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Protection of property rights in civil and criminal law of Ukraine: Points of intersection and problems of law enforcement

Nataliia Parasiuk*
PhD in Law, Associate Professor
Lviv State University of Internal Affairs
79007, 26 Horodotska Str., Lviv, Ukraine
https://orcid.org/0000-0002-7489-9181

Vasyl Parasiuk
PhD in Law, Associate Professor
Lviv State University of Internal Affairs
79007, 26 Horodotska Str., Lviv, Ukraine
https://orcid.org/0000-0002-8195-7597

Ivanna Zdrenyk
PhD in Law, Associate Professor
Lviv State University of Internal Affairs
79007, 26 Horodotska Str., Lviv, Ukraine
https://orcid.org/0000-0002-8645-0701

Rostyslav Boryslavskyi
PhD in Law
Lviv State University of Internal Affairs
79007, 26 Horodotska Str., Lviv, Ukraine
https://orcid.org/0000-0001-8941-7942

Abstract. The relevance of the study is determined by the need to improve mechanisms for the legal protection of property rights in the context of Ukraine's integration into the European legal space and against the backdrop of problems in distinguishing between civil and criminal law remedies. The aim was to identify the intersection of civil and criminal law in the sphere of property rights protection, identify contradictions in law enforcement, and determine areas of convergence in legal approaches. The study used logical-legal, comparative-legal and dogmatic methods, which made it possible to analyse the norms of Ukrainian legislation, decisions of national and international courts and law enforcement practice. The study examined the peculiarities of the implementation of the principle of inviolability of property rights in civil and criminal proceedings and analysed the problems of seizure of property of persons who do not have the procedural status of a suspect or accused. It was established that the current version of the procedural legislation of Ukraine does not ensure an adequate balance of interests of the parties in the case of seizure of property, which leads to a violation of the rights of civil defendants. The peculiarities of the differentiation of coercion in civil and criminal law were identified, and the functions of seizure of property as a means of securing a claim and as a procedural instrument in criminal proceedings were distinguished. The experience of Romania and North Macedonia in protecting property rights in the context of legal convergence was analysed. A conclusion was made about the advisability of adapting certain foreign practices to the Ukrainian context, in particular regarding changes to the procedures for imposing seizure of property and strengthening procedural guarantees. The practical value of the work lies in the fact that its results can be used by judges, lawyers, legislators and law enforcement officials to improve approaches to the protection of property rights and bring national law enforcement practice into line with European standards

Keywords: property rights; civil law; criminal law; protection; coercion; convergence

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*Corresponding author

Introduction

In the current conditions of transformation of the legal system of Ukraine, integration into the European legal space and strengthening of the importance of the institution of human rights protection, the problem of effective protection of property rights is becoming particularly urgent. At the same time, there is a significant gap in law enforcement practice regarding the consistency of approaches in civil and criminal law to the protection of property rights. The vagueness of the boundaries between these two branches of law, insufficient systematisation of judicial practice, abuse of property seizure mechanisms and contradictions between the norms of different codes create a threat to the implementation of the constitutional right to property. Therefore, the issue of convergence of civil and criminal law mechanisms for the protection of property rights requires a thorough scientific rethinking and the development of balanced approaches.

According to Article 13 of the Ukrainian Constitution (1996), the state's obligation to provide equal protection for all property rights subjects is the cornerstone of the field's property rights protection philosophy. There is no consensus among court authorities about how to settle cases involving property rights violations, according to an examination of contemporary judicial practice. In cases when general jurisdiction courts and commercial courts use the rules of current legislation in an uncertain manner while evaluating issues relating to the protection of breached rights, the owners' constitutional rights are violated. This is because judicial bodies are uncertain about how to apply civil law provisions uniformly to disputes of this kind. The inviolability of property rights is, naturally, one of the fundamental tenets of a democratic society and a state under the rule of law. This is reflected in Art. 41 of the Constitution of Ukraine (1996), which states that no one may be unlawfully deprived of their right to own property. Private property rights are unalienable.

At the same time, Ukraine's criminal procedural laws likewise adopted the aforementioned Fundamental Law standard. Therefore, while conceptual approaches to the inviolability of the right to property are described in Article 16 of the Criminal Procedure Code of Ukraine (2001), their specifics are covered in a number of other norms that govern the temporary restriction or deprivation of a person's right to property. In particular, this concerns the conduct of a search, inspection, investigative experiment, temporary seizure of property, imposition of arrest, transfer of seized property to the management of the ARMA, etc. Thus, given the considerable list of cases of restriction of the right to property, such a right no longer seems to be as monolithic and absolute as it is defined in the Constitution of Ukraine (1996). Moreover, as experts rightly point out, in modern Ukrainian realities, restriction or even deprivation of a person's right to property before the sentence enters into legal force, unfortunately, is a fairly common practice.

