Right deprivation in the legal regulation mechanism of civil property relations: Comparative analysis of international legislation

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Right deprivation in the legal regulation mechanism of civil property relations: Comparative analysis of international legislation

ANATOLIY V. KOSTRUBA[1*]

The work examines aspects of how deprivation of a civil right forms when such rights can determine a possible decrease in quality of life. Authors explore this problem in accordance with provisions of the civil legislation and form practical means for application of the right deprivation mechanism based on the analysis of international legislations. In particular, possibilities of estate seizures and gradual transformation of formalised law space into doctrinal subsystem are analysed. The work investigates the possibility to use measures of both state and private influence in this field and presents prognostic components that can affect regulation variations of estate seizure of estates based on an agreed-upon procedure between states. A different procedure is proposed for joint ownership and realisation of a provision on managing land and ecological legislations as a field of civil relations. The practical aim of the work can be applied to solving disputes regarding the need for joint regulation of civil property relations in international and local civil law. Measures that determine the possibility for structural and comprehensive informing of certain forms and structures of legal science are implemented.

Keywords: deprivation mechanism, formalisation, field of land law, legal acts

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INTRODUCTION

In the science of land law, scientists identify a special kind of legal relations – land procedural legal relations – meaning such that regulate norms, establish an order of creation, change or termination of land legal relations. This poses a question regarding the inclusion of subjects that, according to land legislation, are not direct participants in land legal relations but without their involvement the realisation of legal provision regarding compulsory acquisition. These subjects are courts, some specific state agencies (enforcement agencies, internal affairs agencies, military or emergency management agencies, etc.). In our opinion, the main criteria regarding the possibility of including into the list of subjects the corresponding legal relations are a direct participation of a corresponding agency or a physical, legal party and the existence of their interest in exercising compulsory acquisition. Assuming that the discussed state agencies are exercising a direct acquisition benefiting the state and are interested in executing functions of direct acquisition imposed upon them by the legislation, they can be categorised as subjects of the studied legal relations. The involvement of courts in the studied legal relations is instrumental since it is courting that sanction decision about a possibility of compulsory acquisition of an estate in most cases. These considerations justify the inclusion of courts as subjects of legal relations of compulsory acquisition of estates.

In a state and law theory, the content of legal relations is understood as rights and obligations of their participants. Therefore, the content of the studied legal relation can be considered rights and obligations of subjects regarding compulsory transition of a right to an estate. The structure of the content can be simple (subjective law and legal responsibility) and complex (for public officials – authority, legal responsibility). While subjective law is understood as provided and protected by state extent (limit) of the possible (permitted) behaviour of an individual towards the satisfaction of their legal interests that are envisaged by objective law. Unlike objective law, which acts as a total or a system of existing legal norms, subjective law acts as law that belongs only to a specific subject and is realised solely by the expression the will of this individual.

When describing the content of studied legal relations in international and local legislation based on these attributes, the following should be noted. Participants enter the corresponding legal relations not voluntarily. The reason for their participation in legal relations can be different – unlawful behaviour (crime, offence or civil violation), not reaching an agreement with state agencies or local administration concerning a voluntary acquisition of an estate or other causes. In our opinion, this reason causes existing domination of legal responsibilities of subjects of legal relations over their subjective rights. Subjective behaviour of state agencies and their public officials is strictly limited by the authority provided to them in accordance with the current legislation. Only strict abidance to law and acting within specific boundaries allows us to acknowledge the process of compulsory acquisition of an estate as legitimate. At the same time, during specific stages of compulsory acquisition, law provides an individual with several possible variants of its behaviour (legal content), such as the possibility to accept a compensation offer for an estate or provision of another estate in exchange for the one being acquired. Nevertheless, the real behaviour of an individual (factual content) allows us to make conclusions that in such case an individual does not use granted to him subjective rights, which is followed by their legal responsibility to participate in studied legal relations.

