

УДК 342.92: 342.7

Iryna Lychenko

Lviv Polytechnic National University,
Educational and Scientific Institute of Law,
psychology and innovative education
Head of the Civil Law and Procedure Department
iryna.o.lychenko@lpnu.ua
ORCID ID: <https://orcid.org/0000-0002-4838-3579>

Viktoriia Melnychenko

Lviv Polytechnic National University,
Educational and Scientific Institute of Law,
psychology and innovative education
student of the first (bachelor)
level of higher education
viktoriia.melnychenko.pv.2022@lpnu.ua

MODERN PROBLEMS OF ADMINISTRATIVE AND LEGAL PROTECTION OF THE RIGHTS AND LEGITIMATE INTERESTS OF UKRAINIAN CITIZENS IN THE FIELD OF PROPERTY

<http://doi.org/10.23939/law2023.40.116>

© Личенко І., Мельниченко В., 2023

The article is devoted to the problem of defining modern problems of administrative and legal protection of the rights and legitimate interests of Ukrainian citizens in the field of property and theoretical justification of ways to solve them. It was established that the scientific study of issues of administrative and legal protection of the rights and legitimate interests of Ukrainian citizens in the field of property is an important condition for improving domestic legislation and the practice of its application.

Special attention is paid to the impact of modern challenges and threats on the sphere of protection of property rights. It is argued that the entire system of public legal institutions, the modern system of administrative and legal protection should be aimed at guaranteeing human rights to own, use and dispose of their property.

It is appropriate to include legal methods and means of preventing encroachments in the sphere of property as components of the administrative-legal protection of property rights; termination of administrative offenses encroaching on property rights; application of administrative liability measures to violators in accordance with the procedure established by law and compensation for the damage caused.

It was emphasized that today there are quite frequent facts of violation of the rights and legitimate interests of citizens in the field of property. Such violations are related to the challenges of wartime, the problems of citizens realizing the right to own real estate and land plots, the bureaucratization of the procedures for registering the right to own land, the facts of «raider» seizure of property, the deprivation of single elderly people, convicted of crimes,

orphans and others housing and other objects of property rights, the imperfection of the administrative-delict legislation and the system of state institutions that oppose offenses in this area, etc.

Emphasis is placed on the change of legal approaches to determining the sub-department of consideration of cases on administrative offenses in the sphere of property. Special attention needs to be paid to the elimination of alternative sub-department of consideration of cases on administrative offenses in the field of property, duplication of functions of various authorities and officials in this field.

Special attention is devoted to the formation of a strategy for increasing the effectiveness of the activities of bodies that are endowed with managerial and jurisdictional functions in the field of property, carry out the prevention of offenses committed in this field, due to the optimization of their structure, the development of new standards of interaction with citizens.

Keywords: rights; legal interests; property; right of ownership; administrative-legal protection; administrative-legal security; administrative fines.

Formulation of the problem. Transformational processes in the socio-economic sphere, which have been taking place in our country in recent years, determine the development of administrative law and require a deeper study of the problems of using means and methods of administrative-legal protection of the rights and legitimate interests of Ukrainian citizens, in particular, property rights.

Currently, it is particularly relevant to identify the problems of protecting the rights and legitimate interests of citizens in the property sphere, to rethink the conceptual principles of protecting the rights and legitimate interests of Ukrainian citizens in the sphere of property by means of administrative law, taking into account the requirements of today, to bring them into line with modern social needs.

The problems of protecting the legitimate interests of Ukrainian citizens in the sphere of property by means of administrative law have matured in the process of socio-political changes in our country, the urgency of their solution is due to the needs of practice.

Based on this, it can be stated that a scientific study of modern problems of administrative and legal protection of the rights and legitimate interests of Ukrainian citizens in the field of property is extremely necessary and timely.

Analysis of the study of the problem. Improving the quality of administrative legislation and developing theoretical proposals for solving the problem of administrative-legal protection of the rights and legitimate interests of Ukrainian citizens in the field of property is one of the most important tasks of the modern science of administrative law. Despite the relevance of this topic, it has not found a comprehensive scientific reflection in the domestic literature. Work was devoted to certain aspects of the problem... Further scientific research of certain issues of administrative and legal protection of the rights and legitimate interests of Ukrainian citizens in the field of property is a guarantee of improving domestic legislation and the practice of its application.