The issue of legal protection of property rights is increasingly being considered in the context of broader social challenges – war, cyber threats, economic transformation, digitalisation and tax policy. In this regard, the study by V. Alkema *et al.* (2024) deserves attention, which emphasises the importance of security potential, including in the area of property rights, for the stability of Ukrainian enterprises in conditions of a long-term war. In turn, M. Bani-Meqdad *et al.* (2024) analyse the latest threats to intellectual property rights in the context of the digital environment. They emphasise that effective legal protection of such rights is a prerequisite for sustainable development of regions and part of a broader system of human rights. This provision can be transferred to material property rights – especially in the area of law enforcement in the context of digitalisation of the legal process. Interesting accents in the field of modern property management are made by a team of authors led by F. Naz *et al.* (2022), who in their study analyse the transformation of real estate management taking into account artificial intelligence. Important in the context of rights protection is that algorithmic tools can strengthen or, conversely, disrupt the balance of interests of the parties, in particular in property litigation.

In the field of property taxation, W. McCluskey and F. Plimmer (2011) raise the issue of creating a fiscal space for property tax in Central and Eastern European countries. They demonstrate that effective tax policy is possible only under the condition of legal certainty and protection of property rights. In the broader economic context, Ł. Mach (2019) examines the impact of the global economic crisis on the European real estate market, which indirectly demonstrates the close connection between the stability of property rights and macroeconomic security. T. Kačerauskas (2012) analyses the social, legal and communicative aspects of the creative economy. Author emphasises that the institutionalisation of property rights – including intellectual property rights – is an integral element of new economic models, which can be used in the formation of strategies for protecting property rights in a hybrid legal environment.

The purpose of the study was to explore the points of intersection between civil and criminal law in the context of property rights protection, reveal inconsistencies in law enforcement practice, and outline potential directions for harmonising legal approaches.

Materials and methods

The object of the study was social relations that arise in the process of implementing and protecting property rights within the civil and criminal law of Ukraine. The subject of the study was the norms of civil and criminal law of Ukraine, judicial practice, as well as conceptual approaches to the application of protection and enforcement measures in the field of property rights, taking into account national and foreign experience, in particular the legal positions of the European Court of Human Rights. The study used the logical-legal method of scientific knowledge, with the help of which all conclusions that we make in the research process are logically substantiated, and with the help of this method legal concepts are formed and revealed. The comparative legal analysis method is also employed, for comparison of the main provisions of property rights protection under the legislation of Ukraine and other countries, as well as a comparison of methods of property rights protection in civil and criminal law. Romania, North Macedonia and, indirectly, the countries of the European Union, whose practice is reflected by the European Court of Human Rights, were selected for analysis. The comparative analysis of these countries allowed not only to identify legal conflicts in the Ukrainian context, but also to substantiate ways of potential improvement of legislation through borrowing best practices. Finally, the dogmatic method was applied to analyse the norms

of civil legislation of Ukraine and other countries that regulate property rights protection relations, in order to establish their content, purpose, and interrelationship. Dogmatic method allowed for a deep analysis of the current norms of the Civil Code of Ukraine, the Criminal Code of Ukraine, the Criminal Procedure Code of Ukraine and to determine the logic of their application, gaps and conflicts in the regulation of relations regarding arrest, forced alienation and restriction of property rights.

The following categories of sources were analysed within the framework of the study: regulatory legal acts of Ukraine: Constitution of Ukraine (1996), Civil Code of Ukraine (2003), Criminal Code of Ukraine (2001), Criminal Procedure Code of Ukraine (2012). For example, the provisions of Article 41 of the Constitution, Articles 316-317 of the Civil Code and Articles 170-171 of the Criminal Procedure Code (2012) became the main basic texts for legal analysis. The provisions of the Criminal Code of Romania (Article 238) and the Law of North Macedonia "On Property and Other Property Rights" (2001), which enshrines *actio publiciana*, are used. Also, in the article used the analytical works and professional publications of A. Crisu-Ciocinta (2015), E. Zendeli (2019), S. van Erp and K. Zimmermann (2024), which highlighted the nature of the convergence of civil and criminal law regarding the protection of property rights and official publications of analytical resources, in particular, the statistical data of the International Property Rights Index (2018).

Results and Discussion

The protection of property rights necessitates the preservation of the notion of legal security and faith in the legal order. This protection, as part of the implementation of constitutional legal warrants, encompasses numerous elements and is anticipated in most legal areas. Although there is no question that the most significant and comprehensive protection of property rights is provided by civil law, namely real property law, property rights are also safeguarded by other legal branches, such as criminal law.

The right of ownership, as defined by Article 316 of the new Ukrainian Civil Code (2003) (henceforth referred to as the Civil Code), which went into effect on January 1, 2004, is the right of an individual to a thing (property), which he exercises in conformity with the law at his own will, independent of the will of others. The owner has the right to own, use, and dispose of his property, according to Part 1 of Article 317 of the Ukrainian Civil Code (2003). The idea of property rights is contained in Article 316 of the Ukrainian Civil Code (2003). The right of ownership is the legal right that an individual has to anything (property), which he may use as he pleases, independent of other people's wishes.

