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The problem of resolution of legal collisions and conflict in the context of property rights protection

The article discusses the problems of resolving legal collisions and conflicts in the context of protecting property rights. The authors of the article examined the problems of the conceptualization of legal disputes, conflict resolution as a legal science, the specificity of legal conflicts expressed in a whole system of essential features. It is concluded that legal conflict is a relatively independent category of legal conflictology and constitutes a contradictory unity of legal dispute and opposition of legislative acts. The distinction is drawn between a legal dispute and a legislative conflict. The correlation of the concept and essence of legal disputes and legal conflict taking into account the diversity of approaches to their content. Consideration of the system-forming features of legal conflictology as a legal science allowed researchers to identify its specifics. Legal conflictology emphasizes the importance of legal components in social contradictions and the possibility of using legal norms to control the course of conflict and its resolution. The article analyzes in detail the main civil law methods of protecting property rights. The authors of the article determined the actualization of the problem of applying the legal methods of protecting property rights and other property rights, analyzed the signs of property law, civil law methods of protecting property rights and other property rights, highlighted the specificity of the species characteristics of civil lawsuits.

Keywords: norm, law, collision, conflict, competition, concept, property right.

Introduction

The problems of protecting property rights at the present stage of development of civil law relations have a high degree of relevance, which is due to the significant role of property rights in a market economy. Methods of protecting property rights and other property rights have not received sufficient study in civil science, and law enforcement practice often encounters a number of unresolved issues. Studying the problems of legal disputes and conflicts in the context of modern research provides all the grounds for concluding that there is no unified approach to defining their concepts in legal doctrine. First of all, this is due to the ambiguity of the nature of this phenomenon, which has the name of Latin origin (literally: collision). In the legal literature, conflicts are presented in a diverse paradigm: from the collision of inappropriate standards to contradictions on the scale of various legal phenomena.

In the well-known encyclopedic dictionary, legal conflict is defined as «a clash of legal norms (laws or statuses) that occur when a judge has to decide a case concerning: persons who do not reside within the limits of local law, property located within these limits, acts or transactions, made or imprisoned in another district under the action of laws other than local ones. They are often found in states in which, in addition to common law, local laws are also in force» [1; 704]. Clearly expressed in private international law, the conflict issues until the 20th century in legal literature in relation to domestic law were delineated only in gen-

eral terms. As a rule, there were limitations in the study of this phenomenon: the fact of the existence of collisions was only ascertained, the reasons for their occurrence were named, and then the most typical methods of elimination. As for the Soviet period of a number of modern states, the absence of serious studies of the problem of legal conflicts is due to the proclamation of the infallibility of Soviet legislation — the idealization of the system existing at that time did not even allow the possibility of conflicts. Nevertheless, the problem of collision in law, first, the definition of the concept and essence of conflict, was part of the paradigm of scientific research. Among the proposed definitions, the most fully expressing the essence of this concept for its time can be called the defining conflict of legal norms as «the relationship between the norms, acting in the form of differences or contradictions in the regulation of one actual relationship» [2; 24]. The problem of determining the boundaries of a legal conflict has become the subject of consideration of M.T. Baimakhanov in the study of the legal superstructure in the functioning and development of law [3; 215, 216]. Subsequently, the concept of conflict expands from the inconsistency of norms to the contradictions between various legal phenomena, when the term «legal conflict» is used in relation to the contradictions between the legal system and the requirements of society, written law and other legal realities [4; 147].

The definition proposed by A. Tikhomirov is distinguished by specific aspects: a legal conflict is a contradiction between the existing legal order and the intentions and actions to change it, when there is a kind of comparison of this claim either with the current legal order or with the principles of law [5; 33]. The completeness of the content is characterized by the definition of a conflict of N.I. Matuzov, including contradictions that arise in the process of law enforcement and the exercise by competent entities (bodies and officials) of their powers [6; 25]. Summarizing the content of the definitions formulated in the doctrine, R.A. Goncharov in a special dissertation study proposed legal collisions to be defined as formal contradictions (differences) between two or more legal phenomena in the framework of objective law, due to objective and subjective factors of social development, in particular, between structural elements of legal norms, between normative legal acts and other sources of law existing in a given state, interpretative acts, as well as arising in the process of implementing the law, including law enforcement, between other elements of the national legal system and various legal systems of the world [7; 49].

