civil Code reveals the components, that constitute the content of ownership in general and property rights particulary, as having right to posess over the property, right to gain profit from it and right to distribute. However, in both the doctrines of Lithuanian and Ukrainian law, the right of ownership, although it has received attention and depth, is not sufficiently disclosed.

Primarily because law as a science is not static, especially in the face of rapidly changing conditions of public life. The legal relations of ownership are characterized by dynamism, constant development and improvement, the content of owner's rights acquires new features, which lead to the emergence of new issues and problems, which encourages the search for the most appropriate and optimal way to express this legal relationship. Another relevant aspect is the formation of the modern concept of property law in Lithuania and Ukraine.

One of the most popular property rights rankings is currently being compiled in Washington by Property Rights Alliance. The score is now being published yearly and serves as a barometer for the status of property rights, ranking the strength of the protection of both physical and intellectual property rights in countries around the world.[1] According to the International Property Rights Index (IPRI) for 2020, that measures and analyse the rights and possibilities of citizens in different countries to protect their property, Lithuania increased its IPRI score, and could be found on 35th place from 129 worldwide countries, and 3d place from 35 Central Eastern Europe and Central Asia countries. In Ukraine situation, unfortunately, is not so good. In the Global rank Ukraine occupies 105th place and in regional - 22nd. If we

[1] Dr. Sary Levy-Carciente. 2020;

compare both countries, on the basis of the IPRI research, we would see, that Lithuania wins over Ukraine in all indicators, but mostly in "Rule of Law", "Control of corruption" and "Political stability" indexes.[2]

So far, it is obvious, that in Ukraine problematics of property rights guarantees and protection, remains sharper, than in Lithuania, due to European experience and legal standarts of the last. Still, both jurisdictions developed the notion of "property right" under an influence of USSR and Russian legal doctrine, where until the end of XX century, private property was unrecognized and negative in countries, influenced by socialist ideology, so it was not researched and analyzed at the scientific level. Today Ukraine moves towards EU, by signing assosiation agreements, so in many points of view it could be helpful to compare the legal basis and ways to protect owner's rights in these jurisdictions.

Vytautas Pakalniškis was among the first legal scientists to mention, that the right to property is a natural human right, and disclosure of the content of property law norms and their interpretation should be based not only on the Civil Code and the Constitution of the Republic of Lithuania, but also on the Convention for the Protection of Human Rights and Fundamental Freedoms, its application practice, as well as modern European doctrine, treats the concept much more broadly than is usual for the doctrine of Lithuanian law. It became historically important statement, which illustrates changes in the scientific approach to the definition of property and property rights from post-Soviet doctrine to modern European.[3]

Position of legal doctrine and courts on the content of the rights of the owner became significant, as it influences the very concept of property law that is being developed. The relevance of the topic is also determined by the fact that the perception and regulation of property law also influences the nature and specifics of other institutes of civil law, for example: family law, inheritance law, law of obligations.

At the present stage of development of Ukainian legal science, many specialists who are representatives of the general theory of law, constitutional, administrative, and other branches of law have dealt with the issue of international legal regulation of standards for the protection of human rights and freedoms. Adherence to human rights standards is important for the formation of democracy and equality in Ukrainian society. Today Ukraine is trying to step

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[2] See Annex 1.

[3] Pakalniskis, Vytautas 2004;

away from status of country with monopoly of coercion, where all powers are being held in government's hands and the influence of oligarchs in decision-making is high. In such situation for the long time ukrainian property rights concept existed only on paper and in legislative acts, desperate for update to modern realities. Legislative collisions, that today are being eliminated, for a very long time caused troubles not only for private persons but also lo buisinesses and foreign investors, that influenced development of economy. The ECHR and the case law of the ECtHR today could serve as a guide to standards and best practices for key players in the investigation of torture and other serious human rights violations. This guide is an integral part of the national legislation of Ukraine and an indisputable marker of the country's focus on democracy, the rule of law, and the protection of human rights.

Therefore, the analysis of the norms, doctrine and court decisions of the Institute of Property Law related to the issues of property law is relevant and significant both for the further development of property law and its application in practice. And in general, the content of owner's rights is not uniformly defined in the doctrines and legal acts of individual states, which is determined by different legal traditions, legal systems, ideologies and other factors.

There are various opinions in the doctrine of law on how the content of the property rights should be defined, or perhaps it should not be done at all? This is a problem because the lack of unanimity can lead to different interpretations of property relations, especially in the period of modern developing civil legislation in Ukraine. Very crucial for today is to define "property" in Ukrainian legislation and regulate mechanism of property rights protection, because today uncertainty of legal acts and outdated legal order cause prblems in litigations and even understanding by citizens what are their property rights and how they could secure them. The topic of the master's thesis - the content of owner's rights - is relevant, especially in these times of expanding globalization, when different perceptions of the content of owner's rights can cause major problems.

The relevance of the topic is also confirmed by the fact that the issue of the concept of the content of property rights in the Lithuanian and Ukrainian legal systems have not yet been scientifically examined in detail, namely in comparance. And taking into account the similarity of historical experiences and directions of development for the future, such a comparison is appropriate and logical. In addition, the analysis of the content of owner's rights using relevant examples of legal regulations of other countries enriches general legal literacy, acquaints with legal systems of other countries, allows to evaluate one's national system, see its advantages and disadvantages, adopt relevant experience. Whereas, this is important for the development

of cross-border trade and economic relations. This master's thesis can also be used for further research in solving similar problems.

Work objective. The aim of this work is to analyze the content of property rights in the legislations of the Republic of Lithuania and Ukraine. Determine the current state of recognition of property rights and how each country implements and ensures these rights, while not violating the law and other people's rights and interests. An additional aim was developed, in result of russian invasion to Ukraine, that lead to destructions, losses of properties and occupation of territories. In the situation Ukraine finds itself, it is crucially important to analyze existing practice of ECtHR in order to improve legislation effectively and protect victims of terroristic state. Expressed goals are pursued on the basis of the following tasks:

1. To analyze the concept of property and the principle of inviolability of property in legislations of Lithuania and Ukraine;

2. To move towards the history of development of European Court of Human Rights, as an international method of protection;

3. To examine the concept of the so-called "triad" of owner's rights and determine its suitability, compatibility and relevance to today's needs;

4. To examine and propose the possibilities to protect property rights of Ukrainian citizens, whose things were destroyed, loosed or damaged by russian militaries. Determine, whether it is possible to recieve protection in ECtHR;

5. To go through the practice of European Court of Human Rights, regarding violations of Article 1 to Protocol 1, where claims were brought against Lithuania and Ukraine.

The thesis examine and analyze the norms of the Civil Code of the Republic of Lithuania and Civil Code of Ukraine related to the regulation of the content of the right of ownership and the corresponding legal regulation of other states. The jurisprudence of the Constitutional Courts, which examines the issue of the content of the right of ownership, is also touched. The work pays great attention to the doctrine of Lithuanian, Ukrainian and foreign law, which examines the concept of the content of property law. It should be noted that intellectual property and industrial property rights will not be discussed in this paper, as these are sufficiently specific types of property that could be addressed in other research papers.

Research methods. In order to achieve the set goals of the master's thesis and reveal the object, the following methods are used in the work: systematic, logical, comparative, teleological, historical. The systematic method is used to determine the place of ownership in the context of property law, to define the place of content of owner's rights in the context of

property law, as well as to determine the relationship with other legal relations and to analyze the legal norms whose content, meaning and conditions require systematic assessment and examination. The logical approach is used to identify problematic aspects of the application of the legal regulation, as well as to draw generalizations and conclusions. In addition, this method has been used to suggest solutions to problematic aspects, it reveals the true meaning and content of legal norms, as well as provides conclusions and summaries. The work also uses a comparative method, it is used to analyze the differences between the legal regulations of Lithuania and Ukraine on issues relevant to the work, as well as to assess the positions of legal doctrine in terms of the content of owner's rights and its compliance with established legal norms.The teleological method was used in the work in order to reveal the aims of the legal norms regulating the legal relations of ownership, which are pursued by the legislator. This method is also used for the purpose of clarifying what is not directly regulated by legislation.

Originality of the work The topic of property law is quite extensively studied in the doctrine of law and many scholars have devoted a number of scientific works to this topic. However, there are not many scientific works dealing with the content of owner's rights and this topic is not widely discussed in the doctrine of Lithuanian law, the protection and defense of owner's rights dominates in the field of property law. Also, the topic of the content of the rights of the owner is not widely examined in order to determine whether the current regulation of the content of the rights of the owner of the Civil Code of the Republic of Lithuania and Civil Code of Ukraine corresponds to current issues and is appropriate for defining the rights and obligations of the owner. The topic of the content of owner's rights has been studied in his works by several scholars, such as prof. Vytautas Pakalniškis, doc. Algirdas Taminskas, dr. Karolis Jovaišas and others.

The theoretical basis of the study were the works of domestic and foreign scientists who have made a significant contribution to the study of the organization and activities of the ECtHR, in particular the works of: M.V. Buromensky, V.G. Butkevich, O.O. Grinenko, V.N. Denisov , V.I. Evintov, O.V. Zadorozhny, O.M. Klimenko, O.L. Kopylenko, I.I. Lukashuk, T.I. Dudash, V.V. Mytsyk, V.P. Paliyuk, P.M. Rabinovych, V.M. Repetsky, K.O. Savchuk, S.V. Shevchuk, I.V. Yakovyuk and others.

However, much fewer researchers, in particular B.L. Zymnenko, O.S. Danelia, T.N. Neshataeva, V.I. Manukyan, I.V. Mingazova, devoted their works directly to certain aspects of property rights protection in the context of ECtHR activities. O.I. Kotlyar, E.G. Savelyeva. Of

particular note is the study of A.A. Yakovlev, devoted to international legal cooperation in the protection of property rights in the Council of Europe.

The structure and scope of work is determined by the purpose and objectives of the study and consists of an introduction, three sections, which are divided into nine sections, conclusions and annexes.

CHAPTER 1. EVOLUTION OF HUMAN RIGHTS IN THE PAN-EUROPEAN PERSPECTIVE

1.1. The first mention of the European Court of Human Rights and the reasons for its establishment. Reformations under Protocols No 11, 14, 15.

After defeating the Nazi Germany in World War II, the World was brought on the edge of significant decisions and changes, aimed on protection of humanity and preventing a recurrence of such events in the future. The very first aim was to establish universal guarantees of human rights respection and protection.

In the beginning, the Universal Declaration of Human Rights was adopted, developed within the framework of the United Nations at the United Nations General Assembly in 1948. It was, however, several years before even the limited list of fundamental rights contained therein became legally binding and oversight.

One of the most important initiatives in this regard, was the accepted proposal of the European Movement at the "Congress of Europe" held in The Hague in May 1948, when a number of proposals were related to the creation of the European Court of Human Rights (ECtHR) with the authority to control respect by states human rights and fundamental freedoms.[4] In February 1949, a committee of the Movement prepared the first draft of the European Convention on Human Rights. This draft provided for guarantees for about ten rights and freedoms and the creation of the European Court of Human Rights (ECHR), which, after filtering by the commission, was supposed to overturn decisions and establish what is clearly incompatible with the protected rights.[5]

The need to establish a European Court of Human Rights arose due to the introduction of a control mechanism of the Convention, which provided for the possibility of filing individual complaints for violations of rights. Creation of separate judicial body was discussed on a Conference of Senior officials in 1950. During the conference, Belgium, France, Ireland and Italy were taking the position for establishment of the Court.[6]

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[4] "The Conscience of Europe 50 Years of the European Court of Human Rights" 2010, p.18;

[5] "The Conscience of Europe 50 Years of the European Court of Human Rights" 2010, p.18;

[6] Theil, Stefan 2017, pp. 597-598;

After lengthy discussions, the participants of the specially created conference of high-ranking officials agreed on the jurisdiction of the European Court of Human Rights. The Court has been recognized as an institution whose jurisdiction is recognized only after the relevant application has been received from each Member State.[7] Although, Court was formally created in 1950, it did not actually come into existence until 1959.[8] The first decision on the merits was delivered by the European Court of Human Rights in 1961.

Until 1998 there were three treaty control-bodies in Strasbourg: European Comission of Human Rights, that acted part - timely, the Committee of Ministers of the Council of Europe, and the European Court of Human Rights.

Significant changes to the mechanism created by the Convention were introduced by Protocol No. 11, which entered into force on November 1, 1998. Until that date, the mentioned three institutions were responsible for ensuring compliance with the obligations undertaken by States that have ratified the Convention. Following the reformation, accomplished under Protocol No. 11, the Court became the single permanent judicial body of the Convention. The way to become a fully independent judicial organ, and establishing of its institutional position, as we know for today, has been taken years for ECtHR. Main principles and orientals were principle of separation of powers and rule of law.

In 1998, when Court began its own independent activity, as former President of ECtHR remembers in his book, it faced a considerable lagging and nonconformity between its resources and possibilties on the one hand, and clear ensurance, that nothing should affect individual's right to apply on another. That was period, when individual's applications succesful review, were threatened by existing conditions. Court started to work with impossibility to decide cases in reasonable time, but managed to adjust its procedures, increase productivity and stay true to principles.[9]

It is not hard to admit, that giving to European Court of Human Rights all judicial powers, played vital role and made a huge contribution to human rights. While World was still recoverring from regimes, that denied and violated human rights, whole new institution appeared, aimed to protect individuals rights and freedoms. As it was expressed by Antonio

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[7] Mazur, Benitskiy, and Kostritskiy 2006, p. 20;

[8] "Case Law" The UN Refugee Agency, Refworld. April, 2022;

[9] Wildhaber, Luzius. 2006;

Cassese “no one can deny that the (ECtHR) is playing a privotal role in Europe... contributing to the creation of an extensive region... where arbitrary or discriminatory action by governments is being strongly curtailed”.[10]

While drafting ECtHR provisions different points of view occured. For example, discussion arose over the question, how the Court could inquire legislative activities of states. One group claimed, that the ultimate power in constitutional democracies should be kept with the legislative branch, while the other group underlined that even the democratic legislator should be bound by constitutional principles and the rule of law, that could be supervised and controlled by European Court of Human Rights.

The Convention stipulated that the European Court of Human Rights would be composed of judges equal to the number of Council of Europe member states (regardless of the size of the state). This differs from the Commission in that the European Court of Human Rights may include judges against states who have not ratified the Convention. One of the reasons for this difference is that the member states of the Council of Europe were obliged to work for the purposes enshrined in its Charter (rule of law, protection of human rights) and thus entitled to participate in the work of the European Court of Human Rights and achieving these goals, even if they are not parties to the Convention.[11]

The Convention stipulated that judges of the European Court of Human Rights must be of "high moral character" and "possess the qualifications required for appointment to high judicial positions, or be lawyers of recognized authority. Unlike the Commission, it was not expressly provided that judges of the European Court of Human Rights sit in their personal capacity, because this is self-evident.

A notable feature was that for each case brought before the court, a representative of the respondent state (and the applicant state in interstate cases) is involved or a special judge is appointed in their place. Experience has shown that “National” judges play an important role in explaining factual circumstances and domestic law in a case.

The European Court of Human Rights is assisted by a secretariat (originally composed exclusively of registrars). Ironically, the Convention itself did not initially contain provisions for a secretariat, but this can be explained by the fact that when the Convention was being

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[10] Blockmans, Steven 2002;

[11] Denisov, VN 2014;

drafted, it was not known what role the registry might play. This gap disappeared when Protocol No. 11 entered into force in 1998.[12]

Fundamental changes to the protective mechanism created by the Convention were contained in Protocol No. 11 to the Convention, which entered into force on November 1, 1998. After its adoption, cases were about to be heard at the sittings of the three-judge commissions of the European Court, at the hearings of the seven-judge chambers and at the Grand Chamber of seventeen judges. As an obligatory member of the Chamber and the Grand Chamber, a judge representative from the State Party should be participating, and in case of absence or in case of inability to participate in the meeting, a judge chosen by the State Party concerned .[13]

The initial consideration of cases was carried out by commissions (three judges), which decided on their admissibility. The complaint, against which no decision on inadmissibility or removal from the register was made, was submitted to the Chamber, which had the power to consider the case on the merits.

The Protocol No. 11, as it was mentioned before, terminated the existance of three bodied judiciary, that were replaced by a single institution, the European Court of Human Rights. The Court, from the moment of adoption, started to function on a permanent basis.[14]

Changes also touched complaint procedure. New Article 34 removes the optional nature of the granting of the right to individual petition and makes the jurisdiction of the Court mandatory on states parties for individual applications.[15] Henceforth, the ratification of the Convention by any state meant that a complaint about a violation of the Convention could be brought against it by one private person and that the Court had the right to decide on this case.

While the Committee of Ministers retained its function of overseeing the execution of the Court's judgments, its authority to determine compensation was abolished. All future decisions on the merits were to be taken by the Court.

The main reason for the change was that it had become clear by the late 1980s that the Court, acting on a non-permanent basis, would no longer be able to cope with the further increase in its workload. And that the proceedings could take up to five or six years. This

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[12] Matthias, Herdegen 2011;

[13] Dmytrychenko I.V. 2006. - 59p

[14] DRZEMCZEWSKI, ANDREW 2000, p. 359;

[15] Miller, Vaughne. 1998, p.13;

situation is at odds with the notion of effective human rights protection. It was also clear that the Commission was already in the same position even before the accession of Greece, Turkey and Malta, which recognized the right to lodge an individual complaint in 1986 and 1987. Newly created institution, has certainly became the most important and the biggest judicial body, existing in the area of protection of human rights. It also became a law-making body, taking in consideration, that the principle of interpretation of the Convention as a living instrument was declared and it should be construed in the light of present day conditions. Precedents, from November 1998 established by the Court alone, became not only obligatory for State respondents, but also minimal standarts for Parties of the Convention, that should be taken in consideration.

Protocol No. 11 has been the subject of intense controversy. This is evidenced by the fact that specific reform proposals were submitted to the Colloquium held in Switzerland in March 1986, but the text of the Protocol was opened for signature only in May 1994 and will not enter into force until ratification by all Parties to the Convention in 1998. It widened the circle of participants of Convention, so for the present time, with only exeption of Republic of Belarus, all continental European States are Members of Council of Europe and Parties in the Convention. On 16th of March, after cruel invasion in Ukraine, the members of the Council of Europe also expelled from Russia after 26 years of membership.[16]

Reformation of the European Court of Human Rights under Protocol No. 14

After an enourmous groth of the circle of Contracting Parties, Court faced the situation, in which there were so many applications, that even if at the moment they stopped from coming, at least three years wold be needed to solve all the matters.[17] The reason of such a huge load was, that applications mostly arrived from countries, where citizents did not trust their own judiciary system, so after the appearance of an independent instance, they rushed seeking for justice and protection.

In May 2004, Protocol No. 14 was adopted and opened for signature. Its main meaning is aimed at changing the order of consideration of cases, and its purpose is to increase the possibilities of the Court. It set up a new consideration of complaints mechanism aimed at speeding up the work of the European Court of Human Rights. To this end, the Protocol

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[16] "The Russian Federation Is Excluded from the Council of Europe."

[17] Lucius Caflisch (2006);

allowed the single-handed judges (instead of three judges, as before) to declare inadmissible the complaints, to the Committees of three judges (instead of seven judges) to declare admissible and to decide in cases that could be easily resolved on the basis of established practice (case-law law), in particular, in repetitive cases.[18]

Protocol No. 14 provided for a number of other innovations: a new criterion for the admissibility of complaints (substantial harm), an increase in the term of office of judges to 9 years, the ability to issue an order to the Court on the issue of a violation by the respondent state of the obligation to enforce the order, the right of the Court to interpret the order rendered, the right of the European Union to accede to the Convention.

The major developments, that influenced the Court efficiency, were firstly, the reviewed Article 26 of Convention. The novelty introduced a new entity 'single-judge formation' that was empowered with declaring applications inadmissable. Assistance to the single judge from 2004 is about to be given by rapporteurs, appointed from senior officials of the Registry. These decisions on inadmissability are final. Single judge, without exeptions, could not decide on the matters of application, broght against the State of his election. Under previous regulations this part was allocated to the three-judge Commitee, that seriously affected the speed of decision making.

Secondly, commitees were not eliminated, instead theit task became to decide cases unanimously on their admissibility, and in cases, where established precedental practice of the Court existed, even to decide on the matters. These decisions would be binding and could not be reviewed. 'Well established case-law' is that kind of practice, which has been consistently applied by a Chamber. In exeption, decision adopted by the Grand Chamber on a question of principle, could be considered as such.[19] These wide powers were given to commitees, because of existance of a huge amount of repetitive cases, which account for a significant proportion of the Court's judgments. If a unanimous decision could not be reached, than case goes to widened review before the Chamber. Also here exists the possibility for parties to appeal on 'well established case-law' before the committee. If a judge elected by the High Contracting Party

[18] PROTOCOL No. 14;

[19] Explanatory Report to Protocol No. 14, supra n.3,at para. 68;

to the case is not a member of the committee, the committee may at any stage of the proceedings invite that judge to take the place of one of the members of the committee.[20]

Therefore, the participation of a judge elected by the respondent State in a committee meeting is not mandatory and should not be done automatically, it depends on the position of the committee.

The last important issue, presented by the Protocol No 14 was new admissibility criteria. As was mentioned in the Explanarory Report, Court's enourmous caseload occured, because of two reasons: processing around 90% of individual applications, that eventually were declared inadmissible and processing individual applications which derive from the same structural cause as an earlier application which has led to a judgment finding a breach of the Convention.[21] So a new criteria of admissability was introduced: applicant should have had suffered a significant disadvantage.