Speaking about the essence and legal nature of legal relations regarding the protection of property rights, one should mention that the legal fact giving rise to these legal relations is an offense. Namely this fact determines what method can be applied and other aspects of the mechanism for implementing the right to protection. Legal science has been discussing the correlation of these categories for a long time. Researchers of the issue of the correlation of legal categories of protection and defence of property rights noted that this issue is purely theoretical, does not significantly affect the implementation of property rights, but it is quite possible to consider the protection and defence of property rights as two separate sets of actions. In particular, it is indicated that when the violation is only probable, then the measures of a legal or technical nature taken by a person are covered by the concept of "defence". But if the rights holder has sufficient grounds to believe that his right will be violated or there is a real threat of such a violation, the preventive measures taken are covered by the concept of "protection".

O. Hnativ (2014) writes that defence should be considered as a legal method that prevents right violation, and protection – as one that occurs in the event of its violation and entails the restoration of the corresponding property right. This point of view seems quite justified. At the same time, the jurisdictional mechanism of protection can be belonging to civil law (by filing lawsuits in court) or criminal law (filing applications to law enforcement agencies about the commission of a criminal offense). Among the civil law methods of protection, it is worth highlighting, in particular, the following: 1) filing a lawsuit to reclaim property from someone else's illegal possession; 2) filing a lawsuit to return unjustly acquired or preserved property (conditional lawsuit); 3) filing a lawsuit to recognise the right of ownership; 4) filing a lawsuit to remove obstacles to the use of property (negatory action); 5) filing a claim for compensation for damages caused by violation of the owner's right.

As M. Matiyko (2016) notes, "the provision of legal norms by state coercion is a property of the law itself. The use of coercion to implement legal provisions is not a feature of any of the branches of law. It is inherent in all of them. The differentiation of coercion in branches of law manifests itself primarily in the role of protective legal relations, on which the different degree of coercion in different branches largely depends". One cannot but agree with this statement. Accordingly, this is one of the important points of intersection in the protection of property rights in civil and criminal law. At the same time, regulatory norms prevail in civil law, while protective civil legal relations perform a supporting role for them and therefore are significantly inferior to the latter in number. In civil law, coercion only ensures the fulfilment of an obligation that can occur voluntarily, without the use of coercion.

The differentiation of coercion by branches of law and by subbranches and institutions of civil law is also manifested in the measures related to it. In civil law, these are primarily measures of a property nature, unlike criminal law (Matiyko, 2016). In civil law, in relations regarding the protection of property rights, only measures of a property nature are used, and the protection of other types of regulatory civil relations does not exclude the possibility of applying measures of non-property influence (Dudnyk, 2016). It should also be noted the legal equality in relations regarding the protection of property rights, which is manifested in the reciprocity and uniformity of measures of coercion for the parties to civil legal relations.

The purpose of the use of coercion in civil law is primarily to protect subjective civil rights, while for criminal law it is more important to punish the offender. Coercion stops the violation of the subjective civil right of ownership and provides the necessary conditions for its exercise, or restores the violated right. A common feature of coercion in civil law is the use of coercion depending on the will of the person whose right has been violated. The initiative of the parties as a feature of relations regarding the protection of the subjective right of ownership is primarily associated with the claim

procedure for the use of coercive measures. Article 392 of the Civil Code of Ukraine (2003) grants the owner the right to file a lawsuit for the recognition of his ownership right, especially in cases of its appeal or non-recognition by another person, or in the event of the loss of a document confirming his ownership right.

It is crucial to highlight that in legal proceedings involving the protection of property rights, the subject of protection is directly the rights to the designated items. Rights can be violated by others, and civil law provides a variety of means for a person to safeguard his violated or contested rights and legally protected interests. At the same time, methods of protecting property rights can be divided depending on the legal consequences of their application. Existing methods of protecting property rights can be differentiated depending on them (Table 1).

Table 1. Classification of the methods of protecting property rights

Property-legal methods of protection	Recovery of property from someone else's illegal possession
	Removal of obstacles to the owner's exercise of the right to use and dispose of his property
	Recognition of the right of ownership
	Recognition of the illegality of a legal act that violates the right of ownership
Obligatory-legal methods of protection	Methods of protecting property rights in contractual obligations
	Methods of protecting property rights in non-contractual obligations

Source: developed by the authors

The basic law of the state empowers the legislative branch to establish the substance and boundaries of property rights, but this authority must be applied seriously in order to strike a fair balance between the general interest of society and the individual interest. Achieving property rights implies the state's commitment to ensure and defend legally acquired property (Crisu-Ciocinta, 2015). Beyond the protection provided by constitutional rules, there is also civil protection of the subjective property right by defining this actual right, establishing its legal characteristics, and the manner in which it is purchased and set up. Also, criminal protection is provided primarily by juridical norms that indict illegal activities that harm a person's assets, as well as norms included in the general portion of the Criminal Code (Sokha, 2019).

