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INTERNATIONAL LEGAL FRAMEWORK FOR ENSURING SECURITY OF PROPERTY RIGHTS

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Abstract

The article investigates the international legal principles for ensuring the security of property rights in the conditions of the globalization of modern legal systems. Inviolability of property rights declared by the international community has received different assessments in national legal systems. Inviolability of property rights provides for the use of various state and legal mechanisms to ensure its security. New directions of social and economic development in the conditions of globalization make it necessary to improve the national system in order to ensure security of property rights of individuals and legal entities taking into account international legal principles. Attention is focused on the state of property security declared by international and national law guaranteed by the state. International normative and legal acts aimed at strategic directions of ensuring property security are subject to analysis. The development and implementation by the international community of legal postulates which can be used as a basis for legal regulation of property security in national legal systems is of fundamental importance.

Keywords

International law – National legal policy – Economic security – Condition

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Introduction

The development of international relations in the context of globalization of social and economic processes is characterized by the consistent standardization of international legal norms associated with the institutionalization of universally recognized principles in the national law systems that guarantee the security of property rights by transnational and domestic remedies¹.

Growing integration, social and economic complexities and significant stratification of society have a negative impact on the increasing level of conflict in social relations, the contradictory nature of which predetermines the need to improve the mechanism for ensuring security of property rights². The high destabilizing significance of encroachments on other people's property and violations of property rights make it advisable to improve national legislation taking into account the legal framework developed by international law.

The study of legal acts of an international character makes it possible to use the universal and regional content of norms to modernize the national legal system which is focused on ensuring security of property rights of both individuals and legal entities. Adherence to the principles of international law creates the prerequisites for taking into account national religious, cultural, social, economic and other specificities in the legislative drafting of national legal systems.

Given the disparity in national legislation in the area of property security owing to the different levels of social and economic systems close attention should be paid to the inter-state harmonization of legal norms which facilitates the regulation of legal and the unification of organizational and practical means to protect property rights. In this regard, the problem of unifying the legal policy of states is becoming increasingly important at the transnational level.

Universal International Legal Framework for Ensuring Security of Property Rights

The renewal of domestic and international life is reflected in the formation of new threats to the individual, society and state. The current conditions of globalization are accompanied by significant political and socio-economic transformations that predetermine the need to modernize national legal systems³. This is confirmed by the following international legal acts that inspire the expediency to improve national legislation in the field of protection of property rights of citizens, enterprises, institutions and organizations⁴.

The new stage of ensuring property security at the world level is recognized as the signing of the United Nations Charter in San Francisco (USA) on 26.06.1945. This Charter came into force on 24.10.1945 after the Second World War. The international community

¹ V. A. Avdeev y O. A. Avdeeva, "Criminal legal concept of the Russian Federation: main directions of criminal law improvement and crime counteraction measures optimization", *Russian Journal of Criminology* num 1 (2014): 12-24.

² V. I. Afanasyeva, "The legal nature of the subjective right to an invention", *Interuniversity collection of scientific papers* num 3 (2006): 30-35.

³ W. L. Goldfrank, "Paradigm Regained? The Rules of Wallerstein's World-System Method", *Journal of World-Systems Research* Vol: 6 num 2 (2000): 150-195.

⁴ V. A. Kartashkin y E. A. Lukasheva, *International instruments on human rights: Collection of documents* (Moscow: Norma: INFRA-M, 2002).

which is concerned about the unspeakable human grief of the two World Wars in an effort to save next generations from the scourge of war, notes the need for international cooperation among countries including social and economic progress of all nations and peoples. The UN Charter focuses on the development of friendly relations among nations based on the principles of self-determination and equality of peoples.

One of the purposes of the United Nations is to achieve international cooperation in solving international problems of a social, humanitarian, economic and cultural nature. Respect for human rights and fundamental freedoms without regard for differences of religion, sex, race or language must be promoted and developed (Article 1).