The aim is to determine the problem of administrative and legal protection of the rights and legitimate interests of Ukrainian citizens in the field of property and theoretical justification of ways to solve them.

Presenting main material. In recent years, Ukrainian society has undergone radical changes. They are related to the construction of a democratic state, the transition from a command-administrative to a market-democratic system [1, p. 310], by introducing human-centered ideology into all management processes. The change in the socio-economic and political vector of Ukraine's development is closely related to the revision of the main directions of the implementation of legal policy in the state, the means, goals, and methods that are implemented in the field of law or through law, the creation of a fundamentally

new type of relationship between citizens and civil servants, which are based on the priority of human rights and freedoms, respect for the individual, a high culture of communication [2, p. 91].

Strengthening the protection of the rights and legitimate interests of Ukrainian citizens in the sphere of property is especially important in modern conditions. The entire system of public and legal institutions, the modern system of administrative and legal protection should be aimed at guaranteeing the rights of people to own, use and dispose of their property.

In general, the administrative-legal protection of property rights should be understood as a system of legal methods and means of preventing violations of property rights, stopping encroachments on a person's legal ability to own, use, and dispose of property, applying administrative liability measures to violators in accordance with the procedure established by law, and compensating for the damage caused.

It is appropriate to include legal methods and means of preventing encroachments in the sphere of property as components of the administrative-legal protection of property rights; termination of administrative offenses encroaching on property rights; application of administrative liability measures to violators in accordance with the procedure established by law and compensation for the damage caused.

Administrative and legal methods of protection of property rights should include: a) prevention of violation of the regime of protection of property rights; b) renewal of the violated right to property or objects of intellectual property; c) bringing to administrative responsibility for committing an offense in the field of property; d) compensation for the damage caused.

Depending on the method of protection, it is advisable to divide the means into: a) means of prevention; b) means of legal responsibility; c) means of termination; d) means of recovery.

The issues of protection of property rights became more acute during the period of military operations in Ukraine, which is caused by significant problems of guaranteeing the protection of such rights by the state.

A significant amount of property in the eastern and southern regions of the country has been destroyed, the institutions that should implement such protection are not functioning. Despite this, Ukraine has not solved the problems of property rights protection that were inherent in Ukrainian society in the past.

Despite the existence of such a significant number of regulatory and legal acts regarding the administrative and legal protection of the legitimate interests of citizens in the field of intellectual property, their effectiveness has been repeatedly questioned in the legal literature.

The main shortcomings of domestic legislation regarding the protection of the legitimate interests of the owners of objects of intellectual creativity include the following: lack of norms and standards aimed at legalizing the production and distribution of products covered by intellectual property rights, a comprehensive legislative approach to solving the problem of piracy, protection mechanisms from it, a legally established system of measures for the prevention, detection, termination and investigation of offenses in the field of intellectual property, coordination of the actions of various authorities in this field [3, p. 386–389].

The inability of the administrative and legal norms, which determine the types of administrative sanctions for violations in the field of intellectual property, to ensure the proper protection of the legal interests of the owners due to the disproportionality of the fixed penalties to the damage caused to the rights and legal interests of the subjects of intellectual property. Sometimes the income from the illegal use of an object of intellectual property rights exceeds the established sanctions hundreds of times and more than covers the incurred costs [4, p. 492].

Ukrainian legislation is characterized by the lack of proper regulation of the issue of protection of computer programs as objects of copyright, valuation and accounting of intellectual property objects, intangible assets; the need to develop a methodology for determining the amount of material damage caused by the violation of rights to intellectual property objects; inhibiting the development of the system of units for technology transfer, innovation activity and intellectual property in budgetary institutions, organizations and enterprises whose activities are related to the creation and use of industrial property objects [5].

Inadequate legislative regulation refers to ways of protecting the legal interests of owners of intellectual property objects used in the worldwide Internet [6]. Methods of protecting the legitimate interests of subjects of intellectual property law do not take into account the specifics of this field, and the legislation is not adapted to the modern realities of the development of the field of Internet technologies. In connection with this, there was an urgent need for the formation of a modern, effective legal framework for the protection of the legitimate interests of owners of intellectual property objects in the worldwide Internet.

