



**Proprietary security and
legal assets of its provision.**

PROPERIETARY SECURITY AND LEGAL ASSETS OF ITS PROVISION

SEGURIDAD PATRIMONIAL Y BIENES JURÍDICOS DE SU PRESTACIÓN

ABSTRACT

It is difficult to overestimate the historical significance of property for a man and society. The protection of property is carried out both by an owner directly, and by the state on behalf of law enforcement bodies. A set of elements of property legal protection is the mechanism for property security provision. Nowadays, as the part of security science (SOS) development, scientific research of national security various areas is of particular importance. Law is the main tool for national security provision. The legal means make it possible to ensure the security of an individual, society and a state in a comprehensive manner. The article reflects the results of the category “property security” study, primarily from the theoretical and legal positions, including the study of the conceptual apparatus, as well as the place of property security in the national security system. Besides, they considered civil-law and criminal-legal mechanisms for its provision. In the authors’ opinion, property security is an integral part (kind) of national security along with economic, information, environmental and other types. The authors came to the conclusion that property security is ensured in the unity of three legal mechanisms: the exercise of property self-defense right by an owner; a civil-law mechanism for property security and, above all, vindication provision; criminal-legal means of property security provision.

KEYWORDS: property security, National security, Property, Vindication, Theft

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RESUMEN

Es difícil sobreestimar el significado histórico de la propiedad para un hombre y la sociedad. La protección de la propiedad se lleva a cabo tanto por un propietario directamente como por el estado en nombre de los organismos encargados de hacer cumplir la ley. Un conjunto de elementos de protección legal de propiedad es el mecanismo para la provisión de seguridad de propiedad. Hoy en día, como parte del desarrollo de la ciencia de la seguridad (SOS), la investigación científica de varias áreas de la seguridad nacional es de particular importancia. La ley es la principal herramienta para la provisión de seguridad nacional. Los medios legales permiten garantizar la seguridad de un individuo, una sociedad y un estado de manera integral. El artículo refleja los resultados del estudio de “seguridad de propiedad” de la categoría, principalmente desde las posiciones teóricas y legales, incluido el estudio del aparato conceptual, así como el lugar de la seguridad de propiedad en el sistema de seguridad nacional. Además, consideraron mecanismos de derecho civil y penal-legales para su prestación. En opinión de los autores, la seguridad de la propiedad es una parte (tipo) integral de la seguridad nacional, junto con la economía, la información, el medio ambiente y otros tipos. Los autores llegaron a la conclusión de que la seguridad de la propiedad está garantizada en la unidad de tres mecanismos legales: el ejercicio del derecho de legítima defensa de la propiedad por parte de un propietario; un mecanismo de derecho civil para la seguridad de la propiedad y, sobre todo, una disposición de reivindicación; Medios penales-legales de provisión de seguridad patrimonial.

PALABRAS CLAVE: seguridad de la propiedad, seguridad nacional, propiedad, reivindicación, robo.

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INTRODUCTION

The ownership of property is one of the main interests of law subjects directly. In the French Declaration of Man and of Citizen Rights of 1789, property is recognized as one of the natural and inalienable human rights, an inviolable and a sacred right (*Déclaration des Droits de l'Homme et du Citoyen de, 1789*). The owner of the property, exercising his powers, first of all, tries to save his property, as well as to protect him from the claims of other persons.

Over the past decade, significant efforts have been made to develop the "Science of Security" (SoS), to which dozens of scientific articles are devoted. So, according to C. Herley and P. van Oorschot, "science" is the best and the only way for safety research (Herley and Oorschot, 2018). At that, nowadays it is necessary to apply an interdisciplinary system approach in the development of the general theory of security science, taking into account the multifaceted concept of "security" (Geysen and Verbruggen, 2003).

In this regard, it is worth noting the importance of property security provision for each owner, regardless of the form of ownership. The elaboration and the improvement of specific measures to ensure property security must be preceded by a deep and a comprehensive scientific study of the category "property security".

METHODS

In the process of the research conduct, first of all, they used the dialectical method of scientific cognition within the framework of philosophical interpretation of property and security in their interrelation. The system method allowed to study comprehensively the national security system in the aggregate and integrity of its elements, as well as the place of property security in the national security sys-

tem. The functional method made it possible to identify the functions of civil and criminal law to provide property security. The comparative method allowed to compare the legal norms of Russia, France, Germany, Austria and Italy, regulating public relations in property security provision.

A fundamental feature of the chosen methodology was that the issues of property protection by legal means were studied from the standpoint of security science, implying the categories of "threat", "risk", etc. which made a progressive significance for the development of new approaches to property protection.