The Charter pays special attention to the functions of the United Nations to promote: (1) improvement of living standards, social and economic development and progress; (2) resolution of social and economic problems; (3) universal respect for and observance of key human rights and freedoms without distinction as to religion, sex, race or language (Article 55).

Proclaimed by resolution 217A (III) of the UN General Assembly on 10.12.1948, the Universal declaration of human rights establishes the right of both individual and joint possession of property by each person. At the same time, it declares the impossibility of arbitrary deprivation of one's own property (Article 17). The Universal declaration of human rights essentially reveals the international community's legislative understanding of intellectual property law. The right of everyone to participate in scientific progress and to enjoy its benefits will be enshrined. Attention should be paid to the right of free participation in cultural public life and enjoyment of art. In this regard, it is provided for the protection of the material and moral interests of everyone resulting from authors' artistic, literary and scientific works (Article 27).

Thus, the analyzed international legal act of universal character legally formalizes the ownership right including the intellectual property of each person and the seizure of which is prohibited by international law. In accordance with international legal principles, national legal systems improve constitutional, civil, criminal and other legislation to ensure the security of property rights of citizens, enterprises, corporations and consortia. Taking into account the different interpretations of the understanding of property and legal regulation mechanism in the field of its security by individual states, the international community is trying to develop a unified approach.

Transformations of economic, social, political and legal nature taking place in the second half of the XX century predetermine the necessity of novelization of the norms of international law in the field of property security⁵. The International covenant on economic, social and cultural rights which was adopted by the UN General Assembly on 16.12.1966 focusing on the recognition of the dignity of every human being, notes the need to exclude want and fear by making full use of each of their social, economic and cultural rights alongside political and civil rights. It bears in mind the right of every people to self-determination, the free determination of their political status and the free pursuit of their social, economic and cultural development.

⁵ V. A. Avdeev y O. A. Avdeeva, "Main directions of national criminal and legal policy in the sphere of counteraction of crime realization: federal and regional principles comparative analysis", Russian Journal of Criminology num 2 (2014): 46-62.

In accordance with international law and the mutual benefit of the parties involved, every people is entitled to freely dispose of its natural resources and wealth without prejudice to international economic cooperation. The deprivation of the means of subsistence belonging to the people is excluded. The right of men and women to enjoy social, economic and cultural resources is equal. The right of everyone to a decent standard of living and to the continuous improvement of living conditions is recognized. The participating countries recognize the right of everyone to be protected from hunger. To this end, individual and international cooperation measures are taken: 1) use scientific and technical knowledge to improve methods of production, storage and distribution of food in order to achieve the most efficient use and development of natural resources; 2) equitable distribution of world food stocks (Articles 1-3, 11).

The Declaration of social progress and development proclaimed by the UN General Assembly Resolution 542 (XXIV) of 11.12.1969 notes the need for international cooperation in promoting: a) the standard of living of people; b) conditions for social and economic development and progress. The Declaration reveals the main directions of implementation of social development policy. All peoples are entitled to live in dignity in freedom and to enjoy the benefits of social progress.

Social development and progress require the elimination of all forms of inequality and the realization of social, economic and cultural rights without discrimination. Among the conditions for social development and progress, the following deserve close attention: 1) national independence based on the right of peoples to self-determination; 2) the principle of non-interference in internal state affairs; 3) respect for the territorial integrity and sovereignty of states; 4) state sovereignty over their natural resources and wealth; 5) state law and responsibility for freely determining the goals, methods and means of achieving them for national social development; 6) peaceful coexistence and state cooperation regardless of the distinctive features of the economic, social and political systems.

At the heart of social progress must be each state's governmental action to increase national wealth and income and to ensure fair distribution in society. Economic growth and social progress necessitate the protection, exploration, exploitation and use for the benefit of humanity, for exclusively peaceful purposes of the environment, outer space, the seabed and the subsoil of the oceans and seas. The objectives of social development and progress recognize: a) the right to work; b) the elimination of hunger and poverty; c) the improvement of living standards, the equitable and just distribution of income; d) the provision of satisfactory public utilities and housing.

