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ACTUAL PROBLEMS OF MODERN DEVELOPMENT OF THE STATE AND LAW

ISBN 979-8-88831-920-8
DOI 10.46299/979-8-88831-920-8

Mangora T.V., Lukiianova M.D., Durach O., Demianchuk Y.V., Tomliak T., Chernyschuk N.V., Pohuliaiev O.I., Dzeveliuk A., Kaidashov V., Pravdiuk A., Pravdiuk M., Skichko I.

ACTUAL PROBLEMS OF MODERN DEVELOPMENT OF THE STATE AND LAW

Monograph

2022

UDC 340

Author's:

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Mangora T.V., Lukiianova M.D., Durach O., Demianchuk Y.V., Tomliak T., Chernyschuk N.V., Pohuliaiev O.I., Dzeveliuk A., Kaidashov V., Pravdiuk A., Pravdiuk M., Skichko I. Actual problems of modern development of the state and law. Monograph. – Primedia eLaunch, Boston, USA, 2022. – 392 p.

Library of Congress Cataloging-in-Publication Data

ISBN – 979-8-88831-920-8
DOI – 10.46299/979-8-88831-920-8

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UDC 340

ISBN –979-8-88831-920-8

© Mangora T.V., Lukiianova M.D., Durach O., Demianchuk Y.V., Tomliak T., Chernyschuk N.V.,Pohuliaiev O.I., Dzeveliuk A., Kaidashov V., Pravdiuk A.,Pravdiuk M., Skichko I.

ANNOTATION

The collective monograph is devoted to the study of trends in the development of modern Ukrainian legal society. The research uses an interdisciplinary approach, which allows analyzing and characterizing various aspects, aspects and approaches to the development of socio-legal processes in Ukraine and obtaining socially significant scientific results.

Leading scientists Tamila Mangora and Maryna Lukiyanova emphasize that the Ukrainian legislation, which is aimed at settling the issue of resolving labor disputes in court, needs improvement. However, in order to solve urgent problems in the specified area, studies devoted to the consideration of foreign experience in resolving labor disputes in court are of particular relevance. This is explained primarily by the fact that in many countries of Europe and the world, specialized labor courts have been operating for a long time, which play a leading role in the resolution of individual and collective labor disputes, while at the same time ensuring maximum consideration of the interests of participants in labor relations.

In their research work, Olga Durach and Yuriy Damianchuk pay attention to the organization of the work of courts during martial law, emphasize the implementation of the definition of the basic principles of the organization of the judicial power of Ukraine. They reveal the peculiarities and problematic issues of the administration of justice during martial law, consider the administrative and legal principles of corruption prevention, offer ways to solve such issues and ensure the right to a fair trial during the administration of justice during martial law.

Taisa Tomlyak examines the legal positions of the European Court of Human Rights. Explores the broad understanding in the practice of the Court of "society's interests" in the application of measures of deprivation of the right to property and at the same time ensuring a proportional relationship between the goal set and the means used. The author analyzed the current civil legislation and judicial practice of the Civil Court of Cassation, the Commercial Court of Cassation of the Supreme Court and the Grand Chamber of the Supreme Court regarding certain categories of credit disputes

and land cases, including the resolution of jurisdictional problems in the consideration of land disputes.

In her chapter, Natalya Chernyshchuk states the fact that the growth of the role of a lawyer in modern society is objectively due to the complication of social infrastructure (democratization of social relations, liberalization of economic life, growth of private initiative), the development of the legal status of the individual, the expansion of individual rights and freedoms. The role of various forms of social and legal regulation is growing, which leads to the emergence of specific social mediators in relations between people and their groups, as well as the state.

In his chapter, Oleksandr Pogulyayev considered the legal approaches of the political forces of the Right Bank ethnic minorities in solving the issue of international relations during the years of struggle for Ukrainian statehood, the influence of foreign policy factors on the formation of national demands of political parties and public organizations.

Andrii Dzevelyuk, based on the study of the life path of M.Yu. Chizhov, considers his formation as a lawyer and a political scientist in an interconnected context. Analyzes his conclusions that a lawyer should study not only the forms in which law is made available to us, not only the forms in which it becomes mandatory, but also the awareness of law as one of the social phenomena, as a product of various social factors that act under the influence of certain laws.

The section prepared by Vitaly Kaidashov is dedicated to solving the problem of the legal basis of the safety of the quality of agricultural products. The author emphasizes that despite the high degree of importance of the problem under investigation, the current legislation of Ukraine on the safety and quality of agricultural products is imperfect, contains many gaps in the legal regulation of the specified issues.

Authors Andriy and Maryna Pravdyuk in the context of various aspects consider and give their practical characteristics to the constitutional obligations of citizens to pay taxes in Ukraine and the European Union.

In the research of Iryna Skichko, the legal prerequisites for the formation of modern vectors of French foreign policy are clearly observed. At the same time, the

approach of temporal differentiation and subject analysis was used, which was carried out in accordance with the periods of the reign of French presidents and in relation to the key geopolitical directions of foreign policy - European, Atlantic, Middle Eastern, African.

The content of the collective monograph corresponds to the research direction of the Department of Law of the Vinnytsia National Agrarian University "Legal protection of human rights and freedoms in the conditions of European integration". The monograph uses legal, social and legislative research methods.

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10.46299/979-8-88831-920-8.4

4. Protection of property rights in the practice of the European Court of human rights and national courts of Ukraine

Abstract

The legal positions of the European Court of human rights (hereinafter referred to as the court) are considered. In particular, the court's decision on cases concerning the lawfulness of interference with property rights has been examined, taking into account the provisions of Protocol No. 1 to the convention for the protection of human rights and fundamental freedoms (hereinafter Protocol No. 1 to the convention). Also, the principles that, in the court's opinion, the state should adhere to when interfering with property rights are specified.

In addition, it is established that the concept of "property" in the sense of Part 1 of Article 1 of Protocol No. 1 to the convention has an independent meaning. That is, the specified concept cannot depend on its legal classification in national legislation and cannot be limited to ownership of things.

Also, we have investigated a broad understanding in the court's practice of the "interests of society" when applying measures of deprivation of property rights and ensuring a proportional relationship between the goal set and the means used.

The author analyzes the current civil legislation and judicial practice of the Civil Court of Cassation, the Economic Court of Cassation of the Supreme Court and the Grand Chamber of the Supreme Court in relation to certain categories of credit disputes and land cases, including the solution of jurisdictional problems in the consideration of land disputes.

Proposals are made to amend the current civil legislation in order to expand the guarantees of the rights of consumers of credit services provided by financial institutions and changes to the economic procedural legislation in order to resolve jurisdictional conflicts that arise when considering land disputes..

4.1 Protection of property rights by national courts in land disputes

As judicial practice shows, land disputes are common types of disputes in economic jurisdiction. And the problem of delineating the jurisdiction of disputes in the field of land relations is one of the most relevant in judicial practice. Such a jurisdictional problem is associated with a wide range of land relations and a wide variety of land disputes that may arise from these relations.

Therefore, in order to create a stable system of judicial regulation of land relations, it is necessary to deepen the legal positions of Cassation courts on controversial issues that arise in this area.

At the same time, the law of Ukraine "on amendments to certain legislative acts of Ukraine concerning the turnover of agricultural land" No. 552-IX introduces the land market in Ukraine from July 01, 2021. Without a doubt, the introduction of the land market from July 01, 2021 will be the basis for increasing the number of land disputes, and therefore the research of the article is becoming particularly relevant.

Among scientists, the issue of protection of land rights was considered by scientists-lawyers, practitioners, among them: V. Averyanov, O. Andriyko, D. Bakhrakh, O. Nedbailo, V. Kurilo, A. Selivanov and others. at the same time, the judicial practice in resolving land disputes in economic jurisdiction has not been sufficiently studied.

The current legislation of Ukraine, in particular the Civil Code of Ukraine [56] and the Land Code of Ukraine [57] define the grounds for protecting the violated right to land.

Part 1 of Article 16 of the Civil Code of Ukraine defines that everyone has the right to apply to the court for protection of their personal non-property or property right and interest [56, ark. 16].

According to paragraph 10 of Part 2 of Article 16 of the Civil Code of Ukraine, one of the ways to protect civil rights and interests is to recognize illegal decisions, actions or omissions of a state authority, an authority of the Autonomous Republic of Crimea or a local self-government body, their officials and officials [56, ark. 16].

According to Part 1 of Article 393 of the Civil Code of Ukraine, a legal act of a state authority, an authority of the Autonomous Republic of Crimea or a local self-government body that does not comply with the law and violates the rights of the owner, at the request of the property owner, is recognized by the court as illegal and canceled [56, ark. 16].

Part 2 of Article 152 of the Land Code of Ukraine provides that the owner of a land plot or a land user can demand the elimination of any violations of his rights to land, even if these violations are not related to the deprivation of the right to own a land plot, and compensation for losses caused [57, ark. 152].

According to Paragraph "D" of Part 3 of Article 152 of the Land Code of Ukraine, the protection of the rights of citizens and legal entities to land plots is carried out by invalidating decisions of executive authorities or local self-government bodies [57, ark. 152].

Consequently, the prerequisites for judicial protection of the right of ownership or use of a land plot are the existence of a person's right of ownership or use to a land plot confirmed by proper and admissible evidence, as well as the fact of violation, non-recognition or challenge of this right confirmed by proper evidence.

Thus, to ensure the unity of judicial practice in protecting the violated right of a person to use a land plot, there are a number of legal positions of the Supreme Court as part of the Cassation economic Court. One of these categories of cases is disputes about the transfer of the right to lease a land plot to a person who has become the owner of real estate located on the leased land plot.