This most controversial provision entiteled Chambers and the Grand Chamber to elaborate the notion of 'significant disadvantage'. But among the exeptions from these rule, Protocol stated that Court could not reject an application on account of its trivial nature if the case has not been duly considered by a domestic tribunal and the critirea could be disregarded if respect of human rights requires an examination of the claim.[22] Exeptions were added because four States - Austria, Belgium, Finland and Hungary, firstly refused to accept the novelty. On Parlamientary Assembly opinion, the new criteria on admissability, without exeption was 'vague, subjective and liable to do the applicant a serious injustice and would exclude only 1.6% of existing cases'[23] so the compromise was found, because of need to focus Court's resources on the most important applications.

Protocol No. 14 entered into force on June 1, 2010 after the ratification by all State Parties.

On June 24, 2013, Protocol No. 15 to the Convention was adopted and opened for signature and entered intoforce only on August 2021. The main aim of amending the Convention remained to maintain effectiveness of European Court of Human Rights. It

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[20] Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms amending the control system of the Convention, para. 3, art. 28.

[21] Explanatory Report to Protocol No. 14, supra n.1,at para.7;

[22] Lucius Caflisch 2006, p. 13.

[23] PACE - Opinion 251 (2004);

elaborated the new principle of subsidiarity, that lies now in the Preamble to the Convention, another important issue of Protocol No. 15 is inclusion of reference to margin of appreciation of contracting parties while applying the Convention. Addition of new rectail to the text of Convention, signals of a new accent on the supremacy of member states' duty to guarantee and secure the effective realization of rights and freedoms set out in the Convention.[24] As it was said in explanatory report to Protocol No. 15 'reference to the principle of subsidiarity and the doctrine of the margin of appreciation... is intended to enhance the transparency and accessibility of these characteristics of the Convention system and to be consistent with the doctrine of the margin of appreciation as developed by the Court in its case law.'[25]

Text of the Protocol clarified, that only States totally understand, and have better possibilities to ensure human rights at national level, that is why Court only has supervisory role over decisions, adopted by national bodies, and could only review whether they were taken in accordance with Convention. This kind of supervision should be done with respect to countries' margin of appreciation. It actually goes "hand to hand with supervision under the Convention system".[26] To understand fully what 'margin of appreciation' means, we could remember, that the concept was developed by Strasbourg Court to mark where are matters, states could possibly decide on the grounds of local legal traditions and experience and which questions are fundamental and common for all countries. Nikos Vogiatzis in his article offered a citation of David Harris, that revealed the meaning of this concept as 'state is allowed a certain measure of discretion, subject to European supervision, when it takes legislative, administrative, or judicial action in the area of a Convention right'.[27]

Reference to principle of subsidiarity also requires clarification, because in the Protocol No. 15 it is only declared, but any means for interpretation are not provided. George Letsas once explained subsidiarity as the role of Convention and states, that are entitled to '...redress any individual violations of the Convention rights, before they are brought before an international tribunal. With respect to the judicial powers of Strasbourg organs, the principle of subsidiary thus refers to a chronological or procedural priority of domestic control over

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[24] Ian Cram (2018).

[25] Explanatory Report to Protocol No. 15 ,para. 7.

[26] Explanatory Report to Protocol No. 15 ,para. 9

[27] Nikos Vogiatzis, 2015 p. 127-128.

international control'.[28] The simpliest way to explain, what principle of subsidiarity means, is to remember the rule of exhaustion of all domestic remedies, that schoul be completed in general way, before addressing to the Court.

Among these two important notions, Protocol No. 15 also provides[29]:

a candidate for the office of a judge must be less than 65 years of age on the date on which the list of candidates was requested by the Parliamentary Assembly (Article 21 of ECHR, paragraph 2);

a reduction from six to four months of the time period within which an application can be submitted to the Court (Article 35 of ECHR, paragraph 1);

amending "significant damage" - the admissibility criterion for removing the second guarantee to prevent the rejection of a complaint that has not been duly examined by a domestic court (Article 35 of ECHR, paragraph 3, sub. b);

the exclusion of the right of the parties to object to the relinquishment of a Chamber of the Court from jurisdiction in favor of the Grand Chamber, but with exeptions to the objections, brought before entry of the Protocol into force.

As it could be seen, even after decade of working to improve case-loading situation in the European Court of Human Rights and tries to find a balance with Court's capability to accept applications and guaranteeing human rights, situation is still elaborated. According to the analysys of statistics of ECtHR from January 2021, even when the number of incoming applications decreased on around 6%, comparing with 2019, the productivity was lower than the number of allocated applications. As a result the number of pending applications has increased.[30] That is why the new amendments to solve the situation coming by. For now Court is focusing on both acceptable optimization of its loadness and increasing the effectivness of international justice. On 2 October 2013, the Committee of Ministers of the Council of Europe adopted Protocol No. 16 to the Convention.

This new protocol will allow the highest judicial authorities of a participating State to ask the European Court of Human Rights to issue an advisory opinion on matters of principle

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28 George Letsas, (2006).

29 Protocol No. 15 Amending the Convention on the Protection of Human Rights and Fundamental Freedoms.

30 European Court of Human Rights. Analysis of Statistics 2020. p. 4-5.

concerning the interpretation or application of the rights and freedoms defined in the Convention or its Protocols.

1.2. The place of the European Court of Human Rights in the system of the judiciary, its role in the mechanism of protection of constitutional rights and freedoms

European Court of Human rights, according to the European Convention on Human Rights, was established in order to ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto. Court is functioning on a permanent basis.[31] Jurisdiction of the Court extends to all matters, concerning the interpretation and application of the Convention and the Protocols.[32]

The primary task of the Court is to ensure and protect the rights guaranteed by the Convention. As a result of the promotion and development of the Council of Europe's activities in the field of protection of fundamental rights and freedoms, the Court's decisions began not only to apply the Convention but also to interpret it, establish legal principles and standards necessary for its existence and effective application. For several decades, the ECtHR has viewed the ECHR as a "living instrument", guided in its decisions not by static, once adopted norms, but by real legal relations, peculiarities of legal systems, cultures, legal consciousness of various Council of Europe member states.[33]

Lithuania and Ukraine have transposed the provisions of the European Convention on Human Rights into their national legal systems and have committed themselves to implementing the judgments of the European Court of Human Rights. According to the Article 46 of European Convention on Human Rights, High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties. Execution of judgements is observed by the Committee of Ministers. The European Court is increasingly referring to Article 1, in parallel with Article 46, to remind states of their obligation to adjust their domestic legislation to the Convention.[34] Each State-member of European Convention on Human Rights, took responcibility on themselves, to properly execute judgements, that have been ruled

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[31] European Convention on Human Rights.1950

[32]European Convention on Human Rights.1950 Article 32.

[33] Butkevych, Olha. 2017, p.3;

[34] Lambert Abdelgawad, Elisabeth 2008, p. 10;

by the European Court of Human Rights in cases against them. This kind of obligation arises from the content of Article 1 of the Convention, to guarantee to everyone whithin State`s jurisdiction, rights defined by the Convention. If this duty was breached and after the decision of the Court became final, obligation to start process of executing the decision starts immediately. The supervision powers after the process of executing are laid on the Committee of Ministers. Under the meaning of 'executing the decision' is understanded not only compensation for the applicant, whose rights were violated, but also preventing such violations in future. Latter is usually done by implementation of legislative reforms and harmonization of domestic legislation in accordance with the provisions of the Convention.

After joining the European Convention on Human Rights, Lithuania transposed its provisions into the national legal system, so the courts must comply with the Convention and follow the case law. As of 2017, the Court considered 5,963 complaints against Lithuania, of which 5,771 were accepted. According to the report from September 2021, Court dealt with 360 applications concerning Lithuania in 2020, of which 342 were declared inadmissible or struck out. It delivered 13 judgments (concerning 18 applications), 6 of which found at least one violation of the European Convention on Human Rights.[35]

The legal system of the Republic of Lithuania is grounded on the fact that any law or other legal act, as well as international treaties of the Republic of Lithuania, must not contradict the Constitution, because Paragraph 1 of Article 7 of the Constitution prescribes: "Any law or other statute which contradicts the Constitution shall be invalid."[36] According to the law "On International Treaties" of the Republic of Lithuania, international treaties of the Republic of Lithuania have the force of law.[37]

In its decision from 24 January 1995 Constitutional Court of Lithuania established, that in accordance with provisions of Constitution and Law "On International Treaties" after its ratification and enforcement, the European Convention on Human Rights will become a constituent part of the legal system of the Republic of Lithuania and will be applied in the same

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[35] ECHR. 2021. "Country Profiles" 2021;

[36] Constitutional Court of Republic of Lithuania. 1995. Ruling. Case No. 8/95;

[37] "Law on International Treaties of the Republic of Lithuania." Article 12;

way as laws of the Republic of Lithuania. The provisions of the Convention in the system of legal sources of the Republic of Lithuania are equalled to laws.[38]

Decisions of European Court of Human Rights are seperate source of law in Lithuania. Individuals could apply to district courts, as courts of first instance, to protect their rights and freedoms, these decisions could be subject to appeal to the Supreme Court of Lithuania. Final decision and its execution could be postponed, if case goes to European Court of Human Rights, and proceedings could be renewed, if the European Court of Human Rights finds that a court decision of the Republic of Lithuania is in breach of the Convention for the Protection of Human Rights and Fundamental Freedoms.[39]

Department for the execution of the judgments of the European Court of Human Rights, made a summary, with the most important achievements, made by Member States, since Convention-system was amended.[40]

For example, after Court decided in cases Yusiv v. Lithuania and Gedrimas v. Lithuania, changes were brought to the Law on Police, in order to better define physical and mental restraint and set the conditions for the use of restraint or special measures, firearms and explosives. Operational guidelines issued by the Government on the necessity of prior approval of special coercive measures were adopted. Excessive use of force may now be subject to disciplinary proceedings and victims of ill-treatment have access to compensatory remedies.[41]

A mechanism for the effective review of a life imprisonment sentence was introduced in April 2019 enabling such prisoners to request conversion of their sentence into a fixed-term custodial sentence after having served a minimum of twenty years.[42] These amendments were made following the Court`s decision on the case Matiosaitis and others v. Lithuania, which concerned the legal impossibility for life prisoners to obtain a review of their sentences and the lack of any prospect of release. After adopting of decision, the Committee of Ministers set supervision under execution by Lithuania of the Court`s judgement. In 2019 the Department on execution of judgements of the Court informed, that “authorities established a mechanism

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[38] Constitutional Court of Republic of Lithuania. 1995. Ruling. Case No. 22/94;

[39] Kerikmäe, Joamets, Pleps, Rodiņa, Berkmanas, and Gruodytė 2017, p.428;

[40] Department for the Execution of judgments of the European Court of Human Rights;

[41] Department for the Execution of judgments of the European Court of Human Rights p.2;

[42] Department for the Execution of judgments of the European Court of Human Rights;

through which life prisoners may request a court review of their sentences and a change into fixed-term sentences if they have fulfilled a number of requirements and demonstrated that they are no longer a danger to society. Amendments to criminal legislation were adopted on 21 March and came into force on 3 April. In addition, since September 2015, life prisoners have been included in the same rehabilitation and socialisation system as all other prisoners, in preparation for potential release on parole".[43] After amendments entered ifnorce supervision was ended.

Functioning of justice also has changed as a result of the ECtHR decision, in particular, impartiality of courts, in matter of assigning the judges, entitling judges of Supreme Court to reinstate first-instance judgments.[44]

Among other areas in which significant changes have been made as a result of the decision of the European Court of Human Rights, the report on the main achievements mentions the following ones[45]: improval of system of protection from domestic violence[46], right to liberty and security[47], protection of private life, specifically issues of secret survelliance[48], spousal privellege in criminal proceedings[49], defamation[50] and amendments to the Law on State Legal Act.

Thus, the decisions of the European Court of Human Rights occupy a special place in the Lithuanian judicial system. They can be considered as a special case law. Decisions of the European Court are part of the Lithuanian legal system and are of a recommendatory nature

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[43] "Lithuania Amends Law Allowing Review of Life Sentences". 2019;

[44] As result of decisions taken in cases Daktaras v. Lithuania (42095/98) and Daineliene v. Lithuania (23532/14);

[45] Department for the Execution of judgments of the European Court of Human Rights;

[46] In 2017, the Police General Commissioner adopted guidelines to improve police diligence and the gathering of evidence in domestic violence cases, significant case: Valiuliene v. Lithuania (33234/07);

[47] An exhaustive list of the grounds on which detention on remand may be imposed was set out in a new Code of Criminal Procedure, which entered into force in May 2003. See case Jecius v. Lithuania (34578/97);

[48] After Drakšas v. Lithuania (36662/04). In 2015, the Supreme Court published a survey of relevant domestic case-law concerning the monitoring, recording and storage of information transmitted through electronic communications networks, explaining the criteria for secret surveillance measures;

[49] After Kryževičius v. Lithuania (67816/14), the Code of Criminal Procedure was amended to grant all persons the possibility to refuse to testify against spouses or family members, irrespective of their status in the criminal proceedings concerned;

[50] After Biriuk v. Lithuania (23373/03), ceiling on compensation for non-pecuniary damages caused by flagrant abuse of press freedom (resulting in too low awards) was removed from the Civil Code of 2001;

for the improvement and harmonization of legislation. They cannot have automatic priority over the norms of the current legislation, and the legislator reserves the exclusive right to make changes in the legislative acts dictated by the decision of the Court. Lithuania, as noted by Leonard F.M. Besselink[51], without abandoning the conventional ideals of protection of human rights and freedoms, considers that ECtHR decisions cannot claim absolute immunity from national constitutional law.

As about Ukrainian legal system, it should be noted that for the current moment, it is at the stage of reforming and implementing of European standards to Ukrainian realities. Because of the full-scale war, that came to Ukraine on 24th of February, President of Ukraine applied to European Union with application for accession to the EU under a special procedure. On the 1st of March, European Parliament, reccomended for the member countries to immediately grant Ukraine the status of a candidate country for accession to the EU. Although, russian aggression demonstrated that Ukraine deserves to be a member of the European Union, and respected EU member states largely support Ukraine's aspirations, however, this cannot be done without certain mandatory procedures.

This means, in particular, bringing Ukrainian legislation in line with European standards. And an important role in EU legislation is given to the European Court of Human Rights as a guarantor of respect for the rights and freedoms provided for in the Convention. Certain Ukrainian regulations establish, that judicial practice is a source of law.

Ukraine already made a step towards, when the Parliament adopted Law of Ukraine" On the implementation of decisions and application of the case law of the European Court of Human Rights"of February 23, 2006 № 3477-IV, which defines the case law of the European Court of Human Rights as a source of law in Ukraine.

Due to the adoption of the above-mentioned Law, a number of problems related to legal conflicts have arisen in Ukraine. All decisions of the European Court of Human Rights today are a source of Ukrainian law and must be taken into account when considering cases by national courts. Courts must also apply and interpret the Convention in the same vein as the European Court of Human Rights.

It should be noted that the Law does not specify whether the entire catalog of decisions is binding on national courts or only those decisions that affect Ukraine, as party to the case.

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[51] Besselink, Leonard F.M. p. 34-36;

Prior to the adoption of the Law of Ukraine “On Enforcement of Decisions and Application of the Case Law of the European Court of Human Rights” of 23 February 2006 № 3477-IV in 1997, Ukraine ratified the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 and Protocols № 1, 2 , 4, 7, 11 to the Convention.

The Law of Ukraine “On Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, First Protocol and Protocols № 2, 4, 7 and 11 to the Convention” of 17 July 1997 stipulates that Ukraine recognizes Article 46 of the Convention throughout its territory , which concerns the enforcement of final judgments of the European Court of Human Rights in any case to which it is a party. Ukraine has also recognized by this Law the jurisdiction of the European Court of Human and Civil Rights in the entire catalog of issues concerning the interpretation and application of the Convention. In the context of the above, it should be noted that since the ratification of the Convention, it has become part of Ukrainian law and a source of law.[52]

Also, since the ratification of the Convention, a number of by-laws have been adopted, which provide for the powers of public authorities involved in the process of applying the practice and enforcement of judgments of the European Court of Human Rights. Among them: Decree of the President of Ukraine of June 25, 2002 №581 "On some issues of protection of the rights and interests of Ukraine in dispute settlement, consideration in foreign jurisdictions of cases involving a foreign entity and Ukraine", the Cabinet of Ministers of Ukraine May 31, 2006 №784 “On measures to implement the Law of Ukraine“ On Enforcement of Decisions and Application of the Case Law of the European Court of Human Rights ”, Order of the Ministry of Justice of Ukraine of February 9, 2007 № 44/5 in the cases of the European Court of Human Rights and the regional branch of the Secretariat of the Government Commissioner for the European Court of Human Rights ”and others.

In the legal literature, there are different views on determining the place of the case law of the European Court of Human Rights in the Ukrainian legal literature. But most common opinion, is that the European Court only interprets the provisions of the Convention.

In particular, D.M. Suprun notes that as a result of the interpretation of the Convention, the rules themselves acquire a new understanding, which indicates the need for States parties

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[52] "On Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, of the First Protocol and Protocols Nos. 2, 4, 7 and 11 to the Convention". 1997. Official web portal of the Parliament of Ukraine.

to apply its legal norms in accordance with the content given to them by the European Court of Human Rights as authentic interpreter.[53]

Despite, its unclear nature, Ukrainian courts have referred to the case law of the European Court of Human Rights as a source of law while making decisions. For example, it is a case when the judicial board of the Nikolaev appellate court for the first time in Ukraine at consideration of the cassation appeal in civil case was guided by provisions of Art. 10 of the Convention and the judgment of the European Court of Human Rights in Lingens v. Austria.[54]

The Constitutional Court of Ukraine referred to the decision of the European Court of Human Rights in the case of the death penalty.[55] In its further work, the Constitutional Court often referred to the case law of the European Court of Human Rights in its decisions.

In the motivating part of the decision of the Constitutional Court of 10 October 2001, the traditional form of precedent was applied, namely the court referred to a specific decision of the European Court of Human Rights - "James and Others v. The United Kingdom "of 21 February 1986. [56]

1.3 Approach to concept and types of property and property rights under ECtHR judiciary

A significant part of the cases, brought before the European Court of Human Rights, are cases concerning the protection of the right to peaceful possession of property, the inviolability of which is guaranteed in Art. 1 of Protocol № 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms.

According to Article 1 of the Protocol 1, every natural or legal person is entitled to the peaceful enjoyment of his possessions. Deprivation of property is possible in the interests of society and under the conditions provided by law and the general principles of international law. The state has the right to enact laws to control the use of property in the general interest or to ensure the payment of taxes, fees and fines.[57]

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[53] Suprun, D.M. 2002;

[54] Marchenko, Artem. n.d.;

[55] Decision of the Constitutional Court of Ukraine. Case No. 1-33/99 1999;

[56] Decision of the Constitutional Court of Ukraine. Case No.1-23/2001 2001;

[57] Guide on Article 1 of Protocol No. 1. n.d.;

Analysis of the case law of the European Court of Human rights shows, that Court stays on autonomy of the interpretation of the concept “property”. As noted by A.A. Yakovlev, the autonomy of concepts has a clearly defined nature, which does not allow for direct analogies with the everyday meaning of the term. The European Court emphasizes that the autonomy of conventional concepts is a way of interpreting which does not allow states to make such definitions in national law that are in the interests of the state alone and upset the balance of public and private interests. The autonomy of the concept does not mean the unification of national legislation, but the requirement to apply uniform rules and principles of their interpretation - this is what ensures the existence of a single European standard of protection of property rights. [58]

Therefore, in clarifying the meaning of the term "property", it is not enough to be guided by the national legislation of the States-parties to the Convention. In deciding whether to apply Article 1 of Protocol No. 1 to the Convention in a particular case, the Court must determine whether the circumstances of the case as a whole give the applicant the right to an independent interest protected by that article.

According the case-law, it is obvious, ECtHR interpret the concept of “property” quite broadly and applies to both existing property and assets, including claims in respect of which the applicant can reasonably claim to have “lawful expectations" to effectively exercise the right to it.

In such decisions, like Poltorachenko v. Ukraine, Jasiyne v. Lithuania, Yasyunyne v. Lithuania, Voytenko v. Ukraine, Mellacher and others v. Austria, Pine Valley Developments Ltd and Others v. Belgium and others, Court noted that the term "property" does not only cover property, owned by a person, in accordance with the law. For example, property can also be considered as funds, awarded by a national court (Poltorachenko v. Ukraine). "Property" can be considered assets, including claims in respect of which person may claim existing of "legitimate expectations" for the realization of property rights (Kopesky v. Slovakia).[59]

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[58] Yakovlev 2020, 20;

[59] Ogrenchuk and Potemkin 2014;

In the case of Anheuser-Busch Inc. v. Portugal, European Court of Human Rights noted, that future income is not property, except for those that have already been received or are clearly to be received.[60]

Legitimate expectations should be considered as available assets, that are related to future property benefits. This concept, in addition to general features of "property" as the ability to be valued in money and availability, includes an indication that it should be related to future property consequences. That is why it will be fair to say that legitimate expectations are property, but not all property within the meaning of Article 1 of Protocol No. 1 is legitimate expectations.[61]

"Legitimate expectations" must be more specific in nature than just hope and must be based on a legislative provision or legal act, such as a court verdict. In the case of Fedorenko v. Ukraine, Court concluded, that the applicant had a "legitimate expectation" of income under a clause of the dollar equivalent agreement in UAH and that this expectation could be considered "property" within the meaning of Article 1 of the Protocol.[62]

Such an expectation exists in the case of revocation (invalidation) of permits issued by public authorities, which gave the person the hope to implement their commercial plans (for example, to build land, which the company acquired after obtaining a building permit: Pine Valley Developments Ltd and Others v. Ireland).

If the property benefit (right) of a private person is based on an agreement concluded with a public authority, permit, license, normative or non-normative act, which is either declared invalid for reasons beyond the control of the private person, or revoked or declared invalid with reverse force, it is a violation of the "legitimate expectation" guaranteed by Art. 1 of the Protocol.