Social development and progress must be oriented on: 1) creating conditions for sustainable economic and social development; 2) eliminating various forms of exploitation and discrimination; 3) eliminating foreign economic exploitation. The above activities of the interested states parties should result in: deep application of the achievements of scientific and technological progress for the benefit of social development of society; harmonious combination of material, scientific and technological progress and spiritual, intellectual, moral, cultural development of mankind; improvement and protection of human environment. The methods and means of achieving the goals of social development and progress are: a) planning; b) establishment of national systems for the development and implementation of social policies and programmes, assistance to the planned development of disadvantaged areas based on various regional needs and conditions; c) stimulating

social research including international comparative legal studies on the planning and implementation of social development programmes.

It is also important to implement measures to: ensure the effective participation of society elements in the formulation and implementation of national plans and programmes for social and economic development; increase popular participation in the social, political, economic and cultural life of states through the implementation of national and regional plans for economic, social progress and social development; dissemination of social information at the international and national levels regarding ongoing changes in the field of social development.

The key points are: maximum mobilization of national resources, their effective and efficient use, intensification of capital investments in economic and social spheres; progressive growth of budgetary and other resources to finance social directions of development; equitable distribution of national income through the use of tax system and public expenditures as a tool for achieving social progress; prevention of capital outflow that causes social and economic harm to developing countries. Attention should be paid to: taking measures to accelerate industrialization, to improve living conditions in large industrial centres, to develop the organizational and legislative structure; integrated planning for solving urban planning and urbanization problems; improving the living standards of rural populations erasing the significant urban-rural disparities that ensure social progress and equal national development; establishing appropriate controls over land use in accordance with the public interest.

The following methods and means are used to achieve these objectives: 1) taking the necessary administrative, legislative and other measures in the field of realization of social, economic and cultural rights excluding the possibility of their discrimination; 2) promoting economic development through the implementation of organizational and social reforms; 3) intensification of agricultural production ensuring a balanced supply of food and its fair distribution among the population; 4) introduction of government programs for housing construction in both urban and rural areas; 5) development of systems of social, economic and cultural rights.

In this regard, the training of national staff and personnel for the implementation of general development policies and for technical, professional, managerial and administrative activities is of fundamental importance. Free training and retraining of personnel, continuous education of the population and incentives for social development are expedient. International and national policies that exclude the negative consequences of the "brain drain" deserve positive evaluation. Attention should be paid to: a) strengthening of international cooperation to ensure knowledge, experience and exchange of information between countries in the field of social development and progress; b) expansion of scientific, technical, cultural cooperation and use of the experience of states with different social and economic development systems on a mutually beneficial basis respecting national sovereignty; c) deeper application of technology and science for economic and social development; d) carrying out activities for the transfer of patents, production technologies and other technologies; e) development of administrative and legal measures to protect and improve the environment at the international and national levels; f) exploitation and use of the subsoil and seabed resources of the oceans and seas and outer space for social, economic development and progress.

The Universal declaration on the eradication of hunger and malnutrition which was endorsed by the UN General Assembly resolution 3348 (XXIX) of 17.12.1974 aims to take concrete measures to enhance international economic cooperation and address the world food problem. The elimination of hunger is recognized as a common responsibility of the international community and all states. It is noted that food problems should be considered in the process of preparation and implement national plans and programs of social and economic development.

Provision is made for additional financial and technical assistance through multilateral and bilateral agreements without prejudice to the sovereignty of the recipient countries. An effective food security system is in place: 1) participation in the global information system and maintenance of the agriculture and food system; 2) support for the principles and policies of the International commitment on world food security endorsed by the World food conference; 3) inter-state cooperation.

The Declaration on the use of scientific and technological progress in the interests of peace and for the benefit of mankind which was adopted by UN General Assembly Resolution 3384 (XXX) 10.11.1975 notes that scientific and technological progress is the most important factor for the development of humankind. In this regard, the declaration proclaims the interaction of states in the field of international cooperation for the use of the results of scientific and technological progress for the social and economic development of peoples and the strengthening of international security. Countries are required to take measures to ensure that technological and scientific advances are used to meet the spiritual and material needs of the various segments of the population.

