

# Constitutional and legal mechanisms for the protection of private property

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**Abstract.** The article analyzes such problems of modern constitutional law as the formation of mechanisms for protecting the right of private property, as well as the potential of constitutional regulation of the institution of private property. To study the essence of the mechanisms for protecting private property rights, it is necessary to define a number of concepts. First of all, it is necessary to establish what is meant by the concept of "protection of human rights". Examining constitutional mechanisms for the protection of human and civil rights, including in the field of protection of private property, it is necessary to remember that they operate in a certain socio-economic, political, social aspect, which in turn can both enhance and reduce the effectiveness of human rights defenders. institutions (human rights mechanisms). If there is an unstable political, socio-economic situation in the country, there is a loss of value orientations and more, then the corresponding mechanisms for protecting certain rights will be powerless. For a long time, such an unstable socio-economic situation existed in the Russian Federation, the consequences of which can be observed at the present time, which is why it is necessary to put everything in order, including human rights mechanisms, since they play an essential role in the life of the state. The author suggests some ways to resolve the current situation.

## 1 Introduction

The system of the constitutional and legal mechanism for the protection of private property rights is multi-level, while the structural elements of this system perform their duties within the framework of their competence, regulated by law, without interfering with each other in fulfilling their tasks.

The protection of private property rights is regulated not only by the norms of national law, but also by international norms. International legal provisions on private property and mechanisms for its protection are basic for the constitutional law of states, including for the Russian Federation: on their basis, public relations in the field of property are built. The

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decisions of the European Court of Human Rights are of great importance, since they are used to clarify any concepts by the Constitutional Court of the Russian Federation, and are also used in making appropriate decisions.

The institution of private property law is interdisciplinary. Property relations are governed by the norms of constitutional, civil, land, criminal and other branches of law. This institution is most widely regulated in civil law, but constitutional and legal norms are of fundamental importance in the regulation of private property rights. The institution of private property law in civil law is formed precisely on the basis of the constitutional and legal regulation of property.

The system of the constitutional and legal mechanism for the protection of private property rights has been studied over the past thirty years throughout the post-Soviet space, as well as in the countries of the former socialist camp [1-4].

The Russian Federation has developed a system of mechanisms for the protection of private property rights. The main institutions implementing these mechanisms are: the Commissioner for Human Rights in the Russian Federation, the Prosecutor's Office of the Russian Federation, the Constitutional Court of the Russian Federation and other courts, public specialized organizations, the institute of self-defense, as well as international judicial bodies recognized by the Russian Federation. Each of these human rights institutions plays an important role.

## **2 Materials and methods**

The methodological basis of the research is the dialectical method of cognition. At the same time, the work uses theoretical (analysis; synthesis; concretization; generalization) empirical (study of the experience of regulatory authorities, regulatory documentation) research methods. The article is based on the provisions of the Constitution of the Russian Federation, land and civil codes. The work investigated the works of domestic and foreign scientists on the problem under consideration.

## **3 Results**

Before turning to the content and analysis of the constitutional protection mechanism, it is necessary to define its concept.

The mechanism for the protection of human and civil rights is understood as a set of methods, methods and means enshrined in national and international legislation, which are used to exercise and protect the rights regulated by the current Russian legislation. The mechanism for the protection of human and civil rights includes the following elements:

- 1) a system of methods and means established by the state;
- 2) subjects - individuals and legal entities, as well as public associations that use this system.
- 3) values of a material and moral nature protected by law (arising from birth or acquired in accordance with Russian legislation and (or) in accordance with international legislation).
- 4) legal personality, that is, the scope of powers of the subjects;
- 5) the presence of public relations between the subjects regulated by law;
- 6) national and international regulatory legal acts aimed at protecting a particular right;
- 7) acts of realization of constitutional rights, freedoms and legal interests of a person and a citizen;
- 8) legal consciousness and legal culture of subjects of legal relations [12].

