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**SOCIAL PROPERTY FUNCTION FA THE BASIS
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SOCIAL PROPERTY FUNCTION AS THE BASIS FOR ESTABLISHING BOUNDARIES AND RESTRICTIONS OF PROPERTY RIGHTS.

Yuriy PATSURKIVSKIY¹

Abstract

The article analyzes the constitutional and legal regulation of property relations in the Ukraine and European legislation. The author concludes that the absence of direct instruction on a social function of property in the former postsoviet countries can be explained by the conditions in which their constitutions were adopted and by the aims which they pursued.

On the contrary, in the special legislation a social function of property is traced better. Roman jurisprudence viewed property as unlimited and exceptional domination of a person over a thing, as a right free from restrictions and absolute in its defense. "The owner has the right to do with his thing all that he is not directly prohibited," - so claimed Roman lawyers about the right to private property. This opinion prevailed throughout the entire period of the development of law, and it sounded most clearly in the era of the great bourgeois revolutions. However, the popularity of social studies gradually growing in society led to the fact that the concept of the social function of property was reflected in the constitutional legislation of European states. This direction of development of legislation was part of the overall process of socialization of property. The general requirement to act honestly and reasonably while implementing the property right follows from provisions of the same principle established among the main beginnings of the civil legislation which can be considered as the general restriction of the property right. The article concludes etymologically, means to set some borders, limits in implementation of the right therefore it is necessary to understand the bounds established in implementation of competences of the owner on possession, use and the order of property and also the measure of his due behavior established by the law in civil circulation as restriction of the property right. To encumber means to impose a burden of execution of any hardships. So, by the general rule the owner bears a burden of maintenance of the property belonging to it, i.e. he is obliged to contain property in proper condition, to make concerning property of action, ordered by sanitary, veterinary, fire protection and other standards and to fulfill other requirements.

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Functions of law play the most active role in the legal system. They, along with the principles of law, have become the starting structural components of this system. Expanding the complex interaction of the principles and functions of law, it should be noted that the directions of influence are the most significant component of the function of law, they are a kind of response to the needs of social development, the result of legislative policy that concentrates these needs and transforms them into positive law and public duty. As they change, social needs increase - functions and principles of law change and expand. On the contrary, these needs are reduced - this is reflected in the functions of law, as evidenced, for example, by the historical experience of building socialism and communism in a particular country, and the experience of building a rule of law in Ukraine. Undoubtedly, at these historical intervals there was a transition from a static understanding of the functions of property ownership to a dynamic, that is from one-sided (command) to dichotomous (social-value) character of property rights. Therefore, it is advisable to call the functions of law a double definition, for example: the function of organizational and integrative (organizational and integrative), informational and communicative (informational and communicative), social and economic (socio-economic), cultural and educational (cultural-educational), axiological and regulatory (regulatory-axiological). One component of the function reflects its stability, the other - the dynamics, variability in accordance with socio-legal development. In general, the term "function" is quite ambiguous. In biology, the function is self-sufficient specific activity of an organism or a separate organ (brain, limbs, etc.); in cybernetics, a function means a deliberate action of a certain system (structure), and in mathematics a function is a variable variable that varies depending on the change of another value [1: 375]. Significant contributions to the theory of functions are the development of cyber-scientists. For example, cybernetics point out that a function can not be separated from a structure - a functional representation of the nature of things is fully compatible with the structural understanding of this nature. Yes, it is necessary to distinguish external and internal functions of things or events that depend on their structure. For example, clocks (mechanical, quartz, solar, etc.) immanently serve to determine time; the compass indicates a constant direction to the north;