Based on the foregoing, it is possible to single out the specifics of legal conflicts expressed in a whole system of essential features, which are: conditionality by objective and subjective factors that are their causes; deep determination by the processes of social development with their inherent contradictions; arise between two or more legal phenomena within the framework of objective law (a single legal phenomenon by itself cannot form a conflict); being one of the forms of manifestation of contradictions in the field of legal regulation, legal conflicts are formal in nature and are in the legal field; any legal conflict, in whatever form it may be (contradiction or difference), creates certain difficulties in the process of realization by subjects of their rights and obligations; may exist between hypotheses, dispositions, and sanctions of legal norms; between legal acts, on the one hand, and other sources of law existing in this state, on the other, for example, with a regulatory agreement (in the countries of the Romano-German right family), judicial precedent (in the states of the Anglo-Saxon family) or religious source (in Muslim countries) and other elements of the legal system (in particular, between acts of interpretation, etc.); manifest themselves in the field of law enforcement practice, including law enforcement, in particular, as a «conflict of competence»; objectively exist between the national legal system of one state and various legal systems of the world.

Materials and methods

In order to study the problems, scientific sources and reference books were studied and analyzed. When conducting a problem analysis, the following methods were applied: analysis and synthesis, induction and deduction, formalization, comparative analytical, scientific generalization, legal modeling, comparative legal, logical methods.

Results

In the modern doctrine, there are also discussions about both the identification and delimitation of the concepts of conflict of law, competition of law and conflict of law. The closest is the correlation of the concepts of «legal disputes» and «legal conflict». The literature substantiates the opinion that «a legal conflict is a relatively independent category of legal conflict resolution and is a contradictory unity of legal dispute and opposition of legislative and regulatory acts. Taken together, they characterize the intensification of exacerbation of legal contradictions, while not reaching the ultimate state, which is a legal conflict. The differences between a legal dispute and a legislative conflict are expressed in the fact that a verbal contest can be a mani-

festation of an exacerbation of a legal contradiction within the framework of a non-normative legal consciousness. In contrast, legislative conflict is an indicator of exacerbation of legal contradictions at the level of state-legal norm-awareness. Interacting with a legal dispute, legislative disputes act as peculiar determinants of legal conflicts, of which offenses are the most important side.

The knowledge contained in the categories of legal contradiction, dialectical legal contradiction, formal-logical contradiction of legal disputes, legal conflict, legislative conflict, determinants of a legal conflict, its functions, subordination and coordination dependencies of its components and other concepts of legal conflictology enriches the content of branch legal sciences. Jurisdictional cases considered by various law enforcement bodies are, first of all, conflicting cases between individuals and legal entities, acting as counter-entities to each other. Such a cognitive attitude by itself directs the law enforcer to the need for a deeper understanding of not only the contradiction between the requirements of legal norms and the individual consciousness of the bearer of a perfect antisocial act, but also the state of cash, real opposition of the relevant jurisdictional structures [8; 49]. As a rule, dictionaries succinctly reveal both the main meaning and content of the word «conflict» in Latin conflictus: «clash, serious disagreement, dispute» [9; 292]. Legal conflict — a legal dispute between interacting legal entities. A legal conflict can also be considered as a confrontation between subjects of law due to the exercise of their legal personality (subjective rights and legal duties, competencies). Legal conflicts arise in connection with the recognition, restoration or violation of subjective rights; contesting the scope or content of legal rights and obligations; a claimed claim to a right or exemption from a legal obligation; redistribution of legal rights and obligations in other cases. This is not always an unlawful confrontation between social and political forces. At the same time, a legal conflict may also be associated with deviations by the parties (side) of the conflict from the procedure established by law [10].