After all, according to part three of Article 334 of the Civil Code of Ukraine, the right of ownership of property under a contract that is subject to notarization arises from the acquirer from the moment of such certification or from the moment of entry into force of a court decision on the recognition of a contract that is not notarized as valid. Rights to immovable property that are subject to state registration arise from the date of such registration in accordance with the law [56, ark. 334].

Part one of Article 377 of the Civil Code of Ukraine defines that a person who has acquired the right of ownership of a residential building (except for an apartment

building), a building or structure, passes the right of ownership, the right to use the land plot on which they are located, without changing its intended purpose to the extent and under the conditions established for the previous landowner (land user) [56, ark. 377].

According to the first part of Article 120 of the Civil Code of Ukraine, in case of acquisition of ownership of a residential building, building or structure that is owned or used by another person, the right of ownership, the right to use the land plot on which these objects are located is terminated. A person who has acquired the right of ownership of a residential building, building or structure located on a land plot owned by another person, passes the right of ownership of the land plot or part of it on which they are located, without changing its intended purpose [57, ark. 120].

According to the provisions of the third part of the Statute 7 of the Law of Ukraine "About the order of the land" to the individual, the right of ownership to the life of the house, building or structure located, which is located to the order of the land of the activity, so to transfer the right of the order to the land of the plot. By the contract,I will transfer the right of ownership to the living room, I will give you a job, I will remember the contract of the order of the land plot in the private order of the order of the land plot, to the which is located such a living booth, I will give you a job [58,ark. 7].

Also, an analysis of the position of the above norms is based on those who, when transferring the right of ownership to a non-farm mine, should be on the land of the mine, which is in the order, the right of the right of ownership of the land of the mine to the which indicates of the mine of the placed to move to the new own of the mine, on the same minds, which were at the front own.

From the moment the right to wear on the real estate person, became the new owner of such a main, overnight I acquired the rights of the order of the land of the lane, on the which is placed it is property from the connections with displacement the rightto wear on the new one, in accordance, termination the rights of the use previous owner of the land of the lane, on which it is placed, according to the part other articles 120 CC of Ukraine. That person, which acquired rights property onthe main fact of the old order of the land of the village, on the which it is placed

that same volumes ta on the minds, yak i previous owner. At the end of the Contract, the order of the cie of the land deal is made for the middle of the user (the middle of the unruly main) to be remembered with a new contract, on the basis ofa new owner, the right to be held on the located on the cie of the land deal is signed, and the contract is not signed ruptured. Prior to such a legal conclusions came ccassation economic court at affairs No. 908/27/18 vid 15 January 2019 year [59].

Simultaneously, part 1 of the statute 93 of the statute 125 of the Land Code of Ukraine transferred, what the right to order a land deal - it based on on the contract term paid possession i use land deal, necessary to the tenant for proceeding entrepreneurial that another active. The right of the order of the land placed is vindicated by the moment of the sovereign restoration of the right. Scavengers obliged pay rent fee (item "in" part 1 of the Statute 96 of the Code) [57, Article 93, 96, 125].

Acquisition another special rights owner on residential house, buildings abo attempts,which are located on land active, the right of use land at the previous land user (item "e" of part 1 of the Statute 141of the CC of Ukraine) [57, ark. 141].

Therefore, for the sake of the serpent, the position of the occurrence of the right of the hair on the house, house, I will not create a right for the occurrence of theright of the order of the land, on the yak stink of the rosemary, that yak was not broughtinto the order of the middle hair. The right of the order of the land deal is vindicated on the basis of the agreement signed by the moment of the sovereign restoration of theright. I will look back at the inscriptions of the part 2 of the statute 120 of the CC of Ukraine, not to be introduced to the lawbreakers, to be able to get a house, house, to get a pre-registered right of an order for a land plot, yak may another owner I on whishsituated it real estate. Such is the legal position of the laid out at the decree of the cassation economic court at the certificate No. 922/595/18 of the 29thday of 2019 of the year [60].

In a row, yak testifies the ship's practice is great, the number of ship's disputes is great, the price is not broken, the mine is not paid, the order is not paid for the use which land deal on the anchor to know the given mine, without diligent registration of the right.

So, according to paragraph 2 of the other part of Article 22 of the Civil Code of Ukraine, the person could have really won for the best, the right was not destroyed (the benefit was missed) [56, ark. 22].

Part one of Article 1166 of the Civil Code of Ukraine establishes that damage caused to the property of an individual or legal entity is compensated in full by the person who caused it [56, ark. 1166].

According to Paragraph "D" of part one of Article 156 of the Land Code of Ukraine, land owners are compensated for losses caused as a result of non-receipt of income during the temporary non-use of the land plot [57, ark. 152].

So, within the meaning of the above-mentioned norms of the current legislation, compensation for damage is liability for violation of the rights of the land owner.

At the same time, according to Article 206 of the Land Code of Ukraine, land use in Ukraine is paid. The object of payment for land is a land plot. Payment for land is charged in accordance with the law [57, ark. 206].

Land payment is a national tax that is levied in the form of land tax and rent for land plots of state and municipal ownership (subparagraph 14.1.147 of paragraph 14.1 of Article 14 of the tax code of Ukraine) [61, ark. 14].

Land tax is a mandatory payment that is levied on owners of land plots and Land shares (units), as well as permanent land users, and rent for land plots of state and municipal ownership is a mandatory payment that the lessee makes to the lessor for the use of the land plot (subclauses 14.1.72, 14.1.136 of paragraph 14.1 of Article 14 of the tax code of Ukraine) [61, ark. 14].

According to the provisions of chapters 82 and 83 of the Civil Code of Ukraine, tort obligations arising from causing damage to property are characterized, in particular, by a decrease in the victim's property, and for condiction obligations - by an increase in the acquirer's property without sufficient legal grounds. The fault of the

causer of harm is a mandatory element of the occurrence of liability in tort obligations. But for condiction obligations, guilt does not matter, but the fact of illegal acquisition (preservation) of property by one person at the expense of another is important [56, ark. 1172].

According to Paragraph 3 of part one of Article 13 of the law of Ukraine "on land valuation", the normative monetary assessment of land plots is carried out in the case of determining the amount of rent for land plots, in particular, communal property [62, ark. 13].

In addition, according to Paragraph 1 of paragraph 289.1 of the tax code of Ukraine, the standard for monetary valuation of land plots is used to determine the amount of rent [61, ark. 289].

Data on the normative monetary assessment of an individual land plot are drawn up as an extract from the technical documentation on the normative monetary assessment of a land plot (part two of Article 20 of the law of Ukraine "on land assessment") [62, ark. 20].

Taking into account these instructions, the Cassation economic Court in its decision of February 14, 2019 in case No. 922/1019/18 concluded that the determination of the amount of rent for land plots is carried out on the basis of a normative monetary assessment, including when collecting unreasonably stored funds in the amount of rent [63].

So, if there is a dispute about the recovery of the amount of rent as unreasonably stored funds, the specified amount of funds is determined according to the standard monetary assessment.

Another problem that arises when considering land disputes in courts is jurisdictional conflicts, which also relate to land disputes that arise in economic proceedings. We believe that determining the correct jurisdiction of any dispute is important.

The European Court of human rights (hereinafter referred to as the ECHR), in its decision of 29 April 1988 in the case of Belilos v. Switzerland, drew attention to the fact that everyone has the right to a court established by law, that is, the relevant body

should have the authority to decide issues within its competence on the basis of the rule of Law [65].

After analyzing the legal conclusions of the Grand Chamber of the Supreme Court, it can be concluded that there are a large number of land disputes with jurisdictional conflicts concerning the recognition of invalid or cancellation of decisions of state and local government bodies.

Thus, according to Part 6 of Article 302 of the economic Procedure Code of Ukraine, a case is subject to transfer to the Grand Chamber of the Supreme Court, when a participant in the case appeals against a court decision on the grounds of violation of the rules of subject or subject jurisdiction, except in cases where:

1) a participant in a case challenging a court decision participated in the consideration of the case in the courts of first or appellate instance and did not declare a violation of the rules of subject or subject jurisdiction;

2) a participant in a case challenging a court decision has not justified the court's violation of the rules of subject or subject jurisdiction by the presence of court decisions of the Supreme Court as part of a panel of judges (chamber, Joint Chamber) of another court of Cassation in a case with a similar basis and the subject of a claim in similar legal relations;

3) The Grand Chamber of the Supreme Court has already set out in its resolution an opinion on the subject or subject jurisdiction of a dispute in such legal relations [64, ark. 302].

According to parts 1, 2 of Article 45 of the law of Ukraine "on the judicial system and status of judges", the Grand Chamber of the Supreme Court is a permanent collegial body of the Supreme Court, which includes twenty-one judges of the Supreme Court. Grand Chamber Of The Supreme Court:

1) in cases determined by law, review Court decisions in Cassation in order to ensure the uniform application of legal norms by courts;

2) acts as a court of Appeal in cases examined by the Supreme Court as a court of First Instance;

3) analyzes judicial statistics and studies judicial practice, summarizes judicial practice;

4) Exercise other powers defined by law [66, ark. 45].

We believe that it is necessary to analyze several legal positions of the Grand Chamber of the Supreme Court concerning land disputes with jurisdictional conflicts in terms of declaring invalid or canceling decisions of state and local government bodies.

Thus, ark. 12 of the Civil Code of Ukraine provides that the powers of city councils in the field of land relations on the territory of settlements include: the disposal of land of territorial communities; the transfer of land plots of communal property to the ownership of citizens and legal entities in accordance with this code; the provision of land plots for use from land of communal property in accordance with this code; the withdrawal of land plots from land of communal property in accordance with this code; the purchase of land plots for the public needs of the relevant territorial communities of cities; the organization of Land Management; solving other issues in the field of land relations in accordance with the law [57, ark. 12].

