

Волинський національний університет імені Лесі Українки  
Юридичний факультет

**АКТУАЛЬНІ  
ПИТАННЯ РЕФОРМУВАННЯ  
ПРАВОВОЇ СИСТЕМИ**

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А 43      Актуальні питання реформування правової системи: зб. матеріалів XVIII Міжнар. наук.-практ. конф., Луцьк, 04-05 червня 2021 р. / Уклад. Джурак Л. М. – Луцьк: «Завжди Поруч», 2021. – 170 с.

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У збірнику розглядаються питання реформування правової системи, які обговорювалися на Міжнародній науково-практичній конференції, яка проходила 04-06 червня 2021 р. Репрезентовано новітні погляди науковців та практиків на державу і право в умовах їх становлення, сучасного стану та перспектив розвитку. Досліджено актуальні філософсько-правові та теоретико-юридичні проблеми державотворення, правотворення, праворозуміння та правореалізації як в цілому, так і різного галузевого спрямування, з метою їх оптимізації та створення наукових засад для подальшого якісного перетворення.

Для науковців, аспірантів, студентів і всіх, хто цікавиться проблемами правової системи.

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## PROTECTION OF PROPERTY RIGHT TO REAL ESTATE: MODERN PROBLEMS IN THE CONTEXT OF THE CONFLICT IN SYRIA

*D. Spiesivtsev*

*The work is dedicated to consideration of selected civil law problems related to protection of property right to real estate in the context of the armed conflict in Syrian Arab Republic.*

**Keywords:** *property right, protection, armed conflict, damage, Syria.*

The situation in Syria highlights a new level of danger for property rights in a multilevel and multifaceted armed conflict. This situation is interesting because on the territory of the Syrian Arab Republic, in which the government and the opposition troops participate, the terrorist groups, whose activities in all episodes of the conflict have all the signs of terrorist activity, have joined the internal conflict.

In connection with the armed actions in Syria, questions arise as to who should bear the responsibility for the damage caused to the property of the civilian population and legal entities in the context of the armed conflict, and what is the mechanism for its reimbursement. The provisions of international conventions and declarations do not clearly answer the questions raised. In addition, at the moment, there are virtually no international standards that would determine a clear mechanism for compensation for damage caused by armed actions.

It is believed that the introduction of the compensation procedure is associated with the need to fix a clear formula for determining the subject of indemnity. It is this part of the entire compensation mechanism that is most difficult to establish, as it relates to the dynamics of damage caused by several participants in the conflict at once.

In particular, control over the locality may be established by one of the parties to the conflict (government troops, opposition troops or terrorist groups) without seriously compromising the property of civilians and legal entities, in particular immovable, but with further attempts to establish or renew the control of the relevant territory by the other party the conflict can cause significant damage to the property, as the defending party can use the buildings and structures to arrange combat positions and fire points that become the target of heavy weapons.

For an example of the situation, you can take the Syrian city of Ar-Rakka, the density of property damage in which per unit area is the largest among all the Syrian cities during the entire period of the conflict [1]. In particular, since the beginning of the conflict, the city was under the control of the armed opposition groups, but in November 2014, militants of the Islamic State in the course of fighting set control over the city. In June 2017, the Syrian Democratic Forces, supported by the coalition led by the United States, carried out a military operation accompanied by a bombing of the city, resulting in the destruction of many schools, hospitals and other infrastructure of the city. As of October 21, 2017, more than 10,000 buildings were damaged in the city, and 3,326 were destroyed [2, p. 13–14].

Similarly, in eastern Ghouta, which was considered the stronghold of the opposition forces, government forces, using attempts to clear the city from rebels, used heavy weapons and aircraft. As a result, because of hostilities on the territory of Eastern Ghouta, as of October 21, 2017, 6,133 buildings were

destroyed. In Aleppo, which was conditionally divided in the course of the western-backed conflict, controlled by the government forces, and the eastern, controlled by the opposition forces, destroyed 4,733 buildings, mainly in the eastern part of the city, resulting from the use of heavy weapons and bombing [2, p. 9–10, 15–16].

Thus, property damage inflicted in the course of a military conflict on private property can be quite significant, which raises the question of determining the subject of liability and the procedure for reimbursement of the damage.

