

Issues of Ensuring Legal Guarantees for the Protection of Property Rights in the Republic of Uzbekistan

Dilorom Mamirovna Karakhodjaeva¹

¹ Professor of the Department of Civil Law, Tashkent State Law University, Doctor of Law

Abstract:

the essence and meaning, the main legal guarantees for the protection of property rights in the Republic of Uzbekistan, as well as the problems of expanding the ways and means of protecting property rights in the view of modern science are characterized.

Keywords: political guarantees, economic guarantees, legal guarantees, property rights, entrepreneurship, protection of property rights.

Over the years of independence, the Republic of Uzbekistan has implemented a whole range of economic and legal reforms aimed at a radical turn towards expanding the private sector, further deepening and liberalizing the economy.

The republic has developed a certain set of guarantees of property rights:

- 1) political guarantees, which were based on the democratic principles of separation of powers, the rule of law, the priority of economics over politics, and the gradual transition to a market economy proclaimed in the Republic of Uzbekistan;
- 2) economic guarantees enshrined in Article 53 of the Constitution of the Republic of Uzbekistan and further developed in the system of economic legislation;
- 3) legal guarantees enshrined in the existing regulatory framework[1].

However, despite the guarantees provided, there was an objective need to harmonize the system of legal regulation of property relations and, despite the significant amount of legal regulation of property relations, as well as a number of achievements in this matter, property legislation required further improvement, unification and systematization.

In this regard, the priorities outlined by the President of Uzbekistan Sh.M. Mirziyoyev in the Development Strategy of New Uzbekistan were aimed at deepening democratic market reforms and economic liberalization, designed to act as a vector for strategic reform and reliable theoretical, legal, institutional and personnel support.

One of the most important aspects of the institution of property is guarantees against forced deprivation of property rights, and in conditions of transitivity of the market this is mainly manifested in relation to the actions of the state. Here, special attention must be paid to the fact that in current market conditions, stability and predictability of property relations are perceived by the world community as the most important condition for economic well-being and growth, which also determines the effectiveness of all market development[2].

The institution of property rights has historically acted as the core of social development, since it is its transformation that leads to an increase in well-being, or, on the contrary, to the stagnation of society. In this regard, the importance of studying its legal and economic nature is undeniable in order to identify the shortcomings existing in this area and, on the basis of this, determine the most optimal ways to eliminate them.

Traditionally, clarity, stability and predictability of property rights are considered the most important factors of economic growth and directly determine the effectiveness of economic development. In this regard, we believe that the establishment of clear, and most importantly, real guarantees for the protection of property rights is a determinant of the formation of a legal regime of property that is adequate to modern conditions[3].

Many analysts highlight stability and predictability as key factors in the legislative process in the field of property relations. In this issue, in addition to stability, there is also an element of legal guarantees related to property, such as providing conditions for its development.

At the same time, it is important to remember that the true regime of property rights in each individual country is mediated not only by the existing regulatory framework, but also by a number of related factors, such as the registration procedure, accounting and, in general, law enforcement practice in this area.

It is also necessary to take into account that the complication and diversification of state functions, the strengthening of the social orientation of state policy pose new tasks in relation to the regulation of property relations. Contradictions between general and private interests are resolved through the development of various redistribution systems, which, constantly and effectively interacting with each other, form the redistribution complex of a modern state[4].

The owner, in turn, always seeks to protect his private property interest. The natural desire to reduce the limits of state intervention in the private sector (through tax, currency, and customs policies) in turn affects public interest.

The analysis of the literature shows that the issues of the limits of state intervention in the sphere of private property in domestic legal science, as well as in the CIS countries, are one of the urgent tasks of legal science. In Western scientific thought, increased attention is also paid to this issue, since this issue is decisive in the system of social relations.

The solution proposed by the liberal legal tradition, as is known, is that the state should refrain from interfering in the sphere of private interests in all cases where such interference is not justified by the need to protect the rights and legitimate interests of others. In relation to the specifics of property rights, it seems to us that this principle means the need to limit the coercive measures applied to the owner to the extent necessary to ensure that the state fulfills its social functions.

On the other hand, the complexity and inconsistency of property legislation, the lack of clear and uniform legal methods for setting out the powers of the owner, as well as the insufficient level of

economic and legal culture among citizens and business entities entail a violation of the legal regime of property in the republic[5].

Considering that, in general, the existence of state functions to interfere in the scope of the owner's powers is justified and justified by considerations of ensuring public interests, we believe that powers directly related to issues of the inviolability of private property must be vested, first of all, in the courts as the most acceptable institution for limiting rights.

In our opinion, the search for a reasonable legal balance of interests of the owner and the state can, without exaggeration, be called the most important task of property legislation, since the effectiveness of the functioning of the country's economic system depends on its successful solution.