The World declaration on intellectual property which was approved on 26.06.2000 notes the role of the World intellectual property organization as a specialized agency for its protection at the world level. Transparency, clarity and openness in the activities of the organization are to be stimulated. The Declaration recognizes that in the twenty-first century the rapid integration of the economies of some countries makes intellectual property particularly important in the life of each individual. The crucial role of intellectual property in the development of economic, natural and human resources is reaffirmed. In this regard, the expediency of integration of states with transition economies and developing countries into the international intellectual property system is noted. It is pointed out that it is necessary to inform people about the socio-economic and cultural importance of intellectual property rights. It is practical importance for national legal systems to formalize the concept of intellectual property. According to the Declaration, intellectual property is any property recognized as intellectual by nature that deserves appropriate protection including technical and scientific inventions, artistic and literary works, trademarks, industrial designs, geographical and business designations. Intellectual property law is based on the content of Article 27 of the Universal declaration of human rights. Principal importance is the notion of the author as developed in this international instrument which means a person or group of persons responsible for the creative work acting under or without certain auspices for the purpose of making a profit or otherwise. Creative activities may be undertaken in the arts, science and technology. In this regard, intellectual property rights activities anywhere in the world should be intensified. Noteworthy are the international cooperation Treaty and the registration systems for industrial designs and trademarks. The intellectual property rights market development policy is subject to formation and implementation. National intellectual property rights policies of states should be harmonized to ensure their protection at the global level.

Taking into account international legal acts, the idea of adopting and implementing the relevant conceptual documents is being promulgated at the national level. For example, the Concept of long-term socio-economic development which defines ways and means of strengthening national positions in the world community improving the welfare of the population and dynamic development of the economy. They are subject to legal registration: 1) main directions of social and economic development; 2) strategy for achieving the set goals; 3) priorities of state policy in the social and economic sphere.

Implementation of the set tasks provides for ensuring state economic security. According to the national security Strategy, the achievement of the stated goal presupposes the increase of the state economic potential ensuring the increase of the state role in the conditions of the changing world community. The elimination of structural imbalances in the economy and its improvement is one of the areas of national security. The threats to public and state security posed by criminal encroachments against the economy deserve close attention.

States at the level of national law equally recognize and protect private, state, municipal and other forms of ownership which are guided by constitutional and legal principles.

The right of private ownership will be protected by law. No one may be deprived of the property belonging to him. An exception to this rule is a court decision. National legislation provides a mechanism for the legal regulation of public relations and the protection of property interests⁶.

Regional Legal Framework for Ensuring Security of Property Rights

The adoption of these fundamental universal legal and regulatory instruments marked the beginning of the formation of international instruments of regional character⁷. The Charter of the Council of Europe which was signed on 05.05.1949 by the governments of Belgium, Denmark, France, Great Britain, Ireland, Italy, Luxembourg, the Netherlands, Norway, Northern Ireland and Sweden recognizes the promotion of economic and social progress as one of its activities. The achievement of this goal should be facilitated: 1) joint actions, conclusion of agreements between the countries concerned in the social, economic, scientific, cultural, administrative and legal fields; 2) development and protection of fundamental freedoms and human rights.

The Convention for the protection of human rights and fundamental freedoms which was signed in Rome on 04.11.1950 did not contain any rules aimed at protecting property rights in its original wording. This issue was resolved by signing Protocol № 1k of the Convention for the protection of human rights and fundamental freedoms in Paris on 20.03.1952. According to Article 1 of the Protocol, every individual and legal entity is entitled to unhindered use of his or her property. As a matter of principle, deprivation of property is not permitted. The only exception is the public interest on the basis of the

⁶ V. A. Sergevnin; V. A. Avdeev y O. A. Avdeeva, "Harmonization of Russian correctional policy in the field of sentencing and the execution of punishment", Russian Journal of Criminology Vol: 9 num 1 (2015): 78-93.