First of all, the Syrian Issue has shown an acute shortage of effective instruments of international judicial protection of the subjective rights of persons who suffered from hostilities on the territory of the Republic. Thus, this issue is fully subjected to the jurisdiction of national courts, the most effective of which is possible only as a result of the complete collapse of the conflict. Along with this, military actions in Syria also outlined potential threats to the international system of property rights protection for the countries party to the Convention. The extrapolation of the model of conflict that takes place in Syria to the territory of one of the European countries is a clear demonstration of these challenges. At the same time, the reality of these threats is demonstrated by the armed conflict that is taking place in Eastern Ukraine.

In addition, in the context of Syria, it is seen that in the absence of clear international legal mechanisms for compensation for damage caused by military actions, the search for answers to the questions raised leads us to national legislation and to the legal basis of property liability.

As you know, the conflict that is taking place in Syria is characterized by multilateralism. It is attended by government troops, opposition forces and terrorist organizations (recognized by many countries in the world at least). The extent of the damage done is enormous, entire areas of cities with infrastructure and private and public real estate are destroyed.

In the conflict government troops represent the Government of Syria. In the context of the established tradition of writing the texts of the Criminal Codes, special attention is given to the protection of state power in the relevant normative legal acts. This is manifested in the recognition of criminal and the establishment of responsibility for actions aimed at changing or overthrowing the constitutional order or in capturing state power, encroachment on territorial integrity and inviolability, state betrayal, etc. The actions taken from the point of view of the ruling authorities and the current law make the person concerned a criminal, and therefore open the opportunity to bring him to justice.

However, it is evident that the social function naturally inherent in the state requires the implementation of the necessary reimbursement by the state concerned with the possibility of their recovery from the armed organizations.

On this occasion, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted on November 29, 1985, that the perpetrators or third parties are responsible for their behavior and should provide fair compensation to victims, their families and dependents. Such restitution, in particular, includes the return of property, compensation for damage, etc. (paragraphs 8, 9). In addition, the Declaration encourages the creation of national funds to compensate for the damage done to the victims, as well as the provision of necessary, including material assistance to the victims by the state (paragraphs 13, 14) [3]. Thus, it is likely that recognition at the national level of the parties to the conflict, in addition to government forces, of criminals in the manner established by the national law will lead to corresponding negative consequences for them. Particularly, person, who damaged or destroyed immovable property, is obliged to compensate appropriate damage as the offender.

In addition, the social function of the state will stipulate the necessity of reimbursement to persons who have been victims of a military conflict in connection with which such compensation may be carried out in kind, in particular, by providing free accommodation to other persons (in case of loss of dwelling) and granting material compensation. Such a reimbursement by the State will not deprive it of its ability to recover the funds from other parties to the conflict. However, this will be difficult, because finding such persons is quite difficult. Participants in the conflict on the side of the opposition or terrorist groups are heterogeneous groups, but in essence, individuals. To find all of them and to define the nature of their participation in conflicts is virtually impossible.

In this case, it should be noted that in this situation the Syrian authorities are faced with a very serious legal problem.

First of all, this is the completeness of the refund. As a rule, it is difficult or practically impossible to achieve. The proposed new housing may differ from the lost, there will be difficulty in determining the cost of the selected things, etc. At the same time, it is practically impossible to make appropriate compensations simultaneously to all persons in full, taking into account the economic situation of the state after the conflict.

The second issue will be to establish the exact extent and degree of participation of each of the parties to the conflict in the destruction of property. The problem is that in practice it is objectively impossible to establish the degree of guilt of the relevant individuals in the destruction of the relevant objects. As described above, property could have been destroyed either by government forces or by opposition forces or by terrorist groups. It is virtually impossible to establish the responsible entity and the extent of its responsibility. In this regard, practically all the burden of reimbursement will be relied upon by the state with the possibility of further recovery of the corresponding damage from other parties to the conflict.

Abovementioned shows that new approaches need to be found in order to resist the modern challenges for protection of property right to immovable property in context of current and possible armed conflicts.

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**Спесівцев Д. С. Захист права власності на нерухоме майно: сучасні проблеми у контексті збройного конфлікту у Сирії.** *Робота присвячена розгляду окремих проблем захисту права власності на об'єкти нерухомого майна в аспекті збройного конфлікту у Сирійській Арабській Республіці.*

**Ключові слова:** *право власності, захист, збройний конфлікт, шкода, Сирія.*

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## **АКТУАЛЬНІ ПИТАННЯ РЕФОРМУВАННЯ ПРАВОВОЇ СИСТЕМИ**

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