Each subjective right is real only to the extent that it can be exercised. As a result, the problem arises of the implementation of these rights, as well as their protection. The implementation of law in a broad sense is defined as the embodiment of legal norms in the real activities of public authorities, officials, relevant organizations and citizens themselves, the behavior of subjects of public relations [11]. That is, the implementation of the right is the direct use of legal opportunities, as a result of which material and other benefits arise that satisfy human needs. In turn, the implementation of rights in most cases requires active actions of the subject. That is, the implementation of the right can be viewed in two senses: as a process aimed at achieving a result, and as the end result itself - the actual acquisition of the subject of one or another good, as well as the use and disposal of it after the exercise through the exercise of his right or after the restoration of the subjective right.

The existence of the right gives rise to the ability of the subject to demand from other appropriate actions. This requirement will be addressed to the state, since it is it that is called upon to create conditions, organize and provide means for the unhindered exercise by citizens of their rights, regulated by the Constitution of the Russian Federation, and in case of violation of these subjective rights - to restore them.

Exploring the mechanisms of protection of private property rights, it is necessary to define the concept of guarantees of human and civil rights. Such guarantees are understood as legal, economic, ideological and political means ensuring the implementation of the subjective rights of a citizen and a person, their protection, as well as the continuous improvement of these rights.

On the basis of the above guarantees established by the state, the relevant state bodies and public associations have legal obligations corresponding to the rights of citizens established by the basic law of the country. Article 45 of the Constitution of the Russian Federation establishes that state protection of human and civil rights and freedoms is guaranteed [5]. Also, the guarantee role of the state can be traced in other norms of the Constitution of the Russian Federation: Articles 2, 7, 13, 19, 28, 37, 40, 43-53. Based on the above provisions, the state protects human and civil rights through the entire system of state bodies.

## 4 Discussion

The term “protection” in a sociological sense is applied to human rights as an expression of the need of a person or group of persons to ensure that their interests are met through certain acceptable means.

In the legal doctrine, the above institution is defined as follows. T.N. Kalinina concluded that the institution of human rights protection consists of “a legislative subsystem (system of legislation) designed to regulate and protect human rights and fundamental freedoms; legal subsystem (system of law); the institutional subsystem (a system of institutions authorized to carry out human rights activities), including regional and local, supervisory and control infrastructure; subsystems of humanitarian information; subsystems of humanitarian education, retraining and advanced training of personnel; subsystems of “think tanks” for the accumulation, storage, reproduction and development of humanitarian ideology” [12].

V. Roiter A. Azarov and K. Hüfner come to the same conclusion: “To create a system for the protection of human rights, a certain sequence of actions was necessary, namely: a) comprehending the program, b) defining human rights, c) creating binding norms, d) the formation of a political and legal system for the realization of human rights” [10].

Hence, in terms of their content, constitutional mechanisms for the protection of rights include regulatory, organizational, ideological and other elements that are designed to ensure the protection of a particular human right. However, we must not forget that the

concept of "human rights" does not have national identity, therefore, the mechanisms of implementation and protection cannot be limited by national legislation. That is why it is also necessary to study the area of international relations, international standards, which are also essential in the protection of relevant rights.

Most of the norms governing the right to private property and its protection are contained in civil law, however, the norms of constitutional law are fundamental, without which it would be impossible to develop the legal institution of private property in the civil law sense. Accordingly, the concept of the right to private property in the constitutional sense is broader.

Thus, it is advisable to conclude that the right to private property in the constitutional sense and civil law are different. These differences are manifested both in the subject content and in the objective one. Nevertheless, the institution of private property law in civil law is formed on the basis of constitutional and legal regulation of property.

However, the study revealed the inconsistency of the provisions of the Civil Code of the Russian Federation with constitutional norms (Tabl. 1), namely, Article 235 of the Civil Code of the Russian Federation establishes [7-8, 13] that the nationalization of property can be carried out on the basis of a special law, while part 3 of Article 35 of the Constitution of the Russian Federation regulates the deprivation of property solely by a court decision. That is, the above civil law norm is unconstitutional. But, in accordance with international practice, nationalization occurs precisely by the adoption of relevant special laws, therefore it would be advisable to amend the Constitution of the Russian Federation.