Such opinion could be found in case of Pine Valley Developments Ltd v. Ireland the European Court has ruled that Article 1 of the Protocol can be used to protect "legitimate expectations" of a certain state of affairs (in the future), as they can be considered part of property. "Legitimate expectations" arise in a person if he has complied with all the

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[60] European Court of Human Rights. Judgement. Anheuser-Busch Inc. v. Portugal.Application no. 73049/01;

[61] Slipchenko 2020;

[62] European Court of Human Rights. Judgement. Fedorenko v. Ukraine. Application no. 25921/02;

requirements of the law to obtain the relevant decision of the authorized body, and therefore he had every reason to consider such a decision valid and rely on a certain state of affairs.[63]

On the other hand, the hope of recognizing the ownership of property which could not be used effectively for a long time cannot be regarded as "property" within the meaning of Article 1 of the Protocol. For example, in the case of Prince Hans-Adam II of Liechtenstein v. Germany, European Court of Human Rights, noted that the hope of recognition of property rights is a conditional requirement that becomes invalid if no condition is met that does not depend on the will of the individual.[64]

The broad interpretation of the term "property" in the case law of the European Court shows the indivisibility of human rights in the context of autonomous interpretation of the concept of "property", which, in turn, allows the European Court to address the protection of social and economic rights. Strengthening the protection of property rights ensures "the penetration of conventional mechanisms for the protection of rights in the field of socio-economic rights." In the judgment in Airey v. Ireland The Court noted that there was no absolute boundary between the sphere of social and economic rights and the sphere covered by the Convention. This interpretation indicates the possibility of significantly expanding the meaning of the concept under consideration, it is not limited to possession of material objects (property), but also contains some other rights or interests (for example, the right to receive compensation based on a court decision, clientele, the right to use licenses or permits, etc.), as well as the ownership of certain types of social benefits.[65]

Thus, the European Court has developed two main features of the object's belonging to the "property" in the context of Article 1 of the Protocol: 1) economic value; 2) the presence of property rights or "legitimate (legitimate) justified" expectations to use the property effectively.

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[63] European Court of Human Rights. Judgement. Pine Valley Developments Ltd v. Ireland. Application no. 12742/87;

[64] European Court of Human Rights. Judgement. Prince Hans-Adam II of Liechtenstein v. Germany. Application no. 42527/98;

[65] European Court of Human Rights. Airey v. Ireland. Application no. 6289/73;

There were several reasons for including of intelectual into “property”: regarding of the patents to the economic activity; the presence of patents such features as exclusivity and transferability, which are characteristic of the general concept of "property".[66]

In the trademark case, the Court noted that a trademark is property only after the procedure has been completed: registration of rights to it, if the registration procedure has only just begun, the applicant still has certain property rights associated with the application for registration, even if the registration is subsequently revoked.

Based on the above, the following conclusions should be made:

The concept of "property" in Article 1 of the Protocol has an autonomous meaning, which is not limited to the right of ownership of things and does not depend on its definition in national law.

The interpretation of the term "property" in the case law of the European Court of Human Rights does not necessitate a similar definition of this term in national law, but should be used in national courts.

The term "property" is used by the European Court of Human Rights in relation to: 1) available property (material objects and property rights, including intellectual property rights); 2) claims in respect of which the applicant can reasonably claim that he had "legitimate (justified) expectations" to effectively use the right to property (hope to receive pensions, court decisions, satisfaction of the claim for compensation - damages in the presence of such claims of permanent case law of national courts, rent, use of certain facilities or engage in certain activities under issued patents, licenses, making a profit in accordance with the established clientele, tax deductions).

"Legitimate (legitimate, justified) expectations (expectations)" may be based on a contract, permit, license, regulatory or non-regulatory act, including those that have been declared invalid for reasons beyond the control of an individual, or revoked or recognized invalid with retroactive effect), a court decision that has entered into force.

The term "property" does not include the hope of recognizing the right of ownership of property that has long been impossible to use effectively; re-acquisition of the right to which depended on the condition, the fulfillment of which depended on third parties; in respect of which the term of fulfillment by the applicant of the condition under which the right of

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[66] Sermet 1999;

ownership should have arisen has expired. It is safe to say, that to recognise possesion as "property" it should meet two criteria: existance at owner`s hands of right to use and to dispose.

Use may be defined as the ability to enjoy an object in accordance with its purpose. And right to dispose means, that owner is entitled to enter into a legal relationship with another person, regardless of the form which this relationship takes: sale, rental, usufruct. This transferability may be regarded as an essential condition of economic effectiveness and justice.[67]

Therefore, in order to be able to protect under Art. 1 of Protocol No. 1, a person must have at least some right provided for by national law which may be considered a property right under the Convention. This point was illustrated by the Court's consideration of many applications.

CONCLUSION TO CHAPTER 1

Article 2 of the Treaty of European Union recognised human rights, among core values of EU. That means, each European Union Member State, EU member-candidate, EU institution should resect, protect and guarantee human rights on legislative level.

Among all mechanisms, serving on that aim, the most important and fundamental instrument on human rights protection - is European Convention on Human Rights. Convention was designed after World War II, to preserve the rule of law and the principle of democracy in post-war Europe and to create an international mechanism of human rights protection. This was a genuine achievement in international law – the setting up of an international judicial mechanism before which the democratic European States could be called for the first time in the history of international law to acknowledge violations of human rights at national level.[68]

Under the Conventional system, three institutions are responcible for enforcing the obligations undertaken by the Contracting States, the judicial powers by the Convention were vested in the European Court of Human Rights (Article 19). For today members of Council of Europe are bound by the provisions of the European Convention on Human Rights and the case law of the ECtHR. The main purpose for establishing of ECtHR, was to protect human rights on international level, after total disrespect, during the World War II. Prevent violations of

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[67] Sermet 1999, p. 18;

[68] Jočienė 2009, p. 2;

individual`s rights and freedoms in the future and uphold the value of fundamental rights and freedoms at the highest supranational level.

Lithuania and Ukraine have transposed the provisions of the European Convention on Human Rights into their national legal systems and have committed themselves to implementing the judgments of the European Court of Human Rights. ECtHR decisions are an important source of interpretation of ECHR provisions, which can significantly affect the quality of its application (compliance) at the national level. Another important role of ECtHR decisions in national law enforcement practice (after their role as a doctrinal source and precedent for the national legal system) is their role in clarifying the nature of the ECHR's provisions, which may be a stage in its proper implementation and human rights regime.

In the Republic of Lithuania, the case law of the European Court of Human Rights occupy a special place in the system of law, the provisions of the Convention have been borrowed and implemented into national law, and the national judges refer on to practice of the Court, while making decisions. Judgements in cases brought against Lithuania lead not only to execution in a particular case. To prevent further violations of fundamentual rights, legislators rely on ECtHR decisions, while making amendments on to national legal acts.

Although the Court's decisions are mostly of a recommendatory nature, Lithuania, in accordance with the standards and responsibilities of a member of the Council of Europe and the European Union, is making every effort to implement them and improve the legislation. Although the latter is done wisely, ensuring compliance of all innovations with the Constitution of the Republic of Lithuania.

The application of the standards and principles of the ECtHR in Ukrainian legal system is a question related to a more general aspect, namely the place of international law in the national legal system of Ukraine. Ukraine remains one of the few Council of Europe states that has directly regulated the practice of enforcing ECtHR decisions by a separate Law of Ukraine “On Enforcement of Decisions and Application of the Case Law of the European Court of Human Rights”. However, this law contains many gaps.

Yes, decisions of the Court are not in themselves sources of law, but in combination with the relevant provisions of the Convention, national courts may use them as a source of law. The relevant norm is enshrined in the above-mentioned Law of Ukraine (Article 17).

This Law is special and regulates the relations arising in connection with the obligation of the state to comply with the decisions of the European Court of Human Rights and the need to implement the practice of European human rights standards in the Ukrainian judiciary. At

the same time, the Law does not contain clear recommendations on the rules of application of ECtHR decisions.

Among the decisions of the ECtHR, the most important are those that are considered the source of the legal position and are then used as an established legal position in resolving similar cases. In fact, these are guidelines for all national courts.

Decisions, that point to a systemic problem or a well-established interpretation of a situation in the country, could be considered as a source of legal position, and used by courts in similar cases. At the same time, the emphasis in the ECtHR's decision is not so much on the specific circumstances of an individual case, but on the situation with the assessment of the application of a certain norm or national practice.

Right to peaceful enjoyment of property is guaranteed by Article 1 Protocol 1 to the Convention. In Marckx v. Belgium the European Court of Human Rights considered for the first time Article 1 of Protocol No. 1 in the context of legislation in Belgium and defined the scope of Article 1 Protocol No 1. It could be applied only to existing possessions and "does not guarantee the right to acquire possessions".[69]

The further analysys of case-law gives right to say, that the concept of "property" should be interpreted automatically. This means, first of all, that the national law of the States parties to the Convention cannot be considered final in determining its content, but the Court may find it appropriate to apply national law.

Maintaining a fair balance between the public interest and interference with the right to peaceful enjoyment of possessions is another essential criteria to establish the violation of the rights protected by Article 1 of Protocol No. 1 to the Convention.

Thus, Article 1 of the First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms protects the right to property of a person against arbitrary interference by a State with its rights. However, the ECtHR allows for certain cases where interference with the rights of the individual is permissible to satisfy the "public interest", but such interference should not exceed a certain boundary between the interests of society or the state and the interests of the individual. This requires the state to maintain a certain balance and only on the terms or grounds provided for in the national law of the state, otherwise there will

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[69] Grgić, Zvonimir, Longar and Vilfan 2007, p. 5;

be a violation of Article 1 of the First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms.

CHAPTER 2. FEATURES OF LITHUANIAN PROPERTY RIGHTS AND THEIR PROTECTION IN THE EUROPEAN COURT OF HUMAN RIGHTS

2.1. Concept, nature and types of property rights under Lithuanian civil law

The nature and concept of property rights in Republic of Lithuania are established by Constitution of Republic of Lithuania and Civil Code. Provisions of legislation, conserning property rights, were adopted under significant historical circumstances – establishing of Lithuanian independency, transferring to market economy state and further integration to European Union with harmonisation of legislation up to European standarts.

When on the befinning of 1990's, after gaining of independence, new social-economic system was approved, the very first novelties touched precisely, abolished by USSR ideology, basis of property rights, copyright and related rights. The recognition of private property, the principles of its inviolability and the protection of property rights replaced the socialist principles to property that existed under the Soviet past. Article 23 of Constitution of Republic of Lithuania protects property right. When drafting the Constitution, scholars introduced rights to property, as innate right of a citizen and pointed out, that the property of a citizen shall be protected by law and could only be expropriated on the legal grounds and only for needs of society.

Newly declared economic system went away from Soviet ideology and is based on existance in Republic of Lithuania of the private property of its citizens and state-owned property. Already mentioned Article 23 of Constitution do not just protect citizen's property, but recognizes right to ownership as one of human right.[70]

On the following years various legislative acts were adopted, starting from laws on competition and ending with enourmously important laws on privatization of state property and property of self-governments, on restoration of the property right of citizens to real estate. The same time work on the Civil Code continued, scientists decided just to amend the previously existed Code and aimed at codifying of substantive law. In 2001 new Civil Code has entered into force.

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[70] "Constitution of the Republic of Lithuania". 1992;

Property Law is mostly regulated by Book IV "Material Law" of the Civil Code.[71] But, inviolability of property, together with freedom of contract, non-interference into private relations, legal certainty, proportionality, and legitimate expectations, are recognized in article 1.2 of Civil Code as fundamentual principles of regulation of civil relations. The Civil Code does not provide the concept of property, separate articles of the Code refer to either separate types of property (Article 1.97, Article 3.84 of the CC) or the concept of property, that is used as a synonym of the term "object" (Article 4.76, Article 4.88 (1) of the CC). In the meaning of the Civil Code, property is not only things but also securities, property rights, results of intellectual activities, information, actions and results thereof, as well as any other material and even nonmaterial values, and also duties.

The Law on the Basis of Valuation of Property and Business defines property as tangible, intangible and financial values (Paragraph 1 of Article 2)[72]; The Law on the Prevention of Money Laundering and Terrorism Financing defines property together with money, securities and other financial instruments, other assets and property rights, intellectual property results, information, actions and results of activities, as well as other property and non-property values as part of "assets" concept (Article 2 (20))[73]; The Accounting Law defines assets, as tangible, intangible and financial assets which are managed and used and / or disposed of by an undertaking and from which economic benefits are expected to be derived (Article 2(17-18))[74].

Paragraph 1.97 (1) of the Civil Code states, that the objects of civil rights are objects, money and securities, other property and property rights, results of intellectual activity, information, actions and results of actions, as well as other property and non-property values[75]. It can be said that one of the most significant innovations of the current CC was the above-mentioned list of objects of civil rights, which shows that the Lithuanian legislator established the pluralistic doctrine of the object of civil rights, i. y. the doctrine, that the object of civil rights may be not only an object, but also other, also intangible, values. It can be said, that the

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[71] "Civil Code of the Republic of Lithuania." 2000;

[72] "Law on the Basis of Valuation of Property and Business defines property as tangible, intangible and financial values" 1999;

[73] "The Law on the Prevention of Money Laundering and Terrorism Financing". 1997;

[74] "Republic of Lithuania Accounting Law". 2001;

[75] "Civil Code of the Republic of Lithuania." 2000;

legislator of other states (for example Ukraine) also does not avoid the need to define the concept of property in one way or another.

There is no doubt that the aim and task of the legislature is not to provide a specific definition of property, as this must be done by legal doctrine. However, it is clear that in some cases the legislator does not avoid the need to provide a definition of the term "property" in a specific legal act. Property is mentioned in the basic law of the State - Constitution, in main legal act, governing specific type of legal relations - Civil Code and in other, already mentioned legal acts. Concept of property is undividable, and could not be interpreted in any specific way as to the needs of specific branch of law. The only fact, that should be taken account, is that constitutional law establishes the widest category of property, when the other legal acts interpret it, according to the needs and aims of the particular regulation. Commentary to Book 1 of Lithuanian CC clarifies, that broadly, property can be described as the aggregate of rights and duties of some person. It should be noted that the best criteria for describing what can be an object of property right is the ability for the thing or asset to enter into civil circulation[76].

In Russian legal doctrine, that largely influenced Lithuania's regulation, property in the most general sense is understood as the totality of objects, property rights and obligations belonging to a subject of civil law. A person's belongings and property rights constitute his or her property assets, and property obligations constitute property liabilities. As pointed by prof. V.Pakalniškis, "property law is understood differently in Europe and in Lithuania and that this difference needs to be removed has already been observed in Lithuanian scholarly writings. In Lithuania, property law itself is impeded by the so-called concept of "triad" enshrined in the doctrine of civil law. In the same time, doctrine of a property as a natural right dominates in Europe".[77]

Article 4.38 of the Civil Code of Lithuania allows for things and other property be the subject matter of ownership right. Here, however, a question could arise – what is the scope of that article? As noted in legal doctrine, in modern civil circulation, property is increasingly called the things of the intangible world. The civil circulation involves not only the "externalized" objects of the material world, objects of transactions may also include intangible assets (objects of intellectual property, knowledge, abilities, etc.), therefore, they are equated

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[76] "Lietuvos Respublikos Civilinio Kodekso Komentaras". Kn.1. 2001;

[77] Pakalniskis 2004, p. 63;

to objects. Proponents of the traditional approach to things often point out that cash and tangible securities are one type of thing because they are tangible objects.

In the meantime, we should consider non-cash as other objects of civil rights, such as property rights. In terms of the functions it performs, non-cash is no different from cash: both cash and non-cash are equally important in modern civil law as a means of payment and a means of fulfilling obligations. The content of the right of ownership, in other words, the scope of the rights of the owner, does not depend on the material form of the object of the right of ownership, i. y. regardless of whether the money is paper, metal, or electronic, the extent of the owner's ownership is the same. The essential difference between money and things is that money cannot be the subject of many civil transactions, as the most common subject of transactions is goods, objects, other objects of property; money cannot be bought, money does not meet a person's aesthetic or other spiritual needs.

Other disputable objects are trademark, company name, trade secrets, results of intellectual activity, but also the prestigious location of the economic object, demand for manufactured goods, high staff qualification, good business reputation, etc. y. objects that are often impossible to tax, but that does not mean that they have no monetary expression. For example, the economic value of a company is higher if it employs highly qualified staff or is run by a person of good repute known to the public. In the common law commercial law, the term "goodwill" is used to describe such an asset, treating it as an intangible asset that acquires monetary value only after the sale of the business and makes a difference between the estimated (paper) value of the asset sold value and its selling prices.

It is obvious that the property sphere of a person is not limited to the totality of material things, property rights and obligations. With the development of science and technology, more and more new objects are formed that have the potential to create objective value, i. y. to provide a property benefit to their holder. The process of development of new objects of property is also taking place in the modern world: new possibilities are provided by the Internet, advances in medical science (e.g. stem cell ownership), human intellectual activity, and so on. Therefore, the factors important for the development of the modern economy - human resources, knowledge, abilities - should be assigned to an independent group of objects, which is not regulated by intellectual property law. For the time being, legal doctrine discusses

whether these intellectual resources (intellectual capital), as a separate form of property, can be included in the system of protection of property.[78]

It should be noted that due to the complicating economic relations, the objects of civil rights can be merged into property complexes designed to achieve specific goals and perform certain functions. Paragraph 2 of Article 1.110 of the Civil Code stipulates that a property complex, as an object of civil rights, is a totality of objects united for general economic purposes[79]. However, each set of objects of civil rights should not be treated immediately as a property complex, as this set of objects must have a common purpose and the same legal fate. A set of objects can be recognized as a property complex only when the elements that make up the property complex are selected not by chance and determined by law or derive from a factual or legal purpose. Therefore, in law, a property complex is understood as a set of objects of civil rights with a common purpose, which are considered to be a single object and have a property value. Article 1.110 (1) of the CC specifies one of the property complexes, i. y. firm[80]. The company, as an object of law, consists of a complex of tangible – tangible, financial and intangible assets, its rights and obligations. Therefore, an enterprise, as a property complex, can consist of various combinations of tangible and intangible, movable and immovable property, depending on the type, scale, nature, duration of operation and many other circumstances.[81]

To sum up, interpretation of the 'property', under Lithuanian law, could be very wide. In a broad sense, almost all objects of civil law (objects, results of intellectual activity, property rights and obligations, securities, etc.) are considered property by law With the complication of economic and social relations, intangible objects (intangible securities, non-cash, results of intellectual activity, etc.) acquire important significance, therefore the concept of property in a broad sense prevails in modern civil law.

2.2. Property rights in judicial practice of Constitutional Court of Lithuania. "Triad" of property rights.

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[78] Rauličkytė 2000;

[79] "Civil Code of the Republic of Lithuania." 2000;

[80] "Civil Code of the Republic of Lithuania." 2000;

[81] "Lietuvos Respublikos civilinio kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Civilinis kodeksas". 2000;

Law is not a stagnant and static phenomenon. As the law is constantly developing and changing, so legal system, that is created on its basis, is constantly evolving. From the codification of modern civil law, the synthesis of property law introduced the so-called triad of rights. It is now used to define the content of property rights among all post-Soviet countries, according to that division, the content of property includes three kinds of legally protected expectations: a right of possession (ius possidendi), a right of use (ius utendi) and a right of disposition (ius disponendi).[82] Attempts to add new rights (opportunities) to the triad have been unsuccessful. According to the rule, owner has the right freely, without any obstacles, to use his property, dispose it and manage it. These rights are enshrined in Article 4.37 of the Civil Code of Lithuania. Part 2 of the Article allows owner to transfer part of his rights to another person, for example, when concluding a rental agreement, owner of estate transfers right to use his property to a tenent, still remaining the owner[83].

A number of legal doctrines noted that the content of property right should not be confined to the framework of three rights (possibilities), but none of them specified in detail what the broader content of property rights is and limited to claims that the "triad" does not sufficiently reflects to the whole content of property rights.[84]

The Constitutional Court of Lithuania in a ruling from 1999 June 23 stated that "in civil law, the content of the owner's subjective right of ownership is defined by distinguishing the owner's right to manage, use and dispose of the property belonging to him".[85] It should be noted, however, that the Court, which is concerned with the protection of the Constitution, has also emphasized that "this is far from all the rights of the owner". This reaffirms that property, as a constitutional right, has the broadest content.

In its judicial practice, the Constitutional Court presented an extended content of property law that is unusual for the classical doctrine of property law. It has already been stated that the content of the right of ownership is the totality of possibilities (rights) belonging to the owner.

