

PRINCIPLE OF INVIOABILITY OF PROPERTY: RESTRICTIVE CONTEXT*Andrey V. Stepanyuk**Belgorod State University, 308015, Belgorod, Pobeda Street, 85, Russia, info@ores.su**Evgenij E. Tonkov**Belgorod State University, 308015, Belgorod, Pobeda Street, 85, Russia, info@ores.su**Ivan N. Kuksin**Belgorod State University, 308015, Belgorod, Pobeda Street, 85, Russia, info@ores.su**Marina V. Markhgeym**Belgorod State University, 308015, Belgorod, Pobeda Street, 85, Russia, info@ores.su**Sergey V. Tychinin**Belgorod State University, 308015, Belgorod, Pobeda Street, 85, Russia, info@ores.su*

Abstract. In article one of the fundamental principles of civil law - the principle of inviolability of property in a restrictive context is analyzed. The comparative analysis of the concepts "restriction of the principle of inviolability of property" and "restriction of the property right" is carried out. The compulsory termination of the property right, i.e. the termination of the right irrespective of will of the owner as restriction of the principle of inviolability of property is considered. The comparative and legal analysis of the principle use of inviolability of property within the civil legislation of the countries of the former Soviet Union is carried out.

Keywords: civil law, principle of inviolability of property, restriction of the principle of inviolability of property, compulsory termination of the property right, civil legislation of the countries of the former Soviet Union.

1.Introduction. For decades the principle of inviolability of property was absent in the civil legislation of the republics of the former USSR. In our opinion, the reason of lack of this principle was caused by specifics of economic system of the state with a priority of the state form of ownership, characteristic of it. Respectively there was no significant and noticeable scientific research on the matter, also the perspective of restriction of the principle of inviolability of property was not considered. Let's note that only in recent years these questions began to be developed by the Russian scientists-jurists [4, 5, 6].

Unlike domestic science of civil law, in the foreign civil doctrine close attention [1, 2, 3, 9, 10] was paid to a question of inviolability of a private property, its essence and value was investigated. It should be noted that the absolute inviolability of property is one of the main ideas of such political philosophical movement as libertarianism which has deep historical roots [1, river 69].

Considering that formation of the civil legislation is in the republics of the former Soviet Union (Azerbaijan, Armenia, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, Estonia) considerably under the influence of external legal values, studying of a question of the principle of inviolability of property, taking into account traditions of the western laws and orders, is obviously important also timely. At the same time it is necessary to consider that approaches of legislators of the states of the former Soviet Union to the principle of inviolability of property and its restrictions taking into account the western legal traditions differ, and this circumstance cannot but affect a research perspective.

2.Materials and methods. In work various general scientific methods and ways of logical knowledge are used: analysis and synthesis, system, functional and formal and logical approaches. Formation of conclusions was promoted by application of a method of the content analysis, legalistic and comparative and legal methods.

3.Results and discussion. As Sconda M. Veronica fairly notes, the principle of inviolability of property the roots goes back to the Roman private law [2, river 43]. Rather interestingly expressed value of the principle of inviolability of property Balganes Shyam according to which, the inviolability of property provides social existence [3, river 596].

Ryzhenkov A.Y. specifies that the inviolability of property can be interpreted in several ways. "First, the property right assumes impossibility for someone to make impact on a property object without volition of the owner. Secondly, the property right inputs a duty to other persons not to make to the owner difficulties in realization of the property right which is expressed in implementation of competences on possession, use and the order of the property belonging to it. Thirdly, the political system at which the property right is entered in the list of basic human rights and protection of this right is guaranteed by the law that it is enshrined in the Constitution" [4, river 23-24].

If to recognize that the inviolability of property is a property of the property right whether then it is correct to fix it as the principle? Besides, whether it is possible to put an equal-sign between the concept "inviolability of the property right" and "inviolability of property"? The difference, according to us, becomes obvious by consideration of a question of restrictions of the principles of civil law. The principles of civil law, certainly, are the main beginnings of civil regulation, but they are not absolute and can be limited. By consideration of a question of the maintenance of the concept "restriction of inviolability of property" scientists disagree.

So, for example, A.S. Gayduk, speaking about restriction of the principle of inviolability of property notes that in essence, it can be expressed only in the compulsory termination of the property right [5, river 18]. In turn, G.A. Gadzhiyev expands a circle of restrictions and carries to them not only compulsory withdrawal of a thing at the owner, but restriction of turnover ability of separate things, establishment of an easement, etc. [6, river 178-190]. Besides, that circumstance that in the works authors allow mixture of the concepts "inviolability of property" and "inviolability of the property right" attracts attention.

