

CIVIL-LEGAL REGULATION OF THE PROCEDURE OF REQUISITION IN THE CASE OF NATURAL DISASTERS, ACCIDENTS, EPIDEMICS, EPIZOOTICS AND OTHER EXTRAORDINARY CIRCUMSTANCES IN UKRAINE

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Formulation of the problem. The spread of the coronavirus pandemic throughout the territory of Ukraine, the introduction of martial law in connection with the full-scale invasion of the Russian Federation, require the state to apply such legal mechanisms that would help eliminate the negative consequences that arose in connection with dangerous events, or prevent their occurrence.

One of such mechanisms is the institution of requisition, which is legalized in national legislation by the constitutional provision of Article 41 of the Constitution of Ukraine.

Thus, according to the specified article of the Basic Law, forced alienation of objects of private property rights can be applied only as an exception for reasons of public necessity, on the basis and in the manner established by law, and on the condition of prior and full reimbursement of their value. Compulsory expropriation of such objects followed by full reimbursement of their value is permitted only under conditions of war or emergency [1]. At the same time, the state's right to requisition property is an exception to the basic principle of inviolability of property rights for every legal state.

Scientific circles rightly note that this procedure is probably the most radical way of state intervention in property rights, which is not illegal if certain conditions are met [2]. Thus, in the precedent practice of the European Court of Human Rights, clear criteria have been developed, the observance of which indicates the admissibility of interference with property rights. One of these criteria is legality, which consists in «compliance with the relevant provisions of national legislation and compliance with the principle of the rule of law» [3].

Thus, forced alienation of property should be carried out with strict and unwavering adherence to the legally established procedure, which confirms the relevance of this scientific issue.

The purpose of this article is to carry out a theoretical analysis of the problems of legal regulation of the requisition procedure in the case of natural disasters, accidents, epidemics, epizootics and other extraordinary circumstances in Ukraine.

Presenting main material. The general provisions on requisition in Ukraine are defined by Article 353 of the Civil Code of Ukraine (henceforth the CC of Ukraine) [4], which is considered correct, as it contributes to the development of guarantees of the rights of the owner in relation to requisition in the system of general principles of civil law regarding the protection of property rights, in particular, establishing guarantees for damages [5].

At the same time, it should be taken into account that the rules governing requisition are aimed at resolving the conflict between public interest and civil law (in particular, property rights, other civil rights), the resolution of which is in favor of the public interest [6].

Legal analysis of Art. 353 of the CC of Ukraine provides grounds for distinguishing two independent types of requisition depending on the conditions of its implementation, namely: requisition under circumstances not related to the introduction of legal regimes of emergency or martial law; requisition in the conditions of legal regimes of martial law or states of emergency [4].

Because, in the context of the issues under investigation, as of today, the normative basis for requisition in circumstances not related to the introduction of legal regimes of emergency or martial law is Part 1 of Art. 353 of the CC of Ukraine according to which in the event of a natural disaster, accident, epidemic, epizootic and other extraordinary circumstances, for the purpose of public necessity, property may be compulsorily expropriated from the owner on the basis and in the manner established by law, subject to prior and full compensation cost (requisition) [4].

The analysis of this norm shows that it establishes general conditions for the requisition of property, which, together with other provisions of the article, constitute the legislative basis for the legal

regulation of forced alienation of property under circumstances not related to the introduction of legal regimes of emergency or martial law.

At the same time, in terms of the grounds and procedure for requisitioning property, this norm has a deferential nature to the legislative acts that actually regulate the relevant issues. In this context, we note that there is no single legal act that would provide a special legal regulation of forced alienation of property in circumstances not related to the introduction of legal regimes of emergency or martial law in the national legislation. Therefore, the legal norms that are necessary for the implementation of the prescriptions of Part 1 of Art. 353 of the Civil Code of Ukraine are in practice unsystematized and fixed in various types and nature of regulatory documents. This state of affairs greatly complicates law enforcement, creates problems with inconsistency of terminology, creates legal conflicts, etc. At the same time, a significant proportion of issues related to the requisition procedure remain unresolved, which negatively affects the observance of the rights of the owner of the requisitioned property.

Note that if we are talking about the forced alienation of property under the legal regimes of emergency or martial law, then this type of requisition has to a certain extent a clearly defined regulation. Its basis is, in particular, the Laws of Ukraine «On the transfer, forced alienation or seizure of property in the conditions of the legal regime of martial law or state of emergency» [7], «On the legal regime of the state of emergency» [8], «On the legal regime of martial law» [9].