Part one of Article 122 of the Civil Code of Ukraine stipulates that rural, settlement, and city councils transfer land plots to ownership or use from communal property lands of the relevant territorial communities for all needs [57, ark. 122].

According to the rules of the first part of Article 123 of the Civil Code of Ukraine, the provision of land plots of communal property for use is carried out, in particular, by local self-government bodies on the basis of land management projects on the allotment of land plots in cases stipulated by law, or on the basis of technical documentation on Land Management on the establishment of land plot boundaries in kind (on the ground). At the same time, the development of such documentation is carried out on the basis of a permit granted by a local self-government body, in accordance with the powers provided for in Article 122 of this Code [57, ark. 123].

A person interested in obtaining for use a land plot from state or municipal property under a Land Management Project for its allotment applies for permission to develop it to the relevant executive authority or local self-government body, which, in

accordance with the powers defined in Article 122 of this code, transfer ownership or use of such land plots (part two of Article 123 of the Civil Code of Ukraine) [57, ark. 123].

The relevant executive authority or local self-government body, within the limits of their powers, considers the application within one month and gives permission for the development of a Land Management Project for the allotment of a land plot or provides a reasoned refusal to grant it (part three of Article 123 of the Civil Code of Ukraine) [57, ark. 123].

Within two weeks from the date of receipt of the Land Management Project on the allotment of a land plot, and if it is necessary to carry out mandatory state expertise of land management documentation in accordance with the law - after receiving a positive conclusion of such expertise, the relevant executive authority or local self-government body decides to grant the land plot for use (part six of Article 123 of the Civil Code of Ukraine) [57, ark. 123].

Provision for use of a land plot registered in the state land cadastre in accordance with the law of Ukraine "on the state land cadastre", the ownership of which is registered in the State Register of real rights to immovable property, without changing its borders and purpose is carried out without drawing up documentation on Land Management (part one of Article 123 of the Civil Code of Ukraine) [57, ark. 123].

In other cases, the provision of a land plot for use is carried out on the basis of technical documentation on land management regarding the establishment of land plot boundaries in kind (on the ground). The development of such documentation is carried out on the basis of a permit granted, in particular, by an executive authority or a local self-government body, in accordance with the powers defined in Article 122 of this code, except in cases when a person interested in obtaining a land plot for use acquires the right to order the development of such documentation without granting such permission (paragraphs 3-5 of part one of Article 123 of the Civil Code of Ukraine) [57, ark. 123].

According to paragraph 12 of Article 186 of the Civil Code of Ukraine, technical documentation on land management regarding the division and unification of land plots

is agreed: if the division, unification of land plots is carried out by its user - the owner of land plots, and in relation to land plots of state or municipal ownership - by the executive authority, the Verkhovna Rada of the Autonomous Republic of Crimea, the Council of Ministers of the Autonomous Republic of Crimea, the local self-government body authorized to dispose of land plots in accordance with the powers defined in Article 122 of this code; in the case of Division, Association of a land plot that is pledged - by the pledgee; in the case of Division, Association by the owner of a land plot that is in use - by the land user. Technical documentation on land management regarding the division and unification of land plots is approved by the customer [57, ark. 186].

According to paragraph 14 of the above-mentioned article, technical documentation on land management regarding the establishment (restoration) of the boundaries of a land plot in kind (on the ground) is not subject to approval and is approved by: the Verkhovna Rada of the Autonomous Republic of Crimea, the Council of Ministers of the Autonomous Republic of Crimea, executive authorities or local self-government bodies in accordance with the powers defined by Article 122 of this code, if the land plot is in state or municipal ownership; the owner of the land plot, if the land plot is in private ownership [57, ark. 186].

So, according to the provisions of the above-mentioned legislation, the Association of land plots is the process of creating a land plot as a single object from existing land plots that are already objects of civil law.

According to Paragraph 1 of the second part of Article 17 of the code of Administrative Procedure of Ukraine, the competence of administrative courts extends to disputes between individuals or legal entities with the subject of power regarding the appeal of its decisions (normative legal acts or legal acts of individual action), actions or omissions. The term "subject of power" used in this procedural norm refers to a state authority, a local self-government body, their official or official person, or another subject in the exercise of their power management functions on the basis of legislation, including the performance of delegated powers (paragraph 7 of part one of

Article 3 of Article 17 of the Code of Administrative Procedure of Ukraine) [67, ark. 17].

Thus, in the decision of June 19, 2018 in case No. 922/2383/16, the Grand Chamber of the Supreme Court noted that when determining the jurisdiction of a dispute, the courts must find out whether the dispute is private-law or public-law; whether the dispute arose from Relations regulated by the norms of civil law, whether these relations are related to the exercise by the parties of civil or other property rights to land plots on the basis of equality; whether there was a dispute regarding the appeal of decisions, actions or omissions of a subject of power in the exercise of managerial functions in the field of land relations [68].

In the above-mentioned resolution, a large fee of the Supreme Court came to the following conclusion: "based on the circumstances of the case established by the courts of previous instances, disputed legal relations between Atmos LLC and the Kharkiv City Council arose in relation to land plots formed as objects of civil law in accordance with article 79-1 of the Civil Code of Ukraine and provided for use, within the framework of their registration and provision for use as a single object. In these legal relations, the Kharkiv City Council performs the functions of the owner of land plots, who implements his will to change the qualitative and quantitative features of its objects and transfer the right to them to other subjects, if there is a corresponding counter-will. Taking into account the above, disputed legal relations are private-law, and the conclusion of the Supreme economic Court of Ukraine on their public-legal nature in the case under consideration is erroneous.» [68].

Based on the legal opinion in case No. 922/2383/16 made by the Grand Chamber of the Supreme Court, it can be argued that land disputes concerning the appeal of decisions of a local self-government body belong to economic jurisdiction, if when making the relevant appealed decision, the subject of power performs the functions of the owner of the land plot.

We also consider it necessary to analyze some legal positions of the Cassation courts regarding land disputes involving farms and their founders.

According to the first part of Article 1 of the law of Ukraine "on farming", farming is a form of entrepreneurial activity of citizens who have expressed a desire to produce commercial agricultural products, carry out its processing and sale in order to make a profit on land plots granted to them in ownership and/or use, including for rent, for farming, commercial agricultural production, personal peasant farming, in accordance with the law [69, ark. 1].

According to the first part of Article 7 of the law of Ukraine "on farming", the provision of land plots of state and municipal property for ownership or use for farming is carried out in accordance with the procedure provided for by the Land Code of Ukraine [69, ark. 7].

A farm is subject to state registration in accordance with the procedure established by law for state registration of legal entities and individual entrepreneurs, provided that a citizen of Ukraine or several citizens of Ukraine who have expressed a desire to create a farm, acquires the right to own or use a land plot (Article 8 of the law of Ukraine "on farming") [69, ark. 8].

Consequently, a citizen has the right to create a farm after registration of the right of use or ownership of a land plot with the intended purpose for farming.

Checking the courts ' compliance with the norms of procedural law in relation to subject jurisdiction, the Grand Chamber of the Supreme Court in its decision of June 20, 2018 Case No. 317/2520/15-C drew attention to the fact that the land plot leased to the defendant in accordance with orders No. 1697 and No. 174 for farming was actually transferred to them for use by his own farm "swam". That is, the tenant of the land plot was replaced: the rights and obligations of the tenant under the land lease agreement were transferred to the farm, and therefore the parties to the dispute are legal entities. Within the meaning of Articles 1, 5, 7, 8 and 12 of the law of Ukraine" on farming " after the conclusion of a lease agreement for a land plot for farming and state registration of such a farm, the duties of the tenant of this land plot are performed by the farm, and not by the citizen to whom it was granted [70].

With this in mind, the Grand Chamber of the Supreme Court, in its decision of June 20, 2018, Case No. 317/2520/15-C, concluded that in this case the dispute is related to

the provision of a land plot for lease to an existing farm without holding land auctions by leasing an additional land plot for farming to its founder and then transferring this plot to the use of FG "swam". Consequently, disputes between legal entities, in particular state and local government bodies, and farms registered in accordance with the established procedure should be considered according to the rules of economic proceedings [70].

We consider it necessary to investigate another legal opinion of the Grand Chamber of the Supreme Court in case No. 368/54/17, the subject of which is the right of lifelong inherited ownership of a land plot of the founder of a farm on the basis of a state act.

Thus, according to Article 84 of the Civil Code of Ukraine, all land of Ukraine is in state ownership, except for land of communal and private property [57, ark. 84].

According to Article 22 of the Civil Code of Ukraine, agricultural land is recognized as land provided for the production of agricultural products, the implementation of agricultural research and training activities, the placement of appropriate production infrastructure, including the infrastructure of wholesale markets for agricultural products, or intended for these purposes [57, ark. 22].

According to Paragraph "A" of Part 3 of Article 22 of the Civil Code of Ukraine, agricultural land is transferred to ownership and provided for use by Citizens - for personal farming, gardening, gardening, haymaking and grazing, commercial agricultural production, farming [57, ark. 22].

Article 31 of the Civil Code of Ukraine provides that the land of a farm may consist of: a land plot owned by a farm as a legal entity; land plots owned by citizens - members of a farm on the right of private ownership; a land plot used by a farm on lease terms [57, ark. 31].

Article 23 of the law of Ukraine "on farming" provides that the inheritance of a farm (an integral property complex or part of it) is carried out in accordance with the law [69, ark. 23].