Perhaps the main focus in the rulings of the Constitutional Court, related to the right of ownership, was the right to demand not to violate property rights, which falls out of the scope

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[82] Pakalniskis 2004, p. 63;

[83] "Civil Code of the Republic of Lithuania." 2000;

[84] Pakalniskis 2004, p. 65;

[85] Constitutional Court of Republic of Lithuania. "On the Transfer of Premises to the Association of Owners of Blocks of Flat" 1999;

of “triad” but, according to the Court, could not be deprived from the nature of the right of ownership. Scientific doctrine also holds that "the owner has the right to manage, use and dispose of the property belonging to him at his own discretion, and to demand that other persons not infringe his rights". The institution of constitutional supervision has often emphasized that “only the owner, as the holder of subjective rights to property, has the exclusive right to manage, use and dispose of that property. At the same time, the owner has the right to demand that other natural and legal persons, as well as the state, do not infringe property rights”; "The owner has the right to manage, use and dispose of the property belonging to him, as well as the right to demand that other persons do not violate these rights, and the state has a duty to protect and protect the property from unlawful encroachment on it".[86]

It should be noted that in its first rulings the Constitutional Court interpreted the provisions of Article 23 of the Constitution of the Republic of Lithuania “property inviolable”, “property rights are protected by law” as basic principles, for the meaning of which implementation “an entire legal system of civil, administrative, criminal and other branches of law has been created”.[87]

Of course, Constitutional Court paid attention on the inviolability of property, “means, on the one hand, the right of the owner as the possessor of subjective rights to property, to require that other persons not violate his own rights as well as the duty of the state, on the other hand, to defend and protect property against illegal encroaching upon it”.[88]

Thus, the Court initially did not directly grant the owner that his property rights could not be infringed at all, but by imposing a general obligation on all persons and only further developing constitutional doctrine, clearly stated that “the owner of an object is entitled not to infringe his property. And noted that "restrictions on the right to property cannot be combined with the right of a private owner to defend his rights before a competent independent body".[89]

E. Švilpaitė indicated that “the theory of the function of social property was also recognized by the Constitutional Court, which has repeatedly noted that the inviolability of property must not be treated as absolute. Some norms of the Constitution establish the

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[86] “The Constitutional Court and Constitutional Guarantees in Lithuania: Conference Proceedings”. 1995;

[87] Constitutional Court of Republic of Lithuania. “On the Ownership Rights of Functionaries” 1997;

[88] Constitutional Court of the Republic of Lithuania. “On the Supplementary Penalty of Property Confiscation.” 1993;

[89] “The Constitution of the Republic of Lithuania: Direct Application and Protection of Property Rights”. 1994;

objectives and limits of the regulation of economic activities, including the general requirement enshrined in Article 28 of the Constitution, which obliges all persons to observe the Constitution and laws of the Republic of Lithuania in exercising their rights and not restricting the rights and freedoms of others".[90]

Regarding the content of the right of ownership in the jurisprudence of the Constitutional Court, the 1999 year was very significant. March 16 Resolution On the Compliance of Paragraph 2 of Article 5 of the Law on Museums of the Republic of Lithuania with the Constitution of the Republic of Lithuania. Analyzing whether the provision of the said law that museum values are not returned to previous owners is not in conflict with the Constitution of the Republic of Lithuania, the Court stated: "subjective property without prejudice to the rights and freedoms of others. However, this is not all the rights of the owner. A very important protective function belongs to the subjective right of the owner, such as the right to recover one's property from the illegal possession of another".[91]

As can be seen, such a position of the Constitutional Court with regard to the content of the right of ownership clearly destroys the insertion of the right of ownership still common in civil law into the "triad" of rights belonging to the owner. As it is known, in the theory of civil law, when it comes to the content of the right of ownership, the right to recover one's property from another's illegal administration is not included. Both in the current Civil Code and in the textbooks of civil law, the mentioned right is related to only one element that falls within the content of the right of ownership - management. "One of the main rights of the owner is to manage the thing belonging to him by the right of ownership (Article 4.37, Paragraph 1 of the CC). After losing this right, the owner has the right to recover the object (eg stolen) found in another person without any legal basis from the illegal possession of another person (Article 4.95 (1) of the CC)". Meanwhile, the Constitutional Court attributed this right to the subjective right of the owner and included it in the content of the right of ownership, emphasizing that the right to recover one's property from another's illegal possession has an important protective function. Consequently, the Court does not deny that this right is linked to the protection of property.[92]

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[90] Švilpaitė 2002, p. 69;

[91] Constitutional Court of Republic of Lithuania. "On the Law on Museums" 1999;

[92] "Lietuvos Respublikos civilinio kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Civilinis kodeksas". 2000;

When interpreting Article 23 of the Constitution, the Constitutional Court has formed a provision which is clearly enshrined in the constitutions of some states, but which is not expressis verbis written in the Basic Law of Lithuania. Court highlited, that the Constitution guarantees the right of inheritance. As already mentioned, the Court interpreted the provisions of Paragraphs 1 and 2 of Article 23 of the Constitution through the rights of management, use and disposal belonging to the owner. However, in resolving the issue of the constitutionality of Paragraph 1 of Article 573 (wording from 17 May 1994) of the Civil Code in force, the Constitutional Court stated that the said provisions of the Constitution also mean "that the owner has the right to express his will... after his death and, in cases where no such will has been expressed, the right to have his property inherited by law after his death". "Article 23 of the Constitution enshrines the right of the owner to leave property as an inheritance".[93] As could be seen, the Court described these rights as independent rights and did not include them in the concept of disposal, which is often the case in civil law, stating that the group of property rights includes the right to determine the legal status of an object.

The inclusion of such rights in the content of the right of ownership presupposes not only a broad understanding of the content of this right, but also respect for both the owner himself and the property he owns. These rights are like guarantees that, in the event of the death of a person, the will expressed in respect of the property in his possession will be exercised, and in the absence of such expression, the property will be treated in accordance with the procedure laid down in advance by law.[94]

It could already be seen, that Lithuanian constitutional doctrine provides a comprehensive interpretation of the content of the right of ownership. There are enough constitutional justice cases in which the Court went far away from "triad" of rights to define the content of property rights.The definition of the content of the right of ownership, formed in the doctrine of the Constitutional Court, is not limited to three rights, that belong to owner, but is approaching the modern concept of the right of ownership, which has become established in Europe.

The court has repeatedly emphasized that the right to property is a natural right. It is therefore necessary to avoid defining the content of the right of ownership by specifying the

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[93] Constitutional Court of Republic of Lithuania."On the Right to Inheritance". 2002;

[94] "Lietuvos Respublikos civilinio kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas. Civilinis kodeksas". 2000;

specific rights of the owner, as they cannot be determined by law. By placing the right of ownership within the framework of the possible pre-established powers of the owner, we would encroach on the owner's ability to exercise the maximum power over the things. As M. Honore mentioned, approach to the property should be open and flexible, because not all things generally considered to be property share all the same characteristics or sets of characteristics.[95]

The owner must be allowed to exercise all possible powers in relation to the object of ownership, but without prejudice to the requirements of the law and the rights and freedoms of other persons. The content of the right of ownership must be seen as an unfinished circle of permits granted to the owner, which can be supplemented each time by new possibilities for the right holder. However, these possibilities should be exersized in compliance with law or contract provisions and with respect to general interests.

At present, it is considered that the concept of the content of property established in the law is not necessary at all, and its existence has no practical significance, thus, the issue of the content of the right of ownership is left to the doctrine of law. However, in Lithuanian legal science, the content of the right of ownership has not been finally “pulled” out of the triad. On the other hand, as Mr Fedosiuk pointed out, the doctrine of property law is still evolving in Lithuania, so it must be assumed that the problem of the content of property law, which has both theoretical and practical significance, will be examined in nearest future. Meanwhile, the doctrine of foreign law analyzes property issues in detail. For example, when it comes to the content of ownership, there are more opportunities for the owner than is habitually for us. A. M. Honore draws attention to the right to own, the right to use, the right to manage, the right to income, the right to capital and security. The case law of the European Court of Human Rights also recognizes the elements of the content of the right of ownership as the right of pledge, destruction, the right to exclude others from the possession of the thing, the right to prohibit other persons from making any influence on the property, etc.

Both in the doctrine of law (especially foreign) and in the case law of the Constitutional Court when trying to determing the possibility of expanding the content of the right of ownership, by including other rights or, more generally, by arguing that the content of the right to property is dynamic and adaptable to objective economic practices, the question inevitably arises as to which rights are sufficient grounds for finding that the person concerned has a right

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[95] Property and the Body: Applying Honoré 2007;

to property? Another equally important question is whether the ability to fully realize at least one right that falls within the content of the right of ownership is a reasonable basis for claiming that it is a restriction of the right of ownership and not an expropriation? Unfortunately, the author could not find the answer to these questions in the jurisprudence of the Constitutional Court. So the questions still remain investigated by legislators and judges.

Civil turnover is constantly evolving, property relations are changing, and ownership itself is not a constant category. The life practice introduces new means of enforcing the right of ownership, the use of which is restricted if the limits of the possibilities of the holder of the right of ownership are determined in advance. The content of the right of ownership is variable, the Constitutional Court in its practice has moved away from the static content of this right. Thus, it can be predicted that further constitutional doctrine formed by the Court may create new rights that do not fall into the "triad" but form the content of the right of ownership, which the institution of constitutional justice will not refuse to protect in accordance with Article 23 of the Constitution.

Summarizing the above, it can be stated that the concept of the content of the right of ownership formed in the jurisprudence of the Constitutional Court of the Republic of Lithuania is not totally identified with the usual "triad" of owner rights in classical civil law and is modern from the point of view of the current doctrine of property law. The court noted that the synthesis of the subjective right of ownership with the triad of rights does not correspond to the diversity of legal relations of ownership, as a result of which it acknowledged the existence of other possibilities constituting the content of the right of ownership. The Constitutional Court did not refuse to grant guarantees for the protection of constitutional property to those rights of the owner which do not fall into the triad of rights. Finally, in his practice, it provided a definition of the content of property rights, which presupposes that the owner owns a non-exhaustive list of property rights and that one can dispose of his property as he wishes, but in compliance with the law and without prejudice to the rights of others.

2.3. Protection of Lithuanian property rights in the European Court of Human Rights

Possibility to apply to the European Court of Human Rights for protection, became availiable for the citizens of Lithuania, after ratification of the European Convention of Human Rights in 1995. As it was mentioned, Article 1 of the Protocol No. 1 to the Convention guarantees protection of property-related rights. According to the Article 1, every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived

of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.[96] In general, Article 1 intends to protect applicants from any encroachment by the state on the right of a person to peacefully own his property, ie. to protect the right to private property.

While studying Cases, regarding violation of Article 1 of the Protocol №1, Court came to the conclusion, that the whole concept of "property" shoud be interpreted autonomously and determined what could be included into the scope of the concept. Attention was paid to requirements according to which interference within the property right of a person could be legitimate. It could be said, that Article 1 of the Protocol No.1 requires European Court of Human Rights to study each case separately, with paying attention to all details. That is why, each decision has it`s own important conclusions, made by judges. In this Chapter author makes a study through the judicial practice of the European Court of Human Rights in Cases brought, before the Court, against Lithuania. Study includes grounds, that were used by the Court for both satisfying individual`s claims, regarding property rights violation, as well as reasons for declining of the applications.

In the case of Pyrantienė v. Lithuania (No. 45092/07)[97], the European Court of Human Rights found a violation of Article 1 of Protocol No. 1 to the Convention (protection of property). Case was brought because of insufficient lewel of compensation, that was paid to Ms. Pyrantienė for depriving her of legally-owned piece of land, by the government.

Kotrina Pyrantienė applied to the Court in 2007, arguing that she had not been duly compensated for the land taken in Kaunas district, which she had acquired from the state for investment checks in 1996. It later emerged that the State sold the land to the applicant, without having a right to conclude such an agreement. Lithuanian authorities in 2001 applied to the courts for invalidation of an agreement, which ultimately decided to annul the decision of the Kaunas County Governor's administration, which led to concluding of a purchase-sale transaction. In 2005, the plot of land was returned in kind to the heirs of the former owners.

In the main proceedings, the ECtHR found that the applicant's property had been confiscated in accordance with the law, and that the legitimate aim of protecting the public interest had been to protect the rights of the former landowners. Nevertheless, the Court found

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96 "Protocol 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms". 1952;

97 European Court of Human Rights. Judgement. Pyrantienė v. Lithuania. Application no. 45092/07;

a violation of the applicant's property rights on the ground that she had not been adequately compensated. In this regard, the ECtHR, while recalling its case-law stating that Article 1 of Protocol No. 1 to the Convention does not guarantee the right to full compensation (i.e not the full market price may be reimbursed in certain circumstances), found that the domestic courts did not take into account the applicant's individual situation.

The court also recalled that the state cannot impose a burden on a person for mistakes made by the state authorities themselves. Furthermore, the ECtHR noted that the applicant was a bona fide acquirer and could not have been aware that the heirs of the former owners were claiming the land she was purchasing.

The Court recalled that the principle of good administration is particularly important in similar cases, which means that public authorities must act swiftly, properly and consistently when dealing with a matter of public interest, in particular fundamental human rights such as property rights. According to the court, in the present case the decision of the local authorities to sell the applicant's plot of land had been made without all the circumstances being properly clarified. Having assessed all the circumstances of the case, the Court concluded that the principle of a fair balance of interests had not been ensured.

The important conclusions, regarding meaning of Article 1 Protocol No. 1, that were made by the European Court of Human Rights, while deciding on this case were:

- any interference by competent authorities into peaceful possesion of person, even when such interference pursues a legitimate aim, should satisfy the requirment of proportionality;

- deprivation of the property, that was acquired in good faith, should in consequence lead to compensation. Compensation itself, should reflect the real value of the property;

- disproportion between compensation paid and market value of property could exist, but it should not violate “fair balance” and individual’s fundamental rights;

- authorities, when making decisions, must strike the balance between demands of public interest and right of every person to peacefully enjoy its possesions.

European Court of Human Rights underlined in the Case of Pyrantienė v. Lithuania also underlined the importance for governmental authorities, to act within “good governance” principle, in the cases, where interference into the right of individual to enjoy possesion exists.

Another principle, that was mentioned during this case - was the princilple of “good faith”. Lithuanian authorities on domestic level and ECtHR during court hearings, did not challanged or disputed the good faith of the applicant. Government agreed, that Ms. Pyrantienė acted in legal way, moreover, the Court provided a lack of any privileged position (while

acquiring the plot from the State) on the part of the applicant as an additional argument for her good faith .[98] While determining, whether the applicant could be considered a bona fide holder of the property or not, Court also should consider the time, when the applicant was aware or should have been aware of the circumstances precluding the applicant from acquiring the property in question. Precisely, in Case Pyrantienė v. Lithuania, circumstances which show that the applicant was not entitled to receive the property, came to light only many years after the applicant had acquired that property. That fact also indicates the good faith of the applicant.[99]

The Case of Britaniškina v. Lithuania (no. 67412/14) , is an example of judicial practice, where no violation of Article 1 Protocol No.1 was found.[100]

According to the circumstances, the applicant was not satisfied with the process of restitution of a house and a plot of land, that have belonged to her husband's grandfather before nationalisation. Ms. Libė Britaniškina started proceedings after her husband passed away, arguing, that the compensation, awarded by State to him, was unjust. Due to the fact, that domestic legislation had changed, while the case was pending before the courts, the State could no longer compensate the applicant in the way she had hoped. Lithuanian authorities mentioned, that paying restitution in sequrities became impossiple, due to adopted changes in legislation, but applicant could recieve alternative compensation in monetary way. She was asked to express her preference, but never replied.

During proceedings ECtHR addressed to the principles of good governance and fair balance. Precisely, Court pointed on to the nessecity to find the proportion between the land`s market value and pecuniary compensation,that could be awarded. Such compensation should strike a fair balance between public needs and rights of individuals, who were affected. In the cases regarding property rights, particular importance must be attached to the principle of good governance, that imposes an obligation on public authorities to act in good time, in an appropriate manner and with utmost consistency.[101] Court came to the conclusion, that in the present case, property rights of an applicant were restored by government in 2009, when

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[98] European Court of Human Rights. Judgement. Pyrantienė v. Lithuania. Application no. 45092/07;

[99] Bruskina 2018, p. 16;

[100] European Court of Human Rights. Judgement. Britaniškina v. Lithuania. Application no. 67412/14;

[101] European Court of Human Rights. Judgement. Britaniškina v. Lithuania. Application no. 67412/14;

authorities agreed to compensate in natura of 0.0467 hectares of land and rest of the property was about to be repaid in monetary.

ECtHR took into account the complexity of issues, that government faced and is facing, while deciding on every case, considering restitution, and that leads to conclusion, that it is ordinary for some delays to arise. These obstacles themselves should not be criticised, but should be considered while assessing a State's conduct.

It is also important, that in case of Britaniškina v. Lithuania Court made a conclusion, that applicant's actions themselves led to lengthening of the restitution proceedings, so it os safe to say, that when deciding on matters of property rights restitution, judges do not only assess State`s actions, but also look onto how applicant himself contributed into the proceedings. An obligation to provide authorities with answers on to written requests, respond on the information, regarding possible restitution options, expressing the preferences should be respected by individuals, whose property rights were violated, in order to recive just satisfaction. Ms. Britaniškina`s inactivity allowed Court to make a decision, she contributed to the fact that her property rights had not been restored and to the lengthy restitution process.

Relying on the fact, that national authorities acted whithin fair balance and contributed by all availiable forces on the applicant`s case, aiming to restore her violated right in the best possible way, with respect of general interst, Court found no violation of Article 1 Protocol No. 1.

In the case of Varnienė v. Lithuania (no. 42916/04) the European Court of Human Rights found that Lithuania had violated the applicant's right to a fair trial (Article 6 of the Convention) and the right to the protection of property (Article 1 of Protocol No. 1).[102]

The circumstances of the Case were the following - applicant addressed to the European Court of Human Rights in 2004, alleging infringement of her rights in the proceedings concerning the ownership of the remaining immovable property. The local authorities restored the applicant's right to a plot of land belonging to her mother before nationalization near a residential house in Vilnius, Valakupiai. The applicant applied to the national court with a request, a 33-acre plot of land in the same area near the house to be returned to her in natura. During the proceedings in the local courts, applicant reached up to the appellate instance, that in its decision ordered the State to return to her the land in her possession. After the decision

[102] European Court of Human Rights. Judgement. Varnienė v. Lithuania. Application no. 42916/04;

entered into force, authorities did not execute court`s ruling, moreover, the local authority appealed the execution order, and in May 2004 the Supreme Administrative Court ruled that its previous judgment ordering the land to be returned to Ms Varnienė had been made in error.[103]

Applicant appealed to European Court of Human Rights, on violation of Article 1 Protocol No.1 and Article 6 to the Convention. She stated, that reopening of the administrative court proceedings in her case was in breach of the res judicata principle. The factual circumstances had been correctly determined during the first set of proceedings, where a final court decision had been taken.[104]

In its main proceedings, the ECtHR emphasized the importance of the principle of legal certainty, which presupposes compliance with the principle of res judicata, stating that neither party has the right to seek a review of a final and final judgment merely for a retrial. The power of the higher court to reopen the proceedings must be limited to correcting errors of law, but not a new review of the case in principle. The resumption of proceedings should not be a hidden appeal. Judges also made a conclusion, that the mere existence of two different views on a particular issue is not a sufficient basis for reopening the process. Deviation from this principle is possible only if it is necessary due to compelling and convincing circumstances.

In deciding on the protection of the applicant's property rights, the ECtHR once again reminded, that Article 1 of Protocol No. 1, comprises three distinct rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest.[105] Although the Government's argument that the applicants retained the right to restore property rights to the land belonging to her mother in other ways, i. e. not necessarily in kind in a natura, had been took into account, Court found a violation of Article 1 of Protocol No. 1 to the Convention. In this case violation of property rights was linked to the matter of violation of Article 6 of the

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[103] EUROPEAN FOUNDATION of HUMAN RIGHTS 2010;

[104] European Court of Human Rights. Judgement. Varnienė v. Lithuania. Application no. 42916/04;

[105] European Court of Human Rights. Judgement. Varnienė v. Lithuania. Application no. 42916/04;

Convention, found above and on the ground that the applicant's property rights had been violated without a proper legal basis. On an equitable basis, the Court awarded the applicant.

Case of Varnienė v. Lithuania illustrated, that ECtHR could step away from generally established precedental practice and despite the arguments of the State, that applicant was not deprived of the right to restoration of posessions, admit an existing violation of Article 1 of Protocol No 1 to the Convention. In Varnienė's case, applicant's right to recieve fair trial was violated and legal certainity criteria was not respected by competent authorities. Formally, Ms. Varnienė still had the right to restore her property rights on the national level, but ECtHR ruled into applicant`s favor, relying on the fact, applicant had been deprived of property without a proper legal basis, which is indisputably a breach of rights, guaranteed by European Convention on Human Rights.

Another important judgement was made in case of Tumeliai v. Lithuania (no. 25545/14).Applicants - Mr. Donatas Tumelis and Mrs. Renata Tumelienė argued, that their rights, guaranteed by Article 6 § 1 of the Convention (concerning respect of legal certainty) and Article 1 Protocol No 1 (concerning peaceful enjoyment of possesions) were violated.[106]

Applicants claimed, they have purchased plot of forest land. After concluding of a purchase-sale agreement, applicant addresed to the district court to establish a legal fact, that on a purchased land there used to be some buildings. That request was lodged because, under domestic legislation, it was prohibited to construct new buildings, but was possible to reconstruct the existing ones.

On the specific terms, applicants, obtained every needed document to legitimate the constructed building, but despite that, prosecution office, started proceedings, demanding to annul the building permit and oblige the applicants to demolish the building at the expense of the established guilty parties. The guilt, according to the prosecution, was on the applicants and on the Municipality, and environmental protection department, that have issued mentioned building permits.

At first, court of first instance dismissed prosecutor's application, claiming, that according to the relevant legislation, on the time permits were obtained, it was not illegal to construct new residential buildings in the place of former buildings, as well as to reconstruct existing residential buildings and construct necessary storehouses. The case law of the

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[106] European Court of Human Rights. Judgement. Tumeliai v. Lithuania.Application no. 25545/14;

Constitutional Court of Lithuania, on which prosecutors were relying, was adopted after the building permit had been issued to the first applicant. Moreover, Molėtai District Court highlited, that applicants build the building according relevant legislation and there were no evidences, that construction works could damage the environment. However, according to the first instance opinion, demolishing of the building itself could cause environmental damage.[107]

After that, prosecutor's office lodged an appeal and both appellate court and the Supreme Court satisfied the requirements of the prosecutor's office. So applicants made a decision to address for the protection of violated rights to the European Court of Human rights and made a pledge to suspend the execution of the judgment until the decision would be taken by ECtHR.

Relying, in particular, on Article 1 of Protocol No. 1 , applicants lodged a complaint, claiming they had been deprived of their right to the enjoyment of their possessions after being ordered to demolish their summer house.

