EMERGENT: JOURNAL OF EDUCATIONAL DISCOVERIES AND LIFELONG LEARNING (EJEDL)
ISSN: 2776-0995 Volume 3, Issue 10, Oct., 2022

DOES THE "PUBLIC PURPOSE DEFENCE" TO EXPROPRIATION IS CONSONANT WITH THE "SOLE EFFECT DOCTRINE", AND WHETHER CAN THEY BE RECONCILED?

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Abstract
The article deals with the issue of the international standard of legal expropriation and its refraction in the norms of national legislations of states. The author's special attention is focused on the content of the concept of expropriation within the framework of national legal systems. The author reveals the legal content of the concept of expropriation, as well as reveals the patterns and features of the legal regulation of expropriation as an independent legal form of compulsory seizure of private property.

Keywords: international standard, regulation, private property.

To establish the legality of expropriation, these criteria are applied not separately, but simultaneously. In case of violation of at least one of the requirements, expropriation is considered illegal.

The International standard is a kind of legal benchmark that serves to assess the degree of compliance of domestic legislation with the criteria generally recognized in the world community. In other words, the role of the international standard of lawful expropriation is to establish the limits within which a State can carry out expropriation in accordance with the procedure and conditions determined in accordance with the norms of its own legislation. The standard reflects the established international custom, and is also part of the international obligations of the Republic of Belarus. In case of violation of any of the conditions that make up the standard, the international responsibility of the State comes.

Indirectly, the conditions forming the international standard of legal expropriation can also be identified based on the analysis of the legislation of a number of foreign countries, their judicial practice. The States closely involved in the processes of international cooperation perceive the key ideas and concepts emerging in international legal practice.

It should be noted that to date, no attempts have been made in private law science to systematically approach the study of foreign experience in regulating expropriation. To solve this problem, the author studied the current laws on expropriation of Australia, Great Britain, Germany, Canada, Korea, Singapore, USA, Sweden and Estonia. It is characteristic that it is the issues of expropriation (and not nationalization or requisition) that have become the main subject of regulation within the framework of foreign legislations on the seizure of private property in the public interest. In the legal systems of most of these States, there are uniform regulatory legal acts regulating the entire complex of public relations that develop in connection with expropriation. In some cases, the relevant norms are contained in several successively adopted laws (Great Britain) or in sections of codified legislative acts specifically devoted to expropriation (Germany, USA).

Despite the significant differences in the historical path, state and social structure, and legal systems of these states, an analysis of the expropriation legislation in force in them allows us to assert that, in general, such norms have similar content, and regulatory legal acts on expropriation obey the universal logic of construction. Regardless of national peculiarities, these acts determine the subject composition of legal relations arising in connection with expropriation, the object of seizure, establish requirements for the purpose of expropriation and the amount of compensation, contain procedural norms, for example, regulating the procedure for preparing and implementing a decision on expropriation.

In general, the logic of the construction and content of normative legal acts on expropriation in force in foreign countries is subordinated to the fact that the seizure satisfies the conditions designed to ensure the fairness of expropriation, its legality. The principles of expropriation laid down in them correspond exactly with the international standard of legal expropriation.

The content of expropriation laws in force abroad has common features and is subject to the laws that consist in the presence of groups of legal norms in the laws on expropriation, which are necessarily subject to inclusion in the text of such normative legal acts.

Groups of legal norms characteristic of expropriation laws:

— are connected by a common subject of regulation;

— aimed at regulating the procedure and conditions for the implementation of expropriation;

— are essential for ensuring the legality of expropriation and maintaining a balance between the interests of an individual and society.

Their existence is dictated by the essence of social relations arising in connection with expropriation. In addition, the mandatory presence of such norms in the law on expropriation directly corresponds to the content of the international standard of lawful expropriation, first of all, with one of its constituent conditions — on due process.

According to the subject of regulation, the following groups of legal norms characteristic of expropriation laws can be distinguished:

— regulating the subject structure of legal relations arising in connection with expropriation, and the object of expropriation;

— establishing requirements for the purpose of expropriation, guaranteeing its conditionality by public interests;

— regulating the procedure for preparing a decision on expropriation, fixing the requirements for such a decision, the procedure for appealing it;

— determining the rules for calculating the amount of compensation and the procedure for its payment.

The existence of these groups of legal norms ensures the functioning of expropriation as an independent institution within the framework of national legal systems.

The analysis of the studied norms of foreign law in conjunction with the conditions forming the international standard of legal expropriation allows us to formulate the following main signs of expropriation.

First of all, expropriation is characterized by features common to all forms of seizures in the public interest.

Expropriation is carried out forcibly, contrary to the will of individuals whose property is subject to seizure (hereinafter referred to as interested persons). If the interests of interested persons coincide, on the one hand, and the state represented by authorized bodies, on the other, the acquisition of property or property rights for the realization of public interests can be carried out on the basis of civil law transactions. However, the positions of the parties (supply and demand) often do not coincide, which makes it impossible to conclude a deal. This is quite objective: without reaching an agreement between the parties, there is no contract. Therefore, in order to achieve the goals dictated by public interests, the state is forced to resort to expropriation. Expropriation is a volitional act of authorized State bodies based on State coercion.