At the same time, the law of Ukraine "on farming" and the Land Code of Ukraine do not contain such a definition or right as lifelong inherited possession.

According to Part 1 of Article 92 of the Civil Code of Ukraine, the right of permanent use of a land plot was defined as the right to own and use a land plot that is in state or municipal ownership, without a fixed term [57, ark. 92].

According to Part 2 of Article 407 of the Civil Code of Ukraine, the right to use someone else's land plot for agricultural needs (emphyteusis) can be alienated and transferred by inheritance [56, ark. 407].

According to Article 1225 of the Civil Code of Ukraine, the right of ownership of a land plot passes to heirs according to the general rules of inheritance [56, ark. 1225].

Along with this, in accordance with Articles 6, 50 of the Civil Code of Ukraine on December 18, 1990 No. 561-XII (as amended at the time of its adoption), land is granted to citizens of the Ukrainian SSR for lifelong inherited possession for peasant (farm) farming. Citizens of the Ukrainian SSR who have expressed a desire to conduct a peasant (farm) farm, based mainly on personal labor and the work of their family members, are granted at their request in lifelong inherited possession or lease of land plots, including household plots [71, Article 6, 50].

Also, paragraph 6 of the Land Code of Ukraine stipulates that citizens and legal entities who have land plots in permanent use, but according to this code cannot have them on such a right, must re-register the ownership or lease right to them in accordance with the established procedure by January 01, 2008 [57, ark. 6].

The decision of the Constitutional Court of Ukraine of September 22, 2005 No. 5-RP (case on permanent use of land plots) states that the Land Code of the Ukrainian SSR of December 18, 1990 regulated such a form of land ownership as lifelong inherited possession. The Civil Code of Ukraine, as amended on March 13, 1992, established the right of collective and private ownership of land (in particular, the right of citizens to receive free ownership of land plots for farming, personal subsidiary farming, etc. (Article 6)). This indicates that along with the introduction of private ownership of land to citizens, their choice was provided with the opportunity to continue using land plots on the right of permanent (indefinite) use, lease, lifelong hereditary possession or temporary use. At the same time, in any case, both automatic

changes in the titles of land rights and any restriction of the right to use the land plot due to non-registration of the title were excluded [72].

The Constitutional Court of Ukraine considered that the establishment of the obligation of citizens to re-register land plots that are in permanent use for the right of ownership or lease before January 01, 2008, requires regulation by a clear mechanism of the procedure for exercising this right in accordance with the requirements of Part 2 of Article 14, Part 2 of Article 41 of the Constitution of Ukraine. Due to the absence of a corresponding mechanism for re-registration defined in the legislation, citizens are not able to fulfill the requirements of paragraph 6 of the transitional provisions of the code within the established time limit, as evidenced by the repeated extension of this period by the Verkhovna Rada of Ukraine. The basis for the emergence of the right to a land plot is the corresponding legal fact [72].

The Constitutional Court of Ukraine has declared that the provisions of the Constitution of Ukraine (are unconstitutional) do not comply with the Constitution of Ukraine:

- paragraph 6 of Section X "transitional provisions" of the Civil Code of Ukraine regarding the obligation to reissue the right of permanent use of a land plot to the right of ownership or lease without appropriate legislative ,organizational and financial support;

- paragraph 6 of the resolution of the Verkhovna Rada of Ukraine "on land reform" of December 18, 1990 No. 563-XII with subsequent changes in the part regarding the loss of citizens, enterprises, institutions and organizations after the expiration of the term of registration of the right of ownership or the right to use land previously granted to them the right to use a land plot [72].

The ECtHR, in its decision of 28 October 1999 in the case of Brumarescu V. Romania, noted that one of the fundamental aspects of the rule of law is the principle of legal certainty, which, among other things, requires that when the case is finally decided by the courts, their decisions do not cause doubts [73].

Also, the ECHR, in its decision of April 11, 2013 in the case "Verentsov V. Ukraine", noted that the wording of laws is not always clear. Therefore, their

interpretation and application depends on practice. And the role of considering cases in courts is precisely to get rid of such interpretative doubts, taking into account changes in everyday practice [74].

According to Article 1218 of the Civil Code of Ukraine, the inheritance includes all rights and obligations that belonged to the testator at the time of opening the inheritance and did not cease as a result of his death, except for the rights and obligations that are inextricably linked with the person of the testator, in particular: 1) personal non-property rights; 2) the right to participate in societies and the right to membership in associations of citizens, unless otherwise established by law or their constituent documents; 3) the right to compensation for damage caused by injury or other damage to health; 4) rights to alimony, pension, assistance or other payments established by law; 5) rights and obligations of a person as a creditor or debtor provided for in Article 608 of the Civil Code of Ukraine [56, ark. 1218].

At the same time, according to Part 2 of Article 395 of the Civil Code of Ukraine, other real rights to someone else's property may be established by law [56, ark. 395].

In addition, according to Article 396 of the Civil Code of Ukraine, a person who has a real right to someone else's property has the right to protect this right, including from the owner of the property, in accordance with the provisions of Chapter 29 of the Civil Code [56, ark. 396].

Taking into account the above-mentioned rules of law, the Grand Chamber of the Supreme Court, in its decision of 20 November 2019 in case no.368/54/17, concluded that the right of lifelong use of a land plot can be recognized as inherited, since the right of lifelong inherited possession of a land plot belongs to those rights that can be inherited [75].

So, the Cassation economic Court of the Supreme Court and the Grand Chamber of the Supreme Court consider a large number of land disputes in economic jurisdiction and introduce such legal positions that will help reduce the total number of appeals to the court.

We believe that when forming legal positions, Cassation courts proceed from certain general criteria formed in the process of resolving land disputes and adhere to

the rule according to which the court's decision must finally resolve the dispute on its merits and protect the violated right or interest.

As judicial practice shows, a large number of land disputes are based on gaps in legislation and the possibility of ambiguous interpretation of legal norms. Currently, it can be argued that the practice of the court of Cassation will certainly reduce the number of new land disputes, since the legal positions of the courts of Cassation in most cases solve an exclusive legal problem, ensure the development of law and form a single law enforcement practice.

Along with this, it should be noted that the jurisdictional war in legal disputes arising from land relations can be resolved by introducing legislative changes to the procedural codes.

Taking into account the above, we propose to amend the CPC of Ukraine and provide that economic courts are subject to disputes, in particular, on the protection of property rights or other real rights to land plots, appeals against actions or omissions, invalidation and cancellation of decisions of local self-government and state authorities that violate land rights.

4.2 Protection of property rights by national courts in credit disputes

Over the past few years, household incomes and corporate incomes have significantly decreased, which has led to an increase in legal disputes in the field of credit relations. As judicial practice shows, one of the decisive factors for maintaining economic stability in the country is the effective judicial protection of the rights of participants in credit relations.

Therefore, in order to create a stable system of judicial regulation of credit relations, it is necessary to deepen the legal positions of Cassation courts on controversial issues that arise in this area.

At the same time, we believe that there is a need to clarify the essence of the nature of court cases in the field of credit relations, as well as to analyze the procedural

problems that arise when courts consider this category of cases. Research on the above-mentioned issues will help reduce the number of disputes in this area.

Among scientists, the issues of legal regulation of credit relations, the grounds for the emergence and problems of solving credit relations were considered by such scientists: O. S. Kizlova, L. O. Esipova, V. V. Lutz and others. At the same time, the judicial practice in resolving credit disputes has not been sufficiently studied.

The current legislation of Ukraine, in particular the Civil Code of Ukraine [56] and the law of Ukraine "on mortgage" [76] defines the procedure for concluding loan agreements, ensuring the implementation of the loan agreement and liability for violation of its terms.

According to Article 1054 of the Civil Code of Ukraine, under a loan agreement, a bank or other financial institution (lender) undertakes to provide a loan to the borrower in the amount and on the terms established by the agreement, and the borrower undertakes to repay the loan and pay interest [56, ark. 1054].

According to Article 526 of the Civil Code of Ukraine, the obligation must be fulfilled properly in accordance with the terms of the contract [56, ark. 526].

In accordance with article 610 of the Civil Code of Ukraine, a violation of an obligation is its non-fulfillment or fulfillment in violation of the conditions defined by the content of the obligation (improper fulfillment) [56, ark. 610].

According to the first part of Article 612 of the Civil Code of Ukraine, a debtor is considered overdue if he did not start fulfilling the obligation or did not fulfill it within the time period established by the contract or law [56, ark. 612].

So, we believe that in order to properly fulfill the obligation under the loan agreement, the borrower must comply with the terms specified in the loan agreement for payment of interest. Accordingly, failure to pay interest is considered a violation of the terms of the loan agreement.

In accordance with article 599 of the Civil Code of Ukraine, the obligation is terminated by a properly performed performance [56, ark. 599].

According to the first part of Article 267 of the Civil Code of Ukraine, a person who has fulfilled an obligation after the expiration of the statute of limitations has no

right to demand the return of what has been fulfilled, even if she did not know about the expiration of the statute of limitations at the time of execution [56, ark. 267].

In the event of the expiration of the statute of limitations, the application for protection of a civil right or interest is accepted by the court for consideration, but the expiration of the statute of limitations, the application of which is declared by the party to the dispute, is the basis for refusal of the claim (parts two and four of Article 267 of the Civil Code of Ukraine) [56, ark. 267].

Taking into account the above-mentioned legal norms, it can be argued that after the end of the loan term, the borrower's obligations do not cease. At the same time, under the loan agreement, the borrower's monetary obligation may be fulfilled after the statute of limitations expires.