Researchers of the nature of legal conflict believe that «a legal conflict should be recognized as any conflict in which the dispute is somehow related to the legal relations of the parties (their legally significant actions or conditions) and, therefore, the subjects, either the motivation of their behavior or the object of the conflict, have legal signs, and the conflict entails legal consequences. In other words, we must recognize as legal, a conflict over property, even if the opponents were in legal relations with each other (for example, two companies claim to rent the same premises). Although there are no legal relations between firms so far, they will inevitably arise as soon as the subjects turn to a state body (court, arbitration) to resolve the conflict. If they don't apply, but decide the case «amicably», then registering the lease relations of one of the firms will still be a legal procedure» [11]. The correlation of the concept and essence of legal conflict and legal conflict, taking into account the variety of approaches to their content, leads to the following conclusion: based on the difference in the composition of the signs of conflict and conflict, it is possible to allow understanding of a legal conflict as a form of legal conflict provided that there is a wide understanding of the legal conflict itself, but its perception as contradictions between the rules of law objectively hinder its consideration as a form of legal conflict, since a legal conflict has a backbone such feature not inherent legal collision as subject composition. This approach is due to the nature of the contradiction laid down in the basis of these legal categories: a legal conflict is a contradiction between people (a contradiction that has a social nature), and a legal conflict is a contradiction between legal norms, a contradiction between regulatory legal acts, acts of application of law, interpretative acts (has a purely legal nature, without the subjective composition of the parties inherent in a legal conflict).

Discussion

Legal conflictology as a legal science. Conflicts based on contradictions in nature and society, the struggle between people and social groups, occupied the minds of philosophers for centuries, however, a holistic concept of conflict began to be developed only in the 20th century, the sociology of conflict developed as a relatively independent scientific direction in sociology in the second half of the 20th century thanks to the works of L. Coser (USA), R. Darendorf(Germany) and K. Boulding (USA). Legal conflictology as an independent scientific field began to be considered only in recent decades, significantly enriching the industry with knowledge about the nature, essence, dynamics of development of legal (legal) conflicts, as well as legal mechanisms for their prevention and resolution. Being in its infancy, legal conflictology is already recognized as a complex scientific field, closely related to related sciences: legal theory, sociology of law, political science, psychology. The specificity of legal conflict resolution is to study and generalize the nature of the conflict from the standpoint of law — to what extent legal institutions can influence the emergence, development and resolution of conflicts. Legal conflictology is also developing legal mechanisms to regulate and resolve these conflicts. First of all, it is important to determine which elements of the conflict are of a

legal nature and, accordingly, with the help of which legal institutions it is possible to consider and resolve the conflict that has arisen.

Modern reality reflects the conflictogenicity of the social environment, the reduction of which is more than relevant. That is why the study of the problems of legal conflict, the consideration of its features and the determination on this basis of ways to prevent and resolve it are important to reduce the level of conflict in the social environment. Since many social conflicts take place in the field of legal relations and can only be settled and resolved by legal means, procedures, the need for the development of legal conflict resolution as a complex, interdisciplinary, interdisciplinary scientific field of legal thought increases.

Legal conflictology, which studies legal relations, norms and institutions from the point of view of using them to prevent and resolve conflicts, is a «synthesis of conflictological problems with the provisions of legal science», as «many social conflicts occur in the field of legal relations, are generated by legal situations, and then resolved by legal means» [12; 9].

Given the high level of «social conflictogenicity», there is every reason for the formation and development of an independent area of legal science — legal conflictology, which is based on legal conflict. Expanding the specific boundaries of the conflict as a social phenomenon, it is appropriate to note that legal conflictology as a science, realizing its instrumental role, can and should include in the research paradigm not only conflicts in law itself and in the system of legal practice that are already being studied by legal science and resolved by current legislation, but also any social conflicts, with a view to their legal resolution.