One of the main tasks of the Criminal Code of Ukraine (2001) is the legal provision of property protection (Part 1, Article 1 of the Criminal Code of Ukraine). The implementation of this task at the legislative level is carried out primarily by establishing a prohibition on damaging an object under the threat of criminal punishment. In other words, the recognition of certain socially dangerous acts that encroach on property as crimes aims to implement the task of its criminal legal protection. In the event of a crime, this task is not performed in a preventive aspect, the corresponding goal is not achieved. However, the effect of the law does not end there, moreover, the norms provided for by the Special Part of the Criminal Code of Ukraine (2001) come into force.

Objects of criminal legal protection related to property relations are placed under protection by means of regulations contained in various sections of the Special Part of the current Criminal Code of Ukraine (2001). The peculiarity of such polyobjects is that, taking into account the main direct object, the legislator recognises not property relations but others as generic. An analysis of such provisions shows that property damage is caused precisely to a secondary object placed under protection, but not primarily, however along with another object, for example, causing property damage when violating traffic safety rules and transport operation, committing crimes against the environment, causing damage in case of violating safety rules at work, committing certain crimes against public safety, etc.

Undoubtedly, the inviolability of the right to property, as envisioned in Ukraine's existing legislation, is a basic tenet of a democratic society and a law-bound state. For example, Article 41 of Constitution of Ukraine (1996) expressly states that no one shall be wrongfully dispossessed of his or her ownership rights. The right to private property is unquestionable. At the same time, Ukraine's criminal procedure legislation now incorporates the aforementioned main law standard. Therefore, conceptual approaches to the ownership right inviolability are described in Article 16 of the Criminal Code of Ukraine (2001). These approaches are outlined in several other norms of the Code that govern the temporary restriction or deprivation of an individual's ownership rights. It specifically addresses searches, examinations, investigative experiments, property seizures, attachments, and the transfer of confiscated property to ARMA (Asset Recovery and Management Agency), among other things.

It is worth mentioning that the existence of institutions such as ARMA in the public sector is not a novel concept. Almost every European country has a governmental entity authorised to hold and administer property known as an exhibit, which is used as a tool to commit a crime or obtained as a result of the latter. In line with Article 100 of Criminal Procedure Code of Ukraine (2001), ARMA is empowered not only to administer property but also to alienate it. Simultaneously, no circumstances in which property alienation is lawful or permitted have been identified. As a result, law enforcement officials use legal gaps to force ARMA to sell attached assets.

Thus, officials of pre-trial investigative organisations and prosecutors, who have a broad range of powers, clearly abuse their authority to restrict property rights. As a result, persons with no involvement in a criminal offense face completely unjustifiable restrictions on their right to property. In order to demonstrate the aforementioned, attorneys from one of the law firms in Ukraine look at the following case: "we attempted to have the relevant investigative judge's decision overturned after discovering that our client's property had been attached, even though they had not been questioned in a criminal proceeding as a witness, much less a suspect" (Lysak & Poshyvanyuk, 2024). The judges' panel concluded that the property had been attached in advance after considering the attorneys' claims. The attachment was, therefore, cancelled. On the next day, however, the prosecutor filed a move for property attachment in a first-instance court. Surprisingly, the investigating court approved the application on the same day as the new attachment. Criminal practitioners understand how difficult it is to get an

investigative judge to examine an ordinary motion or defence complaint within an acceptable time frame. Simultaneously, motions submitted by prosecutors or investigators (even those involving property attachment) are processed promptly, as is customary. Even more unexpected is that if a lawyer is aware of such motions filed by a prosecutor and wants to attend the hearings, the urge to evaluate them quickly fades for some reason. These facts lead to the gloomy conclusion that the principles of Criminal Procedure Code of Ukraine (2012), which incorporate the idea of equality of parties to a criminal proceeding, are mostly ineffective in the country's current criminal justice system. This is just one example of the schism that has developed between "court-prosecutor" and "court-lawyer" (Lysak & Poshyvanyuk, 2024).

The above-mentioned Ukrainian lawyers believe that the problem of uncontrollable attachment of property owned by individuals who have not been designated as suspects or defendants in criminal proceedings can be solved by making simple changes to Criminal Procedure Code of Ukraine (2012). To accomplish this, it is sufficient to: a) restrict the quantity of motions for property attachment that detectives and prosecutors may submit to the investigative judge; and b) require investigative judges to inform property owners of the consideration of motions for property attachment (just notices, excluding mandatory participation). These straightforward adjustments will instantly end many abuses committed by prosecutors and pre-trial investigation organisations (Lysak & Poshyvanyuk, 2024).