In accordance with the second part of Article 1054 of the Civil Code of Ukraine, the provisions of Paragraph 1 ("loan") of Chapter 71 ("loan. Credit. Bank deposit"), unless otherwise established by this paragraph and follows from the essence of the loan agreement [56, ark. 1054].

According to the second part of Article 1050 of the Civil Code of Ukraine, if the contract establishes the borrower's obligation to repay the loan in installments (with installments), then in case of late repayment of the next part, the lender has the right to demand early repayment of the remaining part of the loan and payment of interest due to him in accordance with article 1048 of this code [56, ark. 1050].

According to part one of Article 1048 of the Civil Code of Ukraine, the lender has the right to receive interest from the borrower on the loan amount, unless otherwise established by the contract or law. The amount and procedure for receiving interest are established by the agreement. In the absence of another agreement between the parties, interest is paid monthly until the day of repayment of the loan [56, ark. 1048].

So, until the day of repayment of the loan, in the absence of another agreement between the parties to the agreement, the monthly interest payment can be applied only within the loan term.

Thus, the Grand Chamber of the Supreme Court in its decision of March 28, 2018 in case No. 444/9519/12 concluded that the lender's right to charge interest on a loan

stipulated by the agreement is terminated after the expiration of the loan term specified in the agreement or in the event of a claim against the borrower in accordance with part two of Article 1050 of the Civil Code of Ukraine. In protective legal relations, the rights and interests of the plaintiff are secured by Part Two of Article 625 of the Civil Code of Ukraine, which regulates the consequences of late fulfillment of a monetary obligation [77].

At the same time, we consider it necessary to analyze the practice of the Supreme Court regarding the termination of sureties. After all, as judicial practice shows, there is a problem of termination of the institution of surety and liability of the guarantor in credit obligations.

Fulfillment of an obligation can be secured by a guarantee (part one of Article 546 of the Civil Code of Ukraine) [56, ark. 546].

Part two of Article 548 of the Civil Code of Ukraine stipulates that an invalid obligation is not subject to security. The invalidity of the main obligation (claim) entails the invalidity of the transaction regarding its security, unless otherwise established by this Code [56, ark. 548].

That is, with the exception of the guarantee (article 562 of the Civil Code of Ukraine), only valid requirements can be met [56, ark. 562].

Parts One and two of Article 553 of the Civil Code of Ukraine define that under a surety agreement, the surety is charged to the debtor's creditor for the performance of his duty. The surety is liable to the creditor for violation of the obligation by the debtor. A guarantee can ensure the fulfillment of the obligation in part or in full [56, ark. 553].

Violation of an obligation is its non-fulfillment or fulfillment in violation of the conditions defined by the content of the obligation (improper fulfillment) (Article 610 of the Civil Code of the Russian Federation) [56, ark. 610].

In case of violation of the obligation, there are legal consequences established by the contract or law, in particular: change in the terms of the obligation; payment of a penalty; compensation for losses and moral damage (Article 611 of the Civil Code of the Russian Federation) [56, ark. 611].

According to part one and two of Article 554 of the Civil Code of Ukraine, in case of violation by the debtor of an obligation secured by a surety, the debtor and the surety are liable to the creditor as joint and several debtors, unless the surety agreement establishes additional (subsidiary) liability of the surety. The surety is liable to the creditor in the same amount as the debtor, including payment of the principal debt, interest, penalty, compensation for losses, unless otherwise established by the surety agreement [56, ark. 554].

Taking into account the above-mentioned norms of civil legislation, we believe that suretyship is an additional way to ensure the fulfillment of credit obligations, and therefore suretyship will have legal significance as long as the main obligations are legally binding.

Along with this, Parts One and three of Article 549 of the Civil Code of Ukraine define that a penalty (fine, penalty fee) is a sum of money or other property that the debtor must transfer to the creditor in case of violation of the obligation by the debtor. A penalty fee is a penalty calculated as a percentage of the amount of an untimely monetary obligation for each day of late fulfillment [56, ark. 549].

Within the meaning of articles 550, 551 of the Civil Code of Ukraine, the right to a penalty arises regardless of whether the creditor has losses caused by non-performance or improper performance of the obligation. The subject of the penalty may be a sum of money, movable and immovable property. If the subject of the penalty is a sum of money, its amount is established by a contract or an act of civil legislation [56, Article 550, 551].

Taking into account the legal nature of the Guarantee established by the legislator as an additional (accessory) obligation to the main contract and direct dependence on its terms, the Grand Chamber of the Supreme Court in its decision of October 31, 2018 in case No. 202/4494/16-C, deviated from the legal conclusions set out in the decisions of the Supreme Court of Ukraine of November 26, 2014 (Case No. 6-75tss14), from February 03, 2016 (Case No. 6-2017tss15) and from July 06, 2016 (Case No. 6-1199tss16) on the presumption of validity of a guarantee and the impossibility of its termination on the basis of Part Four of Article 559 of the Civil Code of Ukraine, taking

into account the existence of a court decision on the recovery of credit debt, since such a decision in itself indicates the expiration of the contract. Therefore, the guarantee does not apply to legal relations that arise after making a decision on debt collection, unless otherwise established by the guarantee agreement [78].

At the same time, due to the financial crisis and low incomes of citizens, an increasing number of individuals are becoming consumers of credit services of financial institutions, including credit cards of banks. At the same time, not everyone has the opportunity to pay the loan funds used in a timely manner and pay interest for their use. Therefore, judicial practice regarding the recovery of funds for the use of credit cards is relevant.

In such cases, contractual legal relations arise between the bank and an individual consumer of banking services (part one of Article 11 of the law of Ukraine of May 12, 1991 No. 1023 - XII "on consumer rights protection" (hereinafter-Law No. 1023 - XII) [79, ark. 11].

According to Paragraph 22 of the first part of Article 1 of Law No. 1023-XII, a consumer is an individual who purchases, orders, uses or intends to purchase or order products for personal needs that are not directly related to business activities or the performance of duties of an employee [79, ark. 1].

Paragraph 19 of the UN General Assembly resolution "guidelines for consumer protection", adopted on April 09, 1985 No. 39/248 at the 106th plenary session of the UN General Assembly, states that consumers should be protected from such contractual abuses as unilateral model contracts, exclusion of fundamental rights in contracts and illegal terms of lending by sellers [80, paragraph 19].

The Constitutional Court of Ukraine in the decision on the case on the constitutional appeal of Citizen Dmitry Kozlov regarding the official interpretation of the provisions of the second sentence of the preamble of the law of Ukraine of November 22, 1996 No. 543/96-B "on liability for late fulfillment of monetary obligations" of July 11, 2013 in the case No. 1-12/2013 noted that taking into account the requirements of Part Four of Article 42 of the Constitution of Ukraine, participation in the contract of the consumer as a weaker party, subject to special legal protection in

the relevant legal relations, narrows the effect of the principle of equality of participants civil- legal relations and freedom of contract, in particular in agreements on the provision of consumer credit [81].

The principle of the rule of law is recognized and operates in Ukraine. The Constitution of Ukraine has the highest legal force; laws and other normative legal acts are adopted on the basis of the Constitution of Ukraine and must comply with it, which is expressly provided for in Article 8 of the Constitution of Ukraine [82, ark. 8].

According to part four of Article 42 of the Constitution of Ukraine, the state protects the rights of consumers [82, ark. 42].

According to the first part of Article 1 of the Civil Code of Ukraine, civil relations are based on the principles of legal equality, free expression of Will and property independence of their participants [56, ark. 1].

The basic principles of civil legislation are defined in Article 3 of the Civil Code of Ukraine [56, ark. 3].

Freedom of contract is one of the general principles of civil legislation, which is provided for in paragraph 3 of part one of Article 3 of the Civil Code of Ukraine [56, ark. 3].

One of the fundamental principles of civil proceedings is fairness, good faith and reasonableness, which is provided for in paragraph 6 of part one of Article 3 of the Civil Code of Ukraine [56, ark. 3].

In other words, we believe that any actions of participants in civil legal relations should be characterized by honesty, openness and respect for the interests of another participant in legal relations.

The European Court of human rights ("ECtHR"), in its decision of 28 October 1999 in the case of Brumarescu V. Romania, noted that one of the fundamental aspects of the rule of law is the principle of legal certainty, which, among other things, requires that when the case is finally decided by the courts, their decisions do not raise doubts [83].

The ECHR has repeatedly noted that the wording of laws is not always clear. Therefore, their interpretation and application depends on practice. And the role of

hearing cases before the courts is precisely to get rid of such interpretative doubts, taking into account changes in everyday practice (decision of 11 November 1996 in Cantoni v. France, application no.17862/91) [84].

Thus, the Grand Chamber of the Supreme Court in case No. 342/180/17 (resolution of July 03, 2019) on the claim of JSC CB "PrivatBank" to an individual for debt collection under the agreement on the provision of banking services by signing an application form for joining the terms and Conditions of providing banking services, concluded that the extract from the tariffs for servicing credit cards "Universal ""Universal, 30 days grace period" and an extract from the terms and conditions for providing banking services in Privat Bank resource: archive of the terms and conditions for providing banking services are posted on the website: https://privatbank.ua/terms/, which are contained in the materials of this case are not recognized as the defendant and do not contain her signature, so they cannot be regarded as part of the loan agreement concluded between the parties on February 18, 2011 by signing an application form. So, there are no grounds to believe that the parties agreed in writingthe price of the contract, which is set in the form of payment of interest for the use of credit funds, as well as liability in the form of penalties (penalties, fines) for violating the terms of performance of contractual obligations [85].

We believe that the majority of consumers of banking services, taking into account the lack of legal awareness, cannot effectively exercise and protect their rights, so this legal position is relevant for all consumers of credit services, since it protects their rights from illegal recovery of funds by banks.