RESULTS AND DISCUSSION

THEORETICAL AND LEGAL BASIS OF PROPERTY SECURITY

In the fundamental works on security, the category of property security has not received detailed elaboration, and there are separate studies devoted to this phenomenon (Hataev, 2005).

Under property security in the broadest sense, we propose to understand "the state of property security." Proceeding from the national security system, it seems to us necessary to consider property security as one of the types of national security, along with economic, information, environmental and other types.

Before we talk about property security, it is necessary to determine the relationship between the concepts of "property", "thing" and "ownership".

The concept of "property" traditionally includes things (movable and immovable) in the legal regulation. Civil law traditionally includes cash and securities in the composition of property. Nowadays most explorers identify the concepts of things and property, since only embodied values, that is, things, can act as property.

The category "ownership" is of a legal nature and reflects the legal relationship of an owner (the subject of ownership) and property (object).

The ownership relations determine property and related personal non-property relations - in fact the whole branch of law - civil law, and they are the subject of its regulation.

Concerning the relationship between property and security and the security element in the ownership right, it is worth pointing to the position by T. Honoré, in which the main components of property are formulated, among which, in particular, is the "right to security", which enables the owner to remain the owner by the virtue of his will without time limit (Honore, 1987). There is the position in modern legal scientific literature according to which the right to protect property rights is considered as one of property components along with possession, use and disposal (. Ryzhenkov and Chernomorets, 2009).

Since there is a risk of ownership loss without a direct damage to property that will cease to belong to the owner, but will not change its quality properties (it will not be damaged or destroyed), we propose to distinguish the category "property security" in addition to ownership security.

Considering the system of property security, it is also necessary to consider the issues about its threats and security subjects.

The analysis of the current legislation and legal doctrine allows to draw the conclusion about the following threats to property security:

- the threat of property loss;
- the threat of accidental property loss (damage);
- the threat of property destruction from the actions of the third parties;
- the threat of property damage by third parties;
- the threat of someone else's property theft;
- the threat of illegal acquisition of the ownership right by third parties.

The peculiarity of property security with regard to the subject composition of its security is that the main subject of such a security

is the immediate owners of the property. First of all, the owners themselves - physical and legal persons - must ensure the safety of their property.

CIVIL-LAW MECHANISM FOR PROPERTY SECURITY PROVISION

Since the owner of property is the primary subject of property security provision, the study of the civil-law mechanism for property security provision must begin with the issues of property right self-protection.

In accordance with the Art. 14 of RF Civil Code, a person whose right is violated may resort to his self-defense, corresponding to the violation method and nature (RF Civil Code, 1994). At the same time, self-defense does not exclude the right to use other means of protection, including judicial protection. The Supreme Court of Russia in the Plenum Resolution explained that the self-defense of civil rights can be expressed, in particular, in the influence of a person on his own property or the property in his legal possession (The Resolution of RF Supreme Court Plenum, 2015). A slightly different approach is typical of the Austrian general civil code: "Anyone who considers himself to be infringed in his rights has the right to file a complaint to a body determined by laws. However, anyone who, neglecting this, allows arbitrariness or exceeds the limits of necessary defense, is responsible for this" (§ 19) (Allgemeines bürgerliches Gesetzbuch vom, 2015).

The basic formula for the protection of property is the thesis borrowed from Roman law: "one can demand (a thing) from everyone who holds a thing and has the opportunity to give it away" (Justinian's Codification). In modern civil law, this formula is presented in the form of vindication (the owner's right to demand the thing lost by him).

So, according to Art. 301 of RF Civil Code "the owner has the right to reclaim his property from someone else's illegal possession." The Civil Code of France (the Napoleonic Code) establishes the following rule: the one who has lost a thing or which was stolen from him has the right to demand it within three years from the date of loss or theft, from the one who has this thing; that, however, does not prevent the latter from filing a recourse action against the one from whom he recei-

ved this thing. If an actual owner of a stolen or lost item purchased it at a fair or a market, or at a public auction, or from a merchant who sells such things, the original owner can demand it back only by refunding the owner the price that he paid for it (Article 2276) (Code civil, 2018). In the German civil code this institution is called "The claim for extradition" (§ 985) (German Civil Code (BGB), 1896). At the same time, the GCC establishes the limitation period for claiming things 10 times greater than the French CC - 30 years (§ 195).

It is possible to single out the following general conditions for the presentation of a vindication suit from the content of the considered legislative acts: 1) a plaintiff has the right to property; 2) the property is out of possession (loss, theft, etc.); 3) the property is possessed by the defendant (retained in kind); 4) the statutory limitation period has not expired.

Nowadays vindication lawsuit can be called the core of the civil-law mechanism for property security provision.