Property rights create quite obvious points of intersection between civil and criminal law. However, this intersection is ambiguous and has certain pitfalls. O. Skarbachuk (2021) observes that while attempting to analyse arrest as a measure to secure a civil claim in criminal proceedings, it is immediately apparent that the normative regulation of such a measure in the Criminal Code of Ukraine (2001) does not match to a comparable measure provided for in the Civil Code of Ukraine (2012). Therefore, measures to secure criminal proceedings (such as pre-trial investigations, court proceedings, and procedural actions related to the commission of an act permitted by the criminal legislation are referred to as property arrests under Article 170 of the Criminal Code of Ukraine (2001), while measures to secure the claim (statements on the merits of the case in which the plaintiff's claims are set out in writing) are referred to as property arrests under Article 149 of the Civil Code of Ukraine (2003). In other words, the functions of arrest in criminal and civil processes are distinct.

Moreover, within the criminal proceeding's framework, one should distinguish several types of property seizure. In particular, property seizure is a temporary, until cancelled in the manner specified by this Code, deprivation by decision of an investigating judge or court of the right to alienate, dispose of, and/or use property, as stated in Part 1 of Article 170 of the Criminal Procedure Code of Ukraine (2001). According to Article 317 of the Civil Code of Ukraine (2003), the owner has the right to hold, use, and dispose of his property; as a result, the idea of "alienation of property" is a part of the idea of "disposal of property". Therefore, there are several types of seizure:

a) a temporary prohibition on the owner of the property to use and dispose of the property belonging to him (e.g., seizure of the property in order to secure material evidence with its subsequent storage in the pre-trial investigation body);

b) a temporary prohibition on the owner of the property to dispose of the property belonging to him (e.g., seizure of the property in order to secure a civil claim).

Since the specified types of seizure of property provide for different scope of the owner's rights, which are limited, it is necessary to apply differentiated grounds for their application, namely: to provide that proving the reasonable possibility of concealment, damage, spoilage, destruction, transformation, alienation is entrusted to the pre-trial investigation body only in the case when the petition for seizure provides, in addition to the prohibition of disposal of property (including its alienation), a prohibition of use of such property by the owner. Otherwise, the petition of the civil plaintiff for the application of such seizure without proving the circumstances provided for in paragraph 2, part 1, article 170 of the Code of Criminal Procedure of Ukraine (2001) is sufficient.

According to Part 6 of Article 171 of the Code of Criminal Procedure of Ukraine (2001), a civil defendant's property may be seized if there is a legitimate civil claim in criminal proceedings. Additionally, the value of the property that will be seized to secure a civil claim must be equal to the amount of damage caused by the criminal offense (Part 8 of Article 170 of the Code of Criminal Procedure of Ukraine, 2001). Furthermore, according to Part 3 of Article 171 of the Ukrainian Code of Criminal Procedure (2012), the civil plaintiff's (his representative's) petition must include the amount of damage resulting from the criminal offense, the amount of the claim, and proof of the fact that damage was caused.

O. Skarbachuk (2021) rightly notes that the above provisions significantly worsen the position of the civil plaintiff in view of the following: (1) the validity of the amount of the civil claim (in this context, it should be noted that the civil process operates with the concepts of "amount of claims" and "cost of claim") can be established exclusively based on the results of the court's consideration of the relevant civil claim, and therefore the specified requirement cannot be achieved either at the stage of pre-trial investigation or at the stage of preparatory proceedings; (2) the civil plaintiff, having the opportunity to obtain information from public registers about real estate owned by the civil defendant on the right of private ownership, is deprived of the opportunity to obtain data on the value (market or estimated) of the specified objects in order to assess its proportionality to the amount of damage caused; (3) evidence of the fact of causing damage by a criminal offense is usually contained in the materials of the criminal proceedings, and the fact itself is established as a result of the judicial investigation. In fact, the commission of an unlawful act by a civil defendant, the occurrence of harmful consequences, and the causal relationship between them, as grounds for compensation for the damage caused, are established within the framework of criminal proceedings, and based on the results of consideration of a civil claim, only a reasonable amount of compensation for the damage caused is established.

O. Skarbachuk (2021) believes that the seizure of the property of a civil defendant as a measure to secure a civil claim should be fully regulated by the norms of the Ukrainian Civil Code (2003), in order to ensure a balance of interests of the parties to criminal proceedings. The moment of filing a petition must be established as the filing of a civil claim in the pre-trial investigation (the petition is considered by the investigating judge) or the moment of filing a civil claim in the preparatory proceedings (considered by the court).

It is important to remember that criminal law and civil law are two distinct and expansive legal systems with different sets of rules and penalties. However, in judicial practice, some aspects of convergence of public and private law are often observed. In particular, the introduction of private law regulation in criminal law is associated, first of all, with the presence of a private interest of the victim (Kucher, 2017). One of the types of private interests falling within the scope of criminal law are private interests regulated by the norms of civil and other branches of law, including property relations. Also, in some situations, criminal and civil law are applied simultaneously, for example, when compensating the victim for damage caused by a crime. Modern researchers emphasise that convergence confirms that the tasks, functions and purpose of law, including with respect to the protection of property rights, are uniform, and the systemic and sectoral (branch) division of law is conditional (Dzyanyy *et al.*, 2024; Kryshtanovych *et al.*, 2024).