It should be noted that in credit disputes, as in other categories of disputes, an important circumstance for the satisfaction of claims by the courts is the correctly chosen method of protection and the timeliness of applying to the court.

The provisions of Article 611 of the Civil Code of Ukraine provide that in case of violation of an obligation, there are legal consequences established by the contract or law [56, ark. 611].

In particular, ark. 625 of the Civil Code of Ukraine regulates the legal consequences of violation of a monetary obligation, which have special features. Thus, in accordance

with the above norm, the debtor is not released from liability for the inability to fulfill a monetary obligation. A debtor who is late in fulfilling a monetary obligation, at the request of the creditor, is obliged to pay the amount of the debt, taking into account the established inflation index for the entire period of delay, as well as 3% per annum of the overdue amount, unless another amount of interest is established by the contract or law [56, ark. 625].

We believe that article 625 of the Civil Code of Ukraine gives interest per annum not a penalty, but a compensatory character.

At the same time, Chapter 19 of the Civil Code of Ukraine defines the period within which a person can apply to the court with a claim for protection of their civil right or interest, that is, the statute of limitations [56, ark. 19].

Analysis of the content of the above norms of substantive law in their totality gives grounds for concluding that the legal consequences of violation of a monetary obligation provided for in Article 625 of the Civil Code of Ukraine are subject to a general limitation period of three years (article 257 of this Code) [56, ark. 257].

The expiration of the statute of limitations, the application of which is declared by the party to the dispute, is the basis for refusal of the claim (Article 267 of the Civil Code of the Russian Federation) [56, ark. 267].

The procedure for counting the statute of limitations is given in Article 261 of the Civil Code of Ukraine. In particular, according to the first part of this article, the limitation period begins from the day when a person learned or could have learned about the violation of his right or about the person who violated it [56, ark. 261].

Thus, the Grand Chamber of the Supreme Court, in its decision of November 8, 2019 in case No. 127/15672/16-C, came to the following conclusion:

"Since, as a result of the debtor's failure to fulfill a monetary obligation, the creditor has the right to receive the amounts provided for in Article 625 of this code for the entire period of delay, that is, such delay is a continuing offense, the right to claim for recovery of inflationary losses and 3% per annum arises for each month from the moment of violation of the monetary obligation until its elimination.

The legislator determines the debtor's obligation to pay the amount of the debt, taking into account the level of inflation and 3% per annum for the entire period of delay, and therefore such an obligation is continuing.

Taking into account the above, the Grand Chamber of the Supreme Court, in its decision of February 13, 2019 (Case No. 924/312/18), agrees with the conclusions of the Cassation economic Court as part of the Supreme Court, set out in the decisions of April 10 and 27, 2018 in cases No. 910/16945/14 and No. 908/1394/17, of November 16, 2018 in case No. 918/117/18, of January 30 2019 in cases no. 905/2324/17 and no. 922/175/18, that the debtor's failure to fulfill a monetary obligation is a continuing offence, therefore, the right to a claim for recovery of funds on the basis of Article 625 of the Civil Code of Ukraine arises from the creditor from the moment of violation of the monetary obligation until its elimination and is limited to the last three years that preceded the filing of such a claim.» [86].

As for the effective method of protection, the Supreme Court as part of the Joint Chamber of the Civil Court of Cassation in its decision of October 10, 2019 in case No. 320/8618/15-C concluded that the interpretation of Articles 14, 16 of the Civil Code of Ukraine allows us to conclude that it is not an effective way to protect the recognition of illegal actions in terms of not crediting regular payments, the obligation to set off the listed monthly payments, cancellation and write-off of bad debts, the obligation to cancel the amount of penalties, prohibition to carry out further accrual of penalties and/or fines on the principal amount of debt under the obligations under the loan agreement, the obligation to perform actions to cancel the accrual of interest for the use of the loan and penalties, the obligation to cancel illegally accrued penalties for late payment, since they do not provide for the corresponding obligation of another subject of civil legal relations and do not ensure the restoration of the rights of the person making such claims [87].

Also, we propose to analyze the issue of double recovery of credit debt from the debtor under the main agreement and the mortgage agreement, which is widely practiced by financial institutions.

Thus, according to the requirements of Article 598 of the Civil Code of Ukraine, the obligation is terminated partially or in full on the grounds established by the contract or law; the current legislation (part one of Article 598, ark.s 599 - 601, 604 - 609 of the Civil Code of Ukraine) does not link the termination of the obligation with the adoption of a court decision [56, ark. 598].

Also, according to Article 1 of the law of Ukraine of June 5, 2003 No. 898-IV "on mortgage" (hereinafter referred to as the law on mortgage), a mortgage is a type of security for the performance of an obligation with real estate that remains in the possession and use of the mortgagor, according to which the mortgagee has the right, if the debtor fails to fulfill the obligation secured by a mortgage, to obtain satisfaction of its claims at the expense of the subject of the mortgage mainly to other creditors of this debtor in accordance with the procedure established by this Law [76, ark. 1].

The mortgage is derived from the main obligation and is valid until the termination of the main obligation or until the expiration of the mortgage agreement (part five of Article 3 of the Mortgage Law) [76, ark. 3].

The mortgage is terminated in the following cases: termination of the main obligation or expiration of the mortgage agreement; sale of the subject of the mortgage in accordance with this law; acquisition by the mortgagee of ownership of the subject of the mortgage; recognition of the mortgage agreement as invalid; destruction (loss) of the building (structure) transferred to the mortgage, if the mortgagor has not restored it. If the subject of a mortgage agreement is a land plot and a building (structure) located on it, in case of destruction (loss) of the building (structure), the mortgage of the land plot is not terminated; on other grounds provided for by this law. Subsequent mortgages are terminated as a result of foreclosure on the previous mortgage. Information on the termination of a mortgage is subject to state registration in accordance with the procedure established by law (Article 17 of the Mortgage Law) [76, ark. 17].

The corresponding regulation is also given in Article 593 of the Civil Code of Ukraine [56, ark. 593].

According to the first part of Article 7 of the law on mortgages, at the expense of the subject of the mortgage, the mortgagee has the right to satisfy his claim for the main

obligation in full or in the part established by the mortgage agreement, which is determined at the time of fulfillment of this claim, including payment of interest, penalty, principal amount of debt and any increase in this amount, which was directly provided for by the terms of the agreement, which determines the main obligation [76, ark. 7].

In accordance with Article 33 of the mortgage law, in the event of non-performance or improper performance by the debtor of the main obligation, the mortgagee has the right to satisfy its claims under the main obligation by foreclosing on the subject of the mortgage. Foreclosure on the subject of a mortgage is carried out on the basis of a court decision, an executive inscription of a notary, or in accordance with an agreement on satisfaction of the mortgage holder's claims [76, ark. 33].

Thus, in the legal relations concerning the recovery by the creditor of debt under a loan agreement by foreclosure on the subject of mortgage, in connection with the failure of the debtor to fulfill the main obligation, the Grand Chamber of the Supreme Court in its decision of September 18, 2018 in case No. 921/107/15-G/16 made the following conclusion:

"The creditor's use of another legal remedy to protect its right violated and not properly restored by the debtor does not constitute double debt collection.

The issue of execution of an enforcement document issued to the creditor in the event that such an obligation of the debtor under such an enforcement document is absent in whole or in part due to its termination (due to execution by the debtor, another person, etc.) is subject to resolution in accordance with the procedure provided for in part two of Article 328 of the code of civil procedure of Ukraine.

Taking into account the lack of evidence of the debtors fulfillment of obligations under loan agreements, the existence of court decisions on debt collection, installment due to the impossibility of their immediate execution, the conclusion of the economic courts of previous instances on the absence of grounds for satisfying the claim of the mortgagee for foreclosure on the subject of mortgage is incorrect and made without taking into account the actual circumstances of the case and the provisions of current legislation.» [88].

With regard to litigation on termination of suretyship in economic proceedings, it should be noted that proceedings in economic courts are conducted on the principle of adversarial parties, and therefore each party must prove with proper evidence the circumstances to which it refers.

Guided by these principles, the Cassation economic Court of the Supreme Court, in its decision of January 29, 2019 in the case 916/436/18, concluded that when filing a claim for recognition of a terminated mortgage under a mortgage agreement, the plaintiff was burdened with the burden of proving the circumstances of the complete termination of obligations under the loan agreement in connection with their implementation. The circumstance of complete termination of obligations under the loan agreement must be proved in the context of each obligation of the borrower, including the principal amount of the loan, interest for the use of credit funds and other mandatory payments provided for by the loan agreement concluded between the parties and additional agreements thereto. The plaintiff, applying for such claims, must provide the court, in addition to supporting documents, with a calculation of their obligations, so that the court can establish the chronology of issuing and paying off each type of obligation [89].

The above analysis of the legal nature of credit relations and the legal positions set out in the decisions of the Cassation courts allowed us to formulate such conclusions.

Based on the conducted research, we summarize that the Civil Court of Cassation, the Economic Court of Cassation of the Supreme Court and the Grand Chamber of the Supreme Court consider a large number of disputes in credit relations and introduce such legal positions that will help reduce the total number of appeals to the court.

We believe that when forming legal positions, Cassation courts proceed from certain general criteria formed in the process of resolving credit disputes and adhere to the rule according to which the court's decision must finally resolve the dispute on its merits and protect the violated right or interest.

As judicial practice shows, a large number of credit disputes are based on gaps in legislation and the possibility of ambiguous interpretation of legal norms. Currently, it can be argued that the practice of Cassation courts will certainly reduce the number of

new credit disputes, since the legal positions of Cassation courts in most cases solve an exclusive legal problem, ensure the development of law and form a single law enforcement practice.