In this regard, it seems to us that the requirements for the system of legal regulation of property relations in Uzbekistan should be based on the following fundamental principles: rationality, optimality, fairness, free access to participation in civil circulation, stability of property legislation; accessibility and understanding in matters of accounting and use of property. Along with legal reform in the area under consideration, an equally important reserve for increasing the level of property relations is a change in the vector of public legal consciousness[6].

Let us emphasize that one of the highest barriers to investment for countries with transitive economies is precisely the excessive complexity of the procedure for the emergence and participation of property in civil circulation for the purpose of implementing investment projects. Meanwhile, this is a key condition for the implementation of long-term economic projects, building stable legal ties with counterparties, developing the domestic business environment and its integration into the world economy.

In this regard, in our opinion, one of the most important aspects of the institution of property are guarantees against forced deprivation of property rights, primarily from the state.

Despite the fact that the legislation establishes the grounds for the forced termination of property rights by the state (nationalization (Article 202 of the Civil Code), requisition (Article 203 of the Civil Code), confiscation (Article 204 of the Civil Code)), the mechanisms for their legal support have not been properly worked out, which in itself represents a kind of risk factor.

Thus, codified legislation under the act of nationalization determines the paid transfer of ownership of nationalized property belonging to citizens and legal entities to the state (Article 202 of the Civil Code).

In modern law there are various doctrines regarding nationalization. Most developing countries adhere to the view that the right of nationalization is an integral attribute of national sovereignty. At the same time, it is argued that this right itself cannot be conditioned by anything, i.e. carried out regardless of the presence or absence of public interests in nationalization. In the case of nationalization, compensation is paid not on the basis of the formula "prompt, adequate and effective", but taking into account all the circumstances. In practice, this means using arguments such as "lack of a sufficient amount of hard currency, the country's natural resources, theft by foreign companies," and on this basis, the amount of compensation paid was, as a rule, sharply underestimated[7].

Note that this doctrine is reflected in many UN documents, among which the most famous are UN General Assembly Resolution No. 1805 "On National Sovereignty over Natural Resources", the Charter and the Declaration on a New International Economic Order.

In theory, it is customary to highlight the following as the goals of nationalization:

- preservation of enterprises and other industrial and social facilities that are of strategic importance for ensuring the state security of the country or social development;

- ensuring the country's environmental safety;
- protecting consumers from abuses that may result from the private ownership of natural monopolies;
- implementation of structural restructuring of the economic structure;
- suppression of illegal transfer of profits abroad;
- establishing control over the use of financial resources available to banks and other financial and credit institutions;
- ensuring the implementation of socio-economic goals outlined in the national plan, etc.

Requisition has a slightly different legal nature, which is the seizure in the interests of society by decision of public authorities of property from the owner with payment to him of the value of the property in the event of natural disasters, accidents, epidemics, epizootics and other circumstances of an emergency nature (Article 203 of the Civil Code). Upon termination of the circumstances in connection with which the requisition was carried out, the former owner of the requisitioned property has the right to demand the return of the remaining property to him.

It is important to note that domestic legislation contains some legal guarantees regarding the non-application of acts of nationalization and restrictions in relation to the requisition of certain categories of property. In particular, we can highlight the Law of the Republic of Uzbekistan "On Private Enterprise" (Article 21), "On Public Funds" (Article 7), "On Guarantees of Freedom of Entrepreneurial Activities" (Article 32), "On Investment Activities" (Article .22), "On guarantees and measures to protect the rights of foreign investors" (Article 5).

However, all of the listed regulatory legal acts provide for the clause "except for cases provided for by law." A detailed analysis of the domestic regulatory framework did not allow us to identify any specific grounds, as well as the procedure for carrying out nationalization. The above allows us to assert that today the nationalization procedure at the legislative level in Uzbekistan is not regulated, which largely leaves this institution to the subjective discretion of the state authorities[8].

As is known, the international community is making efforts to develop guarantees of non-application of acts of nationalization provided for at the international level. Uzbekistan, as a full participant in international relations, is no exception in this case. In this matter, we can name the following international acts, to which the Republic of Uzbekistan is a party: the Energy Charter Treaty, the Agreement on Cooperation in the Field of Investment Activities, etc.

A significant legal body in the field of guarantees against nationalization has been formed at the level of bilateral interstate cooperation. As a rule, guarantees of this kind are established at the level of investment agreements.

A type of nationalization is reprivatization - the conversion of privatized property into state ownership by judicial termination of its purchase and sale agreement or declaring such an agreement invalid on the grounds determined by law.

An example of re-nationalization is the re-privatization of the iron and steel industry in Great Britain in 1967, which was nationalized in the first years after the Second World War, and then denationalized by the next Conservative government.

The decision to turn into state property through the procedure of nationalization is made, as a rule, on the basis of a law that defines the conditions, procedure and mechanism for the nationalization of specific property. In exceptional cases, nationalization is carried out by the government adopting a special resolution.