thermometer (mechanical, electric) indicates the level of temperature; Road transport carries out the function of delivery of goods or passengers. Every other thing structurally belonging to the class of the listed things performs these functions by the fact of belonging to this class. In this case, the objects (mechanisms) that are different in structure perform a stable function, which is an external side in relation to the thing itself (mechanism). At the same time, a person endowed with the ability to perform various operations, actions (and, therefore, able to perform various roles, including legal ones) in relation to the acquisition of a thing, its transmission, etc., implements the inherent function of not only to it but also to many other persons [2: 72]. In legal science, the function of rights is defined as the social role of law (state) directed to act in a macro environment or a microenvironment, that is, to establish social relations, to give them a legal definition, to bring certain information into social contacts. Functions of law, in particular, in the strict sense, the legal system represents the integrity of the legal acts and norms of national law, divided on the basis of internal harmonization on purity (legal institutes and branches), which, in accordance with the subject and method of legal regulation, are linked between themselves by hierarchical and coordinating ties and have a center of legal principles that in a concentrated form express the essence, purpose, main tasks and functions of law. Let's add that the legal system also includes information and legal space, which has both external and internal directions of determination, historical, ethnic and cultural peculiarities of existence; Structurally, such a system has certain elements (legislation, law enforcement, legal consciousness, principles and functions) that stabilize, organize and protect the social order, legal order, interests of society and man, are interpreted as objectively determined basic directions of its influence (including activities) , which express the essence, purpose, role and place of law in society. Functions of law apply to social relations; they determine and, at the same time, determine the social purpose of law in various spheres of social life. In this case, distinguish functions of the law general social (political, economic, social, ideological) and special (regulatory, security, constituent, information). Functions of the right are implemented through the system of law, in particular through branches, institutions, norms, treaties, precedents, through acts of law enforcement, as well as through the respective activities of state authorities [3]. In turn, the realization of the function of law may be externally in a certain historical form, whose social significance also has different components. Thus, the security function of law has several components, one of which, in particular, determines its affiliation with the law-enforcement system (punishment, coercion, constraints), the other - to the social-right (procedural) protection

from the protection (criminal, coercive) influence, the third - to the preventive direction of the functioning of the right [4: 157]. Therefore, it is necessary to distinguish structurally, in particular, punitive-repressive, punitive-indictment, protective, preventive forms of realization of the protective function of law. The notion of "function of law" encompasses the philosophical, legal, and legal interpretation. The philosophical interpretation of the function of law is based on the mediation of this concept by the categories of generalizing content, which are ideological, ideological, sociological categories ("the meaning of law", "justice law", "compulsory law", "regulatory law", "morality law", "image of law") [5: 312-317] And so on. However, it should be borne in mind that many issues remain unclear, the solution of which should form synthesized knowledge, types of legal thinking, strategic decisions on the object and subject of the study. The concepts of understanding the functions based on the division of law and law, on the categories of "legalism", "jurisprudentialism", "legal liberalism"[6: 472], on the integral classification of law and the introduction of the category "legal reality" are developed [7: 24-45]. It must be agreed with the philosopher S. Maximov that in any approach there are both strengths and weaknesses, both possibilities and limits in the general sense of law. Yes, it is clear enough, in our opinion, to reveal the complexity and mobility of understanding the reality of law [8 72-99]. First, it is legal positivism, which focuses on the external side of legal reality, the totality of legal norms, secured by the force of the state. Secondly, it is legal objectivism, which is based on the social conditionality of law, its entrapment in social life. Thirdly, it is legal subjectivity, in which the expression of idealistic and moral interpretation of law, which reveals the active role of the subject of law, becomes an expression. Fourthly, this is a legal reality based on the content of the law, its unchanging powers and authority in the process of interaction of the subjects of law, their communication, and the coordination of their own position with the position of the other party or parties. An attempt to reveal the content of the right function was made at one time by the well-known Soviet scientist-lawyer V. Smirnov, who argued that the concept of "function of law" synthesizes the tasks and methods of regulating social relations, determined by the unity of purpose and the methods of their regulation [9: 98]. Tasks and methods can not be understood without clarifying the structure and content of the subject, which is affected by law, and the concept of the function of law actually reflects in aggregate the subject, task and method of regulation. Thus, we are talking about a notion in which in a certain unity the social purpose of the legal regulation of property relations (from which the tasks arise) and the method of regulation (it is determined by the subject and

the tasks of regulation) is reflected [10: 201]. The basic social purpose of the property right is its implementation. Realization of law is a way of its existence, fulfillment of the main social function. The law - nothing, if its provisions do not find their implementation in the activities of people and organizations in public relations. In this case, we are talking about the general social function of law, and therefore civil law, in particular, the institution of property rights.

In the system of law, civil law is a fundamental, basic industry. It has its internal system through an element such as the property that forms the basis of property relations. In this regard, civil law studies are increasing interest in the study of the social function of property rights, which is associated with an increase in the role of the state in the social sphere.

However, in this context, the concept of social function of civil law differs from the idea of the general social function of law, since the social function of civil law in the narrow sense implies the direction of the impact of civil law on social relations in the social sphere. That is, on the one hand, the provision of constitutional guarantees and improvement of the legal regulation of public property (in particular, the peculiarities of its implementation to ensure the interests of citizens who are in difficult life situations), on the other hand, the possibility of using private property to solve various social problems through the system a number of restrictions on the right of private property.

