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FORECLOSURE OF CERTAIN TYPES OF PROPERTY: GENERAL STATEMENTS THROUGH THE PRISM OF THE PRINCIPLE OF INVIOABILITY OF PRIVATE PROPERTY

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Abstract. *The article reviews the principle of inviolability of private property in the context of Russian legislation, starting from its enshrinement in the Fundamental State Laws of 1906 and up to the modern Constitution of the Russian Federation. The author analyzes the evolution of this principle, its theoretical understanding, as well as the legal positions of the Constitutional Court of the Russian Federation. Two key aspects of inviolability are considered: the right to inviolability as the ability to be protected from encroachments and actual inviolability as the state of property protected by the state. Special attention is paid to various interpretations and legal approaches to the limitation of this principle, including the obligations of the state to protect the rights of owners and the balance of interests of private and public parties. The article discusses practical mechanisms for the protection of private property, including exclusion from the enforcement of court decisions as well as compensation when property is confiscated for state needs.*

Keywords: *property, private property, foreclosure, inviolability principle, inviolability of the right of private property.*

At the beginning of the study, we would like to start with historical facts concerning the subject of the study. Thus, in Russia, the principle of inviolability of property was first enshrined at the constitutional level in the Fundamental State Laws of 1906 (Art. 35)¹. In the Constitution of the RSFSR

¹ Belkovets L. P., Belkovets V. V. *Istoriya gosudarstva i prava Rossii. Kurs lektsiy* [The history of the state and law of Russia. Course of lectures]. Novosibirsk. 2000. 216 p.; Vysochayshe utverzhdennoye Osnovnoye

of 1937¹, this provision was expanded, recognizing public socialist property as inviolable (Art. 135). The modern Constitution of the Russian Federation² establishes that private property shall be protected by law (Part 1, Article 35). It is reasonable to consider this provision as a protection of inviolability of private property³.

The current understanding of inviolability of private property is revealed both in theoretical studies and in the legal positions of the Constitutional Court of the Russian Federation: the principle is upheld. The Constitutional Court confirms that “inviolability of property is a fundamental principle of legal regulation in the sphere of economy”⁴.

The principle considered in the study may also act as a mechanism of protection of property from external encroachments (it may be a prohibition at the legislative way on actions that violate the will of the owner). It can be argued that the above concept is a guarantee of autonomy of the individual. It should be noted that the protection of private property is not only the protection of property, but also inviolability⁵.

There are two main components of inviolability of property: 1) the *right* to inviolability and 2) *de facto* inviolability. In the first case, we mean the right as the

gosudarstvennye zakony. 23 aprelya 1906 g. [The Fundamental State Laws approved by the highest authority. April 23, 1906.] // Polnoe sobranie zakonov Rossiyskoy Imperii. Sobranie 3-e. T. 26 (1906) [The full collection of laws of the Russian Empire. Collection 3rd. V. 26 (1906)]. SPb., 1909. No. 27805. 1160 p.; Vladimirova G. E. Osnovnye gosudarstvennye zakony Rossiyskoy imperii 1832–1892 gg. v opredelenii osnov gosudarstvennogo stroya v Rossii. Avtoref. dis. ... kand. yurid. nauk. [Fundamental state laws of the Russian Empire 1832–1892 in determining the foundations of the state system in Russia. Abstract of the dissertation of the Candidate of Legal Sciences]. Omsk, 2009. 26 p.; Yatskova A. P. Osnovnye gosudarstvennye zakony Rossiyskoy imperii 23 aprelya 1906 g. — pervaya rossiyskaya Konstitutsiya. Dis. ... kand. yurid. nauk [Fundamental state laws of the Russian Empire April 23, 1906 — the first Russian Constitution. Dissertation of Candidate of Legal Sciences]. 12.00.01 / M., 2001. 218 p.

¹ Resolution of the Extraordinary XVII All-Russian Congress of Soviets of 21.01.1937 “On approval of the Constitution (Fundamental Law) of the Russian Soviet Federative Socialist Republic” (with the Constitution) // The Collection of Laws of the RSFSR, 1937, No. 2, Art. 11 (The document lost force in view of the adoption of the Constitution (Fundamental Law) of the RSFSR of 12.04.1978, approved by the Declaration of the Supreme Soviet of the RSFSR of 12.04.1978).

² Constitution of the Russian Federation (adopted by national vote on 12.12.1993 with amendments approved by a national vote on 01.07.2020) // <http://pravo.gov.ru>, 06.10.2022.

³ Kutafin O. E. Neprikosновенность в конституционном праве Rossiyskoy Federatsii [Inviolability in the Constitutional Law of the Russian Federation]. M.: Yurist, 2004. 407 p.