Consideration of the system-forming features of legal conflictology as a legal science reveals its specificity. The object of research of legal conflictology is a legal conflict as a confrontation between legal entities with conflicting legal interests that has arisen in connection with the application, amendment, violation or interpretation of law. The structure of the conflict is represented, as a rule, by the mandatory elements: subjects, object, subjective side and objective side. Based on the definition of conflict, the subject of the conflict is the opposing side, all subjects of law, namely individuals (private) or legal entities recognized as such in the manner prescribed by the state, or the state itself, state formations. The object of the conflict is what the subject's opposition is aimed at — firstly, the potential object — public relations that fall under the legal regulation that the confrontation is aimed at, and secondly, the real object — values, resources, status, states, and also actions, the results of the action to which the confrontation is directed. The subjective side of the legal conflict as a socio-psychological mechanism, lies in the motivational process of the conflict, and can either fully have a legal nature, or partially have legal aspects. The motivational process in a conflict includes: the formation of a motive based on an actual need, interest, attitude; goal setting and decision-making on the commission of a conflict action. The objective side of the legal conflict is the opposite direction of legally significant (legitimate or unlawful) or legally neutral actions of the subjects of the confrontation, causing damage.

Legal conflictology emphasizes the importance of legal components in social contradictions and the possibility of using legal norms to control the course of conflict and its resolution. T.V. Khudoykina substantiates tools for managing and resolving legal conflicts, which should include various tools and techniques: «tools: localization of conflicts with the aim of early warning of their spread and growth; the transfer of conflict behavior of individuals and organizations from destructive to positive-functional form; institutionalization of conflicts through the creation of mediation and arbitration of state and public bodies, the development of legal standards for their activities; resolution of legal conflicts in their mixed and transitional forms by legal procedures (their legalization); regulation of legal conflicts per se using a variety of methods, including non-legal ones (through negotiation, mediation, informal arbitration). Methods: a methodology for analyzing a conflict, involving an analysis of the situation preceding the conflict and predetermining it, diagnostics of the conflict and its consequences; conflict resolution technology technique; the methodology of applying various methods of resolving legal conflicts» [13; 13].

The current state of legal conflictology as a legal science allows us to conclude that this science in the Republic of Kazakhstan, as in almost all states of the post-Soviet space, is at the formation stage, as well as that researchers of general and legal conflictology based on multidimensional studies to lay the foundation for a holistic scientific concept, the scientific theory of legal conflict. The relevance of cooperation and coordination of efforts of specialists of all scientific institutions involved in conflict resolution issues, including the organization of monitoring of social and legal tension is becoming acute.

Ways to resolve legal collisions and conflicts in the context of the protection of property rights. The expansion of the range of studies of collisions and conflict issues indicates the actualization of the issue of identifying and developing an effective mechanism for resolving existing legal conflicts in the legal system

in the current conditions of the development of statehood and movement to law. If the modern states of the so-called young democracy are at the stage of the formation of conflict law and legal conflictology, rejected for many decades by the totalitarian regime, then the foreign doctrine contains solid scientific achievements in this field and has moved forward. In the conflict law of European states, in order to avoid stereotypical, template-based approaches to overcoming a conflict problem, the escape clause formula is used, the essence of which is to give conflict solutions greater flexibility by substituting (eliminating, crowding out) one or more conflict norms to other, more relevant circumstances of the case, collision origin, their cumulation [14]. In this context, it is appropriate to give an example of transformations in the conflict of law aimed at giving its norms more flexibility: modernization of US legislation — Code of laws on the conflict of laws. Under the influence of harsh criticism of formalized conflict principles, enshrined in the first Code (1934), the second Code (1971), relying on the recommendations of doctrine and practice, gave priority to other, flexible ways to solve the conflict problem. Simeon Simeonides, a well-known American specialist in the field of conflict of law, commented on the situation: «It is time to admit that the revolution has gone too far in the perception of flexibility with the exception of any certainty, just as the traditional system has gone too far in the direction of certainty with the exception of any flexibility. Changes are necessary, and a new balance must be established between these two constantly competing requirements» [15; 422]. The most typical conflicts in the modern legal system arise due to underestimation and non-observance of the principle of constitutionality of legal acts, as a result of «eternal» contradictions between the law and by-laws, and also for the simple reason that contracts, agreements, as regulatory regulators are concluded contrary to the law.