Another important area of administrative and legal protection of the legitimate interests of citizens in the sphere of property, which requires detailing the ways and means of its implementation, is countering raiding.

As Ya. Solovyi points out, raiding is a complex phenomenon, countermeasures against it must also be complex and manifest at different levels: both at the level of criminal, corporate, administrative, civil law, and at the level of state policy in general [7].

Administrative and legal means of combating raiding can fully prevent and stop illegal activities in this area at the early stages, and the authorities should be more active in opposing various manifestations of raiding of property rights.

The development of an effective legal basis for combating raiding in Ukraine is the most important task in the way of improving domestic legislation regarding the protection of the legitimate interests of citizens in the field of property. In this regard, it would be positive to use the experience of Great Britain, the United States, and Germany in establishing the appropriate process [8].

The state faces an important task of forming an effective mechanism of legal guarantees for the realization of a person's legal opportunities, optimization of ways to satisfy them, a system of means and methods of preventing the realization of one legitimate desire to the detriment of another. The ideological orientation of all administrative and legal acts, legal procedures and practical activities of the subjects of power to protect the rights, freedoms and legitimate interests of citizens is a new challenge of modern legal policy in Ukraine.

There is an important task of developing a single long-term strategy for legal reforms in this area and a program of nationwide actions regarding its implementation.

There is an urgent need to develop a single long-term comprehensive strategy of legal reforms to strengthen the protection of the legitimate interests of citizens in the sphere of property.

The starting point of this strategy should be a clear understanding that it is the state and its bodies that are the main subjects that ensure official-authority recognition and provision of important interests of citizens in the field of property, determine the ways and means of protecting these legal opportunities, are responsible for the state combating offenses committed in this area.

The main directions of legal reforms to strengthen the protection of the rights and legitimate interests of citizens in the field of property should be:

- formation of a strategy to increase the efficiency of the activities of bodies that are endowed with managerial and jurisdictional functions in the field of property, carry out the prevention of offenses committed in this field by optimizing their structure, developing new standards of interaction with citizens, eradicating corruption, increasing responsibility and accountability, reducing bureaucracy and red tape, establishment of a system of training civil servants and improving their qualifications, familiarization with foreign experience;

- improvement of the regulatory legal framework, which regulates the legal status of subjects of protection of the rights and legitimate interests of citizens in the sphere of property, the procedural form of such protection;

- the development of an information base for the protection of the rights and legitimate interests of citizens in the field of property (creation of a consolidated information database of public information on objects of ownership of land resources, real estate; an information system for detecting offenses in the field of property and monitoring risk factors that lead to corporate conflicts and cause raiding of objects of

property rights), improvement of the system of informing citizens about existing threats to their rights and legitimate interests in the field of property and ways to overcome them, strengthening openness in the activities of authorities, their control by citizens.

The formation of a new intellectually developed society, the active development of the latest technologies, the aggravation of problems related to the spread of digital technologies and the Internet, requires the formation of effective institutional means of protecting the legitimate interests of owners of intellectual property objects.

This problem provoked a discussion in the scientific literature regarding the feasibility of forming a single codified act in the field of intellectual property, which would combine the material, procedural and administrative-delict norms of law in this field.

It seems most expedient to combine administrative offenses in the field of intellectual property into six articles, the content of which would take into account the specifics of objects of intellectual property rights and separately refer to violations of copyright and related rights, industrial property rights, intellectual property rights to commercial names, trademarks and geographic indication, trade secret rights, domain name, logo, databases, computer programs and other intellectual property objects used on the Internet. In view of this, it is expedient to add a separate Chapter 6-A of the Code of Criminal Procedure entitled «Administrative offenses in the field of intellectual property», which would cover all the mentioned legal forms of administrative offenses.

It is also time to effectively reform the legally established system of administrative fines for committing offenses in the field of property. It is possible thanks to the expansion of the use of alternative sanctions, a review of the feasibility of applying certain types of administrative penalties for committing misdemeanors in the field of property, a review of the legislative model for determining the size of administrative fines in this area, a mechanism for taking into account the main characteristics of the subject of the offense when determining the administrative penalty (property status of the offender, having a permanent place of work, the ability to voluntarily perform debt collection, etc.).