According to us, the principle of inviolability of property means that the property right to property cannot be stopped by alienation of a thing without the consent of the owner. In case of withdrawal of a thing legally in accordance with the established procedure on condition of indemnification, or gratuitously at the owner all competences which enter the content of the property right stop. For example, as a result of requisition, confiscation, nationalization. If the thing left possession of the owner illegally, or illegally is kept by other person at falling away of legislative bases for possession of it, then depending on the nature of violation the owner has an opportunity, for example, to show either the proprietary, or obligations and legal claim.

In cases when the law sets restrictions on the separate competences which are the content of the property right, it is about restriction of the property right, but the right for property is not lost.

The analysis of civil laws of fifteen countries of the former Soviet Union showed that from the point of view of reflection of the principle of inviolability of property they can be subdivided into two groups conditionally. The first are the states in which Civil codes the specified principle is directly enshrined. The second group is the countries in which civil laws the principle of inviolability of property is not mentioned.

In Civil codes of the first group the inviolability of property is designated or as the basic began or as the principle of the civil legislation. Treat them: Part one of the Civil Code of the Russian Federation of November 30, 1994 No. 51-FZ (Art. 1); The General part of the Civil code of the Republic of Kazakhstan of December 27, 1994 No. 269-XII (Art. 2); Civil code of the Kyrgyz Republic of May 8, 1996 No. 16 (item 1 of Art. 2); Civil code of the Republic of Uzbekistan of August 29, 1996 No. 254-I (Art. 1); Civil code of the Republic Turkmenistan of July 17, 1998 No. 294-I (Art. 1); Civil code of the Republic of Armenia of July 28, 1998 of ZR-239 (Art. 3); Civil code of the Republic of Tajikistan of June 30, 1999 No. 802 (Art. 3); Civil code of the Azerbaijan Republic of December 28, 1999 No. 779-IQ (subitem 6.1.4 of article 6); Civil code of the Republic of Lithuania on July 18, 2000 No. VIII-1864 (Art. 1.2); Civil code of the Republic of Moldova of June 6, 2002 No. 1107-XV (Art. 1).

No. 435-IV in the article 3 "General Principles of the Civil Legislation" indicates the civil code of Ukraine of January 16, 2003 inadmissibility of deprivation of the property right, except the cases established by the Constitution of Ukraine <<http://meget.kiev.ua/zakon/konstitutsia-ukraini/>> and the law, considering it as one of the general principles of the civil legislation.

Especially it would be desirable to tell about the Civil code of Republic of Belarus of December 7, 1998 No. 218-Z. It is specified in Art. 2 "The main beginnings of the civil legislation" that the civil legislation is based on the principle according to which "the property right, acquired in the lawful way, is protected by the law and is protected by the state, her inviolability is guaranteed, and compulsory alienation is allowed only based on public need at observance of the conditions and an order determined by the law with timely and full compensation of cost of aloof property or according to the resolution of court (the principle of inviolability of property)". Thus, it is the only code in the former Soviet Union which contains determination of the principle of inviolability of property.

At civil laws of the specified states there are bases of the compulsory termination of the property right, at the same time they often coincide (for example, the termination of the property right of the person to property which cannot belong to it; repayment of contents of cultural values; repayment of pets at inadequate treatment of them).

Laws of Georgia, Estonia and Latvia belong to the second group. So, the Civil code of Georgia of June 26, 1997 No. 786-IIc does not provide the principle of inviolability of property as main beginning (principle) of civil regulation. However, it is provided in item 1 of Art. 21 of the Constitution of Georgia that "the property and right of succession admit and guaranteed", and in the item 3 "deprivation of property for necessary social needs is allowed in the cases which are directly provided by the law, by a court decision or at emergence of the urgent need established by the organic law and only at the corresponding remuneration".

The law of the Republic of Estonia "The real right" No. 131 of June 23, 1993 and the Law of the Republic of Estonia "The General part of the Civil code" of April 17, 2002 the principle of inviolability of property is not mentioned. The law on the General part of the Civil code of the Republic Estonia does not comprise the principles (beginnings) of the civil legislation at all. At the same time, in paragraph 1 of Art. 32 of the Constitution of the Republic of Estonia of June 28, 1992 it is specified: "The property of everyone is inviolable and equally protected. The property can be aloof without the consent of the owner only in cases and as it should be, established by the law, in common interests for fair and immediate compensation. Everyone, whose property is aloof without its consent, has the right to appeal to court and to protest alienation of property, compensation or its size". On sense of the Estonian Constitution the provision of Art. 32 are established only concerning natural persons.