For the first time, the idea of limiting private property to achieve social goals was formulated by G. Schwartz, and later by L. Dugi, who put forward the theory of "legal purpose" in civil law. This theory assumed that any property is not for anyone, but for some reason, that is, the intelligent goals of all cohabitation; if a person uses his property for foolish purposes that are not needed in all law and order, the state or property selects, or forces the property to be used in accordance with its social purpose[11: 67].

Modern civil science naturally rejects this idea of limiting private property, consider them excessive, but it should be noted that since the creation of the concept and still foreign and domestic lawmakers are in search of the golden mean between two extremes: a purely market-based economy the absolute protection of private property, and a purely planned economy, based on the total control of the state for the exercise of property rights.

From Roman law, Western civilization borrowed the absolute character of property rights [12: 41-43]. The French Declaration on the Rights of Man and Citizen in 1789, from all natural and inalienable rights, declared only the right of ownership sacred and untouchable, thereby opening the era of widespread constitutional protection of property [13].

SOCIAL PROPERTY FUNCTION AS THE BASIS...

However, from a certain historical stage, the beginning of which was the theory of social property O. Comte and L. Dugi, the absolute nature of property rights was gradually limited. For example, the Basic Law of the Federal Republic of Germany in 1949 repeats the norm enshrined in the Constitution of the Weimar Republic: "Ownership is binding, and its use must simultaneously serve the common good" (Article 14) [14: 128]. The 1947 Constitution of Japan states: "The right of property is established by law in order that it does not contradict public welfare." At [15: 41] this time, the constitution of European countries provide for restrictions on the right of private property in order to "establish equitable social relations", "common good", "in order to ensure its social function and make it accessible to all", in case a "legitimate public necessity or social interests", "for the motives of the public good", etc. [16: 64-67].

According to F. Lucarelli, process ownership restrictions became necessary element of ownership and content related to the "individualization" legal regime of property ownership limitations depending on the differences in functions and social purpose of a property [17: 33-34]. However, it is not absolute and in the content of the Constitution may be limited by law, but only to the extent that it is necessary for the achievement of socially meaningful purposes and in extraordinary circumstances. Thus, for example, the collection of taxes necessary for the existence of the state and observance of the public interest of all members of society, can not be regarded as arbitrary deprivation of the owner of his property, is the lawful removal of part of the property, which follows the public-law obligation. However, in the practice of applying the current legislation of Ukraine, the problem of correlation is often a problem - the conflict of interests between private rights of citizens and public restrictions on these rights [16: 64-67] ². The attitude of civilians to such limitations remains ambiguous. Domestic jurists in general support the view expressed by foreign colleagues about the need for restrictions on private property. Famous researcher of the property rights AV Venediktov noted that the right of ownership obliges the owner to be guided in his actions not only his own interests, but also take into account the interests of society. It has always been social and manifested in the prohibition of the use of property as abuse of the law. Modern researchers also recognize the need to restrict the right to private property and to strengthen the state's interference in managing it.

At the same time, it should be noted that in the domestic civilization, this idea is not unique. For example, KI Sklovsky wrote: "All

restrictions on the right to property inevitably give rise to rather sharp conflicts, because the restriction of property - is a restriction of freedom, autonomy, independence of the person, which in itself - the only source of human well-being" [18: 26-30] .

The problem is not even whether the right to private property should be limited or not, and to what extent and in what forms the state has the right to interfere in private property relations. According to some authors, the boundaries of property rights are the interests of third parties; the legal framework is general and outlined by the global boundaries. Limitation of rights - these are the established rules for the exercise of subjective rights while maintaining the scope of rights; as well as the formulation of social relations within the legal field, and the purpose of the restrictions is social in nature [19: 95], and their correspondence to such purposes, that is, the restrictions imposed, which must be substantiated. L.A. Morozova proposes to highlight the following principles of restricting the right of private property: exclusively in the interests of "public good", "public interest"; the existence of fair compensation by the state to the owner of property losses; establishment of restrictions on the basis and within the limits of the law; the equality of all owners in the restrictions imposed on them, that is, they should not be established for individual owners, but through general legal regulation; possibility of judicial denial of the state's extraction of private property [20: 57].