Aside from the protection provided by extra-criminal legal standards, the property right is consistently protected by the criminal law, just like any other fundamental human right. Like other essential individual rights, the property right is primarily protected by implicating the circumstances that jeopardise it. A situation that is in compliance with the law is the sole scenario that the legal criminal norm must safeguard; an individual who obtained an item unlawfully is not entitled to the protection of this condition. Nemo auditor *propriam turpitudine mallegans*, which states that no one may use their own guilt to defend their interests, is used in the context of property when it comes to the requirement that the acquisition of the property right have a licit nature. It implies that the individual who engaged in unlawful behavior when acquiring the property right could not be eligible for legal protection (van Erp & Zimmermann, 2024).

In this context, it is interesting to address the experience of Romania. The definition provided by the criminal legislator for the offense known as "trust abuse" may be used to determine the need of the licit nature of acquiring the property right in order to get protection from the criminal law: "The unjust appropriation, disposal or use of somebody else's asset by the person who received it on the basis of a title and with a certain purpose, or the refuse to give it back is punished with imprisonment from 3 months to 2 years or with a fine" where there is the application of the phrase "*unjust*" – (Article 238, paragraph 1 of the Criminal Code of Ukraine (2001)). It denotes the absence of a title that would justify the offender's actions, which include turning the mere possession of an object into full ownership. The particular of the trust abuse offense is when the offender transforms their status as a mere holder of another person's property into that of the purported owner of that property (Crisu-Ciocinta, 2015).

The following circumstances establish the presence of the trust abuse offense: the offender should not have obtained the property right over the personal asset that constitutes the material object of the offense at the time of the appropriation, disposal, use, or refusal to return. According to the hypothesis, the offender's actions do not fall inside the criminal illicit realm once they have acquired the asset. Stated differently, the owner of the asset or the individual to whom the owner transferred ownership will be protected by the law when the criminal's actions, such as taking, selling, or using someone else's property or refusing to return it, do not depend on the property right that the criminal has lawfully obtained.

Article 160 of the Law of North Macedonia "On Ownership and Other Real Rights" (2001) (LOORR) contains the provisions of the *actio publiciana*. According to paragraph 1 of the Law, the person who legally and legally obtained an individually determined item and who was unaware that he was no longer the owner (presumed owner) has the right to ask the conscientious holder who possesses the item on a weaker or no legal basis to return it (Crisu-Ciocinta, 2015). The *actio publiciana* cannot be classified as a real property suit because the plaintiff has to demonstrate that, rather than having the right of ownership, the item he is requesting be returned was obtained legally and that he was unaware that he was no longer the owner (presumed owner) (Paragraph 1 of the Law). As a result, the plaintiff must demonstrate that he possesses qualified ownership, meaning that it is legitimate, authentic, and lawful.

As one can see, it concerns two people with conflicting legal rights to ownership, each of whom asserts a stronger title to the thing. The second paragraph of the LOORR (2001) (though it is not comprehensive as such) resolves this conflict of legal grounds in one of the Macedonian cases. It states that when two people believe they are the presumed owners of the same item, the person who has acquired the item as a burden has a stronger legal basis than the person who has not. The owner of the thing takes priority if both parties have equally strong legal foundations. According to A. Crisu-Ciocinta (2015), the right to file a lawsuit under paragraph 1 of this article is perpetual.

In Macedonia, when property rights are protected in criminal proceedings, the legal property claim related to the payment of damages, return of the item, or voiding of the legal act created by the commission of the criminal offense at the request of the authorised person may also be examined (Article 97 of the Criminal Code of the North Macedonia (1996)). In this case, Article 103 of the Criminal Code stipulates that if the court finds that an item is the property of the injured party and is being held by the accused, another criminal, or someone to whom the object was given for safekeeping, it must state in its ruling that the item must be returned to the injured party if the legal and property claim calls for it. On the recommendation of the public prosecutor and other authorised individuals, temporary measures may be put in place during the criminal process in order to protect the property and legal claim resulting from the criminal offense, in accordance with the rules that apply to the enforcement process (Article 106 of the Code). "If multiple injured parties are in a dispute over the ownership of the objects, they shall be referred to litigation, and the court in the criminal procedure shall only rule on the safeguarding of the objects as a provisional security measure", states Article 107, paragraph 2 of the Criminal Code of the North Macedonia (1996). This approach is of high interest in the discussions and considerations of both separate spheres and convergence of property rights protection in civil and criminal law. When using evidence, one must adhere to a number of principles, including the principles of contradiction, equality of parties, presumption of innocence, freedom of evidence, non-discrimination, reasonableness, openness, legality, reasonableness, and non-discrimination (Stoianov *et al.*, 2023).