In this regard, the practice of confiscation of property for public needs in the UK is interesting. Traditionally, in this country, property rights are sacred, but the interests of the nation come first.

Therefore, in the case when the interests of the state affect a particular object that is privately owned, the state takes measures to buy out this object at the market price, while practice shows that the majority of such objects are sold at rates slightly higher than the market ones[9].

Summarizing the above, and fully recognizing the need to consolidate the state's ability to carry out forced seizure of property by legal means, we will outline the following position on this issue. In relation to nationalization and requisition of this kind, acts of state will must be strictly regulated, applied in exceptional cases and be of a one-time nature.

In order to form an adequate legal regime for the processes considered, it seems advisable to regulate these relations at the legislative level through the development and adoption of the Law of the Republic of Uzbekistan "On the conversion of property owned by citizens and legal entities into state ownership." This Law is intended to regulate the legal, economic and organizational basis for nationalization and requisition, establishing the grounds and principles of nationalization.

Moreover, it is believed that at the legislative level it is necessary to provide for conciliation procedures, which include negotiations between the authorized government body and the owner of the property to which the act of nationalization is applied.

Such conciliation procedures should determine the procedure for transferring property into state ownership, the amount and timing of payment of compensation, etc. This procedure is aimed at protecting the rights and legitimate interests of all persons involved in the process of converting property into state ownership.

In general, the presence of a clear legislative framework for nationalization, in our opinion, will strengthen guarantees of the inviolability of property, intensify investment processes and will act as an additional factor in protecting the rights of foreign and domestic investors[10].

Of no small importance is the law of the Republic of Uzbekistan "On the protection of private property and guarantees of the rights of owners", adopted on September 24, 2012, the main purpose of which was the legal regulation of relations related to the exercise of private property rights, the protection of the rights and interests of owners, the implementation of guarantees to ensure the inviolability of private property.

The Law "On the Protection of Private Property and Guarantees of the Rights of Owners" was intended to become a basic law that established the basic principles and provisions in the field of protection of private property and guarantees of the rights of owners. In this regard, it regulated in detail the relevant provisions of constitutional principles, specified the relevant norms of the current legislation, and established mechanisms to ensure the implementation of the most important principle - the inviolability of private property. The law created favorable conditions for the effective functioning of private property in the economy, stimulated entrepreneurial initiative, labor motivation and guaranteed the entrepreneurial activity of the owner in increasing his wealth, which served as the basis for the further prosperity of society and the state[11].

The Law "On the Protection of Private Property and Guarantees of Owner Rights" was the main legal act that established state guarantees in relation to private property, created conditions for the formation of effective mechanisms for protecting private property rights, created benefits and preferences for private owners and entrepreneurs, contributed to the development and improvement of private property rights, small business and private entrepreneurship in the country.

The Concept of improving the civil legislation of the Republic of Uzbekistan has defined a new stage in the development of the Republic of Uzbekistan, priority areas of activity aimed at further liberalization of the economy, reducing the presence of the state in regulating economic relations, strengthening guarantees for the protection of private property rights, as well as stimulating the development of entrepreneurship and actively attracting foreign investment[12].

On October 28, 2020, the President of the Republic of Uzbekistan signed a decree “On measures to accelerate the reform of enterprises with state participation and the privatization of state assets.” The measures approved by the decree affected more than 2 thousand state assets. In addition, the decree creates the Department for the Transformation of Large Enterprises with State Participation under the Ministry of Finance[13].

The Agency for Management of State Assets, together with the Antimonopoly Committee, was tasked with ensuring the development and approval of measures to ensure transparency of the public bidding process held on the unified electronic trading platform “E-ijro auction”, completely eliminating the subjective approach and creating favorable conditions for buyers, providing for the registration of the results of all auctions using a QR code; concluding sales and purchase agreements with a single participant, if the application, drawn up in accordance with the conditions for the sale of state assets, is submitted by only one applicant, with the exception of the state share and immovable objects of state property put up for sale at the starting price of “1 sum”.

The implementation of the intended goals will be reflected in the Strategy for the management and reform of enterprises with state participation in 2020-2025 and the laws “On State Property Management” and “On Privatization”.

Currently, as part of the tasks to ensure accelerated development of the national economy and high growth rates, defined in the Development Strategy of New Uzbekistan, further measures are envisaged to reduce the annual inflation rate, completion of the processes of transformation of commercial banks with state shares, increasing the share of the private sector in banking assets to 60 percent by the end of 2026, eliminating requirements for obtaining certain licenses and other permits by establishing special conditions for the activities of business entities specialized in providing remote services.

The identified aspects indicate the achievement of predictability in the economic policy of the Republic of Uzbekistan, positive stability, and also the results of the planned reforms in the medium term will strengthen the competitiveness of the economy of Uzbekistan, expand foreign trade and increase the interest of foreign investors.

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