The mechanism for resolving legal conflicts and conflicts includes a system of interacting legal means aimed at overcoming and eliminating conflicts of legal acts. The elimination of legal conflicts occurs in the process of law-making, in law enforcement practice, through the normative interpretation of law. Important elements of the mechanism for resolving legal conflicts and conflicts are: ways to resolve conflicts; ways to overcome conflicts; methods of overcoming disagreements between legal entities. Based on the research results, the following methods for resolving collisions can be distinguished: 1) interpretation; 2) adoption of a new act; 3) the abolition of the old; 4) making changes or clarifications to the existing ones; 5) judicial, administrative, arbitration; 6) systematization of legislation, harmonization of legal norms; 7) the negotiation process, the creation of conciliation commissions; 8) constitutional justice; 9) optimization of legal understanding, the relationship of theory and practice; 10) coordination of norms of acts of national legislation; 11) coordination of norms of national legislation with international law; 12) international procedures.

V.V. Denisenko considers it expedient to subdivide all legal means-instruments used in the process of resolving conflicts of legal acts into methods of overcoming and eliminating conflicts. All legal means of resolving conflicts of legal acts, enshrined in the domestic legal system, must be combined into the following groups: — ways to resolve conflicts of law enforcement; — ways to overcome conflicts in lawmaking; normative interpretation as a way to resolve conflicts [16; 13].

Bearing in mind the narrow and wide understanding of legal conflicts, in the narrow sense of the word legal conflict is considered as various kinds of contradictions between two or more legal norms (regulatory legal acts). In a broad sense, a legal conflict is a relationship between norms that arises regarding the regulation of one actual situation [17; 457].

Abstracting from the concept of legal conflict as a «clash» of legal acts and expanding the understanding of conflicts beyond the contradictions of prescriptions to social conflicts in law, the following methods are suitable for resolving legal collisions and conflicts: 1) systematic, orderly development of legislation; 2) a consistent course towards the implementation of the law; 3) negotiation process; 4) the use of conflict of laws norms; 5) consideration of legal disputes; 6) restoration of the former or creation of a new legal status.

Based on the foregoing, it seems possible to illustrate the problem of resolving legal collisions and conflicts in the context of protecting property rights. As a rule, subjects of property rights independently control the right to protect their civil rights. Of the above methods of resolving a legal conflict, the most common and approved consideration of disputes over property rights in court.

In modern research it is stated: a uniform understanding and application of legal norms is extremely important both for owners and for the development of the institution of property and society as a whole. This circumstance determines the need and validity of the study of problems of protecting property rights and other property rights, improving both the legislation in this area and law enforcement practice. Of great importance is the actualization of the problem of applying proprietary legal methods of protecting property rights and other property rights, analysis of the attributes of property law, civil legal methods of protecting property rights and other property rights, a specific characteristic of civil lawsuits, and highlighting their specificity.

The issue of applying civil-law methods of protecting property rights and other property rights is actively discussed in the legal literature as having important practical value for law enforcement practice. The protection of property rights through proprietary legal methods has been developed over a thousand and a half years, and has been tested in all states. The main problem is the correct understanding of the rule of law by officials of public authorities and administrations, as well as judges, and their application in accordance with the letter of the law when making a decision. Under the civil legal protection of property rights is understood the totality of funds provided for by civil law, applied in connection with offenses committed against these rights and aimed at restoring or protecting the property interests of their owners. Protection of property rights is regulated by the norms of almost all branches of law. Civil law norms occupy a special place in the system of legal norms on the protection of property rights and other property rights, which is primarily due to the very subject of civil law. Depending on the nature of violations of property rights and the content of the protection provided in civil law, various methods, means, legally ensuring the interests of the owner are used. The list of these funds is very diverse and depends on the nature of the violation of the right of ownership, on who and how exactly such a violation is committed. The expansion of judicial practice is updated due to the fact that citizens and legal entities are increasingly turning to the judicial authorities to protect their civil rights, and the number of lawsuits aimed at protecting property rights is increasing accordingly.

