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Protection of property rights in the context of armed conflict

According to Ukrainian law, direct interference by the military with a citizen's right to private property is only possible in the case of martial law or a state of emergency. According to the Constitution, the right to private property is inviolable, but in the event of war, the military command can confiscate property without any prior compensation. The Law of Ukraine "On the Transfer, Compulsory Alienation or Confiscation of Property under the Legal Regime of Martial Law or a State of Emergency" allows for the compulsory transfer or confiscation of property in connection with the introduction and implementation of measures of the legal regime of martial law by a decision of the military command approved by the relevant local state administration or executive body of the relevant local council [3]. However, in areas with active hostilities, the military command can independently transfer or confiscate property.

The law provides for the obligation of the state to return property after the end of martial law or to compensate for its value in case of destruction. According to the law, this should be done within 5 years, but based on previous events, the amount of compensation may be inadequate.

The Constitution of Ukraine stipulates that the state must ensure the protection of property rights for all subjects. In the current situation of the country, all subjects of property rights have equal rights before the law [1, p. 1712]. In the event of the introduction of martial law in Ukraine, the constitutional rights and freedoms of a person and citizen provided for in Articles 30-34, 38, 39, 41-44, 53 of the Constitution of Ukraine may be restricted for the temporary period of martial law. [2].

As of February 24, 2022, the military aggression of the Russian Federation against Ukraine has become one of the challenges of our time and has been going on for over a year. During this period, individuals and legal entities have suffered great losses, including damage to their property. In this regard, a natural question arises as to how the Ukrainian legal system can protect the violated rights of individuals and legal entities and what legislation will regulate this issue. The answers to these questions are of great public importance and require detailed regulation for their proper application.

In practice, the legal problem is as follows: The European Convention on Human Rights has limitations in its application during active hostilities, the Civil Code of Ukraine is obviously not

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intended to regulate compensation for damage during martial law, and international humanitarian law not only does not recognize the right to compensation for such damage, but even promotes it as an inevitable process during hostilities [4, p. 105].

Under martial law, full civil protection of property rights is not guaranteed, as national legislation lacks legal mechanisms to ensure that temporarily displaced persons are provided with not only housing, but also an equivalent land plot. There is a need to reform special legislation related to civil protection of the population, as well as to introduce norms that guarantee the restoration of a normal way of life.

During martial law, human rights are ensured through two approaches: restriction and protection. The first approach is aimed at normalizing the situation. The second approach provides for the protection of human rights and interests during a special period and in the territory where hostilities are ongoing. Restriction of rights is also used to ensure that the government acts in the interests of its citizens [1, p. 1714].

In the context of compensation for damage, the most widely used document is the Civil Code of Ukraine, which is the basis for such regulation in peacetime. However, due to the ongoing war in Ukraine, this legal act is not able to fully regulate the issue of liability for damage caused during armed conflicts. For example, part 1 of Article 1166 of the Civil Code of Ukraine provides for full compensation by the person who caused the damage to the property of an individual or legal entity. Articles 1187 and 1188 of the Civil Code of Ukraine provide for liability for damage caused by a source of increased danger [5]. However, the interpretation of these rules is becoming problematic due to active hostilities on the territory of Ukraine.

In the light of current conditions, the most common grounds for compensation for property damage caused by hostilities are violations of the laws and customs of war [6]. Article 438 of the Criminal Code of Ukraine effectively prohibits parties to the conflict from causing excessive harm to the civilian population, except in cases of urgent military necessity. However, such a mechanism for compensation for property damage caused on this basis is not an effective remedy, as it is virtually impossible to establish who is the perpetrator of this crime and in what manner compensation should be paid [7, p. 107].

Another serious challenge to the protection of property rights in time of war is the issue of force majeure (unforeseen circumstances beyond the control of the parties that make it impossible for them to fulfill their obligations previously assumed). In wartime, such circumstances can be numerous, including destruction of property, confiscation, or obstacles to the exercise of property rights. The complexity of force majeure lies in the fact that it may require modification or suspension of contracts and make it impossible to exercise property rights [8; 9]. In general, international humanitarian law has restrictions on armed conflicts to protect civilians and their property. However, parties to an armed conflict do not always take into account the rules set forth in IHL. Some international treaties may contain provisions that take into account force majeure during armed conflict, but each case

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may require individual consideration. The protection of property rights in times of war often requires complex legal strategies and may include compensation or restoration procedures after the conflict is over.

In general, the conditions of armed conflict complicate the protection of property rights, as there are numerous damages, destructions, and illegal seizures of property, which complicates the protection issues and overloads the judicial system. Mechanisms for protecting property in such situations can range from international legal instruments to national strategies designed to ensure restoration and compensation for affected individuals. Ensuring effective protection of property rights in conflict situations requires a comprehensive approach to take into account the unique challenges that arise in this context.

Finally, it is worth noting the use of two categories of international law - jus ad bellum (the right to war) and jus in bello (the law of war). In fact, in the case of the military aggression of the Russian Federation against Ukraine, both branches of law are applied, which do not exclude each other, but rather remain different. Liability under jus ad bellum implies that the aggressor must compensate for direct damage, including environmental damage, caused to both Ukraine and private individuals, including foreigners and stateless persons. Since such liability is direct, it does not require separate proof of guilt.