⁷ V. A. Avdeev, "Current issues of organized crime counteraction on the legislative and law-enforcement levels (round table summary)", Russian Journal of Criminology num 3 (2013): 5-24.

principles of international law which is subject to the conditions stipulated by law. The right to property is subject to restriction in the countries-participants of the Convention in the form: a) establishment of control over its fair use; b) compensation deprivation of the property owner.

The American convention on human rights of 22.11.1969 legally formalizes the right of ownership. This document gives everyone the right to own and use their property. The said ownership and use may be subordinated to the public interest.

The possibility of property deprivation belonging to a person is excluded. Such deprivation will be permitted on condition of payment of fair compensation for public interests or public use in cases provided for by law. Usury is prohibited by law (Article 21) along with other forms of human exploitation.

The African Charter on human and peoples' rights which was adopted at the OAU heads of state meeting on 26.06.1981 guarantees the right to property. Abolition of this right is permitted under the relevant laws taking into account public necessity or in the interest of society as a whole (Article 14).

The Convention of the Commonwealth of Independent States on human rights and fundamental freedoms which was adopted on 26.05.1995 in Minsk (Republic of Belarus) regulates the right of ownership of each legal entity or individual. The Convention excludes the possibility of depriving someone of their own property. At the same time, there is an exception to the general rule when the deprivation of property right is carried out in court or in the public interest. It is subject to the generally accepted norms of international law and conditions stipulated by national legislation (Article 26).

Conclusions

In conclusion, it should be noted that improving the effectiveness of the national mechanism for ensuring property rights is based on the norms and principles of international law⁸. Normative legal acts of universal and regional character form the necessary legal basis for improving national systems of law to ensure the property rights protection of legal entities and individuals. The inconsistency of the norms and provisions of international legal and regulatory instruments of a universal and regional nature creates the conditions for violating the fair balance between the requirements for the protection of the rights of individuals and the public interest.

As a result, the task to bring the norms of article 1 in Protocol № 1 to the European convention of fundamental human rights and freedoms into conformity is being updated in order to implement a uniform approach at the law enforcement level in addressing the issue to secure property rights of both individuals and legal entities.

Counteracting infringements of the right of ownership is also ensured by the creation of a scientifically grounded domestic program that accumulates a complex of interrelated and interdependent legislative, practice-oriented and law enforcement

⁸ V. A. Avdeev; O. A. Avdeeva; O. P. Gribunov y V. A. Sergevnin, "Punishment in the system of criminal law measures of counteracting corruption: Interaction of legal systems in the conditions of international life's globalization", Russian Journal of Criminology Vol: 10 num 2 (2016): 301-312.

measures. The said program which is consistent with the state legal policy in the field of prevention and counteraction to property rights violations should combine international legal and national means that exclude or minimize the determinants such actions.

Targeted impacts should be made on processes and phenomena, facial features and environmental features that are directly related and interact with each other. In order to intensify the preventive function of the state and legal policy it is necessary to intensify the prevention of anti-economic behavior of the population.

In developing general prevention measures, the determinants of contemporary delinquent behaviour on the part of property rights violators should be taken into account. Among the determinants of the general nature should be noted: the growth of legal nihilism in society and a decline in the level of legal culture; shortcomings in the activities of law enforcement agencies to ensure and protect property rights.

Attention should be paid to: shortcomings of legal policy in the reform of market relations and the creation of a socially oriented economic system; unjustified strategy to diminish the role of the state in the public-law regulation of economic relations; sharp decline in the formation of the market quality of life.

As a result, it seems appropriate to implement measures to eliminate (weaken) the contradictions that occur in the economic, social and other spheres of social development for the purposes of general social prevention aimed at ensuring property rights. This approach should lead to the solution of the following main tasks: ensuring sustainable production growth in all sectors of the economy; promoting employment of the socially active population.

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