In this regard, we would like to express our position on the need to adopt a normative legal act that would provide comprehensive regulation of the institution of requisition (both its varieties), the grounds and procedure for its implementation, and create conditions for the proper protection of the rights and legitimate interests of owners whose property is forcibly confiscated alienated, and would improve the situation with the quality of Ukrainian law. N. B. Moskalyuk, in particular, emphasized this necessity in his scientific works [10, p. 135], O. M. Klymenko [11, p. 58], A. Ivanov [12, p. 21], T. E. Krysan [13, p. 166], D. M. Biletskyi [14, p. 128], I. Ya. Holovnia [15, p. 143] and others.

The procedure for forced expropriation of property in circumstances not related to the introduction of legal regimes of emergency or martial law provides for: establishing a set of conditions that are necessary for requisitioning; making a decision on requisitioning; reimbursement of the value of forcibly alienated property to the owner; direct seizure of requisitioned property in accordance with the decision on forced expropriation.

Interpretation of the norm of Part 1 of Art. 353 of the CC of Ukraine provides grounds for asserting that forced alienation of property is carried out in the event of a natural disaster, accident, epidemic, epizootic and other extraordinary circumstances.

The CC of Ukraine does not provide a definition of the specified concepts and does not contain an indication of the law that must be applied to clarify their content.

We note that the occurrence of any of those listed in part 1 of Art. 353 of the CC of Ukraine, events may lead or lead to the occurrence of negative consequences (damage to life, health of a person, his property, etc.). In this regard, the state, fulfilling its constitutional obligations, must intervene and ensure the protection of the civilian population in accordance with the law.

Thus, the norm of civil legislation on requisition is related to the legislation on the protection of the civilian population, the basis of which is the Code of Civil Protection of Ukraine [16].

The norms of this codified act make it possible not only to establish the signs, features and content of events, the occurrence of which is a condition for requisitioning, but also to understand their categorical belonging. Yes, item 25 of Art. 2 of the Civil Code of Ukraine stipulates that a catastrophe, accident, fire, natural disaster, epidemic, epizootic, epiphytotic, which by their consequences pose a threat to the life or health of the population or lead to material damage are dangerous events [16].

In turn, any of these dangerous events can lead to the emergence of an emergency situation, which Code of Civil Protection of Ukraine defines as a situation in a separate territory or business entity on it or a water object, which is characterized by a violation of the normal conditions of life of the population [16].

Taking this into account, a logical question arises as to the expediency of the legislator's application in the norm of Part 1 of Art. 353 of the CC of Ukraine wording «other extraordinary circumstances» as opposed to the categories operated by the Code of Civil Protection of Ukraine? Law-making technique, applied in the stated norms of Part 1 of Art. 353 of the CC of Ukraine creates the impression that a natural disaster, accident, epidemic, epizootic, which according to the norms of the Civil Code of Ukraine belong to dangerous events, are extraordinary circumstances. Apparently, the legislator wanted to use a collective, generalizing concept, which can include all other events, the occurrence of which may lead to forced alienation of property.

We found out that the norms of the current legislation, in particular the CC of Ukraine, do not contain a comprehensive definition of this term. Those definitions that are set forth, for example, in the Laws of Ukraine «On Plant Quarantine» [17], «On Veterinary Medicine» [18]; Orders of the State Aviation Service No. 1239 dated 26.11.2018 [19] and No. 1802 dated 12.11.2020 [20], which regulate legal relations in the field of air transportation, are non-universal and highly specialized, and therefore do not provide an opportunity to fully disclose the meaning of the term.

It should be noted that the concept of «emergency circumstances» is similar in meaning to the concept of «emergency situation», as they create a situation. At the same time, their difference lies in the events that cause them, since an extraordinary circumstance, unlike an emergency situation, in addition to natural, man-made and biogenic events, also arises as a result of events of a criminal and socio-political nature [21, p. 34].

The closeness of the content of these concepts is also confirmed by the fact that an emergency situation in the Code of Civil Protection of Ukraine and emergency circumstances in the Law of Ukraine «On Veterinary Medicine» are defined as a situation and a condition, respectively, which are essentially synonymous.

We cannot ignore the fact that the Great Explanatory Dictionary of the Ukrainian Language interprets the words «situation» and «circumstances» equally as a set of conditions under which something happens [22, p. 819, 1321].

Thus, it is not entirely correct to use the term «circumstances», which indicates a situation, as generic to those terms which indicate an event or process (natural disaster, epidemic, etc.).