Along with this, it should be noted that the problems of a large number of credit disputes can be resolved by making legislative changes to civil legislation.

With this in mind, we propose to amend the current civil legislation to expand the guarantees of the rights of consumers of credit services provided by financial institutions.

4.3 Features of protection of property rights by the European Court of human rights

Taking into account the European integration of our state, it is of great importance to study the experience and legal doctrine that are most implemented in court decisions and bring national legislation in line with the norms of international law.

The main goal of improving national legislation is to achieve European standards of living and a worthy place of Ukraine in the world, as well as to unite society around understanding the value of human rights and Freedoms, which are protected on the basis of the principle of equality and non-discrimination, solving the main systemic problems in the field of protection of human rights and freedoms.

In this regard, of course, the relevance of scientific research in the field of human rights as a fundamental value of civil society, their implementation, legal activity of carriers of rights, and state activities to ensure human rights increases. A special, important place in this is occupied by the protection of property rights, especially given the political, economic and social problems in Ukraine in recent years.

After Ukraine ratified the convention, it became necessary to implement the Convention and court decisions in national legislation. But to what extent does this correspond to the modern realities of Ukrainian judicial practice and Ukrainian legislation? Let's try to figure it out.

Since the convention is an international treaty, and therefore the process of interpretation and application of its provisions complies with international legal rules. At the same time, we believe that at the court level there is an independent interpretation of the concept of property, and therefore the research of the article becomes particularly relevant.

The most thorough problems of protecting property rights in the court's practice are described in the works of such lawyers: I. M. Artsibasov, Yu. m. Antonyan, I. P. Blishchenko, Yu. Y. Berestneva, I. V. Bobrovsky, N. T. Blatova and others.

According to Article 53 of the convention, it is generally accepted that the protection mechanism provided for in the convention is subsidiary to the mechanism that a state party to the convention is obliged to provide at the national level, since nothing in the convention can be interpreted as restricting or negating any human rights and fundamental freedoms that may be recognized on the basis of the laws of any High Contracting Party or any other agreement to which it is a party [90].

In the court's practice, it has also been repeatedly noted that the convention is not a frozen legal act, it is open to interpretation, taking into account the needs of the present. The subject and purpose of the convention as a legal act that ensures the protection of human rights requires that its norms are interpreted and applied in such a way as to make its guarantees effective and real [91, p. 90-91].

In the context of the protection of property rights, such guarantees, in our opinion, are primarily Article 1 of the First Protocol "protection of property".

Note that the right of property was not singled out in the convention as a separate right, but Article 1 of the first protocol provided: "every natural or legal person has the right to possess his property peacefully. No one may be deprived of his property except in the public interest and under the conditions provided for by law and the general principles of international law. However, the previous provisions do not in any way restrict the right of the state to enact such laws as it considers necessary in order to exercise control over the use of property in accordance with the general interest" [92].

An analysis of the court's practice shows that the court considers the protection of property rights precisely through the interpretation of the concept of "property".

Thus, the court in the case" Kechko V. Ukraine "of 8 November 2005 (Application No. 63134/00) noted that the concept of" property", which is contained in Part 1 of Article 1 of Protocol No. 1, has an autonomous meaning, which is not limited to the ownership of physical things and does not depend on the formal classification in national legislation: some other rights and interests, for example, debts constituting property, can also be considered as" property rights", and thus as" property " for the purposes of this provision. The question that needs to be determined is whether, in accordance with the circumstances of the case, taken as a whole, the applicant had the right to a substantive interest protected by Article 1 of Protocol No. 1 [94].

It is worth noting that the applicant's complaint concerned salary surcharges. In the context of Article 1 of Protocol No. 1, the court added: "The State may introduce, suspend or terminate the payment of such allowances by making appropriate changes to the legislation. However, if the current legal provision provides for the payment of certain allowances and all the requirements necessary for this are met, the public authorities may not knowingly refuse these payments as long as the relevant provisions are in force. Accordingly, ark. 1 of Protocol 1 to the convention was violated.» [94].

However, in the case of Balan V. Moldova of 29 January 2008 (Application No. 19247/03), the court interpreted the concept of" property "more broadly, noting the following:" property "may be either" available property "or property, including claims in respect of which the applicant may claim that he or she has at least a" legitimate expectation "to obtain effective enjoyment of the right of property. In contrast, the hope of recognition of a right of ownership which could not be exercised effectively cannot be considered "possession" within the meaning of art. 1 of Protocol No. 1, as well as a conditional claim that does not follow as a result of non-fulfillment of this condition [95].

Since the case of Balan V. Moldova concerned the unlawful use by the Ministry of the interior of Moldova of a photograph taken by the applicant, the court, in the context of Article 1 of Protocol No. 1, recalled that Article 1 of Protocol No. 1 to the convention for the protection of human rights and fundamental freedoms applied to intellectual property.

Along with this, it is worth noting that there are also judgments in the court's practice in which the court has concluded that a property interest is by its nature a requirement which can only be regarded as "property" if it has a sufficient basis in domestic law.

In particular, in the case of Volovik V. Ukraine of 6 December 2007 (application no. 15123/03), the court considered that the concept of "property", which is provided for in Part 1 of Article 1 of Protocol No. 1 to the convention for the protection of human rights and fundamental freedoms, has an autonomous meaning, which is not limited to the right of ownership of tangible things and does not depend on a formal classification in national law, certain other rights and interests that constitute property (for example, debt), can also be considered as a "right to property" and, accordingly, as "property" for the purposes of this article. Where a proprietary interest is by its nature a requirement, it may be regarded as "property" only when it has a sufficient basis in national law or where such an interest has been established by a final judicial decision that can be enforced. The court considers that the applicant's claims under Ukrainian law regarding insurance payment and monetary compensation cannot be considered as "property" within the meaning of Article 1 of Protocol No. 1, since they were not recognized and fixed in the court decision that entered into legal force. Ukrainian law also does not provide for provisions that could allow it to be concluded that the applicant at least had legitimate expectations regarding the receipt of the amounts he claimed [96].

In Fabry v. France of 7 February 2013 (application no.16574/08), the court reached a similar conclusion as to the existence of a right to acquire property. In particular, the court pointed out that Article 1 of Protocol No. 1 did not guarantee the right to acquire property, inter alia, by inheritance by law or donation. However, the concept of" property "may include both" actual property "and property values, including the right of claim, on the basis of which the applicant may claim that he has at least a" legitimate expectation " to gain actual possession of the right of ownership. A legitimate expectation must have a "sufficient national legal basis". Also, the concept of "property" may apply to the receipt of certain services that interested persons were

deprived of due to discriminatory conditions of provision. At the same time, the expectation of recognition of the right of ownership under the statute of limitations, which for a sufficiently long time cannot be effectively exercised, cannot be considered "property" within the meaning of Article 1 of Protocol No. 1; the same applies to the provision of a service under a condition that was not carried out due to non-fulfillment of the condition. While the predominantly declarative nature of the court's decisions leaves states with a choice of means to remedy the consequences of a violation, it should be recalled at the same time that the adoption of general measures imposes a duty on the state to prevent new violations in good faith, such as those stated in the court's decisions. This imposes an obligation on the domestic courts to ensure, in accordance with the constitutional order and with respect for the principle of legal certainty, the full operation of the convention norms interpreted by the court [98, p. 43-52].

Analyzing the court's decisions concerning tax disputes, it can be concluded that the court also applies Article 1 of Protocol No. 1 to the convention to this category of cases. The court considers illegal collection of taxes as interference by the state in a person's possession of their property or funds.

Thus, in the case of Intersplav V. Ukraine dated January 09, 2007 (Application No. 803/02), the taxpayer, the Intersplav joint venture, carried out activities for the production of products using processed metal purchased in Ukraine, the purchase of which was subject to VAT at the rate of 20 %. Most of the applicant's products were exported from Ukraine at a zero VAT rate, so the applicant, in his opinion, was entitled to VAT refund. The applicant alleged a violation by the state, represented by the tax authorities, of the first protocol to the European Convention for the protection of human rights and fundamental freedoms of 04/11/1950 (Convention) on account of the systematic delay in VAT refund. In the present case, the court found a violation of Article 1 of the first protocol, as in fact the persistent delays in reparation and compensation, coupled with the lack of effective means to prevent or put an end to such administrative practices, as well as the state of uncertainty as to the timing of the

return of the applicant's funds, had upset the "fair balance" between the demands of the public interest and the protection of the right to peaceful enjoyment of possessions [97].

So, in this case, the court concluded that if there are abuses in the tax system of a certain organization, state bodies should apply appropriate measures of influence to the guilty entity, and not extend negative consequences to other persons.

Analyzing the court's decisions concerning the protection of property rights, it can be concluded that the court pays great attention to the principles that the state must adhere to when interfering with property rights.

In particular, in Zelenchuk and Tsitsyura V. Ukraine of 22 May 2018 (applications nos.846/16 and Nos. 1075/16), the court observed that any interference with the exercise of a convention right must pursue a legitimate aim. Similarly, in cases involving a positive duty, there must be a legitimate justification for the state's inaction. The principle of" fair balance " inherent in Article 1 of Protocol No. 1 to the convention itself presupposes the existence of a general public interest. In addition, it should be recalled that the various norms set out in art. 1 of Protocol No. 1 to the convention are not separate, that is, unrelated, and that the second and third rules relate only to specific cases of interference with the right to peaceful possession of property. One consequence of this is that the existence of the public interest required under the second sentence, or the general interest referred to in the second paragraph, follows from the principle established in the first sentence, and therefore an interference with the exercise of the right to peaceful possession of property within the meaning of the first sentence of art. 1 of Protocol No. 1 to the convention must also pursue an aim in the public interest (see the judgment in Alisic and others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and The Former Yugoslav Republic of Macedonia, application no. 60642/08, paragraph 105) [93].