Thus, the objective of the work is to study the institute of compulsory acquisition of estates in the international legal doctrine and legislations of separate countries. The work uses the method of legal analysis since the main doctrinal understanding is based on the possibility to predict legal construction by the qualitative content of legal acts. The

author has studied international conventions, agreements, recommendations, international legal principles and norms that determine harmonisation and unification of national legal systems of different countries, and legislative acts on the compulsory acquisition of estates of individual countries. Legal regulation of compulsory acquisition of estates should be examined starting from a number of sources of law and their influence on regulation. Despite the fact that the modern law theory differentiates the following main forms of sources of law: normative-legal act, normative legal agreement, legal precedent, legal custom, authorities, authors consider application of legal customs in the sphere of compulsory acquisition of estates impossible due to the following. Constitutions of most countries state that the right of ownership over land is acquired and realised by citizens, legal parties and the state only in accordance with law. Additionally, the order and foundation of compulsory deprivation of ownership rights can be established only by law. Therefore, it is impossible to apply legal customs in the sphere of compulsory acquisition of estates.

LITERATURE REVIEW

In Roman law, "acquisition" was called "any act which transferred the ownership right". C. Wellman (1995) stated in his works that during acquisition we transfer to someone else the property with a condition that property would be in if it still was ours, and that is the course for all civil law. A.J. Simmons (1995) wrote that acquisition in its narrow sense is termination of an ownership right through its transfer to another person, and, therefore, it is only subjectively a termination of a right, meaning that it's a termination for this person, while objectively acquired right continues to exist for another person with the same content and the same specifics that distinguished it before an acquisition act. A. Macklin (1993) reached this conclusion when analysing methods of establishing subjective rights in civil law.

It is worth noting that O.L. Alcantara (1996) is not the only representative of the pre-revolutionary civil law who gave attention to the essence of acquisitions. This question received a deep comprehension in the work of W. Bradford (2005), where the author analyses different methods of termination and forfeiture of an ownership right. Meanwhile, one researcher notes that acquisition can be viewed both in its wide and narrow senses (Arya 2006). In its wide sense – it is a loss of an ownership right. In its narrow sense – it is a voluntary transfer of ownership rights from one person to another. This way, according to the narrow (immediate) understanding, the latter is a voluntary legal act, which must result in a transfer of rights to another person, and as a result, the previous owner loses this right (Ellerman 2010). The emphasis on the voluntary nature of acquisition is not random since the author clearly understood that this act is based on a voluntary expression of will of a rights holder. Though later in the text, the author uses the term "acquisition" to denote compulsory transfer of rights on the basis of confiscation and expropriation. These cases he calls "compulsory acquisition", which are performed independently from the will of a rights holder (Murray 2014).

When analysing the current legislation, I.W. Duncanson (2009) identifies such forms of usage and understanding of the term "acquisition": "acquisition" is used as an ancestral category to signify the whole of transition (transfer) mechanism of property (rights) from one party to another at the discretion of an owner or without it; "acquisition" can be used as a category of types, more specifically as one of the reasons to terminate an ownership right, and in such understanding it should be determined in a way where the owner of an item (property) on at their own discretion performs a transfer of an item (ownership right) to another person.

MATERIALS AND METHODS

The work uses the method of legal analysis since the main doctrinal understanding is based on the possibility to predict legal construction by the qualitative content of legal acts. The development of legal regulation of any state institution is unimaginable without considering international legal norms in the form of international principles, agreements, recommendations. International law provides modern global rule of law, has a deep influence in the system of its norms, directs the development of domestic national law, acts as criteria for the lawfulness of state's behaviour on an international level and in an internal sphere of social-legal relations. The existence of international conventions, double-sided and many-sided agreements, creation of non-governmental human rights bodies determine harmonisation and unification of national legal systems of different countries. That is why when advancing legal institutions of any country it is necessary to take into account international legal principles and norms, as well as their practices in certain countries (Lerat 2013).

The institute of compulsory acquisition of estates is familiar to legislations of all countries in different forms. As a rule, common international approach regarding compulsory acquisition of objects of private ownership rights by governments is based on recognition of every state's sovereignty on its territory, the existence of specific exclusive law that determines the character and content of ownership rights, also establishment of a specific order concerning its purchase, transition or forfeiture.