In view of the above, in order to apply a single categorical and conceptual apparatus, we consider it expedient to make changes in part 1 of Art. 353 of the CC of Ukraine by replacing the wording «under other extraordinary circumstances» with «under other dangerous events that led (may lead) to the occurrence of emergency situations (circumstances)».

Thanks to this, it will be possible not only to eliminate the terminological inconsistency, but also to solve the problem to which T. E. Krysan draws attention. According to her position, it is necessary to establish an exhaustive list of extraordinary circumstances under which requisition is possible, since when making a decision on forced alienation of property, one or another authority may abuse its right, interpreting the relevant concept quite broadly [13, p. 167].

Also, the proposed content of the norm of Part 1 of Art. 353 of the CC of Ukraine can act as a certain safeguard in such cases, taking into account the presence of a legislative definition of a dangerous event and an emergency situation, as well as an expanded (compared to what is contained in the CC of Ukraine) list of emergencies approved by the State Committee of Ukraine on Technical Regulation and Consumer Policy situations [23].

The next condition for conducting requisition is that it is carried out exclusively for the purpose of public necessity. For the first time at the legislative level, the definition of this concept was enshrined in Art. 1 of the Law of Ukraine «On Expropriation of Land Plots, Other Objects of Real Property Located on Them, Which Are Privately Owned, for Public Needs or Due to Public Necessity» and defined as an exclusive necessity determined by national interests or the interests of a territorial community, under which forced alienation is possible [24]. Thus, the specified concept should be classified as evaluative.

An emergency situation combined with the need for immediate elimination or prevention of its consequences requires a quick response, therefore the decision to requisition property cannot be made in court. Instead, the most expedient and effective way is an

administrative order (adoption of an administrative act), which distinguishes requisition from other ways of terminating ownership, which require a court decision.

The above provides grounds for the conclusion that the decision on forced alienation of property belongs to the exclusive powers of the state.

The norm of part 1 of Art. 353 of the CC of Ukraine does not contain information about the state authority authorized to make a decision on requisition, which is open to criticism [25, p. 71]. In the scientific literature, only assumptions are made that these can be state authorities, authorities of the Autonomous Republic of Crimea, local self-government bodies [26, p. 452].

Taking into account the exclusivity of requisition as a basis for acquiring only the right of state property, which logically implies subject limitation in making a decision on forced alienation of property, we believe that local self-government bodies cannot be given such powers. Because of this, as of today, it can be confidently asserted that there is no single subject of decision-making on forced alienation of property. This situation is caused by the lack of comprehensive legislative regulation.

Establishment of a state authority that can requisition property is carried out in each specific case. At the same time, the law does not provide a single criterion by which the appropriate body could be established. In some cases, such a criterion can be the object of requisition, in others - a dangerous event that led to the emergence of an emergency situation. For example, the requisition of foreign investments is carried out on the basis of the decision of the bodies authorized for this by the Cabinet of Ministers of Ukraine (Part 4 of Article 397 of the Economic Code of Ukraine) [27].

In turn, the decision on requisition in the event of an epizootic may be taken by a body that carries out activities in the field of prevention of outbreaks of particularly dangerous animal diseases. Investigating the issue of requisitioning animals during epizootics, O.A. Ustimenko noted that it is not legally regulated by which body the decision on forced expropriation should be made, the procedure for such expropriation, etc. [28, p. 125].

We believe that potentially such a body, depending on the scale of the emergency situation, can be considered the State Emergency Anti-epizootic Commission under the Cabinet of Ministers of Ukraine or a specific local state emergency anti-epizootic commission, which carry out their activities on the basis of Resolution No. 1350 of the Cabinet of Ministers of Ukraine dated November 21, 2007 [29].

In any case, the difficulty in determining the state authority that has the right to requisition property under circumstances not related to the introduction of legal regimes of emergency or martial law and the lack of a unified approach to this issue, in our opinion, is a negative phenomenon of current law enforcement.

It is worth mentioning that the global practice of combating the coronavirus pandemic knows cases of the use of requisition in these processes. For example, in Great Britain, one of the measures implemented under the imposed quarantine included the requisition of private hospitals as emergency hospitals [30]. The coronavirus pandemic on the territory of Ukraine was not accompanied by the introduction of a state of emergency and caused only the introduction of quarantine and restrictive anti-epidemic measures. Despite this, it can certainly be attributed to the list of dangerous events referred to in Part 1 of Art. 353 of the CC of Ukraine. At the same time, the resolution of the Cabinet of Ministers of Ukraine No. 1236 dated 09.12.2020, according to which the quarantine was introduced, not only did not solve the entire problem, but also did not allow the possibility of requisitioning in the conditions of the spread of the coronavirus [31].