When choosing a method of protecting property rights, it is necessary to take into account its following legally significant features: targeted predetermination and sequence of application of legal remedies, reality, enshrined in law, the availability of sufficient means of proof, the possibility of a certain set of actions in order to restore the violated right. Under the methods of protecting civil rights, one should understand a certain set of means prescribed by law, with the help of which the suppression, prevention, elimination of violations of the law, its restoration and (or) compensation of losses caused by violation of the law can be achieved [18; 4]. As a rule, the nature of the legal conflict — violations — is differentiated depending on whether the person who violated the right of ownership consists of contractual, obligatory relations with the owner. Claims against the offender are ultimately aimed at protecting property as an economic category and have a different legal basis (violation of the subjective property right, non-performance or improper performance of obligations under the contract, causing harm, etc.). In the theory of civil law, there is a division of claims into: 1) property law (aimed directly at protecting property rights as an absolute subjective right, not related to any specific obligations and aiming either to restore ownership, use and distribution of the owner of his property, or remove obstacles or doubts in the exercise of these powers); 2) legally binding (their claim does not follow from the right of ownership as such, but is based on other legal institutions and subjective rights corresponding to these institutions); 3) not related either to property law or law of obligation, but arising from various civil law institutions; 4) aimed at protecting the interests of the owner upon termination of the right of ownership on the grounds provided for in the law [19; 442, 443].

Scriabin S.V. reasonably believes that it is possible, on the basis of the current civil law, to identify four main civil-law methods of protecting property rights and other property rights: 1) material and legal claims to protect property rights and other property rights; 2) binding legal claims for the protection of property rights and other property rights; 3) other methods of protecting property rights and other property rights; 4) claims against state bodies that violate the right of ownership and other property rights [20; 243]. The characteristics of proprietary legal protection methods are based on the following features: firstly, they are aimed directly at protecting property rights as an absolute subject of law; secondly, they are not associated with any specific obligations; thirdly, they are intended to restore the possession, use and disposal of the owner, the thing belonging to him, or to eliminate the obstacle or doubt in the exercise of these powers.

The specifics of proprietary legal protection methods is as follows: 1) the absence of a mandatory relationship between the owners of the right and violation of the law (the existence of a contract of relations of any kind precludes the possibility of using these methods); 2) the absolute nature of the protected rights, i.e. the presence of an indefinite number of entities obliged to refrain from violating property law; 3) the possibility of filing one of the proprietary lawsuits only by the owner of the property or the subject of other property rights.

Legal claims in judicial practice comprise the main part and are divided into 3 groups: a claim for recognition of ownership, a vindication (for recovering property by an owner from someone else's illegal possession) and negative (for elimination of violations not related to deprivation of ownership). Ownership right as a specific subjective right is protected only with the help of property claims, since they are aimed directly at protecting property rights as an absolute subjective right and are not associated with any specific obligations. We are talking about such protection methods that are designed to protect property rights to a property object that is

preserved in kind. In the event of its loss or impossibility of returning to the owner, it can only be a matter of compensating for the losses incurred, which already refers to the number of obligatory, rather than material, means of protection. Therefore, proprietary legal methods of protecting the property interests of authorized persons have only individually defined things as their object, but not other property [21].

Examples of legal remedies include claims for damages caused by non-performance or improper performance of a contract, compensation for damage under a tort obligation, return of property upon expiration of a lease, loan, storage, return of property under an obligation from unjust enrichment, etc. It is true that «property rights can be violated indirectly, as the consequences of violation of other, most often obligations, rights. For example, the person to whom the owner transferred his thing under the contract (tenant, custodian, carrier, etc.) refuses to return it to the owner or returns it with damage. Here we should talk about the application of legal methods of protecting property rights. They are specially designed for cases when the owner is bound by the oblige, most often by contractual relationship, and therefore they are usually applied to the faulty counterparty under the contract, taking into account the specific features of the relationship of the parties» [22; 612].