RESULTS AND DISCUSSION

A specific unification of order of exercising such compulsory acquisition and establishment of specific guideline list of reasons for the acquisition. According to Protocol 1, Article 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950), 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. Among the instruments the state uses to perform compulsory acquisition of estates and specific international-legal doctrines, there are expropriation, repurchase and compulsory acquisition in the public interest, confiscation, requisition and nationalisation (Brown & Marusek 2014). One of the oldest ways of compulsory acquisition of property is requisition, which in its earliest form was known as "military" requisition. In the ancient times, it was considered a common rule that local population has to supply the army with resources. In the Middle Ages and up to the Thirty Years' War, there was a custom of virtually total unlimited pillage of property of population in an army-occupied region. After the French Revolution, requisition started to apply to the property of their own subjects.

International regulation of requisition was reflected in article 52 of the Convention respecting the Laws and Customs of War on Land (1907), which states that requisition can be performed for the needs of the army of occupation and cannot be performed to satisfy the needs of a warring country. Unauthorised requisition performed by soldiers or officers is unlawful. Requisition is only allowed in proportion to the military needs, and it should be repaid in cash; if not – requisition has to be affirmed by a receipt and repaid as soon as possible. The Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949) contains similar provisions. These conventions establish that requisitions measures regarding specific property can be requisitioned by a belligerent in such cases and to the extent when it is absolutely necessary (Article 19 of the Convention respecting the Laws and Customs of War on Land) and only if the requirements of the civilian population have been taken into account (Article 55 of the Convention relative to the Protection of Civilian Persons in Time of War). Common requirements for compensation are established.

According to a complex analysis of the specified conventions, the term requisition does not include the ability for compulsory acquisition of estates but only of movable property and property of the highest necessity (the occupying power can requisition only foodstuffs, articles or medical supplies; the occupying power can requisition civilian hospitals only temporarily and only in cases of urgent necessity; requisition in kind and services can only be demanded for the needs of the army of occupation; an army of occupation can only take possession of cash, funds, and realizable securities which are strictly the property of the State, depots of arms, means of transport, stores and supplies, and, generally, all movable property belonging to the State which may be used for military operations, etc.). As a confirmation that requisition of estates was not present in the international practice, Article 55 of the Convention respecting the Laws and Customs of War on Land (1907) states that the occupying State shall be regarded only as administrator and manager of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct (Akhtar 2015).

In addition to military requisition, the notion of peacetime requisition formed much later. International-legal regulation considers "peacetime" requisition only as prohibition with a reservation concerning specific exceptions (Mcgillicuddy 2012). A single approach was developed for them, which consisted of establishing responsibilities of states where exceptional circumstances has formed, in response to which measures of compulsory acquisition were executed, while owners would be compensated under the corresponding legal regime (national or the most favourable one), which corresponded with general principles of international law regarding legal equity and non-discrimination. An example of the prohibition can be provisions of the Vienna Convention on Diplomatic Relations (1961), which forbid requisition of property (including estates) of diplomatic and consular agencies in during peace or war time.

When analysing legislations of different countries, it should be noted that usually requisition is included in the list of compulsory acquisition. When researching norms of foreign countries, the following qualities should be noted: in legislation of a number of countries, the notion of exclusively military requisition (generally, this involves only countries of Anglo-Saxon law); "peacetime" requisition is considered as compulsory acquisition of property (including estates) only in time of emergencies (natural disasters, epidemics, epizootics, etc.) – a good example is CIS countries (Ukraine, Russia, Belarus, Moldova, Uzbekistan, etc.); military requisition in national law, as opposed to international norms, is understood as provision of personal national defence interests and not as satisfaction of needs of occupational armies; national requisition, unlike international principles, allows compulsory acquisition of real property, including estates; requisition outlines a simplified procedure of compulsory acquisition, in comparison to other reasons (generally, it is immediate acquisition without the participation of court bodies in assessing the necessity of this acquisition); certain states often establish special guaranties in relation to requisition – for example, the right of successors to receive repayment (compensation) for requisition of their property is protected (in the Republic of Kazakhstan) (Cheng 2008).