While deciding on the merits, European Court of Human Rights, reminded once again about existing of three rules in the Article 1 Protocol No.1 (these rules were already mentioned in the case of Varnienė v. Lithuania). The Court mentiones,that the second and third rules are concerned with particular instances of interference with the right to the peaceful enjoyment of property and should comply with the principle of lawfulness and pursue a legitimate aim.[108] It was also expressed, that environmental protection grounds today attracts interest of public, and is used by national authorities as an excuse to widen its margin of appreciation, that leads to breaching of an fair balance between public interest and individual's right to enjoy possesions.

With regard to the violation of Article 1 of Protocol No. 1, the Court decided as follows: the demolishing of the house was conducted in legal nature, under provisions of domestic regulation, the interference into possesion was lawful, pursued legitimate aim and was in the public interests. So, in general, State authorities actit within its competence and legislative regulation.

Yet, despite interference may be considred lawful, attention was paid to the particular circumstances of the specific case. Firstly, it was hard to establish, whether having regard to the applicants' interest in keeping the house, the order to demolish it is a means proportionate

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[107] European Court of Human Rights. Judgement. Tumeliai v. Lithuania.Application no. 25545/14 § 16;

[108] European Court of Human Rights. Judgement. Tumeliai v. Lithuania.Application no. 25545/14 § 72;

to the aim pursued.[109] In the most general terms, the principle of proportionality, that is enshrined in Article 18 of the Convention, means that the measures taken by the authorities must not go beyond what is necessary to attain the objective. It is always necessary to maintain a balance of interests of both the state and individual citizens, which will ensure the rule of law in the field of protection of rights, freedoms and interests. The European Court of Human Rights had previously noted that, in accordance with the principle of proportionality, "any special procedure," condition "," restriction "or" penalty "imposed must be proportionate to the legitimate aim pursued." In addition to the legitimate aim, the European Court also puts forward such possible cases of restriction of human rights as: "urgent social need", "morality of the population", maintaining a balance between public interests and the interests of the individual.[110]

Secondly, Court came to the conclusion, that according to the principle of good governance, authorities are obliged to prevent or correct occasional mistakes, even ones resulting from the negligence of State bodies. The applicant should not be bearing consequences same or stricter, than authorities, that issued specific permits, that later appeared to be in breach of law.[111] From the circumstances of the case it is clear, that applicants, performed all actions dependent on them, and had not somehow contributed into adopting of unlawful decision. The Court stressed, that applicant did not have any reasos to doubt the validity of issued permit.

Thirdly, domestic courts failed to explain, how demolishing costs should be splitted between defendants, also the degree of responsibility of applicants was not investigated. These reasons were enough for ECtHR to conclude that the measure complained of was disproportionate to the legitimate aim pursued. It follows that there has been a violation of Article 1 of Protocol No. 1 to the Convention.[112]

From Case of Tumeliai v. Lithuania we could make a conclusion, that even if on legislative level, infringement into possesion is allowed, big attention should be paid into the level of contribution of public bodies into existing situation and degree of responsibility of

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[109] European Court of Human Rights. Judgement. Tumeliai v. Lithuania.Application no. 25545/14 § 76;

[110] Totsky 2013, p. 71;

[111] Stelkens and Andrijauskaitė 2020, p. 576;

[112] European Court of Human Rights. Judgement. Tumeliai v. Lithuania.Application no. 25545/14 § 81-82;

applicants and State bodies should be properly examined. It is an obligation of public administrative bodies, while issuing building permits, to act within the existing legislative provisions and apply it correctly, as individuals in their expectations and beliefs rely on the decisions of authorized persons in the same way, they could be relying on the law. According to the principle of good governance, mistakes made by a State authority must be borne by the State itself, and errors must not be remedied at the expense of the individuals concerned. Absence of rules on the abolition of building permits and mechanisms of correcting of mistakes, made by State authorities, while issuing such permits, is incompatible with the property rights guaranteed by Protocol 1 to the ECtHR, and the principle of legitimate expectations.[113]

Quite an opposite situation could be seen in the Case Kaminskas v. Lithuania (application no. 44817/18). An application was lodged by Mr. Vytautas Kaminskas against Lithuania, he was arguing on violation by Lithuanian authorities of his rights, guaranteed by Article 8 of the Convention.[114] The case concerned the decision to demolish the applicant's house on the ground that the house had been built illegally on a plot of land belonging to the forest fund, that is protected by State's envitonmental legislation. Applicant, recieved mentiond plot of land as a gift from his mother, and sometime after obtaining his property rights, he constructed an illegal building, where he used to reside. After the State Inspectorate of Territorial Planning and Construction under the Ministry of the Environment inspected the applicant's land and found that the construction had been unlawful, he was ordered to demolish the buildings within six months.[115]

During litigations, Mr Kaminskas, didn't dispute the illegality of construction, although mentioned, he was planning to change the status of his land, obtain necessary permits ex post facto and legitimate the buildings in that way. Applicant also claimed, that he did not have sufficient funds to provide himself with another place for living and the disputed house - is his family's only place to reside. In the further proceedings local courts dismissed applicant's requests to re-assess the boundaries of the forest on his land and to exclude from the forest land category the part on which the house had been built. The same fate awaited his further

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[113] Khatsernova 2021, p.638;

[114] European Court of Human Rights. Judgement. Kaminskas v. Lithuania. Application no. 44817/18;

[115] European Court of Human Rights. Judgement. Kaminskas v. Lithuania. Application no. 44817/18 § 6;

complaints, district court of Kaunas did not attach significance to the fact of the applicant's respectable age and his low income as an exception from the obligation to comply with law.[116] European Court of Human Rights also paid respect to the fact, that national courts assessed applicant's individual situation[117] and made several concessions to the applicant, such as the extension of the demolition deadline, in order to enable the ex-post legalization of the building. Strasbourg was satisfied that the domestic authorities had assessed all the relevant circumstances and examined all of the applicant's allegations on the basis of his personal situation.[118]

The Court concluded that the demolition decision pursued legitimate aims, was in the public interest[119] and was necessary in a democratic society. The ECtHR took this into account the applicant's difficult situation in view of his retirement age, bad health and low income[120], but compared the applicant's interests with the general interests of society in preservation of forests and the environment and noted that neither the age of the applicant, nor his other personal circumstances could be decisive given that the applicant had knowingly built a house on a protected site without a permit.[121]

Court also defined, that notion "home", within the meaning of Article 8 of the Convention is not limited to premises which are lawfully occupied or which have been lawfully established. It is an autonomous concept which does not depend on classification under domestic law.[122] ECtHR mentioned, that despite of the fact, applicant builded house illegaly, it could be

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[116] European Court of Human Rights. Judgement. Kaminskas v. Lithuania. Application no. 44817/18 § 11;

[117] See § 34 <Kaminskas v. ...>. During hearings in case of Mr. Kaminskas, applicant appealed against decision of local courts. He submitted that he was retired and in poor health, his wife had cancer, and they had nowhere else to live. He stated that he had built the house on his own land and its presence did not interfere with anybody's interests, as demonstrated by letters from the local authorities and local residents, expressing their support for him. He argued that the first-instance court had failed to strike a fair balance between his rights and the public interest. ECtHR pointed, that national authorities were not obliged to make for him any postponements, in accordance with national law, however Court allowed to increase the time to implement the decision to 6 months.

[118] The Demolition of a House... 2020;

[119] European Court of Human Rights. Judgement. Kaminskas v. Lithuania. Application no. 44817/18 §53;

[120] European Court of Human Rights. Judgement. Kaminskas v. Lithuania. Application no. 44817/18 §34;

[121] European Court of Human Rights. Judgement. Kaminskas v. Lithuania. Application no. 44817/18 §64;

[122] European Court of Human Rights. Judgement. Kaminskas v. Lithuania. Application no. 44817/18 §42;

considered as his “home” and made a reference to already established judicial practice.[123] But that obstacles should be properly examined on compliance with rights, which are protected by the Convention. Final decision always depends on the factual circumstances, namely, the existence of sufficient and continuous links with a specific place.

In particular situation Court came to conclusion, that applicant had built his house unlawfully and that he had done so knowingly, moreover, he started to look for legitimation of the building only after demolishing order was issued and the situation he brought himself in, was his personal guilt.

At the same time, according to the Court’s opinion, goverment took enough of measures to help applicant to improve his situation and adequately addressed the applicant’s arguments regarding his individual situation. As a result, the court did not find any violation of the applicant's rights under the Convention.

CONCLUSIONS TO CHAPTER 2

Property law is the broadest right in rem in terms of content, which is also one of the main ones human rights. Regulation of property law has emerged after Lithuania established new social-economic system with recognition of private property, the principles of its inviolability and the protection of property rights, which replaced the socialist principles to property that existed under the Soviet past. Lithuania, after regaining independence, started its way in the process of building proper conditions for a free economy.

This chapter explains whether the current regulation of the content of owner 's rights in Lithuania is appropriate and sufficient for the full exercise of the owner's rights, ensuring that there are no violation of laws and rights and interests of other persons. The paper reveals the main points with that related issues and draws attention to the historical development of the content of owner rights and its impact modern law.

In Lithuanian legal doctrine, property rights are regulated by Constitution of Lithuania, Civil Code of Lithuania and big attention is being paid to property rights protection by Constitutional Court of Republic of Lithuania, that adopts judicial practice, reveals the content

[123] In particular at Ivanova and Cherkezov v. Bulgaria, no. 46577/15, § 49, ECHR made a conclusion, that considering the amount of years, individual has been living in a house, building could be named “home” and the order for its demolition amounts to an interference with their right to respect for that home. In Yevgeniy Zakharov v. Russia, no. 66610/10, § 30, Court highlited, concept of “home” within the meaning of Article 8 is not limited to premises which are lawfully occupied or which have been lawfully established. It is an autonomous concept which does not depend on classification under domestic law.

of property rights and clarifies the provisions of the legislation. Also, various legal acts were adopted to regulate property-related rights or define property in narrow spheres, among them: Law on the Basis of Valuation of Property and Business, Law on the Prevention of Money Laundering and Terrorism Financing, the Accounting Act. Such legal acts interpret the wide general notion of property, that is given by Constitution, and narrow it, according to the needs and aims of the particular regulation.

In the commonly accepted understanding, that is widespreaded in Lithuania, property is understood as the totality of objects, rights and obligations belonging to a subject of civil law. Interpretation of the 'property', under Lithuanian law, could be very wide. Objects of ownership include every thing, or other object, that could be purchased. Such objects that cannot be appropriated could not be considered as objects of property rights. Property rights as an objects of civil law should also have potential value. The regulation of the content of the rights of the owner according to the Civil Code of the Republic of Lithuania still is not widely discussed. By analysin the provisions of Civil Code of Lithuania, it could be said, that main features of property rights are absoluteness, elasticity, stability, safety and reliability. Ownership is defined, as right to manage, possess, use, and dispose of property at one's volition, bringing us to the well-known "triad" of rights. Constitutional Court, however, does not exclude the synthesis of the right of ownership into the triad of rights, making a statement, that whole powers of owner are far beyond three well-known ones. Civil Code also provides with special rules for ownership of land and other immovable property; two forms of common property and special remedies: vindicative action, actio negatoria, possessory action.

Besides domestic remedies, another important way to protect property rights, is the possible protection in European Court of Human Rights, that arose for lithuanian citizens in 1995, after ratification of the Convention. These rights are guaranteed by Article 1 Protocol 1 to the Convention.

An analysis of the case law of the European Court of Human Rights makes it clear that the content of Article 1 to Protocol 1 shows that it has its own specific structure. It contains three separate rules.

What else could be importantly noted, is that State has obligation to act within fair balance between public interest and individual's right to peacefully enjoy possesions. It is also important to respect legal certainity principle, good governance and proportionality. In order to comply with the test of proportionality between the public needs and the interests of an

individual, interference should be conducted in such a manner which is not arbitrary and which is in accordance with the law.

State, however, has a wide margin of appreciation in deciding on a property related cases. But in every particular case, individual circumstances should be respected, the actions of the applicants and public authorities should be assessed, the level of contribution made by parties should be examined and the grounds for interfering with the right of ownership should be examined. Compensation for interference into peaceful enjoyment of possesions should be paid in most cases, only exeptional obstacles could free government from recovering damages (such as wittingly illegal acquisition of property).

In some cases, despite the State's compliance with all the requirements and its acting within the law, the Court may find a violation of property rights and award compensation to the applicant. Each decision is always made by the court after a detailed assessment of the circumstances of the case.

CHAPTER 3. FEATURES OF UKRAINIAN PROPERTY RIGHTS AND THEIR PROTECTION IN THE EUROPEAN COURT OF HUMAN RIGHTS

3.1. Concept, nature and types of property rights under the Ukrainian civil law

As stated in Art. 3 of the Constitution of Ukraine, "a person, his life and health, honor and dignity, inviolability and security are the highest social values in Ukraine".[124] This provision is the basis for the development of civil society and the rule of law, in which property rights are inviolable. Constitutional guarantees of property rights in Ukraine are established by a number of articles of the Constitution. First of all, in accordance with Art. 41 of the Constitution of Ukraine, “everyone has the right to own, use and dispose of their property, the results of their intellectual and creative activities. The right of private property is acquired in the manner prescribed by law. Citizens may use state and municipal property in accordance with the law to meet their needs. No one may be unlawfully deprived of property rights. The right of private property is inviolable. Compulsory alienation of private property can be used only as an exception for reasons of public necessity, on the basis and in the manner prescribed by law, and subject to prior and full reimbursement of their value. Compulsory expropriation of such objects, followed by full reimbursement of their value, is allowed only in a state of war or emergency. Confiscation of property may be applied only by court decision in cases, to the extent and in the manner prescribed by law. The use of property cannot harm the rights, freedoms and dignity of citizens, the interests of society, worsen the environmental situation and the natural qualities of the land ".[125]

The basic provision of this article is, of course, that provides for the right of everyone to own, use and dispose of their property, the results of their intellectual, creative activities. In contrast to Art. 1 of Protocol No. 1 to the ECHR, the drafters of the Constitution of Ukraine did not make a separate reservation that this is the right to free, unimpeded or peaceful possession, use and disposal of property. In addition, the right of ownership is determined in the Basic Law through the "triad" of rights - to possess, use and dispose.

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[124] "Constitution of Ukraine" 1996, art. 3;

[125] "Constitution of Ukraine" 1996, art. 41;

At the same time, O. Grinenko agrees with the position of a number of Ukrainian scholars, that the drafters of the Constitution of Ukraine could have more broadly disclose the existing powers of the owners. Thus, she notes that “one can agree with the views of those domestic scholars who rightly point out that the legislator in formulating this constitutional norm has overlooked one of the important human rights under which person can freely exercise property rights over his property, namely :… To use it for economic and other activities not prohibited by law, to transfer it for temporary use to other citizens, legal entities and the state, to alienate it freely. Finally, the right of private property can be inherited ".[126] However, in our opinion, it would be a mistake to follow the path of defining in the Constitution of Ukraine all possible ways to exercise property rights. After all, in the conditions of constant development of economic relations there are more and more new ways of realization of the property right which can be not included in the specified list.

In addition, parts 3 and 4 of Art. 13 of the Constitution of Ukraine stipulate that obligations arise with property rights. It should not be used to the detriment of man and society. The state ensures the protection of the rights of all subjects of property rights and management, the social orientation of the economy. All subjects of property rights are equal before the law. Separately Art. 14 of the Constitution of Ukraine provides for the basic principles of realization of land ownership, according to which land ownership is guaranteed. This right is acquired and exercised by citizens, legal entities and the state exclusively in accordance with the law. According to Art. 92 of the Constitution of Ukraine "human and civil rights and freedoms, guarantees of these rights and freedoms; the basic responsibilities of a citizen are determined exclusively by the laws of Ukraine”.[127]

O. Grinenko finds a fairly broad meaning of Art. 92 of the Constitution of Ukraine. In particular, she emphasizes that “it follows from the provisions of Article 92 of the Constitution of Ukraine that only the laws of Ukraine determine the legal regime of property, and extends to the establishment of restrictions on the exercise of property rights or acquisition of property rights. After all, the legal regime of ownership includes at the same time the regime of

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[126] Grienko 2016;

[127] "Constitution of Ukraine" 1996, art. 13,14,92;

exercising the right to such property, and therefore the restrictions established by other regulations should be considered unconstitutional ".[128]

Provisions of the Constitution of Ukraine, governing property rights, include Art. 54, which stipulates that "citizens are guaranteed ... protection of intellectual property, their copyrights, moral and material interests arising in connection with various types of intellectual activity".[129]

Protection of property rights, as well as other constitutional rights and freedoms of man and citizen is carried out in the bodies specified in Art. 55 of the Constitution of Ukraine (in courts, by appealing to the Commissioner of the Verkhovna Rada of Ukraine for Human Rights, by appealing to the Constitutional Court of Ukraine, in international judicial institutions or competent bodies of international organizations, by other means not prohibited by law).

At the same time, in accordance with the obligations assumed by Ukraine, arising from its membership in the Council of Europe and ratification of the ECHR, everyone under the jurisdiction of Ukraine, in case of exhaustion of all domestic remedies, is guaranteed the opportunity to apply to the European Court human rights to protect their rights.

Thus, the Constitution of Ukraine systematically determines the conditions for the exercise of property rights and the principles of its protection. At the same time it should be borne in mind that in accordance with Part 1 of Art. 9 of the Constitution of Ukraine, the ECHR is part of the national legislation of Ukraine, and therefore provides guarantees of convention rights both in the sense of its substantive norms and the relevant jurisdictional mechanisms for their protection. The Civil Procedure Code of Ukraine, stipulates that the court applies the ECHR and its protocols when considering cases, the binding nature of which was approved by the Verkhovna Rada of Ukraine and the practice of the ECtHR as a source of law (Article 10 § 4).[130]

The enshrinement of property rights in the Constitution of Ukraine creates conditions for its consideration as a fundamental constitutional principle. As noted by O.M. Klimenko, "The principle of inviolability of property rights is enshrined in Art. 41 of the Constitution of Ukraine, which is contained in Section II - "Rights, freedoms and responsibilities of man and

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[128] Grinenko 2016;

[129] "Constitution of Ukraine" 1996, art. 54;

[130] "Civil Procedure Code of Ukraine" 2004;

citizen", th indicates belonging of property rights to the system of constitutional human rights and freedoms and their guarantees. At the same time, this principle is in connection with the provisions of part two of Art. 3, Articles 13, 14 of the Constitution of Ukraine, which are referred to the general principles of the constitutional order. This gives grounds to consider it as a general constitutional principle ".[131]

In addition, the fundamental principles of the principle of inviolability of property rights are regulated in the laws of Ukraine, in particular Art. 321 of the Civil Code of Ukraine, according to which the right of ownership is inviolable, no one may be unlawfully deprived of this right or restricted in exercising it[132], Art. 147 of the Commercial Code of Ukraine, which provides that the property rights of economic entities are protected by law. "Seizure by the state of the property of company, is allowed only in cases, on the grounds and in the manner prescribed by law. Damages caused to a business entity in violation of its property rights by citizens or legal entities, as well as public authorities or local governments, are reimbursed in accordance with the law "[133]and other laws and regulations.

However, any right of a person becomes practically valuable only when the state creates a mechanism for its implementation and protection. Despite the fact that the institution of property rights, in particular private property, has been developed by Ukrainian lawyers since the first years of Ukraine's independence, as the first steps of economic reforms were to take place in this area, Ukrainian legislation needs to be significantly improved. In particular, European standards of property protection must be taken into account.

As noted above, Art. 41 of the Constitution of Ukraine sets fundamental principles of legal guarantees for the protection of private property rights and fully correspond to Art. 1 of Protocol No. 1 to the ECHR.

Inviolability of right to property was interpreted by many scholars, most of them agree, that it should include the absolute duty of third parties and the State to refrain from encroachment on property. Also, the existence of guarantees of protection and protection of this right from unlawful encroachment.[134] Existance of well-developed mechanism of

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[131] Klymenko 2012, p.51;

[132] "The Civil Code of Ukraine" 2003, art. 321;

[133] "Commercial Code of Ukraine" 2003, art. 147;

[134] Antonyuk 2017, p.8;

protection of property rights, is important for proper functioning of economic and social spheres.

Ensuring the economic security of the state is carried out by defining in the Constitution the legal regime for important natural resources, the preservation and development of which depends on the normal functioning of Ukraine as a state and its population. We are talking about land, its subsoil, air, water and other natural resources that are within the territory of Ukraine, natural resources of its continental shelf, exclusive (marine) economic zone, which are recognized by the Constitution as objects of property of the Ukrainian people their powers in this area through public authorities and local self-government, as well as such a particularly important object for Ukraine as land, which is recognized by the Constitution of Ukraine as a national treasure, which is under special protection of the state. These provisions, according to OM Klimenko, in a systematic connection with Part 1 of Art. 17 of the Constitution of Ukraine provide the basis of state sovereignty, and correspond to the provisions of the Declaration of State Sovereignty of Ukraine of July 16, 1990.[135]

However, the right of ownership has not only an economic direction, it also plays a social function, as property imposes certain obligations (Part 3 of Article 13 of the Constitution of Ukraine) and each owner, while exercising its powers, must act in the interests of society, should not use it to harm individual and society. In particular, one cannot harm the rights, freedoms and dignity of citizens, the interests of society, worsen the environmental situation of the state. These responsibilities, in turn, are the limits of the use of property.

On the other hand, the social aspect of property rights is manifested in the fact that the state provides protection of the rights of all subjects of property rights and management, the social orientation of the economy. Additionally, the social function of property is expressed in the rule enshrined in Part 5 of Art. 41 of the Constitution of Ukraine, which provides for the possibility in exceptional cases and on grounds of public necessity in a state of war or emergency to forcibly alienate objects of private property subject to prior and full reimbursement of their value. O.O. Grinenko, however mentioned the difficulty of defining the concept of "public necessity". In particular, she writes, “it should be noted that the use in the first sentence of Part 5 of Art. 41 of the evaluative concept "public necessity", which is the

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[135] Klimenko 2014;

basis for the forcible seizure of private property, indicates the possibility of a conflict of private and public interests ".[136]

Thus, the analysis of current legislation of Ukraine governing property rights leads to the conclusion that the legal meaning of the principle of inviolability of property rights is to establish the constitutional law of the absolute obligation of everyone not to violate subjective property rights (except in the interests of society and cases and in the manner prescribed by law), as well as the positive obligation of the State to protect and defend the rights of all owners. Legal protection of property rights is carried out exclusively on the basis of and in accordance with the laws of Ukraine or international agreements, the consent to the binding nature of which was given by the Verkhovna Rada of Ukraine.