Property rights are regarded essential human rights and are protected by constitutional provisions, international conventions, and a plethora of laws and by-laws. The institution of property rights constitutes a complicated legal category,

making it difficult to provide a description that encompasses all of its features. According to civil law theory, ownership may be described as a legal relationship in which a given property belongs entirely to a certain subject based on the force of the legal norm (Zendeli, 2019). The protection of property rights is one of the most fundamental goals of any legal system. In current legal literature, property rights are viewed as a civil society institution, a fundamental Institute of private rights, and a universal value (Vasyliev, 2024). Property protection is a regulation that ensures that everyone has the right to own property and cannot be stripped of it. Importantly, under this law, property encompasses not only physical items, but also firm shares, intellectual property (such as trademarks), and social security benefits. In some situations, a person's professional practice (for example, medical or legal) might be considered a "possession" (Murat, 2021).

The two fundamental paradigms of property rights are the "bundle of sticks" approach and the "discrete asset" approach. Over the last century, scholars abandoned the previously dominant "discrete asset" approach. While some scholars recently have suggested reintegrating the "discrete asset" approach into property theory, the legal community – both academic and professional – remains substantially wedded to the "bundle" approach. At the same time, there is a sense that the public at large generally adheres to the "discrete asset" approach (Nash, 2009). Meanwhile, the paradigmatic frame through which property rights are presented has an effect upon perceptions of those rights.

As Ukrainian scholar O. Hnativ (2014) correctly points out, one of the most important issues in the history of Ukrainian public awareness is the question of property rights and their social function. The concept of property rights has always played a major role in civil law. Its main provisions determine the content of other sections of civil law contractual, inheritance, obligation law, etc. This explains the continuous interest in the study of property rights protection by representatives of legal science. Furthermore, International Property Rights Index (2018) show that there is a clear link between the strength of a country's legal institutions and the protection of property rights (see Fig. 1). Property rights protection has a high positive link with the rule of law (r = 0.91), as well as with judicial independence (r = 0.93). The trend line also demonstrates that when the quality (score) of legal institutions (rule of law and judicial independence) declines, so does the quality of property rights protection. Thus, the quality (effectiveness) of property rights protection is an indicator of the quality of institutes, and, thus, represents highly important area of concern for Ukraine, within the process of European integration.

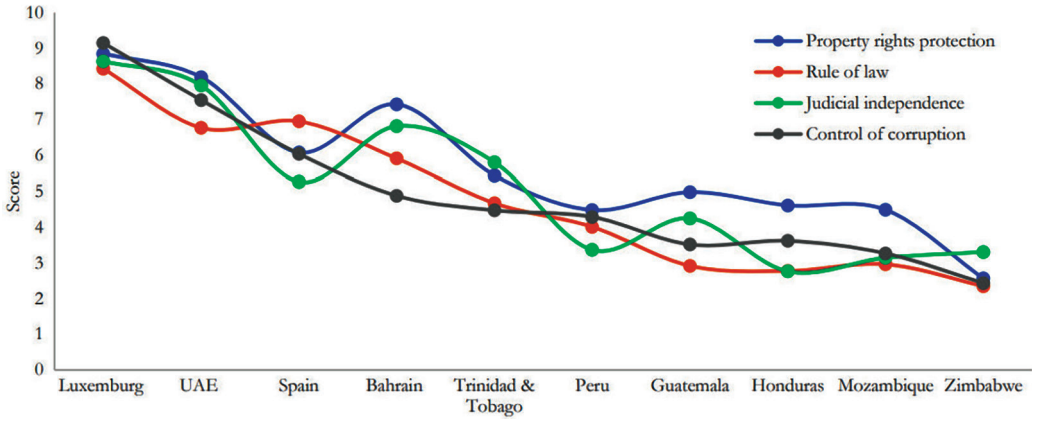

Figure 1. Property rights protection and legal institutions quality
Source: International Property Rights Index (2018)

Property law in a digital and globalising society is a rapidly developing area of property law studies. The legal categorisation of digital assets and the question of whether it is feasible to "own" data are two of the fundamental difficulties in the field of digitalisation, which is not surprising to property attorneys (Zimmermann, 2022). Nevertheless, EU-level talks are still ongoing, thus these rights have not yet become incorporated as a result of EU events. T. de Graaf (2019) has made an intriguing addition to this discussion by investigating the legal classification of bitcoins using both property law and contract law. An overview of bitcoin technology is provided for this reason in order to guarantee that everyone is aware of the fundamental technological procedures. After this is accomplished, the technology is examined from the perspectives of both property law and contract law. By comparing bitcoins to "documentary intangibles", T. de Graaf (2019) argues that they can be qualified, focusing on the paper's broader property law component. Naturally, these areas represent a sound challenge also for Ukrainian legislative field, since the country is an active participant in the global digital transformation processes and formation of digital assets/properly. This fact makes the task of balance, aligning, and convergence between interpretation and addressing property rights protection in civil and criminal law of Ukraine even more crucial.