Obviously, these principles deserve attention in determining the grounds for limiting ownership [21: 145]. Contrary to the opinion of some scholars, it is considered justified by the owner of public obligations of property character as a special form of termination of the right of ownership. At the same time, the connection between the social state and property is expressed through a legalized mechanism for the withdrawal of some of the citizens owning certain assets in order to fulfill state social guarantees in relation to other citizens in need of social protection. Funding for the implementation of social guarantees (payment of subsidies, benefits, compensations and pensions) is carried out at the expense of taxpayers who, by virtue of the law, do not need state social support, and therefore independently carry out "decent life" and "free development". In other words, the establishment and introduction of a tax restricts the private owner in exercising the powers of use and disposal of a certain part of his finances. From the moment of the origin of the tax (as a rule, from the moment of the object of taxation) and before the due date, he has the right to own only a corresponding part of the funds [22: 21-30].

Obviously, it is obvious that there is a certain contradiction between the legal and social principles of this possibility of limiting private property.

SOCIAL PROPERTY FUNCTION FA THE BASIS...

Worth to agree with Z.Sh. Gafurov is that in this case the legal nature (contradiction) lies in the inviolability and inalienability of human rights, and the possibility and necessity of limiting them, mainly private property, will take place primarily in the interests of the integrity of society. If the legal principles follow the priority of the rights of the individual, then the social - from the primacy of the rights of the collective, including the society itself organized into the state as a whole [23: 12] .

The urgency and significance of the problem raised both in theoretical and in practical terms are confirmed by the provisions of normative acts which indicate that the tax burden for the rich should be greater than for the majority of citizens. And most of all at the expense of taxes on consumption, real estate and property. With the help of taxation, redistribution of property, a state budget is formed, with the help of which social state policy is implemented. On the one hand, the processes of budget formation and redistribution of property, of course, are regulated by the budget law, but on the other hand - the budget actually represents a special object of civil legal relations, which is included in the treasury, with a special procedure of formation in which the termination of the right of private property occurs in accordance with the public law (payment of taxes and other obligatory payments to extrabudgetary funds). This allows us to say that for the given legal relationship, along with budget requires and civil law.

Consequently, the social function of subjective property rights is fully manifested in the restrictions of the rights of the owner's share, established by law for socially useful purposes.

The complexly organized system of property relations is a single, indivisible, two-phase, permanent process that involves the appropriation and alienation of one of the subjects of certain objects of the external world (without taking into account their quantitative and qualitative characteristics) in favor of another. Property relations can be understood as the ability to acquire and lose as being established. They reflect the reality and the possibility of freedom of choice of personality, the development of a person's creative personality for the sake of the creation of his own subjective world. The results of this choice are used and consumed in one way or another by the entity at its discretion. Relationships of property are integrated into real and virtual relationships and contradictions of social and individual life. They cover its main interdependencies, expected and predictable, probable and unforeseen results of assignment-alienation. That is, in property relations there is an interpenetration of appropriation (force) in alienation (impotence), and vice versa. Under appropriation it is necessary to understand the possibility of acquiring an object in the power

of the subject, that is, the willful act of the active relation of the subject to the object as its own, expressing the excess of the human being of the subject in its unit, because it excludes the probability for all others use these objects without entering into the relationship with the owner himself. With the appropriation in the personality there is an exclusive right to free activities in various spheres of life. It becomes actual, becomes meaningful only in the context of admissibility of the risk of alienation. At the same time, the alienation - in essence, not only the loss of a person and society the opportunity to get into the business, apply this blessing in the production → distribution → exchange → consumption as a result of purchase-sale / seizure-selection / gift-action of the object. As a result of property relations, alienation is an inalienable, extraneous state, a way of being in the conditions of social relations that arise in the process of formation and development of human activity and abilities in an impersonal, distinctive, irrelevant justification that becomes higher than its creators. In the philosophical understanding of property relations it is necessary to proceed from the following features: - the property is mediated, since there is a stable relationship between people that arise in the production economy due to the lack of resources and surpluses of goods; - the determining characteristic of property is the fundamental alienation of its objects as a result of the non-economic form of coercion, based on the possibility of separating the individual from the working conditions; - forms of ownership, their legal or political reflection may arise as private, collective, state or public property; - the possibility of separating a person from working conditions is determined by the type of personality, as well as the basic product and tools of labor; - alienation of a part of the population from the objects of property arises due to the removal from the limited conditions and factors of production; - the limited resources used in production and the surplus of goods in distribution, exchange and consumption, give property relations a permanent conflict of nature, and, consequently, require regulation and control; - in the course of increasing the level of material and social human needs, the object of property is that the impersonal subject perceives as insignificant for its own substance, but significant for other persons [24: 89-90]. Social transformation is a concept that reveals a contradictory, universal and universal process of complex changes in the quality definition of a social system characterized by a limited rationality of an active person, openness, graduality, uncertainty of results, novelty of experience, pressure of historical heritage, duration that is bordered by the conflict of socio-cultural changes in the unity of the natural, social and individual reality [25: 12-13]. The state of the transformed society is largely determined by the dynamics of the value context of individual and social property relations. Among the most