3.2 Protection of property rights in light of russian invasion in Ukraine

In line with the study of constitutional guarantees for the protection of property rights, it seems appropriate to analyze separately the problematic issues of their implementation in connection with the formation of illegal territorial formations of, so called, DPR and LPR in eastern Ukraine and annexation by the Russian Federation of the Autonomous Republic of Crimea. After all, these violations, along with the problems of national unity and territorial integrity, raise questions about the mechanisms of protection of property rights of the Ukrainian people, the state, individuals and legal entities to facilities located within these territories.

A separate, important nuance is State guarantees of protecting property rights for those people whose property has been damaged or lost, due to russian military invasion, on 24th February 2022.

Ukrainian experts have repeatedly emphasized gross and mass violations of human rights, including property rights in the Autonomous Republic of Crimea after its annexation, which in many cases led to the nationalization of property.

Since the beginning of the annexation, violations of property rights in Crimea have reached unprecedented proportions. All Ukrainian state property on the peninsula was expropriated under the reason of "nationalization" in the Republic of Crimea. The property of private companies was also quickly confiscated due to takeovers. On July 30, 2014, the self-

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[136] Grinenko 2016;

proclaimed Crimean authorities issued an order requiring all real estate lease agreements issued prior to annexation to be terminated early and unilaterally.[137]

Ukrainian BBC News reporter Anastasia Zanuda, tried to calculate in 2021, the approximate financial losses, caused by Russian Federation. According to her article, Ukraine has lost $ 135 billion from Russia's annexation of Crimea. And this is only a minimal proven estimate of losses.[138] Among these numbers - over about $15,7 billion lost by State and municipal enterprises and $18,4 billion lost by private companies. Losses caused by deprivation of private properties ewevaluated in $42,7 billions.[139]

All aspects of the nationalization of property belonging to Ukrainian entities by the illegal ARC authorities are shown in great detail, for example in the Analytical Report “Citizenship, Land, Nationalization of Property in the Occupation of Crimea: Deficit of Rights” prepared by the Ukrainian Independent Center for Policy Studies. United Nations Development Program (UNDP).

Resolution № 72/190 “Situation in the field of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine”[140], adopted by the UN General Assembly on December 19, 2017, in addition to condemning the violations committed by the Russian occupation authorities, abuse and discriminatory measures and methods against residents of the temporarily occupied Crimea, including Crimean Tatars, as well as Ukrainians and persons belonging to other ethnic and religious groups (para. 1), also urges the Russian Federation to respect the laws in force in Ukraine , and repeal the laws introduced in the Crimea by the Russian Federation, which allow for forced evictions and confiscation of private property in the Crimea in violation of applicable international law (paragraph "d" of paragraph 3).

Similar issues are acute in connection with the formation of illegal territorial formations of the DPR and LPR in eastern Ukraine. In particular, O. Pervomaisky during his speech at the International Conference "Property Rights: European Experience and Ukrainian Realities", held on October 22-23, 2015 in the Supreme Court of Ukraine raised important questions that need to be answered first, in particular, who really are the subjects of responsibility, given that

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[137] Klimenko 2015, p 17;

[138] Zanuda 2021;

[139] See Annex 2.

[140] General Assembly 2018;

the victims are both individuals and the state of Ukraine and the Ukrainian people in general? How is this interpreted in international law? What should be the optimal format for the protection of property rights in the occupied territories and territories where the anti-terrorist operation is carried out? According to the scientist, an international tribunal will be able to resolve these issues, the model of which should be suggested by the mediating countries. Defendants in cases of protection of property rights can be not only the actual perpetrators of harm, and these are usually individuals who have committed illegal acts against another's property (crimes, civil offenses), but also Ukraine as a state that did not guarantee protection of property rights within its territory. From the standpoint of justice, the subject of civil liability for violations of property rights in some areas of Luhansk and Donetsk regions is the Russian Federation.[141]

As Ya. M. Romaniuk noted, "Ukraine is currently facing new challenges and threats. Since February 20, 2014, as a result of the armed aggression of Russian Federation, Ukrainian territory of the Autonomous Republic of Crimea and the city of Sevastopol have been temporarily occupied. Similarly, since 2014 we face another threatening challenge, so in eastern Ukraine, an anti-terrorist operation is underway to overcome the terrorist threat, counter the aggression of a neighboring state - Russia - and preserve the territorial integrity of Ukraine. Unfortunately, hundreds of thousands of Ukrainians became internally displaced, left their homes, and lost their property. A large number of business entities of the Autonomous Republic of Crimea, industrial districts of Luhansk and Donetsk regions have ceased economic activity, lost assets in the form of property, as well as established business ties. All these events, of course, had a negative impact on property relations. Therefore, sooner or later, we can predict that we will receive a large number of lawsuits initiated by entities that lost their property in the ATO zone, on the line of demarcation, as a result of the ATO or during the temporary occupation of the ARC. It should be noted that this process has already begun, but how large it will be, it is impossible to predict."[142]

According to the legislation of Ukraine, the territory of the ARC and the city of Sevastopol, as well as certain districts of Donetsk and Luhansk regions are recognized as the occupied territory of Ukraine. Ukrainian legislation should be applied in these territories, which

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[141] Pervomaisky 2015, p. 304;

[142] Romanyuk 2016;

establishes the legal regime of ownership and guarantees its observance. This approach, in our opinion, should be applied to the ownership and use of property in the ARC.

In addition, Resolution № 72/190 “Situation in the field of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine”, adopted by the UN General Assembly on December 19, 2017, also condemned the illegal establishment of laws, jurisdiction and administration by the Russian Federation. in the occupied Crimea and required that the Russian Federation comply with international legal obligations in respect of the laws in force in the Crimea before the occupation (paragraph 2).[143]

Given the situation in the ARC, Ukraine has developed a special legal regulation of relations, including property relations, in such conditions, the Law of Ukraine "On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine" of April 15, 2014, the Law of Ukraine "On the creation of a free economic zone" Crimea "and the peculiarities of economic activity in the temporarily occupied territory of Ukraine" of August 12, 2014, the Law of Ukraine "On the administration of justice and criminal proceedings language with the anti-terrorist operation "of August 12, 2014.

Undoubtedly, the mass violations by the Crimean "pseudo-government" of the property rights of Ukrainian citizens in the ARC are a gross violation of property rights as one of the basic human rights, and accordingly the obligations of the Russian Federation to protect this right enshrined in Art. 1 of Protocol No. 1 to the ECHR. However, questions about the mechanisms for protecting these rights under the current conditions remain open.

Analyzing the legislative regulation of the implementation and protection of property rights to property located in the temporarily occupied territory of Ukraine, as well as problematic aspects of law enforcement, it should be noted that in accordance with the Law of Ukraine "On Ensuring Rights and Freedoms and Legal Regime in the Temporarily Occupied Territory of Ukraine"[144], which is based on the recognition of the territory of the Crimean peninsula as part of the territory of Ukraine, the right of ownership in the temporarily occupied territory is protected in accordance with the legislation of Ukraine (Part 2 of Article 11).

The state of Ukraine, the Autonomous Republic of Crimea, territorial communities, including the territorial community of the city of Sevastopol, state bodies, local governments

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[143] United Nations General Assembly 2017-2018;

[144] "On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine" 2014, art. 11;

and other subjects of public law retain the right of ownership and other real rights to property, including real estate, including land located in the temporarily occupied territory (Part 3 of Article 11). Individuals, regardless of their acquisition of refugee status or other special legal status, enterprises, institutions, organizations retain the right of ownership and other real rights to property, including real estate, including land located in the temporarily occupied territory, if it is acquired in accordance with the laws of Ukraine (Part 4 of Article 11).

Acquisition and termination of ownership of real estate located in the temporarily occupied territory is carried out in accordance with the legislation of Ukraine outside the temporarily occupied territory. If it is impossible for the state registrar to exercise the powers of state registration of real property rights and their encumbrances in the temporarily occupied territory, the state registration body is determined by the Cabinet of Ministers of Ukraine (Part 5 of Article 11). In the temporarily occupied territory, any transaction concerning immovable property, including land, committed in violation of the requirements of this Law, other laws of Ukraine, shall be considered invalid from the moment of commission and shall not create legal consequences, except those related to it. invalidity (Part 6 of Article 11).

The same approach is used in the Law of Ukraine "On the peculiarities of state policy to ensure the state sovereignty of Ukraine in the temporarily occupied territories in Donetsk and Luhansk regions" of January 18, 2018 № 2268-VIII[145], which states that for individuals regardless of their registration as internally displaced persons or their acquisition of special legal status and legal entities retain the right of ownership, other real rights to property, including real estate, including land located in the temporarily occupied territories in Donetsk and Luhansk oblasts, if such property is acquired in accordance with the laws of Ukraine. The state of Ukraine, territorial communities of villages, settlements, cities located in the temporarily occupied territories in Donetsk and Luhansk regions, public authorities, local governments and other subjects of public law retain the right of ownership, other property rights, including on real estate, including land located in the temporarily occupied territories in Donetsk and Luhansk regions (Article 2).

In this context, in our opinion, it is interesting to review the practice of resolving various issues of property rights in these territories. In particular, as noted above, Art. 11 of the Law of Ukraine "On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the

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[145] "On the peculiarities of state policy to ensure the state sovereignty of Ukraine in the temporarily occupied territories in Donetsk and Luhansk regions" 2018, art. 2;

Temporarily Occupied Territory of Ukraine" regulates such an important component of the acquisition and termination of property rights as state registration. In particular, in case of impossibility for the state registrar to exercise the powers of state registration of real rights to immovable property and their encumbrances in the temporarily occupied territory, the state registration body is determined by the Cabinet of Ministers of Ukraine.[146]

Initially, in accordance with the Resolution of the Cabinet of Ministers of Ukraine of July 2, 2014 № 226 "Issues of state registration of real rights to immovable property located in the temporarily occupied territory" state registration of these rights and other registration actions on immovable property located within territory of the Autonomous Republic of Crimea and the city of Sevastopol, were to be carried out by the bodies of state registration of rights of Kherson and Zaporizhia regions in accordance with the legislation of Ukraine in the field of state registration of real rights to immovable property. This legal act expired in 2016.

Currently, according to the Order of the Ministry of Justice of Ukraine № 898/5 of March 28, 2016 "On the settlement of relations related to the state registration of real rights to immovable property located in the temporarily occupied territory of Ukraine" [147] state registration of property rights and other real rights to immovable property located within the territory of the Autonomous Republic of Crimea, the city of Sevastopol, as well as the temporarily occupied territory of Donetsk and Luhansk regions, shall be exercised regardless of the location of such property. The Main Territorial Department of Justice in the Kherson Region provides for the registration of paper cases concerning real estate located within the territory of the Autonomous Republic of Crimea and the city of Sevastopol. The Main Territorial Department of Justice in the Donetsk Region (located in Kramatorsk) and the Main Territorial Department of Justice in the Luhansk Region (located in Kramatorsk) in the city of Severodonetsk).

If we talk about the judicial practice of resolving disputes related to property rights in the temporarily occupied territory of Ukraine, in the territory of the anti-terrorist operation and in connection with the anti-terrorist operation, then, the most common categories of cases concerning the protection of property rights were: recognition of property rights under the

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[146] "On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine" 2014, art. 11;

[147] "On the settlement of relations related to the state registration of real rights to immovable property located in the temporarily occupied territory of Ukraine" 2016, para. 1, p. 1;

statute of limitations; recognition of property rights under sales contracts; recognition of property rights by inheritance by law and by will.

According to the report of Ukrainian Helsinki Human Rights Union, the most problematic issues, while accessing justice for property rights protection on tje occupied territories, were: determination of jurisdiction of cases, assessment of property, determination of the range of defendants in the case, payment of court fees. Despite the different case law, according to recent trends, the following general circumstances can be identified, which are recognized by the courts:

- it is a well-known fact that during the anti-terrorist operation in Donetsk and Luhansk regions the objects of social and transport infrastructure, housing stock and life support systems were damaged (destroyed);

- if there are special grounds for compensation, it is the special legal norms that are subject to application, and not the norms of the Civil Code;

- identification of persons who committed a terrorist act, the presence of a court conviction against them, is not an obligatory condition of compensation for damage by the state on the basis of Art. 19 of the Law of Ukraine "On Combating Terrorism";

- the obligation to compensate for the damage is imposed on the state regardless of its fault, and after compensation the right to claim against the guilty person passes to the state;

- the exercise by a person of the right related to the receipt of budget funds, which is based on special and current at the time of the disputed legal relationship regulations of national law, can not be made dependent on budget allocations;

- appropriate defendants in such cases are the Cabinet of Ministers of Ukraine and the State Treasury Service of Ukraine.[148]

When resolving disputes related to the protection of property rights in the territory of the ARC or DPR, or LPR, there are often problems with obtaining evidence. An example of such is the "Generalizations of the practice of application by courts of legislation governing the protection of property rights in the temporarily occupied territory of Ukraine, in the ATO and in connection with the ATO: problematic issues", prepared by the judge O.V. Zhelepa, V. M. Mivshuk. For example, during the consideration of the case on claim for recognition of the right of ownership by inheritance, a decision was made to demand evidence. However, the

[148] Naumenko 2020, p. 23;

Ministry of Justice of Ukraine could not comply with the court's decision to demand evidence, because in accordance with the order of the Main Territorial Department of Justice in Donetsk region of December 25, 2015 № 358/2 private notary of Donetsk city notarial district Kurilchuk, who had testified the inheritance, was terminated voluntarily. Archival documents of private notary were about to be transferred for storage to the Donetsk regional state notarial archive after the end of anti-terrorist operation. Until now, the archive should be kept in responsible storage of notary Kurilchuk. The case was finally resolved on the basis of a copy of the inheritance case, which was submitted to the court during the consideration of another civil case, according to the decision of which plaintiff was renewed the term for acceptance of the inheritance.[149]

Although, in mentioned case, way to protect plaintiff's rights was found, there still remains a huge amount of claims, that could not be resolved, because of impossibility to reach and collect necessary evidences. At the same time, there hardly could be seen any problems with summoning witnesses from cases.

Another problem, parties and judges are facing - is determining of jurisdiction. According to the general rule defined by Art. 109 of the Civil Procedural Code of Ukraine, claims against a natural person are filed in court at the place of residence registered in the manner prescribed by law or at the place of his residence registered in the manner prescribed by law. Lawsuits of legal entities are filed in court at their location.[150]

Along with the general rule, the CPC contains clarifying rules, in particular, which allow to sue for damages at the place of damage (Part 3 of Article 28), and lawsuits arising in respect of immovable property, to sue at the location of property or its main part (Part 1 of Article 30).

The Civil Court of Cassation of the Supreme Court of Ukraine, in the decision of March 21, 2018 in case № 644/4407/17 during the resolution of the issue of jurisdiction, noted the following: in accordance with Part 1 of Art. 114 of the CPC of Ukraine of 2004 (Part 1 of Article 30 of the CPC of Ukraine) claims arising in respect of immovable property are filed for the location of property or its main part, the rules of exclusive jurisdiction apply to any disputes in which the object the disputed material relationship is real estate. However, if the object of the dispute is not the property itself, but the damage caused to it, then the possibility of filing

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[149] Zhelepa and Myvshuk 2017, p.138;

[150] "Civil Procedure Code of Ukraine" 2004;

lawsuits is determined not only at the location of the property, but also at the location of the defendants in the case or place of residence of the plaintiff.[151]

Taking into account the fact that it is impossible to organize proper proceedings in disputes, the subject of which is the property itself, which is located in the temporarily occupied territories, Part 1 of Art. 12 of the Law of Ukraine "On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine" clarified that moment. The territorial jurisdiction of the courts of the courts located in the territory of the Autonomous Republic of Crimea and the city of Sevastopol has been changed:

- for civil cases under the jurisdiction of local general courts located in the territory of the Autonomous Republic of Crimea and the city of Sevastopol, to local general courts of the city of Kyiv, determined by the Court of Appeal of the city of Kyiv;

- for civil cases under the jurisdiction of the general courts of appeal located in the territory of the Autonomous Republic of Crimea and the city of Sevastopol, to the Court of Appeal of the city of Kyiv.[152]

Unfortunately, despite Ukraine tries to facilitate the mechanism of restitution and protection of property rights, it is almost impossible to predict every nuance, what leads to protracted proceedings, confusion at the stage of determining jurisdiction, burdening the judiciary. The lack of clear mechanisms for returning property to owners or recognizing the right to property and procedures for paying compensation in the event of its destruction has a negative impact on the guarantee of legal opportunities for citizens of Ukraine in the field of property.

Observance and enforcement of property rights is the responsibility of the state, so it is difficult to talk about the reintegration of territories that are annexed, partially occupied and damaged during the armed conflict, without a coherent system of protection of property rights. Persons, that were forced to leave their homes, should be guaranteed the restoration of violated, unrecognized and disputed rights to own, use and dispose of property and to be able to seek protection of such rights using the means of protection provided by law.

And as of April 2022, due to the full-scale war, it could be said, that the grief of loosing homes and possesions, affected every second Ukrainian. Property of tens of hundreds of

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[151] Naumenko 2020, p. 19;

[152] "On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine" 2014, art. 12;

citizens was destroyed or damaged as a result of invasion of the Russian Federation. So today, it is already late for talking about special regimes for protection of property rights for citizens, from eastern regions and Crimea. Today, the problem of protection of property rights has become a national-wide.

It is difficult to predict how many lawsuits, applications and appeals will fall on the state and judicial authorities after the ending of the war. On the restoration of property rights, recognition of property rights, obtaining state aid for reconstruction, removing obstacles to the use of property - these are just a few categories, with which Ukrainians will try to restore their rights. It is worth to start talking about creating a completely new mechanism for protecting property rights.

The old system of protection proved to be slow and ineffective. For example, in 2019, Grand Chamber of the Supreme Court of Ukraine received a case № 265/6582/16-ts on compensation for material damage caused by a terrorist act in the amount of UAH 888,715. The case concerned commercial premises in the city of Mariupol, which were destroyed by artillery shelling on January 24, 2015 during the anti-terrorist operation.[153] As of January 2022, the case took the second round of the Supreme Court, so the trial lasted more than six years, and now, when Mariupol is being completely destroyed, there will be thousands of such lawsuits.

Prior to the full-scale invasion, the Ukrainian government did not pass any special regulation on compensation for victims of the anti-terrorist operation in Donetsk and Luhansk regions, which was about to be prepared and submitted to the Cabinet of Ministers of Ukraine in October 2014. Therefore, the court, in the case, refused to compensate the real value of the destroyed trade pavilion, but recognizing such irresponsibility of the state, managed to award the plaintiff compensation ten times less real damage.[154]

It can be said that Ukraine has not yet taken measures and agreed on mechanisms to protect property rights lost in the armed conflict, what was very irresponsible, given that the war is in its ninth year. The invasion of 24th February will force Ukraine to devote a lot of energy to developing effective means of protection, which would be much easier and faster to

[153]Supreme Court of Ukraine Resolution in case No. 265/6582/16-ts;

[154] Gromovy 2022;

do if there was a properly coordinated basis, such as the procedure for compensating the victims of the anti-terrorist operation.

Speaking of the current state of affairs, we should start with the requirements of the Geneva Conventions, which enshrine the rules of warfare. In particular, Art. 48 of Additional Protocol 1 to the Geneva Conventions of 12 August 1949 stipulates the obligation of the belligerents to distinguish between civilian and military objects and to direct their actions only against military objects. Article 52 explicitly prohibits the making of civilian objects in the direction of repression. Attacks can be carried out only on military facilities specified in Art. 53, and any doubt as to whether the building is used for military purposes should be interpreted as meaning that the facility is civilian.[155] Unfortunately, every day the Russian Federation systematically and brutally violates the requirements of the Geneva Conventions.

According to the head of the State Emergency Service, as of March 22, 2022, the Russian military damaged about 3,780 residential buildings, completely destroyed 651 houses. This only applies to objects that rescuers can safely assess, and there is no information about damage to the occupied territories.[156] Speaking to the Irish Parliament, the President of Ukraine stated that no buildings in Mariupol had survived.

Ukrainians suffer property damages, not only because of the bombing, every day the Prosecutor General's Office, the Security Service of Ukraine, publish new evidence of looting and theft in the apartments of civilians. The “Belarusian Gayun” NGO published evidence (CCTV footage, transport declarations, cash receipts) from post offices in Mozyr, Belarus, where Russian invaders were sending loot to their families.

The Rome Statute of the International Criminal Court sets out a list of war crimes, including robbery of a city or town, even if it is stormed; deliberate attacks on civilian objects, ie objects that are not military purposes; attacking or shelling unprotected and non-military purposes, cities, villages, housing or buildings.[157] The Ukrainian Criminal Code contains relevant articles for the punishment of criminals: violation of the laws and customs of war - from 8 years in prison to life, there is also a separate article on looting. At the international

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[155] Protocol I of 8 June 1977;

[156] RBC-Ukraine 2022;

[157] “Rome Statute of the International Criminal Court” 1998;

level, the Prosecutor of the International Criminal Court in The Hague began a direct investigation on Russia's war crimes.

Difficulties arise in the fact that such processes can take years, and crimes do not have a statute of limitations. That is, any identified and detained person will be punished by the ICC, regardless of when the Court finds him or her. But, from the point of view of protection of property rights, the responsibility should lie with the state for the fastest and highest quality restoration or compensation.