The question of a regulation of inviolability of property in Latvia is rather interesting. The civil code of the Republic of Latvia was adopted on January 23, 1937 and during 1992-1993 is gradually restored in force. However it

does not contain any provisions concerning inviolability of property. The constitution of the Republic of Latvia has little deeper historical roots as it was accepted on February 15, 1922. On May 4, 1990 process of renewal of operation of articles of the Constitution of 1922 which was complete on July 6, 1993 was begun. But, only in 1998 the Constitution was supplemented with Chapter 8 "About human rights". In Art. 105 it was specified in this chapter that "... Compulsory alienation of property for the benefit of society is admissible only in exceptional cases on the basis of the separate law for fair compensation". Thus, the specifics of the legislation of Latvia are expressed that the principle of inviolability of property in it directly is not called.

When studying a question of restriction of the principle of inviolability of property it is necessary to pay attention to one important aspect. Restriction of the principle can be connected with a concrete object of the property right. In this case such object as premises attracts attention. According to p.1 Art. 40 of the Constitution of the Russian Federation "Everyone has the right to housing. Nobody can be randomly deprived of the dwelling". The dwelling, certainly, is the social benefit. Therefore, "through systematicity the state becomes a factor of social wellbeing" [7, river 6028]. In scientific literature it is noted: "Normal human activity depends not only on physical protection of the personality, but also on the conditions necessary for satisfaction of her material and spiritual needs. In this sense legal protection of the personality includes as its personal physical (life, health, honor, advantage) safety, and his welfare including inviolability of property. Among the material property belonging to the person, housing is allocated with the practical importance and legal status. The problem of ensuring inviolability of housing takes the important place in international law and the interstate legislation" [8, river 148].

At the same time, No. 14 "About some questions which arose in jurisprudence at application of the Housing code of the Russian Federation" is specified in item 10 of the resolution of the Plenum of the Supreme Court of the Russian Federation of July 02, 2009 that by consideration of the disputes arising in connection with realization by the owner of the competences on possession, use and the order of the premises belonging to it, vessels should consider that the law set limits of implementation of the property right to premises which are that the owner is obliged: to use premises for designated purpose, that is for accommodation of citizens, to support premises in proper condition, without allowing thriftless treatment of him, to observe the rights and legitimate interests of neighbors. At non-compliance with these rules the property right to premises can be stopped by court by making decision on its sale from the public auction, i.e. the termination of the property right to masterless contents premises (Art. 293 of the Civil code of the Russian Federation). It should be noted that similar norms exist also in the legislation of the countries of the former Soviet Union. For example, Art. 250 "Termination of the property right to thriftlessly contents premises" Civil code of the Kyrgyz Republic, Art. 275¹ "Withdrawal of premises at the owner" of the Civil code of Republic of Belarus. It is necessary to emphasize that in the majority of laws of other countries of the former Soviet Union similar norms are absent. However, prerequisites for the termination of the property right to premises in other more widespread and vital situation are formed now. According to paragraph 2 p.1 Art. 446 of the Code of civil procedure of the Russian Federation collecting according to executive documents cannot be turned on the premises (its part) belonging to the citizen debtor on the property right if for it and the members of his family who are in common living in this room it is the only thing suitable for full-time residence by the room. This rule does not extend only concerning the premises which are a mortgage subject.

On May 14, 2012 the decree of the Constitutional Court of Russia No. 11-P "On the case of verification of the paragraph of the second of part one of article 446 of the Code of civil procedure of Russia in connection with complaints of citizens F.H. Gumerova and Y.A. Shikunov" was issued. The constitutional court specified that though the specified statute and does not contradict the Constitution of Russia, but it needs adjustment. Distribution of unconditional property (performing) immunity on premises which sizes considerably exceed average values and cost is sufficient for satisfaction of property claims of the execution creditor without prejudice to a being of constitutional right on the dwelling of the citizen debtor and members of his family, means not so much protection of this right, how many observance of exclusively property interests of the debtor to the detriment of the interests of the execution creditor and consequently violation of balance of interests of the debtor and creditor. Acceptance specified the resolution caused development of the relevant bill by the Ministry of Justice of the Russian Federation (01/05/11-16/00059339 of November 22, 2016). This bill provides creation of the mechanism of the compulsory termination of the property right to the premises or its part belonging to the citizen debtor. Now in Russia the procedure of bankruptcy (insolvency) of citizens is entered and taking into account that in many cases the main valuable property belonging to the citizen debtor are the only premises on which it is impossible to turn collecting now, the prospects of adoption of this law are represented real.

4.Conclusions. The carried-out analysis shows that the principle of inviolability of property is one of fundamental fundamentals of private law. The majority of the countries of the former Soviet Union apprehended this position, having enshrined in the civil laws.

At the same time, in science of civil law ambiguous approach concerning definition of in what part the principle of inviolability of property can be limited is observed. The problem consists in mixture of the concepts "principle of inviolability of property" and "inviolability of the property right". It is represented that the only restriction of the principle of inviolability of property is the termination of the property right forcibly, in cases and as provided by

the law. Thus the owner loses the status. Restrictions of the property right are more numerous, and they do not lead to the termination of the property right.

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