A different quality of requisitions is the existence of its specific types. For example, Russian legislation distinguishes two types of requisition: permanent and temporary. Except that estates can be requisitioned only temporarily. According to Article 51 of the Land Code of the Russian Federation (2007), during natural disaster, accidents, epidemics, epizootics or other circumstances that are of urgent matter, estate can be temporarily seized from its owners by authorised executive state bodies in order to protect vital interest of citizens, society and state from threats, caused by these emergencies, with

due compensation of incurred damages and a document of requisition and return given to the owner of the estate after disposal. If it is impossible to dispose of hazardous effects, the estate is either acquired or exchanged for an equivalent one. When the estate is transferred to land reserves or land freeze, its further use is determined by the Government of the Russian Federation. Besides the Russian Federation, the institute of temporary requisition is also used in Italy (Howard-Hassmann 2004).

In the United Nations Convention against Transnational Organized Crime (2004), the term "confiscation" is explained as: the permanent deprivation of property by order of a court or other competent authority. The term "property" means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets. The content of international-legal norms allows confiscation of property that was involved in a crime, that is a special confiscation. The norms of these conventions do not contain a provision clarifying the question about confiscation of estates (that is do they allow or limit such acquisitions) (Bales & Robbins 2001).

Legal systems of many countries include another type of confiscation – general, which involves acquisition of all property, regardless of their relation to the crime committed. Depending on which type of confiscation the state penal system establishes – general or special, countries can be divided into three groups. The first group recognizes only general confiscation as punishment, that is the compulsory non-repayable conversion of a convicted offender's property, which was not connected in any way to a crime committed, to the benefit of a state (Belarus, Bulgaria, Vietnam, Denmark, Kazakhstan, China, Congo, Côte d'Ivoire, Cuba, Laos, Latvia, Mauritania, Madagascar, Mongolia, Sudan, Tajikistan, Togo, Ethiopia. Kyrgyzstan and Uzbekistan abolished general confiscation in 2001, Russia – in 2003). Legislations of the second group of countries allow special confiscation as punishment – compulsory non-repayable seizure of specific types of property, which were otherwise (directly or indirectly) connected to a crime committed by the convicted person (objects of crime, instruments and means of committing a crime, property obtained through crime, dangerous or harmful objects, etc.), executed by a special law and to the benefit of a state. Punishment in the form of special confiscation of property are covered in legislations of such countries as the Republic of Korea, the Netherlands, Japan, etc. The third group of states has two types of confiscation established – general and special. Such countries include, in particular, France and Ukraine.

It is worth noting that some countries have fully or partially abandoned such an institute of criminal law as confiscation of property. A number of countries have placed a prohibition on the application of general confiscation in their constitutions (Azerbaijan, Argentina, Barbados, Bahrain, Belgium, Cyprus, Colombia, Costa Rica, Lebanon, Malaysia, Maldives, Mexico, Nicaragua, UAE, Paraguay, Romania, Syria, Tajikistan, Turkey, Chile, etc.). Such prohibition is justified by the fact that confiscation of property results in almost complete material insecurity not only for the convict but also their family, a substantial psychological impact on these individuals, which do not correspond with the goals of punishment. In addition, such measures violate the rights and freedoms of citizens and are an obstacle to humanization and liberalization of criminal law. In many countries, where general confiscation persists, its application is often limited since this measure has a very significant impact on the living conditions of not only the convicted person but also their family. In France, for example, it can only be used for crimes against humanity, as well as illegal production, import and export of drugs. In Belarus and Tajikistan, it can be imposed only for grave and particularly grave crimes committed for financial gain. In Kazakhstan, confiscation can be imposed only for profit-motivated crimes.

Special attention should be paid to the list of property that is not subject to confiscation and does not include estates in it. As a general rule, the list includes the property necessary for living of a convicted person or individuals who are such person's dependent, joint housing, estates, furniture, clothes, children's items, etc. The types of property that can be confiscated are often largely the same in different countries. Returning to the issue of estate confiscation, it should be noted that a number of countries prohibit confiscation of estates. For example, according to a list of property that is not subject to confiscation by the verdict given in the annex to the Criminal Code of the Republic of Belarus (1999), confiscation is not applicable to estates on which the house and outbuildings are located, as well as estates required for agricultural or subsidiary economy.