important contradictions of property relations in terms of establishing a correspondence between the modernization of social functions and the change in the structure of society can be attributed: 1. Model property relations characterizes the actual behavior of subjects, which must meet certain repeatedly and regularly repeated written or unwritten mandatory rules of assignment-alienation, typical for most members of society. But in the face of growing risks of social reality, which is rapidly changing, there are massive violations of mandatory rules and patterns of behavior of owners. That is, social transformation is accompanied by anti-system deviations from the proper property relations that become the system. As a result, the social norms of these relationships lose their significance, and their negative / positive sanctions cease to be violated / complied with. Relationships of property in the norm should preserve the positive experience of the past, accumulated by the society cultural luggage of appropriation / alienation in the present from the past to the future. The norm of property relations, as a certain rule of conduct in the system "my-alien", which in advance provides a typical way of responding in certain conditions, with the predicted coincidence of circumstances expected in specific situations, and what should happen, facilitates the adaptation of entities assignment-alienation, makes the behavior of owners and non-owners "mechanical". But in a transforming society, the basis of the past intensively generates "experimental" actions of owners beyond the traditional and usual, demonstrating increasing quantitative and impressive qualitatively indicative outputs beyond the limits of moral and legal positively evaluated algorithms and norms aimed at the future orientation of the new model assignment-alienation. Property is an objective social relations, which are regulated by the norms in force in society. Relationships of property, realized in the behavior, actions, concrete actions of the subjects of assignment-alienation as the most universal communication that exists in society, as a manifestation of the act of objective reality within a certain form of society and with the help of it. Along with this, property relations as a subjective reality as a process and result form their own subjective world, beliefs, motives, experiences, thoughts, ideas transposed into the framework of the model "my-alien". Accompanying the feelings of value of the assignment / alienation relationship is proper, necessary, binding for their existence. The transformation of society rapidly (and often quite painfully) draws in the ownership relations of new owners, co-owners, "almost" owners, deliberately created, and often with the use of frank coercion, and artificially alienated from property or destroyed (also not without coercion) individuals (almost by F. von Hayek). Each of them, according to their personal setting and socio-group scoring scale, the specific social role and position of the

owners varies (and even diametrically opposite) to the values on which the relationship is based, and also assesses the obligation to comply and the possibility of violating both the existing ones and those that are still forming the norms of the assignment / alienation relationship. There is an active blurring of abstract ideals that do not imply the existence of sanctions as a binding component, atrophy of the desired goals and ultimate forms of existence through the "good-bad" dichotomy, as well as the behavior of the owners and non-owners, which made it possible to reach the general guidelines for the activities of the sub Objects that were previously directed at choosing a line of conduct and assessing the assignment / alienation. Repetitive assessments of the subjects of property relations contribute to the formation and establishment of a new or changed social norm of assignment-alienation, which in the future plays the role of the basis of assessment through the signs of "right-wrong", and objectivize the value of "my" and "alien", categorically restricting the freedom of conduct of owners and non-owners. That is, the formation of a model of new social relations of assignment / alienation. The relationship of ownership in the transformational social system is characterized by the chaos of the rise or decline, the spontaneity of rapid changes, the low efficiency of procedural units, the inappropriateness of the use of internal reserves, the daily level of realization of the interests of the individual, impoverishment of thinking and feelings, etc.. They are characterized by constant changes (the tempo of which is so high that it sometimes causes anxiety and even a sense of fear before the incomprehensible), which alternate only with short respite, an increase in potential ynoho rate controlled "dissolution" of man in the world. As well as the frequencies in the phase and the amplitude of qualitative transformations of the organic unity of the macro, meso and micro levels of the social or individual reality of assignment-alienation [26]. This "acceleration" affects various manifestations of property: - the right to power in the system of management of all levels; - a series of intermodal property rights in the management system; - power of ownership in the model of organization of vital activity of the population, civil self-organization, a set of moral imperatives, common in society; [27] the right to life, body, and even creative potential, opportunities, intentions, ideas, ideas, destiny of a person. In conclusion we note that the formation of a new social order, accompanied by infertile attempts of revolutionary implantation of socio-economic innovations, planting of political and economic innovations, manifests itself in the ripening of a new balance of the dominant and diverse minority forms of ownership, in the regeneration of the national, historical and social logic of the development of the assignment of relations /alienation.

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