⁴ Resolution of the Constitutional Court of the Russian Federation from 01.04.2003 No. 4-П “On the case of verification of the constitutionality of the provision of Paragraph 2 of Article 7 of the Federal Law “On auditing activities” in view of the complaint of citizen I.V. Vystavkina” // The Collection of Legislation of the Russian Federation, 14.04.2003, No. 15, Art. 1416.

⁵ Goshulyak V. V. Institut sobstvennosti v konstitutsionnom prave Rossii [The Institute of property in the Constitutional Law of Russia]. M., 2003. 166 p.

ability to be protected, while in the second case we mean to the *state* of property protected by state force. It is necessary to distinguish between two aspects of inviolability of property: the first is the right to inviolability as the ability to be protected from encroachment, and the second is actual inviolability as the state of property protected by the state. The legal community is not without discussion: some scientists argue that “the right to inviolability is a legal form of ensuring the protection of property”¹; others point out that “inviolability exists both in real social relations and in the legal norms enshrining them”².

Understanding the distinction between the concepts of “right to inviolability of private property” and “inviolability of private property” is important for assessing possible limitations. Depriving an owner of the right to freely dispose of personal property effectively limits his right to inviolability, but this does not mean that his property becomes available for illegal actions³.

The Constitutional Court of the Russian Federation mentions in its acts mentions that the principle of inviolability of property includes constitutional guarantees of free use of property, stability of property rights and impossibility of arbitrary deprivation or disproportionate restriction of property rights.

G. A. Gadzhiev, referring to Part 2 of Article 8 of the Constitution of the Russian Federation and Clause 4, Article 212 of the Civil Code of the Russian Federation, states that “the inviolability of private property covers the principle of equality of protection of the rights of all owners”⁴.

Foreclosure of the debtor’s property, regulated by Articles 235 and 237 of the Civil Code of the Russian Federation⁵, is related to the forced termination of the right of ownership and directly to the principle of inviolability. The Constitution of the Russian Federation does not directly enshrine the inviolability of private property, but this principle is in one way or another *an integral part of the constitutional right to property*. In legal practice, there are several approaches to the interpretation of the content of this principle.

¹ Kutafin O.E. Op. cit.

² Patyulin V.A. Neprikosnovennost lichnosti kak pravovoy institut [Personal inviolability as a legal institution] // Sovetskoe gosudarstvo i pravo [The Soviet State and Law]. 1973. No. 11. P. 13.

³ Gadzhiev G.A. Konstitutsionnye osnovy sovremennogo prava sobstvennosti [Constitutional foundations of modern property rights] // Zhurnal rossiyskogo prava [Journal of Russian Law]. 2006. No. 12. Pp. 30–41.

⁴ Ibid.

⁵ Civil Code of the Russian Federation (Part one) of 30.11.1994 No. 51-Φ3 (ed. of 08.08.2024, amended on 31.10.2024). Changes introduced by the Federal Law of 08.08.2024 No. 237-Φ3, came into force from the date of its official publication (published on the Official Internet Portal of Legal Information <http://pravo.gov.ru> — 08.08.2024) // The Collection of Legislation of the Russian Federation, 05.12.1994, No. 32, Art. 3301.

Thus, lawyer, Candidate of Legal Sciences, A.I. Vasilyanskaya proposes to consider the principle of inviolability through several key elements: 1) exclusion of interference in the realization of the right of private property; 2) protection and defense of the right of property and its objects; 3) inadmissibility of arbitrary deprivation of property or disproportionate restriction of property rights¹.

The principle of inviolability of private property and its limitations are directly related to the balance of private and public interests. Many subjects are involved in the process of foreclosure on property: the owner-debtor, the claimant, and state authorities, which regulate the procedures of foreclosure and compliance with the principle of inviolability.

The Government plays an active role in protecting the principle of inviolability of property by establishing a list of property that cannot be foreclosed upon and thereby protecting the rights of owners. This legislative immunity also protects the interests of debtors, as well as their dependents and minor children.

By establishing a list of property that cannot be foreclosed, the state simultaneously safeguards the rights of owners despite the interests of creditors. If the property is confiscated for state needs, the owner receives compensation or similar property. These situations show the difference in approaches to the termination of property rights and their guarantees, where some rights are protected and others may be at risk.

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¹ *Vasilyanskaya A. I.* Inviolability of private property: term, content, limits // Legal company "Within the Law": [Electronic resource]. — URL: https://lawforyou.ru/articles/89-publikatsii/77-article-1#_ftn11 (date of address: 26.11.2024).

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