What steps has Ukraine taken so far? According to Prime Minister Denis Shmygal, anyone whose house or apartment was destroyed by the occupier will be able to submit a claim for compensation on the state online platform "Diia". The Fund for the Restoration of Destroyed Property and Infrastructure was established. And as soon as the war is over, Ukraine will begin to rebuild everything that was destroyed by the enemy.[158]

Another important way to protect property rights during the war in Ukraine, is recently adopted Law "On the protection of the interests of persons in the field of intellectual property during martial law." "It is extremely important to create legal mechanisms to protect the interests of individuals in the field of intellectual property, to prevent the loss of intellectual property rights during martial law. The state is obliged to minimize the impact of negative factors and consequences of martial law on citizens of Ukraine," indicates the explanatory note.[159] The document provides for the suspension of the deadlines related to the protection of intellectual property rights, as well as deadlines for the procedures for acquiring these rights, defined by special laws of Ukraine in the field of intellectual property and bylaws.

The draft Law of Ukraine "On Compensation for Property Lost, Damaged and Destroyed as a Result of the Armed Aggression of the Russian Federation and Fair Distribution of Reparations" has already been submitted to the Verkhovna Rada of Ukraine. The purpose of this project, in accordance with paragraph 2 of the explanatory note, is to protect "property rights and other real rights to property that have been violated as a result of military aggression by the Russian Federation."[160] According to the project, the protection of property rights of

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[158] Matyash 2022;

[159] Explanatory note to the Draft Law of Ukraine 2022;

[160] Verkhovna Rada of Ukraine Draft Law №7237 2022;

affected individuals, their heirs and affected legal entities will be carried out by paying primary and full compensation for lost, damaged or destroyed property.

Primary compensation is defined as the payment of funds that are immediately necessary to protect property rights, housing rights of individuals, restoration of vital functions and services provided by legal entities, as well as the restoration of normal life in Ukraine.

Full compensation will be provided in order to protect the property rights of victims, ensure fair and targeted distribution of reparations and / or other penalties from the Russian Federation. The right to full compensation will be provided subject to the payment of reparations by the Russian Federation.

The draft Law was sent for consideration to the Office of the Verkhovna Rada of Ukraine, which provided some conclusions and suggestions for improving the text.[161] In particular, it is proposed not to use the term "compensation" because the application of compensation can be carried out with the consent of the parties in the amounts established by them, or in the amounts determined by the subjects of power. These cases do not involve either the guilt of the person in any wrongdoing or the full compliance of the amount lost with the amount of compensation. In this regard, according to the Office, at the legislative level it is more appropriate to regulate the issue of reimbursement of damage. It is also proposed to clarify the list of persons entitled to compensation, namely, to supplement the list of persons who are not compensated, persons convicted of collaborative activities and to improve the list of claims under which Russian citizens whose property was damaged in Ukraine have the right receive government benefits. And most importantly, the compensation mechanism itself needs to be improved. Thus, it is proposed to introduce a single application for compensation, remove the requirement to provide victims with Extracts from the State Register of Real Property Rights, as the authorized person can obtain such information independently, and the procedure of special commissions to inspect lost, damaged or destroyed compensation should be defined in more detail.

Thus, Ukraine needs the rapid development of a state fund for compensation and the adoption of new legislation. New legal act should make clear, how the step-by-step process of obtaining compensation for property destroyed or damaged as a result of armed aggression, should be built. As Y. Romaniuk rightly pointed out, our legislation on protection of property, was written for peaceful times. Domestic judicial system had no experience in the practical

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[161] The office of the Verkhovna Rada of Ukraine 2022;

implementation of guarantees of protection of property rights even in conditions of ATO.[162] Current situation is much more complicated, terrifying and horrific. Legal practitioners and judges are expected to have and will have a lot of questions. And the most important one would be: which state will be directly responsible for violating the property rights of Ukrainians? Will it be the Russian Federation, whose fault are these crimes? Or Ukraine, would be obliged to pay compensations, after which it will have the right of recourse against Russia?

It is necessary, first of all, to disclose the special aspects of the disputes considered by the ECtHR, which arose against the background of internationally significant events. Their study will allow to draw conclusions that may be useful in shaping Ukraine's strategy to protect the rights of the state in the ECtHR.

Case studies of the European Court of Human Rights (Cyprus v. Turkey, Al-Skeini and Others v. The United Kingdom, Issa and Others v. Turkey, Ilascu and others against Moldova and Russia, etc.) asserts that another state, due to which the property right of citizens has been violated, can and should be responsible for its violation. But, when we talk about occupation and actions of another state, that undisputably led to deprivation of property, responsibility should also be borne by state, that exercised factual control over the territory, where property was situated.

The ECtHR in the case of Ayder and Others v. Turkey noted that state responsibility is absolute and objective in nature, based on the theory of social risk. Thus, the state may be prosecuted to compensate victims of unidentified persons or terrorists when the state acknowledges its inability to maintain public order and security or to protect human life and property (§ 71).[163] On the opinion of judges, even the lack of objective investigation on the property rights violations - is the purpose of responsibility of the State.

Another significant position was expressed in Loizidou v. Turkey. Cypriot citizen complained about the actions of the Turkish authorities, which effectively deprived her of access to her property in the occupied part of Cyprus, due to the occupation of that region. The European Court of Human Rights has noted that the responsibility of a state may arise if it exercises effective control over the region of another state as a result of a military operation. It follows from the content of these decisions that the presumption of territorial jurisdiction of

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[162] Romaniuk 2016, p. 4;

[163] European Court of Human Rights. Judgement. Ayder and Others v. Turkey. Application no. 23656/94 §71;

the state may be limited in exceptional cases when it is not allowed to exercise its power in part of its territory. This can happen as a result of military occupation by the armed forces of another state, which actually controls the occupied territory, military action or rebellion, as well as the actions of a foreign state, as supports the creation of a separatist quasi-state.[164]

In Ilascu and others v. Moldova and Russia, applicants argued on a violation of their rights, that arose after occupation of Transnistria region by russian militaries. Court found Moldova guilty of failing to take the necessary measures to protect its individuals, that is, of the country's positive obligations. Russia, on the same time, was found guilty of violating individual rights on the territories, which were de-facto under its effective control, given that its troops and military equipment were located there, and it provided support to the separatists[165].

So, it could be said, that both countries Ukraine and Russia, would be bearing responsibility, like it was expressed on the previous judgements of ECtHR. Ukraine could face responsibility for ineffective protection of its citizens and their property. Russian regime would be undisputably found liable on the level of International Criminal Court and European Court of Human Rights, for crimes and violations, it caused on occupied territories.

Like in case Cyprus v. Turkey, that was brought to ECtHR by Cyprus government, alleging, that after beginning of military operation in Cyprus, Turkey commited violations of the Convention. Among a long list of accusations, Cyprus government also argued, that Turkey violated Article 1 to Protocol 1. Court concluded that there has been a continuing violation of Article 1 of Protocol No. 1 by virtue of the fact that Greek-Cypriot owners of property in northern Cyprus are being denied access to and control, use and enjoyment of their property as well as any compensation for the interference with their property rights (§ 189).[166] Same situation today arises on all occupied territories of Ukraine.

Moreover, article 19 of the Law of Ukraine “On the fight against terrorism” provides for recovery of damages, by way of recourse from the guilty party. Therefore, in the case of

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[164] Kotormus 2017, p.144

[165] European Court of Human Rights. Judgement.Ilascu and others v. Moldova and Russia. Application no. 48787/99;

[166] European Court of Human Rights. Judgement.Cyprus v. Turkey. Application no. 25781/94;

awarding compensation by Ukraine and incurring the corresponding costs, Ukraine would be able to recover from Russia in ECtHR such costs.[167]

Thus, Ukraine should continue developing of possible measures to guarantee human and civil rights and freedoms provided by the Constitution and laws of Ukraine, international treaties, to all citizens of Ukraine, including those living in temporarily occupied territories and those who have moved from them. However, the fact remains that it is extremely difficult to guarantee the right of ownership in the territory not controlled by the Ukrainian authorities.

Of course, the answer to the outlined questions should be given by international judicial institutions, in particular the ECtHR on the basis of Art. 1 of Protocol No. 1 to the ECHR. Author agrees with Y. Romaniuk, that Ukraine is not the first country to face such challenges. We can benefit from the experience and practice of European countries that have already had problems similar to those currently facing our country, and therefore know how to solve these problems. Many other states, such as Croatia, Serbia, Bosnia and Herzegovina, Cyprus, Turkey, as well as the closest states to the former Soviet Union, have experience of resisting armed aggression and separatism, operating in the conditions of formation and functioning of the so-called self-proclaimed "republics", and in post-Soviet space - Georgia, Moldova, Azerbaijan and Armenia. Therefore, today there is already a case law of the European Court of Human Rights on these states, which we can analyze.[168]

3.3. Protection of Ukrainian property rights in the European Court of Human Rights

The ECtHR's statistics show that the number of appeals to its mechanisms to protect human rights from the actions of Ukrainian authorities is quite high. After the ratification of the Convention on 17th of April 1997, and entering into force on 11 September of the same year, 104 783 applicaions were brought before the Court as of 2021. Judgement was delivered in 18 599 cases. Among them 376 decisions, concerning violation of Article 1 Protocol 1.[169] In this regard, Ukraine is second only to Italy (378 decisions on Protocol 1, Article 1), Romania (503 decisions on Protocol 1, Article 1) and Turkey (698 decisions on Protocol 1, Article 1).

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[167] Naumenko 2020, p. 25;

[168] Romaniuk 2016, p. 5;

[169] ECtHR Public Relations Unit 2022, p. 9;

Violation of Art. 1 of Protocol No. 1 to the ECHR concerns 22.17% of all ECtHR cases examined with regard to Ukraine.

A large number of appeals to the ECtHR regarding Ukraine testify to the importance of this international judicial institution and its case law for ukrainian legal practice. In view of this, as well as the fact, which has been repeatedly mentioned above - that numerous human rights violations, including property rights in illegal territorial formations of the DPR and LPR, in the Crimea and, unfortunately, in the surrounded or occupied by russian troops cities in 2022, will inevitably lead to the transfer of disputes arising on this basis, for consideration by the ECtHR. But along with interstate complaints, the number of individual applications will definitely increase.

Analysis of the case law of the European Court of Human Rights shows that oftenly interference in property rights is carried out by public authorities, in particular, executive authorities. It should be noted, unfortunately, that the number of decisions rendered in substance by the ECtHR in cases against Ukraine is currently would be increasing sharply.

Among decisions, concerning violations of property rights on the occupied territories, it is worth to mention case of Tsezar and others v. Ukraine (applications no. 73590/14, 73593/14, 73820/14, 4635/15, 5200/15, 5206/15, and 7289/15) of 13 February 2018. The applicants in this case, citizens of Ukraine residing in Donetsk, i.e in a territory not currently under the control of the Government of Ukraine, complained that the Ukrainian authorities had illegally and disproportionately suspended the payment of their pensions and other social benefits to them in Donetsk. They also claimed that as a result of the transfer of the courts from Eastern Ukraine onto the other controlled regions, they were deprived of the right to access the justice. The Court noted, that because of the conflict in eastern Ukraine the authorities were forced to move Donetsk local courts to neighboring regions, which were under governmental control. There was no evidence that the applicants 'personal circumstances' had prevented them from traveling to the area, where the courts were located to file claims and the Government's actions had not impaired the very essence of their right of access to a court. According to the complaint on Article 1 of Protocol No. 1, the applicants, were not in the same situation asother residents of Ukraine. The objective factor of the hostilities going on in the region where applicants reside forced the Government to adopt remedial measures which were not needed in

those other parts of the country which remained under their control.[170] Accordingly, the Court did not find any violation of Article 1 of Protocol No. 1 by the Government. Clearly, the Russian Federation's military aggression significantly limited, if not prevented, the Government from making social benefits in the uncontrolled territory.

The present case is indicative in the sense that, although the ECtHR found the applicants' claims unfounded, the legal reasoning for refusing to satisfy the application concerned an objective inability of the State to fulfill its obligations and not their absence. That is, the ECtHR has once again confirmed the possibility of ownership of the right to pension benefits, which must be paid to citizens only if all the necessary legal conditions for their receipt.[171]

It is not only public authorities that are responsible for preserving citizens' ownership of benefits. Individuals personally, must also take part in and actively promote the emergence of such a right. The inactivity of the citizen, to whom a right could be guaranteed by state, as a result of which a certain right did not arise, in general, excludes the responsibility of the state and officials under Article 1 of Protocol No. 1.

Analysis of ECtHR decisions on violation of Art. 1 of Protocol 1 to the ECHR, allows us to provide the following classification of the most common categories of cases. Most ECtHR judgments on Ukraine have recently concerned the enforcement of judgments of national courts; disputes related to the expropriation of property from a person who has acquired the right of ownership or lease of this property under a transaction made by a public authority in excess of authority (as a rule, these are arrears of wages); disputes concerning compensation for non-pecuniary damage in connection with criminal proceedings; disputes concerning violation of property rights of a legal entity; disputes over the seizure of property for reasons of public necessity. Special mention should be made of complaints of Ukrainian citizens to the European Court of Human Rights regarding compensation for damages caused during the anti-terrorist operation in certain districts of Donetsk and Luhansk regions, as well as the issue of payment of pensions and others. social benefits in the temporarily occupied territories.

The practice of appealing to individuals and legal entities with complaints against Ukraine for protection of property rights to the ECtHR is important in the context of further improvement of legislation and practice of Ukraine in this area. In addition, the analysis of

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[170] European Court of Human Rights. Judgement. Tsezar and Others v. Ukraine. Applications nos. 73590/14, 73593/14, 73820/14, 4635/15, 5200/15, 5206/15 and 7289/15;

[171] Shabanov 2019, p. 168;

such decisions is important for individuals and legal entities whose rights are violated by the state, and which cause not only material but also moral damage. In a difficult economic situation, the citizens of Ukraine need an increased level of protection of property rights, which is provided with the opportunity to seek protection of their interests, including the supranational judicial bodies, among which is the ECtHR.

As I. Lishchyna noted, “the main problem for the ECtHR Secretariat is non-compliance with national court decisions. The European Court of Human Rights finds that a pecuniary claim is the property of a person, especially if such a claim is upheld by a national court. If for one reason or another the state does not comply with the decision against itself to pay compensation, the ECtHR considers that there is a violation of Article 6 "Right to a fair trial" and Article 1 of the Protocol on the right to property of the European Convention on Human Rights and fundamental freedoms".[172]

In this regard, it is considered appropriate to analyze some decisions of the ECtHR against Ukraine in connection with non-compliance with the decisions of national courts, which led to a violation of property rights. For example, a violation of Article 1 of Protocol No. 1 to the ECHR on peaceful possession of property was established by the ECtHR Judgment in Balandina v. Ukraine of 6 December 2007.[173] The case concerned the payment of arrears of wages, which the State Enterprise (State Municipal Repair and Construction Enterprise for the Repair of the Housing Fund of the Frunzensky District of Kharkiv) was about to pay to the applicant under the decision of Dzerzhinsky District Court of Kharkiv from 5 May 2000, but failed to enforce the judgment for more than seven years and six months due to lack of funds. The court found a violation of Art. 1 of the First Protocol and ruled that the respondent State should pay the applicant the arrears still due to her and EUR 2,000 in respect of non-pecuniary damage. As grounding, the Court referred to the Case of Kucherenko v. Ukraine,[174] that is of a similar nature. According to the court, failture of domestic authorities to execute, beyond the reasonable time, for the enforceable judgments, respectively, given in the applicant’s favour, prevents an individual from receiving the money to which he was entitled. Moreover, lack of

[172] Lishchyna 2017;

[173] European Court of Human Rights. Judgement.Balandina v. Ukraine. Application no. 16092/05;

[174] European Court of Human Rights. Judgement.Kucherenko v. Ukraine. Application no. 27347/02;

an effective domestic remedy to redress the damage created by the delay in the present proceedings, violates right, guaranteed by Article 6 of the Convention.

The ECtHR's judgment in another case, Batrak v. Ukraine[175] of 18 June 2009, also considered a dispute over non-compliance with the judgment of the Avtozavodsky District Court of Kremenchuk of 9 April 2004 on the applicant's payment of UAH 8636.45 under Art. 57 of the Law of Ukraine "On Education". The applicant alleged that the excessive length of the enforcement proceedings against her had violated her right to peaceful possession of her property. Following the hearing, the ECtHR decided to pay her the costs awarded to the applicant by a court decision and still to be paid to her as compensation for pecuniary damage, as well as EUR 1,200 in respect of non-pecuniary damage plus any tax that may be chargeable. A similar situation was considered by the European Court of Human Rights in the case of Bezugly v. Ukraine.[176] In particular, the ECtHR found a violation of Art. 1 of Protocol No. 1 to the ECHR due to the fact that the applicant had not been paid by the State-owned enterprise the payments of arrears of wages awarded by the national court.

A similar situation was considered by the European Court of Human Rights in Biletskaya v. Ukraine (judgment of 10 December 2009)[177], which also found a violation of the right to peaceful possession of one's property due to non-compliance with a court decision on payment of wages. In particular, the Court in this decision clearly defined, that judgment debt at issue constitutes the applicant's possession, and impossibility for the applicant to obtain execution of the judgment at issue amounts to an interference with this possession, which is a violation of Art. 1 of Protocol № 1 to the ECHR (paragraph 13). In addition, the issue of non-compliance with the decisions of national courts on the payment of wages was considered by the ECHR in the cases "Derevenko and Dovgalyuk v. Ukraine", "Didukh v. Ukraine".

The issue of review by the Supreme Court of Ukraine of court decisions in connection with the decision of the European Court of Human Rights in a particular case deserves special attention. One of the well-known decisions, is judgment in the case of Bochan v. Ukraine of 3 May 2007, which concerned, inter alia, the violation of Art. 1 of the Protocol 1 to the ECHR.

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[175] European Court of Human Rights. Judgement. Batrak v. Ukraine. Application no. 50740/06;

[176] European Court of Human Rights. Judgement. Bezugly v. Ukraine. Application no. 19603/03;

[177] European Court of Human Rights. Judgement. Biletskaya v. Ukraine Application no. 25003/06;

This Case was a subject to review by ECtHR twice. A number of problems of the judicial system of Ukraine were identified, as a result of examination.

First, in the present case, the European Court of Human Rights found violations of the applicant's rights under the provisions of the Convention. In view of the Court's decision, the applicant applied to the Supreme Court of Ukraine for a review of the judgments in exceptional circumstances (in 2008). In turn, the Supreme Court of Ukraine did not satisfy Bochan's statement and, accordingly, did not take into account the conclusions of the European Court of Human Rights in her case, namely the conclusion on the assessment of evidence in the case by national courts. According to Bochan, this constituted a new violation of Article 6 § 1 of the Convention and Art. 1 of Protocol No. 1 to the Convention, in connection with which she again appealed to the European Court of Human Rights.[178] ECtHR stated that "The applicable national legal framework made available to the applicant a remedy enabling a judicial review of her civil case by the Supreme Court in the light of the European Court's finding that the original domestic decisions were defective... In the instant case, the Supreme Court had, in its decision of March 2008, grossly misrepresented the European Court's findings in its judgment of 3 May 2007. In particular, it had recounted that the European Court had found the domestic courts' decisions lawful and well-founded and had awarded just satisfaction for the violation of the "reasonable-time" guarantee (when in fact that complaint had been rejected as manifestly ill-founded). Those affirmations were palpably incorrect. The Supreme Court's reasoning did not amount merely to a different reading of a legal text. For the Court, it could only be construed as being "grossly arbitrary" or as entailing a "denial of justice". The impugned proceedings had thus fallen short of the requirement of a "fair trial" under Article 6 § 1".[179]

As it could be emphasized, according to the general case-law of the Court, a State's lack of funds for damages is not a ground for recognizing the lawful absence of appropriate compensation. The right provided for in Art. 6 of the Convention, includes ensuring the implementation of the decision that was made as a result of the trial. Effective protection of the right to peaceful possession of property includes the right to enforce a court decision without undue delay.

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[178] Ignatenko 2015. Legal Gazette online;

[179] European Court of Human Rights. Judgement. Bochan v. Ukraine (No. 2). Application no. 22251/08;

In the context of the application of the law declared in Article 1 of Protocol No. 1 to the Convention, as M. Honcharuk and L. Lytvynets rightly point out, tax disputes are no exception, where courts also increasingly refer to the case law of the European Court of Human Rights. In this category of disputes, the imposition of an obligation to pay tax or deprivation of the right to receive a tax benefit (tax credit or budgetary VAT refund) is considered a deprivation of property. Accordingly, it must be carried out "under the conditions provided by law and general principles of international law.[180] Among the most well-known decisions of the ECtHR on this issue is the Decision of the ECtHR in the case of Intersplav v. Ukraine of 9 January 2007,[181] which stated that in this case the dispute did not concern a specific amount of VAT refund or compensation for delay. in its payment, and the general right of the applicant in accordance with the Law of Ukraine "On Value Added Tax". The Court notes that, having examined the criteria and requirements laid down by domestic law, the applicant had reasonable grounds to hope for a refund of the VAT which he paid in the course of his business, as well as for compensation for late payment. Decision indicated, that the concept of "property" in Art. 1 of Protocol No. 1 to the European Convention on Human Rights has an autonomous meaning, independent of the formal classification adopted in national law.

This ECtHR judgement was referred to by the parties in a number of cases, considered by the courts of Ukraine, for example, in case № 2a-18782/11/2670on the claim of LLC "Interpalette" to the State Tax Inspectorate in Solomyanskyi district of Kyiv to declare illegal and cancel the tax notice decision, in the case № 22-a-28584/08 on the appeal of the STI in Vinnytsia against the decision of the Vinnytsia District Administrative Court of June 13, 2008 in the case on the administrative claim of LLC "Barlinek Invest" to the STI in Vinnytsia on recognition of illegal actions.[182]

It can be concluded that the ECtHR considers the state is obliged to take measures to prevent or stop abuses in the field of VAT and budget reimbursement. But, refusal to reimburse a person on the only ground, the tax authority has not established the payment of VAT by the supplier or his counterparties, if the person acted in good faith, violates his right guaranteed by Article 1 of Protocol No. 1.