Expropriation is directly linked to the achievement of public interests. At the same time, this conditionality has several important aspects. Firstly, a necessary condition for the implementation of expropriation is the existence of a reasonable causal relationship between expropriation and the realization of public interests with its help. Such a condition is designed to exclude the possibility of using expropriation in private interests. Secondly, expropriation is a forced measure in the sense that without its implementation, achieving a goal that meets the public interest is impossible — there are no alternative ways to do this. In this regard, the condition for the implementation of expropriation must be proven in accordance with the established procedure, the inability to implement the relevant socially significant project in another way, for example, by creating encumbrances on the property of a private person, in particular by establishing a public easement.

Expropriation, along with related nationalization and requisition, is the basis for the termination of property rights and in this regard, in our opinion, should be included among the compulsory grounds for the termination of property rights provided for by civil legislation.

In addition to these general features that determine the essential characteristics of expropriation, it is also characterized by a number of qualifying features, including those related to the composition of relations arising in connection with expropriation.

Expropriation is carried out to achieve the widest possible range of goals that meet the public interest. For example, the rules on expropriation can be aimed at the implementation of urban development plans and plans for the improvement of territories and settlements, the creation of tourist and nature protection zones, trade and logistics complexes, the construction of bridges, roads and railways, shipping channels, public pipelines, power plants, etc. [3, p. 320]. In other words, expropriation is primarily aimed at solving the planned tasks of public administration for the benefit of the whole society. The range of tasks solved through the institution of expropriation may also include the forced transfer of rights from one private owner in favor of another, if there is a reasonable public need for this.

It is of fundamental importance that expropriation, in our opinion, is to a certain extent "everyday", designed for fairly frequent, i.e. repetitive, use, a mechanism for implementing state regulation for the benefit of society. Expropriation is carried out in conditions of normal functioning of the State and society, their institutions and is not an emergency measure. Nevertheless, it should be emphasized that expropriation, like other forms of seizures in the public interest, despite the above characteristic, retains the character of an exceptional measure dictated by the lack of alternatives to such seizure in a particular situation.

Expropriation has the character of an individually defined measure, which distinguishes it from mass non-personalized seizures of private property. Nevertheless, it seems possible to expropriate a group of persons within the framework of the implementation of a single socially important project. The key condition in this case is that the decision on expropriation is always made in relation to the specific property of a certain individual. The compensation paid in case of expropriation is also personalized.

A characteristic feature of expropriation is that, as a rule, the powers to make a decision on seizure are granted to executive authorities in order to ensure a certain degree of efficiency in expropriation. Transfer of these functions from representative authorities to the Government (in its broad sense as a system of executive authorities) it can greatly simplify the decision-making process on expropriation in comparison with a more complex parliamentary procedure. At the same time, the decision on expropriation is always made by the regulatory body in strict accordance with the procedure established by the law on expropriation.

The Institute of expropriation is aimed at creating legal guarantees for a wide range of interested persons. It includes not only the owner of the property, but also persons who own property rights (both real and binding) in relation to the seized property.

The expropriation procedure is aimed at protecting the interests of both interested persons (the owner of the property and others) and legally authorized entities carrying out their activities in the public interest and initiating the expropriation procedure. The decision-making process on expropriation should consist in an analysis by the regulatory body of the positions of these parties in order to determine whether the proposed withdrawal is really due to public interests and whether it is the only possible measure to protect such interests. In this regard, the expropriation process should be based on such constitutional guarantees as the inviolability of private property, the rule of law, publicity, as well as the constitutional framework established for restrictions on rights and freedoms. In particular, the procedure should provide for the possibility of appealing the decisions taken in court.

Thus, the following conclusions can be drawn.

The analysis of international treaties and other international documents regulating the protection of private foreign property during expropriation, doctrinal sources, international arbitration and judicial practice allows us to state the existence of an international standard of lawful expropriation. By this standard, the author understands a stable set of internationally recognized conditions for the legality of expropriation, with the simultaneous satisfaction of which such withdrawal of private foreign property is considered legitimate.

The variety of tasks and goals of state regulation, as well as a number of other factors have led to the existence of various forms of exemptions in the public interest. Among the traditional forms of such seizures are expropriation (including its indirect forms), nationalization and requisition. These legal institutions are independent and do not duplicate each other.

The absence of any of these institutions within the national legal system creates a gap in the regulation of compulsory seizures in the public interest.

The elimination of such a gap is an important task from the point of view of both the completeness of the legal provision of the sovereign powers of the State to regulate property relations on its territory, and the protection of the property interests of individuals from arbitrary encroachment by establishing legal guarantees in case of seizure of their property. Such a task can be solved by developing and introducing into national legislation the missing legal institutions, in particular expropriation.

Expropriation is a compulsory paid seizure of a private person's property in the public interest, carried out in accordance with the procedure established by law on the basis of a decision of the body authorized by such law.

In the legal systems of foreign countries, there are uniform normative legal acts (sections of codified acts) designed to regulate public relations that develop in connection with expropriation.

Based on the results of the consistent application of scientific methods of analysis and synthesis to the study of the content of the laws on expropriation of a number of States, it can be argued that a typical law on expropriation should contain a number of mandatory elements, the presence of which follows from the very essence of expropriation as a forced withdrawal, conditioned by public interests, entailing compensation and designed for repeated use. These mandatory elements include the norms defining the subject structure of legal relations arising in connection with expropriation, the object of expropriation, its purpose. The law on expropriation should also contain rules governing the procedure for preparing a decision on expropriation, establishing requirements for such a decision and the procedure for appealing it, as well as determining the rules for calculating the amount of compensation and the procedure for its payment.

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