Of interest to us is the application of expropriation in international law. In its broadest sense, expropriation means any compulsory acquisition of property, which includes military, state or public needs, nationalization and confiscation. Nevertheless, a number of scientists disagree with this understanding of expropriation: some scholars note that expropriation – is the exclusively paid (compensatory) acquisition of an object, another group notes the unpaid nature of expropriation, and some believe that expropriation is solely the acquisition of property (sometimes – only estates and real property located on them) for public purposes that are not related to emergencies. Presumably, this situation arose primarily because of the lack of a single international legal terminology in this sphere. Thus, we can find similar definitions of expropriation in foreign countries: "eminent domain" (United States of America, Philippines), "compulsory purchase" (Great Britain, New Zealand, Ireland), "resumption" (Hong Kong), "resumption/compulsory acquisition" (Australia), "expropriation" (South Africa, Canada), "alienation of land for (state) public needs (public necessity)" (Ukraine, Russia). Despite inconsistencies in international legal and national approaches to understanding of expropriation, the unifying factor is that expropriation is understood as the compulsory acquisition specifically of estates (Doupe & Salter 2000).

A normative rule about the non-discriminatory nature of provisions regulating property of private owners is contained in constitutions of most countries of the world in general forms. More detailed principles and provisions concerning compulsory acquisition of estates and the issue of compensation to owners of acquired estates are defined in separate laws. In foreign countries, compulsory acquisition of estates is regulated by a number of normative-legal acts, based on the following principles: clearly defined public needs or emergencies; the need for just and full reimbursement to the owners of expropriated estates; designation of procedural rights of the parties concerned, including a preliminary notice, the right to just compensation and the right to appeal; court hearing of compensatory ruling if there are any procedural violations, abuses, etc. As a rule, these principles and provisions concerning compulsory acquisition of estates and the issue of compensation to owners of acquired estates are defined in separate laws (Anderson 2014).

The Constitution of the Kingdom of Norway (1814) is the oldest one in Europe – adopted back in the early nineteenth century, it is still in continuous force, having undergone significant changes in the course of constitutional reforms. However, some of its provisions have been retained from its first edition to this day. Such provisions include § 104, which envisages that the right to immovable and movable property cannot be violated in any way, and § 105, according to which, if for reasons of state necessity any property is to be conceded into public use, the owner receives a full reimbursement from state treasury. In the Constitution of the Grand Duchy of Luxembourg (1868), Article 16 states: "No one shall be deprived of their property except in the public interest in cases and in the manner prescribed by law, and subject to fair and prior compensation".

In the 19th century, the theory of the social function of property get widespread use in Europe, whose ideas are incorporated in constitutional approaches to regulation of property relations, including compulsory acquisition of private property. The theory of the social function of property, according to which subjects of property rights are obliged to obey social norms and fulfil social functions assigned to them, was enthusiastically received by western legislators. At the same time, scientists expressed the opinion that elements of such ideas were usually included in the constitution, which arose on the wave of popular speeches and revolutions. Compulsory acquisition of property was allowed only for the needs of society, on legal grounds and for an appropriate reimbursement (Fox 2000).

Of particular interest is France, whose legal development is historically linked to the beginning of the formation of this institution. The Constitution of the French Republic (1958) deserves attention concerning construction of a system of constitutional legal regulation. According to its Preamble, The Declaration of the Rights of the Man and of the Citizen (1789) and provisions of the Preamble to the Constitution (1946) are included in the list of constitutional sources of law. It is these documents that determine the basis for constitutional regulation of property relations. Social ownership relations are regulated, in addition to Article 17 of the Declaration, by the norms of the Preamble to the Constitution, according to which, any property or enterprise, the exploitation of which has or acquires a national significance or turns into a monopoly, must become the property of society.