Analyzing the decision in the case "Zelenchuk and Tsitsyura V. Ukraine", it is possible to distinguish in the case – law of the court the following principles that the state must adhere to when interfering with property rights: the principle of peaceful possession of property, the principle of a democratic society, the principle of legality and the principle of"fair balance". At the same time, the court in the case "Zelenchuk

and Tsitsyura V. Ukraine" made an important conclusion about the legality of the moratorium on land sales in Ukraine.

In particular, the court noted "the assessment of compliance with Article 1 of Protocol No. 1 to the convention may concern not only the conditions for individuals to receive land rent and the degree of state interference with freedom of contract and contractual relations in the rental market, but also the existence of procedural and other guarantees that ensure that the functioning of the system and its impact on the property rights of the landlord are not arbitrary and unpredictable (see Amato Gauci V. Malta, application no. 47045/06, paragraph 58) [93].

Article 1 of Protocol 1 does not provide for an obligation on the state to pay compensation for the loss of a person's property, but the requirement to strike a fair balance between the person's interest and the public interest in itself means the payment of such compensation.

In the context of the above, the court, in its judgment in Holy monasteries V. Greece, noted that Article 1 of the First Protocol does not guarantee the right to compensation in all circumstances, since legitimate aims in the public interest may make redress less than the market value necessary. Special circumstances justifying less compensation or no compensation at all may be the conditions under which the property was acquired [103].

Ensuring the principle of a fair balance should be regarded as the principle that interference with the right to property is permissible only if it presupposes a legitimate aim in the public interest. At the same time, interference with the right to use property must maintain a "fair balance" between the public interest and the need to respect human rights.

Thus, in the judgment Immobiliare Saffy V. Italy of 28 July 1999 (application no.22774/93), the court emphasised that interference, particularly when it was to be seen in the context of Article 1, paragraph two, of Protocol No. 1, must strike a" fair balance" between the requirements of the general interest and the requirements of the protection of fundamental human rights. The importance of ensuring this balance is reflected in the structure of Article 1 as a whole, and therefore in part two. There must be a reasonable correlation between the means used and the goal set. In ascertaining whether this

requirement has been met, the court accepts that the state has the right to enjoy wide margin of appreciation both in choosing the means of enforcing orders and in ascertaining the justification for the consequences of such enforcement of orders in the light of the general interest – execution aimed at achieving the aim set by the act in question. In areas such as housing, which plays a central role in welfare and economic policy in modern society, the court will respect legislative decisions as long as they are in the general interest and based on clearly formulated reasonable motives (see Mellacher and Others v. Austria, applications nos. 10522/83; 11011/84; 11070/84, judgment of 19 December 1989, paragraph 48, and in the case of chassagnou and others v. France [GC], 29 April 1999, applications nos. 25088/94, 28331/95 and 28443/95, P. 75) [100].

It is also necessary to draw attention to the fact that discriminatory measures to restrict the right to peacefully own property cannot correspond to the general (public) interest. In particular, in the context of this, the position of the court in the case of Marx v. Belgium of 13 June 1979 is of interest. In the present case, the court examined the application of Belgian inheritance law. It distinguished between the right to inherit children born in marriage and illegitimate children. According to the Belgian government's arguments, the right to peaceful possession of property was legitimately restricted for reasons of general interest. Rejecting the arguments of the Belgian government, the court noted the discriminatory nature of the restriction and pointed out that the discriminatory restriction is not reasonable, and therefore cannot be considered legitimate [102].

The court made an important conclusion on the principle of "good governance" in the case of Rysovskiy V. Ukraine of 20 October 2011 (application no.29979/04). Thus, the court found a number of violations of Article 6 § 1 of the Convention, ark. 1 of the first protocol to the Convention and Article 13 of the convention in a case related to land relations; it also sets out certain standards for the activities of subjects of power, in particular, disclosed elements of the content of the principles of "good governance". Thus, the court noted that the principle of "good governance" should generally not prevent public authorities from correcting random errors, even those caused by their own

negligence (see Moskal V. Poland, cited above, paragraph 73). Any other position would amount, inter alia, to authorising the improper allocation of limited public resources, which would in itself be contrary to the general interest (see ibid. On the other hand, the need to remedy a former "mistake" should not disproportionately interfere with a new right acquired by a person who relied on the legitimacy of the good-faith actions of a public authority (see, mutatis mutandis, judgment in Pincova and Pink V. The Czech Republic, application no. 36548/97, paragraph 58, ECHR 2002-VIII). In other words, public authorities that do not implement or follow their own procedures should not be able to benefit from their unlawful actions or avoid performing their duties (see the above-mentioned judgment in Lelas v. Croatia, paragraph 74). The risk of any error of a public authority must rely on the state itself, and errors cannot be corrected at the expense of the persons concerned (see, among other sources, mutatis mutandis, the above-mentioned judgment in Pincova and Pinc v. The Czech Republic, paragraph 58, as well as the judgment in Gashi v. Croatia, application no. 32457/05, paragraph 40, of on 13 December 2007, and in trgo v. Croatia, application no. 35298/04, para. 67, dated 11 June 2009). In the context of revoking a wrongly granted right to property, the principle of "good governance" may not only impose on the public authorities an obligation to act without delay, correcting their error (see, 137 for example, Moskal V. Poland, paragraph 69), but also require the payment of appropriate compensation or other kind of appropriate redress to the former bona fide owner (see, above-mentioned, pincova and Pinc v. The Czech Republic, P. 53, and Toscuta and others v. Romania, P. 38) [101].

Thus, according to the court's decisions, the line between the general and public interest is conditional. There is no clear indication in the court's practice that in order to determine the lawfulness of an interference with possession of property, it is necessary to use the general or public interest.

Analysing the judgment, it can be concluded that the court pays particular attention to the reasonable proportionality between the means employed and the aim pursued in the interference with property. It is from the point of view of reasonable proportionality between the means used and the purpose pursued in interference with property that the court in the case "Mir razvitie, Tov and others v. Ukraine" dated June 27, 2019.

(applications nos.13290/11 and two others) noted that, in any event, the interpretation of national law by the domestic courts meant that the discretion of the executive was not limited to any rule that would specify with sufficient clarity the scope and conditions for its exercise. Therefore, it did not provide a significant degree of protection against arbitrariness. These considerations are sufficient to enable the court to conclude that the domestic legal provisions did not comply with the quality requirement of the "law" and thus that the suspension of the licence was not lawful. The established principle of the court's case-law is that since the Legislature's margin of appreciation in implementing social and economic policies is broad, the court will respect the Legislature's decision as to what is a matter of public interest, unless that decision is manifestly baseless. The court accepts the conclusion of the domestic authorities that the ban pursued the general interest and served the legitimate aim of preventing crime, including juvenile delinquency, tax evasion and contributed to the fight against gambling addiction. However, the court reiterates that Article 1 of Protocol No. 1 to the convention for the protection of human rights and fundamental freedoms ("the convention") requires that, for all interventions, there be a reasonable proportionality between the means employed and the aim pursued. This fair balance will be disturbed if the person concerned has to bear an individual and separate burden [99].

Along with this, there is a relationship between Article 1 of Protocol No. 1 and other articles of the convention, because issues arising from the use of one's "possessions" may also relate to other articles of the convention.

Analyzing the decisions of the ECHR, it is worth noting that a number of cases considered by the ECHR relate to both Article 8 of the Convention and Article 1 of Protocol No. 1 related to housing. In particular, in the case of Surugiu V. Romania, the ECtHR concluded that there may be duplication of the concepts of "property" and the concept of "Housing" and according to Article 1 of Protocol No. 1, but the presence of "housing" does not depend on the existence of a right or interests in relation to real estate.

Also, the court's decisions observe the relationship between Article 1 of Protocol 1 and other articles of the Convention: Article 2 - right to life, ark. 3 - Prohibition of torture, ark. 4 - Prohibition of slavery and forced labor, ark. 6 - right to a fair trial, ark. 7 - no

punishment without Law, ark. 8 - right to respect for private and family life, ark. 10 - freedom of expression, ark. 11 - freedom of Assembly and association, ark. 13 - right to an effective remedy, ark. 14 - Prohibition of discrimination.

Ukraine, recognizing the norms of the Convention and the practice of the court as a source of law, assumed the obligations of observing convention guarantees in the field of protection of human rights and fundamental freedoms.

However, the lack of understanding of guarantees of human rights and freedoms takes place in national law enforcement activities, since the finality of court decisions and the obligation to comply with them should be considered as the most important general condition for guaranteeing human rights and freedoms.

Based on the conducted research, we summarize that:

The court operates on the principle of autonomy of interpretation of concepts and in its practice independently establishes the definition of the issues studied;

The court has its own understanding of the concept of ownership;

The court considers the category of" property " as one that can constitute both existing property and assets and claims in respect of which a person can claim that he has hopes for the exercise of a property right.

Indeed, in our view, the court has significantly expanded the understanding of property and "possessions" within the meaning of Article 1 of the first protocol, but there is no human right or freedom that the court would establish with regard to the development of the provisions of the convention.

In addition, analyzing the practice of the European Court of justice, in the context of the European Convention, we can draw another conclusion that the understanding of property, property, is constantly expanding. This is certainly facilitated by the position of the European Court of justice, which constantly repeats that "property, in the sense of the Convention and its protocol, is an independent phenomenon that is in no way connected with its national understanding and has an interpretation independent of the national one.