Conclusions. Summarizing, we consider it possible to note that it seems not only correct, but also urgent to adopt a special law on requisition with the definition of the body (or bodies) that would be in charge of the forced expropriation of property independently or in coordination with other state authorities. In addition, we believe that the determination of the value of property should be carried out on the date of its assessment, by analogy with the way it is provided for requisition under the legal regimes of war or state of emergency, and carrying out the assessment as of the date of adoption of the administrative act on the requisition of property is erroneous. Also, in addition to the monetary form, the norm of Art. 353 of the CC

of Ukraine actually provides for the possibility of applying in-kind compensation, enshrining in part 6 the right of the previous owner to demand the provision of other property in exchange for him, if possible.

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Чаплик І.Д. Цивільно-правове регулювання порядку реквізиції у разі стихійних лих, аварій, епідемій, епізоотій та за інших надзвичайних обставин в Україні.

Поширення усією територією України пандемії коронавірусу, введення воєнного стану у зв'язку із повномасштабним вторгненням російської федерації вимагають від держави застосування таких правових механізмів, які б допомогли усунути негативні наслідки, що настали у зв'язку із небезпечними подіями, або запобігти їх виникненню. Одним із таким механізмів виступає інститут реквізиції, який легалізовано у національному законодавстві конституційним положенням статті 41 Конституції України. Так, згідно із вказаною статтею Основного Закону примусове відчуження об'єктів права приватної власності може бути застосоване лише як виняток з мотивів суспільної необхідності, на підставі і в порядку, встановлених законом, та за умови попереднього і повного відшкодування їх вартості. Примусове відчуження таких об'єктів з наступним повним відшкодуванням їх вартості допускається лише в умовах воєнного чи надзвичайного стану. При цьому, право держави реквізувати майно є винятком із базового для кожної правової держави принципу непорушності права власності. Примусове відчуження майна повинно здійснюватися із суворим та неухильним додержанням законодавчо встановленої процедури, що підтверджує актуальність цієї наукової проблематики.

У статті вказано, що не лише правильним, але й нагальним прийняття спеціального закону про реквізицію із визначенням у ньому органу (чи органів), який самостійно або ж у координації із іншими органами державної влади був би управленим на примусове відчуження майна. Крім цього, вважаємо, що визначення вартості майна повинно здійснюватися на дату його оцінки, за аналогією із тим, як це передбачено для реквізиції в умовах правових режимів воєнного або надзвичайного станів, а проведення оцінки станом на дату прийняття адміністративного акту про реквізицію майна є помилковим.

Ключові слова: право власності, реквізиція, надзвичайні обставини, відшкодування, примусове відчуження.

Chaplyk I.D. Civil-legal regulation of the procedure of requisition in the case of natural disasters, accidents, epidemics, epizootics and other extraordinary circumstances in Ukraine

The spread of the coronavirus pandemic throughout the territory of Ukraine, the introduction of martial law in connection with the full-scale invasion of the russian federation, require the state to apply such legal mechanisms that would help eliminate the negative consequences that arose in connection with dangerous events, or prevent their occurrence. One of such mechanisms is the institution of requisition, which is legalized in national legislation by the constitutional provision of Article 41 of the

Constitution of Ukraine. Thus, according to the specified article of the Basic Law, forced alienation of objects of private property rights can be applied only as an exception for reasons of public necessity, on the basis and in the manner established by law, and on the condition of prior and full reimbursement of their value. Compulsory expropriation of such objects followed by full reimbursement of their value is allowed only under conditions of war or emergency. At the same time, the state's right to requisition property is an exception to the basic principle of inviolability of property rights for every legal state. Forced expropriation of property must be carried out with strict and unwavering adherence to the legally established procedure, which confirms the relevance of this scientific issue.

The article states that it is not only correct, but also urgent to adopt a special law on requisition with the definition of the body (or bodies) that would be in charge of the forced expropriation of property independently or in coordination with other state authorities. In addition, we believe that the determination of the value of property should be carried out on the date of its assessment, by analogy with the way it is provided for requisition under the legal regimes of war or state of emergency, and carrying out the assessment as of the date of adoption of the administrative act on the requisition of property is erroneous.

Keywords: property right, requisition, extraordinary circumstances, compensation, forced alienation.