The Constitution of the Federal Republic of Germany (1949) in Article 14, part 2, repeats provisions of the Weimar Constitution "Property requires that its use must at the same time serve the common good". Its unique quality of securing the idea of social justice proceeds from the recognition of the need for government intervention in social processes. In addition to the general principles of the exercise of property rights, its provisions define the conditions for the socialization of lands, natural resources, means of production (Articles 14-15). Acquisition of property is allowed only for the common good and can only be done by law or on the basis of the law governing the nature and extent of compensation; compensation includes a just accommodation of the interests of society and individuals involved; the right to recourse to courts of general jurisdiction is guaranteed. In Germany, acquisition can be performed on a federal level, or on a land level, for example, for the road construction or architectural monuments protection.

The Constitution of the Kingdom of Denmark (1953) in § 73 stipulates that no one shall be compelled to surrender his property, except when required by public necessity; compulsory seizure of property on the grounds of public necessity is allowed only in the manner prescribed by law, subject to full compensation. The expression "the cession of one's property" must be interpreted in the light of the practice of acquisition; the rigid framework is set, first of all, for the legislative authority: the legislator is restrained by the procedure of passing laws on acquisition and this procedure is established by the Constitution itself. The procedure established by this Constitution for the adoption of such laws contains a safeguarding mechanism in the form of a reaffirmation of public necessity and the validity of the decision to expropriate by the newly elected parliament. The principle of the social function of property under this Constitution consists in the public duty of the owner to concede its legitimate rights in cases of public necessity.

The Constitution of Greece (1975) regulates this institution in the most complete and rigorous way. According to Article 17, part 2, no one shall be deprived of their property except for the public interest, which must be duly proven, as defined by law, and under the condition of full and prior compensation, which corresponds to the value of the acquired property at the time of the court hearing concerning the amount of compensation.

The same article regulates the procedure and conditions for determining compensation, benefits on its taxation, guarantees of the rights of the owner, which are always appointed by the civil court. Article 18 regulates property issues regarding natural resources and territories with special status (mines, quarries, caves, archaeological zones, minerals, water resources, abandoned territories, etc.). It is specified that law can regulate realisation of abandoned territories with the goal to use them in the interests of national economy and in assistance to landless citizens. Presumably, this provision is aimed at involuntary deprivation of legitimate rights of the owner of the abandoned estate in connection to the improper exercise of their rights over national natural riches and with the goal to provide economic and social public needs.

The Constitution of the Portuguese Republic (1976) concisely defines the basis for regulation of property relations; according to Article 62, part 2, requisition or expropriation of property for public purposes can be carried out only under the authority of law and on payment of fair compensation. A unique feature of the Constitution of the Czech Republic (1992) is the absence of respective provisions on property and a separate section dedicated to human rights and freedoms. The charter defines the social meaning and character of property, while deprivation of property or compulsory restriction of property rights is allowed only in the public interest, on the basis of law, on condition of reimbursement.

In the Constitution of the Republic of Poland (1997), provisions on property are included in Section I "Republic", which defines the basic principles of organization of state and society. In particular, it is established that the state protects property, while deprivation of property is permissible only when it is carried out for public purposes and for fair compensation (Article 21). An exceptional feature of this Constitution is the establishment of three types of emergency states (state of martial law, state of emergency, state of natural disaster), which makes it possible to determine the scope of possible limitations. When investigating the current state of the problem of fair compensation for the value of real estate during expropriation in Poland, one can observe the main principle of expropriation: full compensation for the losses incurred by the owners of expropriated real estate. However, in many cases, parties whose property was expropriated feel indignant about the very fact of expropriation and the amount of compensation they were offered. The problem is also that the amount of compensation, especially in cases of expropriation of estates together with the house, is equal to the market value of real estate or calculated by a cost-based value, which is not always sufficient to purchase another real estate. In Estonia, such an assessment is performed by private surveyors who are in no way connected with authorities. There is a significant difference between the market value and the economic losses because many cases lack any connection between the market value of the object, from the surveyor's point of view, and losses from the owner's point of view. It is quite difficult to develop legislation in the absence of feedback from practice, while practice invokes criticism due to underdeveloped legislation.