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[180] Goncharuk and Litvinets 2014;

[181] European Court of Human Rights. Judgement. Intersplav v. Ukraine. Application no. 803/02 §30-32;

[182] Horobets′ Natalia 2018, p. 166;

The ECtHR has a separate position on pension benefits. The court will consider such payments as property if, in accordance with national law, the person has a reasonable right to receive them under the national social security system. If the relevant conditions are met by the person, the authorities may not refuse such payments as long as the payments are provided by law.

In decision of Suk v. Ukraine of 10 June 2011,[183] claimant argued that the domestic authorities deprived him of his possessions, particullary, monthly subsistence allowance for the years 1999 and 2000. The Court reiterated that the concept of "possessions" in the first part of Article 1 of Protocol No. 1 has an autonomous meaning, which is not limited to ownership of physical goods and is independent of the formal classification in domestic law. Certain other rights and interests constituting assets, for instance unpaid debts, can also be regarded as "property rights", and thus "possessions" for the purposes of this provision.

The very lack of certain funds in the state cannot be a reason for non-payment of social security. ECtHR judges highlited, that it is definitely on a State`s discretion to determine the amount and specifics of benefits. However, once a legal provision is in force which provides for the payment of certain benefits and any conditions stipulated have been met, the authorities cannot deliberately refuse their payment while the legal provision remains in force. The same ruling was also adopted in Kechko v. Ukraine.

An interesting case concerning the payment of pensions was the case of Sukhanov and Ilchenko v. Ukraine from 3 June 2014.[184] The applicants alleged, in particular, that they had not been paid social benefits in the amount claimed by them. The amount of their allowances was set by the Law of Ukraine "On Social Protection of Children of War", but the state did not make such payments, which, according to the applicants, violated their property rights.

As we have already noted, the established case law shows that social benefits fall under the concept of "property". However, in the present case the court decided whether it was possible to speak of the applicants having "legitimate expectations" regarding the payment of such financial assistance. In the present case, the Court found that, indeed, in certain cases "legitimate expectations" of receiving certain funds may fall within the scope of Article 1 of Protocol No. 1. One that has a "legitimate expectation" if there is sufficient basis for such a

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[183] European Court of Human Rights. Judgement. Suk v. Ukraine. Application no. 10972/05;

[184] European Court of Human Rights. Judgement. Sukhanov and Ilchenko v. Ukraine. Applications nos. 68385/10 and 71378/10;

right in national law - for example, when there is a well-established practice of national courts confirming its existence. But no legitimate expectation can be said to arise where there is a dispute as to the correct interpretation and application of domestic law and the applicant's submissions are subsequently rejected by the national courts.[185]

Due to the lack of sufficient grounds for forming such an expectation, the application in this case was rejected. The court lacked evidence that the applicants had a "legitimate expectation" and the current legislation did not contain any provisions that would entitle the applicants to a pension supplement in the amount they claimed during the proceedings in the domestic courts. Although this case did not satisfy the applicants' claims, it was the first case, in relation to Ukraine, where the Court equated pension benefits with the notion of "property".

As it was noted above, as of 2021, Ukraine ranked fifth in the number of ECtHR judgments brought against it, according violation of property rights. The number of cases pending before Ukrainian courts is also quite large. These facts are clear evidence of underdevelopment or even lack of some effective domestic protection mechanisms. These statistics are also a worrying indicator of the low level of respect for human rights and freedoms in Ukraine. The ECtHR assesses the violation by our state of certain guarantees of the Convention as a "systemic", "repetitive" phenomenon, which appears to the Court as a consequence of various "dysfunctions of the legal system", "a structural problem of Ukraine".[186] An example of such an assessment by the ECtHR of Ukraine's human rights protection mechanisms is the pilot judgment in Yuriy Mykolayovych Ivanov v. Ukraine of 15 October 2009, where the ECtHR found that the structural problems identified by the Court in this case are widespread and of complex nature. According to the available information, they require the implementation of comprehensive and comprehensive measures, possibly of a legislative and administrative nature, with the involvement of various national authorities. The reason for the Court's appeal to the "pilot decision" is explained by the ECtHR as follows: "the recurring and chronic nature of the problems underlying the violations, the large number of victims of such violations in Ukraine and the urgent need to provide them with immediate and appropriate compensation at national level".[187]

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[185] Shabanov 2019, p.170;

[186] Rabinovych 2012;

[187] European Court of Human Rights. Judgement. Yuriy Nikolayevich Ivanov v. Ukraine. Application no. 40450/04;

The ECtHR also found that the above violations were the result of a practice incompatible with the provisions of the Convention, which consisted in the respondent State's systematic failure to comply with national court decisions for which it was liable and in respect of which the infringed parties were ineffective. remedies. It ruled that the respondent State should take immediate steps to remedy this situation, including the introduction of an effective remedy or a set of remedies capable of providing adequate and sufficient redress for non-compliance or delays in enforcing national court decisions.

As noted by A.A. Yakovlev, "the implementation of international human rights law in Ukrainian law is a complex procedure that requires doctrinal understanding". To improve the quality of this process, the Law of Ukraine "On Enforcement of Judgments and Application of the Case Law of the European Court of Human Rights" was a general measure aimed at eliminating the systemic problem and its root cause, providing legal expertise of bills (Article 13). In addition, it stipulates that the representative body carries out legal examination of all bills, as well as by-laws, which are subject to the requirement of state registration, for compliance with the ECHR, based on which it prepares a special opinion. In Ukraine this role is assigned to the Government Commissioner for the European Court of Human Rights.

The “pilot” decision, obliged Ukraine to introduce an effective remedy that would provide adequate and sufficient protection against non-compliance or delay in enforcing the decisions of the national court for which it is liable under principles established by the case law of the ECtHR. It is clear that the main reason for non-enforcement of decisions is the lack of funds necessary to implement the decisions of national courts, where the state is a debtor. The amount of funding provided in the annual budget is insufficient and Ukraine has not been able to take effective measures in this area. Some scholars have an opinion, that the problem of non-enforcement of judgements in Ukraine is a longstanding issue, that is connected with aspects of the Ukrainian legal, judicial, and political systems.[188] Until today, situation with executing of the ECtHR decisions remains unstable, buttoday Ukraine is taking steps forward. As deputy Minister of Justice - Commissioner for the European Court of Human Rights Ivan Lishchyna said, "an important step in (improving the system of execution of decisions) was the establishment of the Commission for the Implementation of Decisions of the European Court of Human Rights. Its activities contribute to the effective cooperation of public authorities in

[188] Meleshevich and Forstein 2014 p. 277;

the implementation of the decisions of the European Court of Human Rights in cases against Ukraine, the solution of systemic and structural problems identified in its decisions. Bills on the implementation of ECtHR decisions have also been drafted. Therefore, thanks to the coordinated work of the Government, the Committee of Ministers of the Council of Europe has stopped monitoring the implementation of 1,129 ECtHR judgments in cases against Ukraine".[189]

In our opinion, in order to find a solution to improve the mechanism of implementation of ECtHR decisions, it is appropriate to refer to the experience of some Council of Europe member states that have introduced parliamentary control over the implementation of decisions and application of ECtHR practice.

CONCLUSION TO CHAPTER 3

The current legislation of Ukraine, first of all, the Constitution of Ukraine, as well as the Constitutions of many leading European countries, quite comprehensively enshrines the principles of protection of property rights in Ukraine, as well as reasonable limits to state intervention in this area. economic but also social function. However, the implementation of the constitutional guarantees of property rights, their implementation, given the current problems in this area, should be ensured by guarantees of proper and effective functioning of the judicial system of Ukraine. It is stated that one of the current problems of Ukrainian legislation and practice is the implementation of European standards in the field of human rights in general and standards of protection of property rights in particular.

Despite the efforts, ukrainian legislators give on to improving legislation, according International Property Rights Index for 2021, Ukraine occupies only 106th place with a rank of 4.4, that decreased during previous year on 0.013 pts.[190] And we must prepare for the fact that in the coming years the situation will not improve, due to the level of violations of property rights, caused by the military aggression of the Russian Federation.

The situation in Ukraine is complicated in the same way as in other states that were part of the former USSR. The law school and the achievements of the Soviet Union cannot be used in modern realities where progressive states are moving towards constant development and have the main goal of ensuring a quality life for their citizens.So the whole legislation on

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[189] Lishchyna, Ivan 2021;

190 Ukraine. 2021 International Property Rights Index;

property was created only in past 30 years. Today it is obvious, that for effective protection of property rights, it should face huge amendments and developments in accordance with european standarts. As Professor R. Maidanyk noted: "property law in Ukraine should be based on the ideas of adaptation of European common law (Jus Commune Europaeum), unification and harmonization with EU law, EU member states, with taking into account the EU-Ukraine Association Agreement, acquis EU and its application practices ".[191]

In connection with that circumstances, increases the need to study the practice of the ECtHR. Cituation complicates by the fact of millitary agression of Russian Federation, that led to enourmous amount of looses of properties and their destructions.

Today Ukarainian parliamentaries are urgently developing mechanisms for future protection of property rights for those, who have suffered from russian agression. Among them, adopted bill No. 7198 on compensation for unmovable property, damaged or destroyed as a result of hostilities, terrorist acts, sabotage caused by the military aggression of the Russian Federation. Legislative bill, in addition to providing citizens with compensation for damage to and destruction of real estate, also would help State to gather information for future claims of Ukraine to the Russian Federation for damages, in particular in ECtHR.[192] These international claims, likely, would create a huge precedental ground and also would be important as a fixation of military crimes of russian authorities.

As Isabella Risini said in her interview, despite the exclusion of Russian Federation from Council of Europe, Article 58 of the ECHR, directly proclaims, that the Convention may be denounced only six months after the country has notified the Secretary General of the Council of Europe about its wihdrawal. Based on this, Ukraine will be able to file a lawsuit against Russia in the European Court of Human Rights for human rights violations during the current ongoing military aggression. It is possible that the court will be able to accept applications also for the reason that the crimes were committed by the Russian side even when the country was a party to the Convention.[193]

This means that Ukraine is facing a complete overhaul of the system of protection of property rights of citizens, which will be developed not only by the domestic legislator, but

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[191] Maydanyk, Roman, Maidanyk, Nataliia and Popova, Nataliia 2021, p.41;

[192] Official Gazette of the Verkhovna Rada "Voice of Ukraine" 2022;

[193] Vlasenko. Deutsche Welle 2022;

also by international courts. New safeguards should be created in the light of developments in Ukraine, to ensure the most rapid and effective protection of victims of hostilities and to prevent violations of property rights in the future.

In addition, another important problem in the law enforcement practice of Ukraine, should also be fixed, is the issue of non-enforcement or long-term enforcement of national court decisions, which, in turn, encouraged Ukrainian citizens to increasingly apply to the ECtHR for protection of infringed property rights. Failure to comply with national court decisions has become so systemic, repetitive and chronic that the ECtHR has adopted a “pilot decision” in the case of Yuriy Ivanov v. Ukraine, which has deemed it necessary for Ukraine to take immediate steps to implement an effective remedies or a set of such remedies capable of providing adequate and sufficient redress for non-compliance or delays in the enforcement of national court decisions, as well as postponed in all cases in which the applicants raise unfounded complaints relating exclusively to prolonged non-enforcement. Ukrainian modernity simply will not allow delays in litigation and "formality" of payments for damaged or destroyed property. Ukraine will have to develop a completely new practice of considering property claims, which will ensure fast and efficient consideration of such cases.

Ukraine today is moving towards the European Union membership under the accelerated procedure. But, that also means the Parliament and domestic courts should focus on closing gaps in legislation, establishing a system for monitoring the implementation of European Court of Human Rights judgments and properly protecting the property rights of its citizens, who are now under daily threat and unlawful interference.

CONCLUSIONS

1. Right to enjoy property peacefully, is one of the fundamental human rights that was not been forgotten at various stages of the development of society and has received a great deal of attention from different branches of law. A state governed by the rule of law and democracy is inconceivable without private property, the material basis for the exercise of other rights. Therefore, it is generally accepted that property is the truest and most concrete guarantor of individual rights and freedoms, the mainstay of the economic system.

2. In the currently developing world, it is clear, “property” went far away from just real estate and monetary assets. In some cases arises the need to define the term “property” for the purposes of a specific branch of law. In such cases, the concept of property will be provided exclusively within the needs of the relevant branch of law and in the field of its regulation. For example individual assets (e.g. objects, money, securities, etc.) or types of assets (e.g. tangible assets, financial assets). However, a single and universal definition of "property" cannot exist.

3. The inviolability of property could be briefly described as a combination of the right of an owner to freely enjoy all possible rights. It could be related to property and the state's obligation to ensure the most favorable regime for the exercising of property rights and to protect property from unlawful encroachments.

4. The concept of the "triad" of property rights is universal and can be used for a general understanding of the essential components of property rights. However, it is impractical to limit the nature of property rights to only right to use property, dispose and manage it freely. Scholars and judjes agree, that in a modern society, that is constantly developing, these three components are not enough to fully understand and guarantee proper protection of property rights.

5. According Lithuanian Constitution, property can be described as the aggregate of rights and duties of some person. Civil Code does not provide the single concept of “property”, it only recognises seperate types of it and uses as a synonym of the term “object”. In the meaning of the Civil Code of Lithuania, property is not only things but also securities, property rights, results of intellectual activities, information, actions and results thereof, as well as any other material and even nonmaterial values, and also duties.

6. Principle of inviolability of property is prescribed by Article 23 of Constitution of Lithuania. Inviolability of property, undisputably, should be preserved as one of the components of right to property, but on the same time it is not absolute and property rights may be restricted. There always should be balance between individual and collective interests while implementing the principle of inviolability of property.

7. In Ukraine, legislation does not define the meaning of "property", but the Article 41 of the Constitution of Ukraine defines this term as "everyone shall have the right to own, use, or dispose of his property and the results of their intellectual or creative property activities".[194] The most important cource for regulation of property rights, is the Civil Code of Ukraine Book 3.

8. Ukrainian legal tradition recognises positive obligation of the State to protect and defend the rights of all owners and obligation of everyone not to violate subjective property rights. Inviolability of private property is established on the constitutional level, but the right of authorities to limitate one in the matter of public needs or security is kept. But because of imperfect regulation, Ukraine faces many problems in the protection of property rights.

9. Today Ukraine should totally change legislation on property. Outdated legislation is an anchor on Ukraine's path to the European community. Property rights should be viewed through the prism of economic theories, and the goal of legislation should be the further economic and social development of the state, not the stagnation and "conservation" of assets within the country. Property rights should be considered in Ukraine as the second most important group of human rights, an effective guarantor of which will be the state.

10. Provisions of the European Convention of Human Rights and principles developed by European Court of Human Rights, while applying of the Convention should play an important role in improving of Lithuanian and Ukrainian civil legislation.

11. Analysis of the case law of the European Court of Human rights shows, that Court stays on autonomy of the interpretation of the concept “property”. ECtHR do not limitate the “property” on only material goods and it does not depend on a formal classification in national law: certain other rights and interests that constitute assets may also be considered "property rights" and therefore "property" on the means of Convention. Concept of property has a fairly broad interpretation.

12. European Court of Human Rights has developed two main features of the object's, that could determine its belonging to the "property" in the context of Article 1 of the Protocol: 1) economic value; 2) the presence of right to the specific property or "legitimate justified" expectation to use that property effectively.

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[194] Kravtsov, Ihor 2019;

13. The most important princilples, that should be respected by governments, while dealing with property rights, are: the principle of good administration; the principle of a fair balance of interests; principle of good governance; legal certainity criteria; and maintaining a balance between public interests and the interests of the individual.

14. For effective guarantees of property rights, it is not enough to rely solely on the State's obligation to respect such rights not to interfere with the actions of the state. The inactivity of the citizen, to whom a right could be guaranteed by state, as a result of which a certain right did not arise, in general, excludes the responsibility of the state and officials under Article 1 of Protocol No. 1.

15. The growing number of citizens' appeals to ECtHR for protection of property rights from unjust court decisions, unjustified interference in peaceful possession by government agencies, the award of unfair compensation, is a signal of the need to further improval of domestic legislation and practice in this area.

16. States should take into account the standards of protection of peaceful possession of property developed by the ECtHR during the long practice of application of Convention. Deciding on whether there is a violation of Art. 1 of the First Protocol, it is necessary to determine: 1) whether the plaintiff had an ownership right on the property; 2) whether there was an interference with the peaceful possession of property and what was the nature of such interference; 3) whether there was a deprivation of property.

17. Special attention should be paid to rebuilding an effective system of protection at the national level and a proper system of enforcement of ECtHR decisions, in order to guarantee individuals the right provided for in Article 1 of Protocol No. 1.

ANNEXES

Comparing

Lithuania and Ukraine

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[195] Country Comparison. 2021. International property rights index;

[196] Ukrinform 2021.

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ABSTRACT

The Master`s thesis is aimed to disclose the concept and approach to property rights and their protection in Republic of Lithuania and Ukraine. A special place in the work is dedicated to the case law of the European Court of Human Rights, in relation to these countries, precisely in the context of the applications under Article 1 of the Protocol 1 (protection of property). The author directly focuses on the level of disclosure of the concept of "property" in the jurisdictions under study, on the application and relevance of the "triad" of property rights, research on national means of guaranteeing and protecting property rights, and the impact of ECtHR practice on Lithuanian and Ukrainian legal systems. A special place is given to the acute problem of protection of property rights in the occupied territories of Ukraine, in the anti-terrorist operation zone and in the territories affected by the full-scale invasion of the Russian Federation on February 24, 2022.

The author examines national law of Lithuania and Ukraine, practices of national courts and practice of the Constitutional Courts, pays attention to the opinions of legal scholars and positions and standards expressed by the European Court of Human Rights in its judicial activity. Among the ECtHR decisions mentioned are the following: Fedorenko v. Ukraine, Daktaras v. Lithuania, Valiuliene v. Lithuania Lithuania, Pyrantienė v. Lithuania, Batrak v. Ukraine, Biletskaya v. Ukraine, Bochan v. Ukraine and other cases. The approach of the European Court of Human Rights to the right guaranteed by Article 1 to Protocol 1 is explained, along the concept of "autonomous interpretation". The structure of Article 1 Protocol No 1 is considered.

Keywords: property, property rights, private property, European Court of Human Rights, European Convention on Human Rights, inviolability of property, Republic of Lithuania, Ukraine.

SUMMARY

The topic of Master's thesis is "Protection of the property rights under practice of the European Court of Human Rights and regulation problems in Lithuania and Ukraine". In the primary focus of the research is the analysys of "property rights" concept and ways of protection. Protection of property rights is viewed both under domestic practice of national authorities, courts and Constitutional Courts of Lithuania and Ukraine and in the light of the relevant case law of European Court of Human Rights. Standarts of protection recognised in judicial practice of ECtHR are also the subject of research. To conduct an effective analysis, the author examines the history of the European Court of Human Rights and the levels of recognition of ECtHR case law and the Convention in general at the national levels.

On the basis of the research it is found, that ECtHR interprets "property" autononomously, without setting clear definition and advises State parties of Convention to approach property separately in each case, that is considered before national courts.The ECtHR also emphasizes that the structure of Article 1 of Protocol No. 1 consists of three rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognizes that the Contracting States are entitled, among other things, to control the use of property in accordance with the general interest. This interpretation of the Convention was made by the court, in particular in the case Varniene v. Lithuania. In its case law, the European Court of Human Rights emphasizes that the right to peaceful enjoyment of properties is an inalienable personal right of a person.

The impact of ECtHR case law cannot be underestimated, with the Court ruling that Lithuania has amended many pieces of legislation, which has been a major step towards improving legislation. As for Ukraine, the level of implementation of the decisions of the European Court of Human Rights remains insufficient, as evidenced by the existence of "pilot" decisions and the imperfection of the national Ukrainian legislation, which needs to be changed. It is now important for Ukraine to implement the ECtHR standards in the light of Russian aggression and the number of further complaints that will be filed in court against the Russian Federation and Ukraine directly.

Ukraine's compliance with its obligations to implement ECtHR decisions under Art. Article 46 of the Convention is necessary to establish a basis for the court to expeditiously consider complaints about violations committed after 24 February and to avoid taking "pilot

decisions" thereafter. It is now important to amend the legislation, fill the existing gaps and prove to the European Community that Ukraine adheres to and shares the fundamental principles set out in the Convention for the Protection of Human Rights.

Both Lithuania and Ukraine should take into account the standards of protection of peaceful possession of property developed by the ECtHR during the long lasting practice of application of Convention. Deciding on whether there is a violation of Aproperty rights, it is necessary to determine: 1) whether the plaintiff had an ownership right on the property; 2) whether there was an interference with the peaceful possession of property and what was the nature of such interference; 3) whether there was a deprivation of property. Special attention should be paid to rebuilding an effective system of protection at the national level and a proper system of enforcement of ECtHR decisions, in order to guarantee individuals the right provided for in Article 1 of Protocol No. 1.

HONESTY DECLARATION
15.05.2022
Vilnius/Kyiv

I, Anastasiia Vitmer, student of Mykolas Romeris University and Taras Shevchenko National University of Kyiv (hereinafter referred to University), Law School, Private Law program

confirm that the Master thesis titled

"Protection of the property rights under practice of the European Court of Human Rights and regulation problems in Lithuania and Ukraine":

1. Is carried out independently and honestly;
2. Was not presented and defended in another educational institution in Lithuania, Ukraine or abroad;
3. Was written in respect of the academic integrity and after becoming acquainted with methodological guidelines for thesis preparation.

I am informed of the fact that student can be expelled from the University for the breach of the fair competition principle, plagiarism, corresponding to the breach of the academic ethics.

_____ Anastasiia Vitmer

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