In the process of developing a draft of the new Code on Administrative Misdemeanors, the legislator should revise the legislative model for determining the type and amount of administrative fines applied for offenses in the field of property. Legislative approaches to determining the amount of fines and the term of administrative arrest need to be revised (it has not been proven that a significant increase in the effectiveness of the application of administrative arrest at the expense of increasing the term of its application has been proven). From the point of view of the effectiveness of coercive influence on the violator, the use of correctional works for the commission of petty theft of someone else's property (Article 51 of the Code of Criminal Procedure) is quite doubtful.

Increasing the effectiveness of legal policy is possible thanks to a change in legal approaches to determining the sub-department of consideration of cases on administrative offenses in the sphere of property. Special attention needs to be paid to the elimination of alternative sub-department of consideration of cases on administrative offenses in the field of property, duplication of functions of various authorities and officials in this field.

There is an urgent need to make appropriate changes to the Code of Administrative Procedure of Ukraine to strengthen the protection of the rights, freedoms and legitimate interests of citizens and other persons. The legislator should abandon the general concept of «interest» used in this Code and establish the concept of «legitimate interest». Determining the tasks of administrative proceedings in the first part of the first article of the Civil Code, it should be noted that the priority is to protect the rights, freedoms and legitimate interests of individuals, rights and legitimate interests of legal entities in the field of public legal relations.

Overcoming various negative trends in the field of property in the future can only be associated with the implementation of comprehensive socio-economic reforms, increasing the efficiency of management activities in this field, improving the legal regulation of the protection of property rights in Ukraine, taking

into account in the normative legal acts the main legitimate interests of citizens in the sphere of property, securing them in the form of subjective rights and guaranteeing their implementation and protection.

The modern socio-economic development of Ukrainian society contributes to the development of property relations, the transformation of property goods into a priority object of social relations, and legal interests in this area into an indispensable element of the administrative and legal status of Ukrainian citizens.

The legitimate interests of citizens in the field of property are the basis for the emergence of subjective rights of citizens, supplementing them in those areas where legal norms are not able to clearly regulate the implementation of needs regarding ownership, use and disposal of property. Actually subjective rights are one of the forms of realization of legal interests.

Conclusions. The administrative and legal status of a citizen of Ukraine in our time bears the imprint of crisis processes in the field of management in our country, economic problems, etc. Today, the facts of violation of the rights and legitimate interests of citizens in the field of property are quite frequent.

Such violations are related to the challenges of wartime, the problems of citizens realizing the right to own real estate and land plots, the bureaucratization of the procedures for registering the right to own land, the facts of «raider» seizure of property, the deprivation of single elderly people, convicted of crimes, orphans and others housing and other objects of property rights, the imperfection of the administrative-delinquency legislation and the system of state institutions that oppose offenses in this area.

An important task of our state is the qualitative reform of domestic administrative and tort legislation in this area, the development of effective measures to strengthen the protection of rights and legitimate interests in the field of intellectual property, property of business entities. It is especially important to form a strategy to increase the efficiency of the activities of bodies that are endowed with managerial and jurisdictional functions in the field of property, carry out the prevention of offenses committed in this field, due to the optimization of their structure, the development of new standards of interaction with citizens.