The Federal Constitution of the Swiss Confederation (1999) is relatively new in Europe. Article 26 established that property is guaranteed, deprivation of property and restrictions on property, which are equivalent to liquidation, shall be fully compensated. The general principles of restrictions on fundamental rights are defined in Article 36, which stipulates that restrictions on fundamental rights require legal justification. Exceptions include cases of serious, immediate and otherwise inevitable danger. Restrictions on fundamental rights must be justified by public interest or protection of the fundamental rights of third parties; they must be proportional, while the essential content of fundamental rights is indefeasible.

In Australia, the Commonwealth Constitution (2013) authorises compulsory acquisition of estates. Government land monitoring plays a fundamental role in ensuring

the accountability and transparency of land transactions in general and compulsory acquisition in particular. This independent supervisory body issues recommendations (instructions) entitled "Policy and Instructions for the Purchase, Compulsory Acquisition and Sale of Land", which are mandatory standards for all real estate transactions concluded by government agencies. In Taiwan, one method is used to assess real estate for taxation purposes and expropriation purposes. But tax assessment turns out much lower than the market value of real estates. A special "ad hoc" rule that gives the right to a local committee of appraisers to raise assessment of estates, which are subject to compulsory acquisition in the near future, results in situations when compensation for some estates greatly exceeded market value, while compensation for other estates was substantially below market value.

According to the Land Expropriation Act of Japan (2019), a governance body that makes decisions about implementation of projects requiring expropriation must compare positive public effect from such project with negative consequences for public or private interests. In relation to the application of law, one judicial precedent holds our interest. On 27 of March 1997, the Sapporo District Court recognized the decision of the Japanese government and Hokkaido Prefecture to build a dam in Nibutani as illegal because the government did not take into account the negative impact of the dam on cultural interests of the Ainu people. The culture of the Ainu was recognized as a culture of an indigenous minority that deserved special protection. A common example of a public interest that is often used to justify the need for expropriation are defensive needs. The United States extensively utilised land expropriation for military purposes in the 1950s in Okinawa. Of the 542,000 acres of the Okinawa Islands, 60,000 acres were seized, in many cases by force, by issuing military orders.

The practice of confiscation (seizure) entered American colonies alongside common law. In the early years, undeveloped estates could be seized without compensation; this practice was adopted because of the abundance of land. When developing the Constitution of the United States (1789), different views were expressed on compulsory acquisition of private property (eminent domain). D. Madison, who wrote the Fifth Amendment to the Constitution of the United States (1789), had more moderate views and has suggested a compromise aimed at protection of property rights through a separate obligation to pay compensation and the use of the term "public use", and not "public purpose", "public interest" or "public benefit". The Fifth Amendment imposes limitations on the exercise of eminent domain: "must be for public use and provide just compensation". Some historians believe that these limitations were set because of the need to provide the army with mounts, forage and rations from local ranchers and with an understanding about the need for compensation for such seizures. In addition, soldiers demanded forced housing in any houses near the location of combat missions. The US Supreme Court has successively postponed the right of the government to issue acts of acquisition for public use. In 1832, the Supreme Court ruled that seizure of private property can be used to allow the mill owner to expand their dam (pond) and production by flooding their upstream neighbour's estate. The court noted that public use is not intended as public taking of land; this can mean a public benefit. In the case of Clark v. Nash (1905), the Supreme Court discovered that different parts of the country had different circumstances and definitions of public use that also varies depending on the facts of a case. It ruled that the farmer can extend its irrigation canal through another farmer's estate (with compensation) – "water flow of previously mentioned Fort Canyon creek and the use of the said waters... (are) public use". The court recognized the dry climate and geography of Utah and determined that a farmer of an estate that is not adjacent to a river has the same rights as a farmer who has a direct access to water. However, the 14th amendment, adopted in 1868, restrictions on seizure of private

property, prescribed in the 5th Amendment, applied only to the federal government and not to the state governments.