**Table 1.** Compliance of the norms of the Land and Civil Codes of the Russian Federation with the Constitution of the Russian Federation.

Industry legislation	Compliance degree	The norms of the Constitution of the Russian Federation	Note
Industry legislation			
1 Civil Code of the Russian Federation			
1.1 Article 235 Grounds for termination of ownership			
"Turning into state ownership of property owned by citizens and legal entities (nationalization) is carried out on the basis of the law with compensation for the value of this property and other losses in the manner prescribed by Article 306 of this Code"	Does not match	No one can be deprived of their property except by a court decision. (part 3 of article 35 of the Constitution of the Russian Federation)	It is necessary to bring the norm of the Civil Code of the Russian Federation in accordance with the Constitution of the Russian Federation
1.2 Article 242 Requisition			
"1. ... property in the interests of society, by decision of state bodies, can be seized from the owner in the manner and under the conditions established by law, with the payment of the value of the property to him (requisition). 2. The assessment, according to which the owner is reimbursed for the value of the requisitioned property, may be challenged by him in court. Note: clause 1 of Art. 242, in conjunction with other norms, was recognized as partially inconsistent with the Constitution of the Russian Federation (Resolution of the	Does not match	Compulsory alienation of property for state needs can be carried out only on condition of prior and equivalent compensation. (part 3 of article 35 of the Constitution of the Russian Federation)	It is necessary to bring the norm of the Civil Code of the Russian Federation in accordance with the Constitution of the Russian Federation

Constitutional Court of the Russian Federation of 08.07.2021 No. 33-P "			
2 Land Code of the Russian Federation			
2.1 Article 51. Requisition of a land plot			
"1. ... a land plot may be temporarily confiscated from its owner by authorized executive bodies of state power in order to protect the vital interests of citizens, society and the state from threats arising in connection with these extraordinary circumstances with compensation to the owner of the land plot for the losses caused (requisition) and issuing him a document on requisition. 3. If it is impossible to return the requisitioned land plot, its owner shall be reimbursed the market value of this land plot, established in accordance with Article 66 of this Code, or an equivalent land plot shall be provided at his request. "	Does not match	No one can be deprived of their property except by a court decision. (part 3 of article 35 of the Constitution of the Russian Federation)	It is necessary to bring the norm of the Land Code of the Russian Federation in accordance with the Constitution of the Russian Federation
	Corresponds	Compulsory alienation of property for state needs can be carried out only on condition of prior and equivalent compensation. (part 3 of article 35 of the Constitution of the Russian Federation)	Bringing the norms of the Land Code of the Russian Federation in accordance with the Constitution of the Russian Federation is not required

The content of the constitutional mechanism for protecting human and civil rights in the sphere of property relations includes a set of regulatory, organizational, ideological, communicative and other elements that are functionally designed to carry out the actual process of ensuring the protection of subjective rights. The system of the constitutional and legal mechanism for the protection of private property rights is multi-level, while the structural elements of this system perform their duties within the framework of their competence, regulated by law, without interfering with each other in fulfilling their tasks.

Currently, the Russian Federation has already developed the practice of protecting private property rights through regulated human rights mechanisms. The system of such mechanisms is formed by: judicial protection, the institution of the Commissioner for Human Rights, the Constitutional Court of the Russian Federation, the bodies of the Prosecutor's Office of the Russian Federation, self-defense, as well as international mechanisms such as the European Court of Human Rights, the Commission on Human Rights at the United Nations.