СПИСОК ВИКОРИСТАНИХ ДЖЕРЕЛ

1. Цветков В. В. Демократія і державне управління: теорія, методологія, практика : монографія. Київ : ТОВ «Видавництво «Юридична думка»», 2007. 336 с.
2. Авер'янов В. Б. Людиноцентристська ідеологія як основа реформування українського адміністративного права в умовах інтеграційного процесу. *Держава та регіони (серія «Право»)*. 2010. Вип. 2. С. 87–92.
3. Базилевич В. Д. Інтелектуальна власність : підруч. Київ : Знання, 2006. 431 с.
4. Підпригора О. А., Бутнік-Сіверський О. Б., Дроб'язко В. С. та ін. Право інтелектуальної власності / за ред. О. А. Підпригори, О. Д. Святоцького. Київ : Концерн «Видавничий Дім «Ін Юре»», 2004. 672 с.
5. Про Рекомендації парламентських слухань «Захист прав інтелектуальної власності в Україні : проблеми» : рекомендації Верховної Ради України від 27.06.2007 р. № 1243-V. *Відомості Верховної Ради України*. 2007. № 45. Ст. 2001.
6. Холіна А. Г., Тюльченко І. К. Проблеми захисту інтелектуальної власності в Інтернеті. Матеріали регіональної наукової конференції викладачів, аспірантів та студентів вищих навчальних закладів «Актуальні проблеми сучасного розвитку України : соціально-економічні, науково-технічні та правові аспекти». URL: <http://masters.donntu.edu.ua/2012/fknt/kholina/library/article4.htm>.
7. Соловій Я. І. Проблеми кваліфікації діянь, пов'язаних із захопленням підприємств (рейдерства) / URL: http://azov-academy.ucoz.org/publ/to_euro_2012_problemi_kvalifikaciji_dijan_pov_jazanikh_iz_zakhoplennjam_pidpriemstv_rejderstva_solovij_ja_i/7-1-0-129.
8. Колесник М. А. Зарубіжний досвід протидії рейдерству та можливості його використання в Україні. *Право і Безпека*. 2010. № 5 (37). URL: http://www.nbu.gov.ua/portal/soc_gum/pib/2010_5/PB-5/PB-5_2.pdf.

REFERENCES

1. Tsvytkov V. V. (2007). *Demokratiya i derzhavne upravlinnya: teoriya, metodolohiya, praktyka* [Democracy and public administration: theory, methodology, practice]: monohrafiya. Kyiv: TOV «Vydavnytstvo «Yurydychna dumka». 336 p. [In Ukrainian].
2. Aver»yanov V. B. (2010). *Lyudynotsentryst-s'ka ideolohiya yak osnova reformuvannya ukrayins'koho administratyvnoho prava v umovakh intehtratsiynoho protsesu* [People-centered ideology as a basis for reforming Ukrainian administrative law in the context of the integration process]. Derzhava ta rehiony (tseriya «Pravo»). No. 2. P. 87–92. [In Ukrainian].
3. Bazylevych V. D. (2006). *Intelektual'na vlasnist'* [Intellectual Property]: pidruch. Kyiv: Znannya, 2006. 431 p. [In Ukrainian].
4. Pidopryhora O. A., Butnik-Sivers'kyy O. B., Drob'yazko V. S. ta in. *Pravo intelektual'noyi vlasnosti* [The right of intellectual property] / za red. O. A. Pidopryhory, O. D. Svyatots'koho. Kyiv: Kontsern «Vydavnychyy Dim «In Yure». 2004. 672 p. [In Ukrainian].
5. *Pro Rekomendatsiyi parlament-s'kykh slukhan' «Zakhyst prav intelektual'noyi vlasnosti v Ukrayini: problemy»* [About the Recommendations of the parliamentary hearings «Protection of intellectual property rights in Ukraine: problems»]: rekomendatsiyi Verkhovnoyi Rady Ukrayiny vid 27.06.2007 r. # 1243-V. Vidomosti Verkhovnoyi Rady Ukrayiny. 2007. No. 45. P. 2001. [In Ukrainian].
6. Kholina A. H., Tyul'chenko I. K. (2012). *Problemy zakhystu intelektual'noyi vlasnosti v Interneti. Materialy rehional'noyi naukovo-y konferentsiyi vykladachiv, aspirantiv ta studentiv vyshchyykh navchal'nykh zakladiv «Aktual'ni problemy suchasnoho rozvytku Ukrayiny : sotsial'no-ekonomichni, nauково-tekhnichni ta pravovi aspekty»* [Problems of intellectual property protection on the Internet. Materials of the regional scientific conference of teachers, graduate students and students of higher educational institutions «Actual problems of modern development of Ukraine: socio-economic, scientific-technical and legal aspects»]. URL: <http://masters.donntu.edu.ua/2012/fknt/kholina/library/artitsle4.htm> [In Ukrainian].
7. Soloviy Ya. I. (2012). *Problemy kvalifikatsiyi diyan', pov»yazanykh iz zakhoplennyam pidpryyemstv (reyderstva)* [Problems of qualification of actions related to the seizure of enterprises (raiding)] URL: http://azov-atsademy.utsoz.org/publ/to_euro_2012_problemi_kvalifikatsiji_dijan_pov_jazanikh_iz_zakhoplenjam_pidpriemstv_rejderstva_solovij_ja_i/7-1-0-129 [In Ukrainian].
8. Kolyesnyk M. A. (2010). *Zarubizhnyy dosvid protydyi reyderstvu ta mozhlyvosti yoho vykorystannya v Ukrayini* [Foreign experience of countering raiding and the possibility of its use in Ukraine] Pravo i Bezpeka. No. 5 (37). URL: http://www.nbu.gov.ua/portal/sots_gum/pib/2010_5/PB-5/PB-5_2.pdf. [In Ukrainian].