In countries with democratic values, legislations have developed in a direction of protecting private property rights, though the provision on social functions of private property, its service for the common good and even on nationalisation were included in constitutions of many European countries. Modern constitutions of countries with socially oriented economies contain provisions on the possible transformation of private property into a public one through nationalisation and agrarian reforms, which include four integral conditions: public or state interests, the enactment of a law, mandatory compensation and the judicial procedure for compensation in the case of a dispute. Having examined constitutional regulation of nationalisation in European countries, we note that its realisation involves the adoption of either separate laws about nationalisation of certain objects of the right of private property or the general law governing such acquisition and the nature of compensation, which will be followed by adoption of legislative acts on nationalisation of certain objects of the right of private property on its basis and in accordance with it.

A common feature of constitutions of many countries is that they secure the right of private property and regulate its social function, which means that while preserving the guarantees of owners, it creates a combination of their interests with the state's interests. A number of Basic Laws involve limitation of the owner's rights if it is motivated by public interest. The principles for this limitation are: it is admissible solely in the interests of the common good and public interest; just compensation of property losses to its owner by the state; legitimacy; equality of all owners in the face of such limitations; judicial protection of private property rights.

In general, while examining provisions of modern constitutions, we note that the almost identical approach is applied to the issue of compulsory acquisition of property (including estates), which restricts property to social or state (public) interests and guarantees the owner a just compensation for their seized property. As a rule, such interests are understood as construction of roads, other infrastructure, airports or seaports; objects that positively affect the protection of the natural environment; preservation of accessible public spaces, including sea and ocean coasts; ensuring normal functioning of foreign diplomatic missions in the country; improvement of agricultural sector by consolidating land property located in close vicinity, which aims to increase land productivity; objects of state and social infrastructure – state, medical, educational institutions.

However, one of the main principles that unites legislations of different countries is the provision stating that the institution of compulsory acquisition of land is necessary to ensure state or public interests, which is reflected in the transfer of ownership rights resulting from a legal procedure in state or municipal ownership and preventing use of state mechanisms for redistribution of estates or other property between private property owners. Although contrary to this principle, a rather dangerous precedent was adopted in the United States of America. This is the case of Kelo v. City of New London (2005). The US Supreme Court delivered a verdict in the case, supporting the decision of the city authorities: to take away the estate belonging to the Kelo family and transfer it to a private developer who planned to build a number of private commercial facilities on this territory. This verdict was a giant disgrace – for the first time the US Supreme Court supported the practice of acquisition of private estates not for public needs, like construction of government buildings or roads, as enshrined in the Constitution of the United States (1789), but in favour of another private agent who, in the opinion of the state, will use this property with greater benefit to the whole society. As it turned out later, the Court's decision proved to be a failure. Significant reconstruction in New London did not happen

and, as of early 2010 (more than four years after the court's decision), nothing was built on the seized land, despite spending more than $80 million in public funds. Pfizer Corporation, which was to become the main beneficiary of additional development, announced in 2009 that it will close its project – a $300 million New London Research Center, shortly before the end of the ten-year tax discount agreement with the city. These land areas were subsequently acquired in 2010 for only $55 million by General Dynamics Electric Boat.

CONCLUSION

When summarising findings of the research on the institute of compulsory acquisition of estates in the international legal doctrine and legislations of separate countries, the following should be noted: world globalization processes predetermine harmonisation of national legal systems of various countries of the world and unification of international legal principles, including the institution of land expropriation, as evidenced by the significant consolidation of county groups that liberalise their legislations by each other's example and mutually fulfil certain legal provisions; understanding the content of separate legal categories of the institute of compulsory acquisition of estates differs considerably not only between legislations of countries of different legal systems but even between international legal and national doctrine; states, generally, have a much broader interpretation of provisions of this institutions compared to international principles, including specific additional conditions, reasons or guarantees for implementation of norms or introduction of specific separate types of certain means of compulsory acquisition; estates as a special object of compulsory acquisition is rarely act as a direct object of regulation of corresponding international legal norms, although the institute of compulsory acquisition is usually central in the framework of national legal systems of different countries.

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