However, the study revealed that the system of such human rights mechanisms cannot be called perfect. They need significant efficiency gains. So, there are, for example, the problem of protecting the right of private property through the judiciary. They are due to the failure of citizens to use this human rights remedy in full due to mistrust, which is caused by the indefinite period of consideration of the stated requirements, as well as the corruption of these state bodies. This problem can be solved by more careful selection of personnel and by increasing supervision by the relevant government authorities.

Also, in order to increase the effectiveness of human rights mechanisms, in particular the institution of the Commissioner for Human Rights (Ombudsman), it would be advisable to give the Ombudsman the right to initiate legislation.

It would be useful to provide the Commissioner for Human Rights with procedural rights to go to court in order to protect an indefinite number of persons and to enter into a case on their own initiative to protect the social rights of both individual citizens and an indefinite

number of persons (Article 47 of the Code of Civil Procedure of the Russian Federation) [6].

The ombudsman's effectiveness could be increased by granting him the right to appeal to the Constitutional Court of the Russian Federation regarding the verification of the compliance of regulatory legal acts, including in the field of implementation and protection of private property rights, with the Constitution of the Russian Federation.

The problem of non-payment or incomplete payment of compensations for property seized from owners in order to meet state needs is a pressing issue. This problem can be solved by introducing amendments to civil legislation in relation to changes in the procedure for nationalization. Namely, to state Article 306 of the Civil Code of the Russian Federation in the following edition "In the event that the Russian Federation adopts a law that terminates ownership, the losses caused to the owner as a result of the adoption of this act, including the value of the property, are reimbursed by the state until the actual seizure of property." Moreover, it would be advisable to adopt the Federal Law "On the Procedure for Nationalization in the Russian Federation", which regulated a clear procedure for providing compensation for seized property, as well as appropriate guarantees to owners.

Due to the fact that a large number of citizens' appeals and complaints to the Ombudsman are received specifically on the issue of the implementation and protection of private property rights, it is advisable to create a specialized corresponding institution of Ombudsmen.

In the course of the study, it was revealed that the protection of private property rights is regulated not only by the norms of national law, but also by international norms. International legal provisions on private property and mechanisms for its protection are basic for the constitutional law of states, including for the Russian Federation: on their basis, public relations in the field of property are built. The decisions of the European Court of Human Rights are of great importance, since they are used to clarify concepts by the Constitutional Court of the Russian Federation, and are also used in making appropriate decisions.

The study revealed that the Constitution of the Russian Federation as a whole complies with international standards in the field of protection of private property rights.

Currently in the Russian Federation there is a wide range of research areas of the institution of private property and mechanisms for its protection. Among them, the following are the most interesting: the process of integration of the Russian national legal system and various foreign legal institutions; growing interest in collective, corporate private property (regulation at the legislative level of relations arising in the process of lobbying; development of a legal institution of social responsibility of business is also possible); expanding the list of objects of private property rights; study of the legal consolidation of "information" as an object of private property rights.

It is obvious that such prospects for a scientific analysis of the institution of private property and constitutional and legal mechanisms for its protection will contribute to the strengthening of forms of private property, the formation of a scientific and theoretical basis for lawmaking and law enforcement, and also in the future will significantly change the socio-economic situation in the state.

## 5 Conclusion

An analysis was made of the legal provisions of the Constitution of the Russian Federation and the norms of the Land and Civil Codes of the Russian Federation and it was revealed that the content of the legal provisions on requisition in the Civil Code of the Russian Federation does not comply with the norms established by part 3 of Article 35 of the Constitution of the Russian Federation on preliminary and equivalent compensation for

alienated property. The rules on requisition of the Land Code of the Russian Federation correspond to the above constitutional requirements [9]. However, they do not comply with the requirement of Part 3 of Article 35 of the Constitution of the Russian Federation on deprivation of property only by a court decision. Therefore, they need to be brought into line with the Constitution of the Russian Federation.

In the course of the study, it was revealed that the protection of private property rights is regulated not only by the norms of national law, but also by international norms.

The study revealed that the Constitution of the Russian Federation as a whole complies with international standards in the field of protection of private property rights.

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