Дата надходження: 11.10.2023 р.

Ірина Личенко

Національний університет «Львівська політехніка»,
завідувач кафедри цивільного права та процесу
Навчально-наукового інституту
права, психології та інноваційної освіти,
доктор юридичних наук, професор

iryna.o.lychenko@lpnu.ua

ORCID ID: <https://orcid.org/0000-0002-4838-3579>

Вікторія Мельниченко

Національний університет «Львівська політехніка»,
студентка першого (бакалаврського) рівня вищої освіти
Навчально-наукового інституту
права, психології та інноваційної освіти
viktoriia.melnychenko.pv.2022@lpnu.ua

СУЧАСНІ ПРОБЛЕМИ АДМІНІСТРАТИВНО-ПРАВОВОГО ЗАХИСТУ ПРАВ ТА ЗАКОННИХ ІНТЕРЕСІВ ГРОМАДЯН УКРАЇНИ У СФЕРІ ВЛАСНОСТІ

Стаття присвячена проблемі визначення сучасних проблем адміністративно-правового захисту прав та законних інтересів громадян України у сфері власності та теоретичному обґрунтуванню шляхів їхнього вирішення. Констатовано, що наукове дослідження питань адміністративно-правового захисту прав та законних інтересів громадян України у сфері власності є важливою умовою покращення вітчизняного законодавства та практики його застосування.

Особливу увагу надано впливу сучасних викликів та загроз на сферу захисту права власності. Аргументовано, що вся система публічно-правових інституцій, сучасна система адміністративно-правового захисту повинна бути націленою на гарантування прав людини володіти, користуватися та розпоряджатися своєю власністю.

До складових частин адміністративно-правового захисту права власності доцільно віднести правові способи та засоби щодо попередження посягань у сфері власності; припинення адміністративних правопорушень, що посягають на право власності; застосування до порушників заходів адміністративної відповідальності у встановленому законом порядку та відшкодування заподіяної шкоди.

Акцентовано, що сьогодні доволі частими є факти порушення прав та законних інтересів громадян у сфері власності. Такі порушення пов'язані з викликами воєнного часу, проблемами реалізації громадянами права власності на нерухомість та земельні ділянки, забюрократизованістю процедур оформлення права власності на землю, фактами «рейдерського» захоплення власності, позбавленням одиноких осіб похилого віку, засуджених за вчинення злочинів, сиріт та інших соціально незахищених верств населення житла й інших об'єктів права власності, недосконалістю адміністративно-деліктного законодавства та системи інституцій держави, що протистоять правопорушенням у цій сфері тощо.

Наголошено на зміні правових підходів до визначення підвідомчості розгляду справ про адміністративні правопорушення у сфері власності. Особливої уваги потребує усунення альтернативної підвідомчості розгляду справ про адміністративні правопорушення у сфері власності, дублювання функцій різних органів влади та посадових осіб у цій сфері.

Особлива увага присвячена формуванню стратегії підвищення ефективності діяльності органів, які наділені управлінськими, юрисдикційними функціями у сфері власності, здійснюють профілактику правопорушень, що вчиняються у цій сфері, за рахунок оптимізації їх структури, вироблення нових стандартів взаємодії з громадянами.

Ключові слова: права; законні інтереси; власність; право власності; адміністративно-правовий захист; адміністративно-правове забезпечення; адміністративні стягнення.