Conclusions

The study conducted a comprehensive analysis of the mechanisms for protecting property rights in the civil and criminal law of Ukraine, with a focus on identifying points of intersection between these two branches of law and identifying existing problems of law enforcement. Key gaps in legislation and contradictions in judicial practice that lead to abuses, in particular regarding the seizure of property without proper judicial control, are outlined. The paper analyses the conceptual apparatus (protection, coercion, seizure of property), distinguishes the functions and legal consequences of coercive measures in civil and criminal proceedings.

For the first time, the convergence paradigm is systematically applied – both at the theoretical level and through the analysis of comparative material from Romania, North Macedonia and the practice of the European Court of Human Rights. This made it possible to show the practical possibility of harmonising Ukrainian legislation with European standards in terms of the protection of property rights. The value of the study lies in identifying real risks for property rights holders in the context of modern law enforcement practice, in particular regarding the activities of ARMA (National Agency for Investigation and Asset Management), and in proposing specific amendments to the Criminal Procedure Code of Ukraine to limit abuses by pre-trial investigation bodies.

The right to property represents one of the core human rights, and without its effective protection, a guarantee of the full protection of other human rights cannot exist. The problems of protection and defence of property rights are becoming especially relevant in the current conditions of Ukraine's integration into the European international community, in the context of the adaptation of domestic legislation in the sphere of international law on the problems of the implementation and protection of property rights. Proving the infringement of property rights is seen as one of the court's and the parties' primary responsibilities in criminal and civil actions. The proof must, however, be legitimate and not infringe upon the inviolability of property rights. In this vein, as the conducted research shows, the gradual borrowing of techniques tested in other branches of criminal procedure from them is capable of ensuring procedural convergence without the creation of supra-branch structures of judicial law. Since Ukraine has committed to respecting human rights in accordance with international standards (the flow of applications to the European Court from individuals and legal entities against Ukraine is constantly growing, including in connection with violations of property rights), it is extremely necessary to organise a systematic study by civil servants, and primarily judges, of decisions of the European Court and national courts of EU member states.

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Захист прав власності в цивільному та кримінальному праві України: точки перетину та проблеми правозастосування

Наталія Парасюк
Кандидат юридичних наук, доцент
Львівський державний університет внутрішніх справ
79007, вул. Городоцька, 26, м. Львів, Україна
https://orcid.org/0000-0002-7489-9181

Василь Парасюк
Кандидат юридичних наук, доцент
Львівський державний університет внутрішніх справ
79007, вул. Городоцька, 26, м. Львів, Україна
https://orcid.org/0000-0002-8195-7597

Іванна Здреник
Кандидат юридичних наук, доцент
Львівський державний університет внутрішніх справ
79007, вул. Городоцька, 26, м. Львів, Україна
https://orcid.org/0000-0002-8645-0701

Ростислав Бориславський
Доктор філософії в галузі права
Львівський державний університет внутрішніх справ
79007, вул. Городоцька, 26, м. Львів, Україна
https://orcid.org/0000-0001-8941-7942

Анотація. Актуальність дослідження зумовлена необхідністю удосконалення механізмів правового захисту майнових прав в умовах інтеграції України до європейського правового простору та на тлі проблем розмежування цивільно-правових і кримінально-правових засобів впливу. Метою роботи було виявлення перетину цивільного й кримінального права у сфері захисту права власності, з ідентифікацією суперечностей у правозастосуванні та визначенням напрямів конвергенції правових підходів. У дослідженні використано логіко-юридичний, порівняльно-правовий та догматичний методи, що дозволило проаналізувати норми українського законодавства, рішення національних і міжнародних судів та правозастосовну практику. У межах роботи було досліджено особливості реалізації принципу недоторканності права власності у цивільному та кримінальному процесах, проаналізовано проблеми арешту майна осіб, які не мають процесуального статусу підозрюваного чи обвинуваченого. Було встановлено, що чинна редакція норм процесуальне законодавство України не забезпечує належного балансу інтересів сторін у випадку накладення арешту на майно, що призводить до порушення прав цивільних відповідачів. Було виявлено особливості диференціації примусу у цивільному та кримінальному праві, а також розмежовано функції арешту майна як засобу забезпечення позову та як процесуального інструменту у кримінальному провадженні. Проаналізовано досвід Румунії та Північної Македонії щодо захисту права власності в умовах правової конвергенції. Зроблено висновок про доцільність адаптації окремих іноземних практик до українського контексту, зокрема щодо зміни процедур накладення арешту на майно та зміцнення процесуальних гарантій. Практична цінність роботи полягає у тому, що її результати можуть бути використані суддями, адвокатами, законодавцями та працівниками правоохоронних органів для удосконалення підходів до захисту права власності та приведення національної правозастосовної практики у відповідність до європейських стандартів

Ключові слова: права власності; цивільне право; кримінальне право; захист; примус; конвергенція