With respect to the same thing, depending on the status of the plaintiff and the defendant, both corporeal and legal liability methods of protection can be used in relation to the thing. In case of transfer of the thing that is the object of the lease into unlawful possession to a third party, the lessor will use proprietary methods of protecting property rights with respect to the illegal owner, and the obligatory ones with respect to the tenant. The antithesis of property and obligation rights is that in the field of property rights his own actions are crucial for satisfying the interests of the authorized person, while in the field of obligation rights, the interests of the authorized person are satisfied, first of all, as a result of the actions of the obligated person. It is logical that in both cases the exercise of subjective law, regardless of whether it relates to property or obligation, is legally ensured by the proper conduct of the obligated persons. But if this circumstance is obvious in the exercise of obligation rights, then in the field of property rights the behavior of obligated persons does not come to the fore, since they are obliged only to not prevent the authorized person from performing (or not committing) actions to exercise his right. In case of violation by one of the obligated persons of their duties, the need arises to protect property law [23; 153].

A group of civil legal remedies for property rights that are neither related to property law, nor obligation law, but arising from various civil law institutions include, for example, protection of property rights of an owner recognized as missing in the established manner or declared dead in the event of his appearance (Articles Art. 30, 32 of the Civil Code of the Republic of Kazakhstan), protection of the interests of the parties when the transaction is declared invalid (Article 157 of the Civil Code of the Republic of Kazakhstan) and so on.

Civil legal means aimed at protecting the interests of the owner upon termination of the right of ownership on the grounds provided for in the law, which constitute a separate group, are called lawsuits against public authorities, that is, claims against government bodies. In accordance with Article 266 of the Civil Code of the Republic of Kazakhstan, in the event of the adoption by the Republic of Kazakhstan of legislative acts terminating the right of ownership, losses incurred to the owner as a result of the adoption of these acts are fully compensated to the owner by the Republic of Kazakhstan.

Conclusion

Thus, the protection of subjective property rights is an opportunity provided, within the limits of subjective powers, to independently or through the application of measures of state coercion to remove obstacles to the exercise of the powers of possession and use in the event of external obstacles. The peculiarity of the protection of property rights is that it is possible both in the presence of a fact of violation of the property right, and for preventive purposes in cases expressly provided by law or other legal acts. The protection of property rights from encroachments is carried out in various ways, which together constitute a set of special procedures of a jurisdictional and non-jurisdictional nature. Among the latter, self-defense of property rights occupies a special place, the application of which is allowed if there is a real, sudden threat to the property of the owner, impossibility of contacting the authorized bodies, proportionality of the owner's actions to the nature of the threat. In contrast to self-defense, operational measures, although they are implemented by the owner on their own, always rely on specific norms of the current legislation. Operational measures implemented by the owner or possessor of other property rights while protecting against encroachment are legal and factual actions carried out within the framework of the possibilities of lawful behavior fixed by law. Operational measures can be implemented not only by the titular owner, which allows third parties to participate in pro-

tecting private interests. Moreover, the list of operational measures, enshrined in law, can be arbitrarily expanded, including by agreement of the parties [24; 6, 7]. A careful study, objective assessment and analysis of the accumulated legal experience can help to avoid probable mistakes and shortcomings, and also serve the purpose of improving the effectiveness of existing means of protection of the powers of owners of property rights. An assessment of the role and importance of the institution of property protection allows us to draw conclusions about the quality of property legislation in historical retrospective. Historically, in Roman law, the plaintiff and defendant equally proved the grounds for the emergence of their rights. The current situation also requires the proof of each of the parties of their innocence, without resorting to the use of presumptions, because only in this way it is possible to establish the true nature of legal relations, and therefore, protect the interests of the owner and ensure the stability of civil turnover [25; 221].

Ownership and other property rights are fundamental to any subject of civil law. Only effective protection of these rights gives meaning in the broad sense of any social activity [26; 67]. Constructive judicial practice in protecting property rights is based on a set of conditions, which include: clear and consistent legislation; detailed legal positions of courts on the application of legislation on property rights and other property rights; unity of judicial practice in cases of protection of property rights and other property rights and its stability; a favorable legal environment for the adoption and, in particular, the enforcement of judicial acts; public opinion, condemning everyone who encroaches on other people's property, and depriving him of the opportunity to continue his activities.