Proceeding from the resulted threats of property safety it is possible to single out the following forms of civil-law protection of property with the reference to this or that threat (using the example of the German civil code):

1. An illegal deprivation of property (loss, theft): a vindication claim against the actual owner of a thing about the issue of the latter (§ 985).

2. Other violations of property law that are not related to unlawful deprivation of property: a negatory claim about violation elimination and the claim for abstention from certain actions (§ 1004).

3. The damage to the thing: a claim from unlawful acts (par. 1, § 823).

4. The violation or an unlawful deprivation of the right by public authority actions (inaction): a suit in an administrative court (cl. 2, § 42 of Administrative Court Act).

A separate issue of safety provision by property owners during its storage (The article 890 of RF Civil Code, § 688 of the Civil Code of Germany, Article 1921 of the French Civil Code, § 957 of the Austrian Civil Code).

One of the legal instruments for property security provision by the owner (or an interested person) is the property insurance (Article 930 of RF Civil Code).

As the part of the study of civil law principles for property security provision, it is also necessary to pay attention to the risk of accidental loss of property (Article 211 of RF Civil Code, § 1064 of the Austrian Civil Code) as one of the factors that creates a threat (Maratovich, 2017).

CRIMINAL LAW MEASURES OF PROPERTY SECURITY PROVISION

The crimes that encroach on property appeared among the first and are recorded in the criminal legislation of almost any state now. RF Criminal Code has the chapter 21, in which the crimes encroaching on property and property rights are concentrated. In the Criminal Code of Germany the Sections 19 and 20 are devoted to similar acts. The third book is devoted to property crimes in the Criminal Code of France. The main object of these crimes is the social relations that develop in the sphere of property right and other ownership rights. Since the state of property right protection is violated as the result of these crimes commission, it can be said that it is purely a matter of an individual, an organizations or a state property security violation.

It can not be assumed that the criminal law provision of an individual, an organization or a state property security is limited to criminal liability establishment for property crimes. The comparative analysis of the criminal legislation of various countries shows that property security is affected during the commission of a wide variety of crimes attributed to different sections (chapters) by a legislator.

In a number of basic crimes, a legislator uses a method or an effect as a constructive feature that is associated with an unlawful effect on property. In RF Criminal Code, there are those among the crimes against a person: for example, when one is compelled to engage in sexual acts (the Article 133 of RF Criminal Code), the threat of destruction, damage or the seizure of property acts a method. Property security in such crimes acts as an additional or an optional object.

During the design of criminal-legal norms for the formulation of qualifying signs, they often use a method or an effect associated with property damage cause. In this case, the violation of property security conditions the public danger increase of a deed, which is reflected in the sanction of a qualified crime. Thus, for example, in clause 2, part (3), § 267 of the Criminal Code of Germany, a qualifying attribute is established in the form of major property damage cause as the result of document forgery; in Article 615.3 of the Criminal Code of Italy the property damage method is indicated as a qualifying indication of unauthorized access to computer information.

Criminal legal means provide the property security of an individual (individuals), legal entities, as well as the state. At the same time there are crimes that are directed against all types of property security (for example, theft), and there are those that have a narrower focus. Thus, the threat of property destruction or damage in relation to a judge (the Article 296 of RF Criminal Code), along with the interests of justice, encroaches on the property safety of a judge. A number of crimes encroaches (again at the level of an additional object) exclusively on the property security of the state, without affecting the property security of individuals and legal entities. This, for example, "The violation of the rules concerning the provision of precious metals and precious stones to the state" (the Article 192 of RF Criminal Code).

SUMMARY

Property security can be considered as one of the types of national security and in the current conditions this category needs further scientific development.

The civil-law mechanism for property security provision presupposes, first of all, the self-protection by a property owner, the vindication as the main instrument of protection, and other means (the provision of property security during storage, property insurance as the means of property security provision).

Criminal-legal study of property security is characterized by the fact that property security is an independent object of criminal-legal protection, but it is closely interrelated with

other types of security (public, economic, information, etc.). The provision of property security by criminally-legal means takes place in the following ways:

a) the establishment of criminal liability for the attacks on the property of individuals and legal entities, as well as the state;

b) the use of the main elements of crime, of the method or the consequence as a constructive feature associated with unlawful effects on property;

c) the use of the methods or consequences, associated with property damage or its threat, as qualifying signs. In this case, the violation of property security causes a deed public danger increase.

CONCLUSIONS

In this article, the attempt was made to study a new category of "property security" for science comprehensively. According to the authors, the obtained results are original and new and can be used to conduct further research on the problematic aspects identified in this article due to the methodological approaches of this study.

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