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С. Мурат, Б.А. Айдарбеков, А.Б. Кемелбай

Меншік құқығын қорғау тұрғысында құқықтық қайшылықтар мен қақтығыстарды шешу мәселелері

Мақалада меншік құқығын қорғау аясындағы құқықтық қайшылықтар мен жанжалдарды шешу мәселелері талқыланған. Мақала авторлары құқықтық қақтығысты концептуалдандыру, қақтығыстарды құқықтық ғылым ретінде қарастыру мәселелерін, тұтас маңызды белгілер жүйесінде көрсетілген құқықтық қақтығыстардың ерекшелігін қарастырған. Құқықтық қақтығыс дегеніміз қақтығыстарды шешудің салыстырмалы түрде тәуелсіз категориясы болып табылады және заңдық-нормативтік актілерге қарама-қайшылықты құқықтық дау мен қарама-қайшылықты біртұтастық болып табылады деген тұжырым жасалған. Заң даулары мен заңнамалық қайшылықтар арасындағы айырмашылық шекаралары жүргізілген. Олардың мазмұнына көзқарастардың алуан түрлілігін ескере отырып, құқықтық қайшылық пен құқықтық қақтығыстың түсінігі мен мәнінің арақатынасы анықталған. Құқықтық қақтығыстың жүйелік құраушы ерекшеліктерін заң ғылымы ретінде қарастыру зерттеушілерге оның ерекшеліктерін анықтауға мүмкіндік береді. Құқықтық қақтығыс әлеуметтік қарама-қайшылықтардағы құқықтық құрамдас бөліктердің маңыздылығын және қақтығыстардың барысы мен оны шешуді бақылау үшін құқықтық нормаларды қолдану мүмкіндігін баса көрсетеді. Мақалада меншік құқығын қорғаудың негізгі азаматтық-құқықтық әдістері егжей-тегжейлі талданған. Мақала авторлары меншік құқығын және басқа да мүліктік құқықтарды қорғаудың құқықтық әдістерін қолдану мәселесінің өзектілігін анықтаған, меншік құқығының белгілерін, меншік құқығын және басқа да мүліктік құқықтарды қорғаудың азаматтық-құқықтық әдістерін талдаған, азаматтық-құқықтық талаптардың нақты сипаттамаларының ерекшелігіне тоқталған.

Кілт сөздер: норма, заң, қайшылық, қақтығыстар, бәсекелестік, түсінік, меншік құқығы.

С. Мурат, Б.А. Айдарбеков, А.Б. Кемелбай

Проблемы разрешения юридических коллизий и конфликтов в контексте защиты права собственности

В статье рассмотрены проблемы разрешения юридических коллизий и конфликтов в контексте защиты права собственности. Авторами статьи изучены проблемы концептуализации юридической коллизии, конфликтологии как юридической науки, обозначена специфика юридических коллизий, выражающаяся в целой системе сущностных признаков. Сделан вывод о том, что правовая коллизия есть относительно самостоятельная категория юридической конфликтологии и представляет собой противоречивое единство юридического спора и противостояния законодательно-нормативных актов. Проведены границы различия между юридическим спором и законодательной коллизией. Определено соотношение понятия и сущности юридической коллизии и юридического конфликта с учетом многообразия подходов к их содержанию. Рассмотрение системообразующих признаков юридической конфликтологии как правовой науки позволило исследователям выявить ее специфику. Юридическая конфликтология акцентуализирует значение правовых составляющих в социальных противоречиях и возможность использования юридических норм для управления течением конфликта и его разрешения. В статье детально проанализированы основные гражданско-правовые способы защиты права собственности. Авторы статьи определили актуализацию проблемы применения вещно-правовых способов защиты права собственности и иных вещных прав, осуществили анализ признаков вещного права,

гражданско-правовых способов защиты прав собственности и иных вещных прав, выделили специфику видовой характеристики гражданско-правовых исков.

Ключевые слова: норма, право, коллизия, конфликт, конкуренция, концепция, право собственности.

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