

## RESTRICTIONS TO THE RIGHT OF PROPERTY: CONSTITUTIONAL VERSIONS IN THE POST-SOVIET COUNTRIES

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### Abstract

**Purpose:** The paper deals with constitutional approaches to the formalization of restrictions and deprivation of property rights in 12 post-Soviet countries: Azerbaijan, Armenia, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Uzbekistan, and Ukraine.

**Methodology:** As an analysis of specific constitutional approaches to the restriction of property rights, the paper pays attention to the conditions for the admissibility of its deprivation, compensated withdrawal and alienation of property as an object of property rights.

**Applications:** This research can be used for universities, teachers, and students.

**Results:** Based on the analysis, it was concluded that legal forms of restriction of the right to property are set forth in direct and indirect versions. The first reflects the direct wording of the permissibility of restricting the right to property; the second is due to the general rules of constitutional restriction of the rights of a person and citizen.

**Keywords:** *state, property, property rights, restriction of property rights, deprivation of property rights, constitution, human rights.*

### INTRODUCTION

Property is an object of study in various branches of science, which naturally affects its interpretations and meaningful content. At the same time, it seems undeniable that “in the area of formation of economic institutions, a state assumed all the most active roles: participant, organizer, controller, “conductor”, and “leader”. That is why a state actively regulates relations concerning property rights, including its subjective aspect. [Khabrieva, T. Y. \(2018\).](#)

Analysis of the scientific literature gives grounds to assert that, among other things, the property received development in the aspect of its inviolability principle, as the economic basis of a constitutional system, in connection with objects of property rights, etc. Thus, the recognition of the significance of property rights is expressed in its construction at the constitutional level with the consolidation of its subjects (person, citizen, state, public associations) and objects (land, natural resources, etc.), types of property (public, private, etc.), legal protection and defense, conditions and grounds for restriction of such a right. For example, in the Constitution of the Russian Federation the recognition and protection equally of private, state, municipal and other forms of ownership (part 2 of article 8), as well as the provision that land and natural resources may be involved in the specified forms of ownership (part 2 of article 9). In the context of human rights and freedoms of a person and a citizen, the law enshrines protection of private property (part 1 of article 35), the right to own property, to own, use and dispose of it individually as well as jointly with other persons (part 2 of article 35). The possibility of forcible alienation of property is also provided for (Part 3 of article 35), primarily in order to ensure the interests of an individual, society and the state ([Lobão, J., & Pereira, C. 2016;](#) [Machado, A. D. B., Souza, M. J., & Catapan, A. H. 2019;](#) [Zare, Z. 2015;](#) [Bakhshandeh, M., Sedrposhan, N., & Zarei, H. 2015\).](#)

Since the post-Soviet states have a significant part of common history, including those related to ownership, we consider it interesting to consider their constituted sovereign will in connection with the restriction of the right to property. The focus group includes the constitutions of 12 post-Soviet states: Azerbaijan, Armenia, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Uzbekistan, and Ukraine. Such a choice of countries for the focus group makes it possible to identify representative patterns of approaches to restriction of property rights. [Sicat, G. P., & Makasiar-Sicat, L. \(2004\).](#)

### METHODS

The methodological foundation for the research is based on the application of main general-scientific methods and scientific knowledge methods (analysis, synthesis, deduction, induction, system-structural, formal-logical approaches), as well as specific scientific methods: formal-legal, comparative-legal and interpretative. [Khabrieva, T. Y. \(2018\).](#)

### DISCUSSION AND RESULTS

An analysis of the constitutional texts for this group of countries showed that the “restrictive” approaches of the post-Soviet countries with regard to property rights were implemented indirect and/or indirect (through general principles of restricting human rights) ways. At the same time, indirect restriction prevails in both normal and special modes. Thus, out

of 12 countries, direct restriction of property rights in the conditions of a normal legal regime is fixed only for two countries (Armenia and Georgia), and in special ones – for one (Georgia). The established restriction of the right to property is present in seven constitutions in relation to the ordinary and special legal regimes. There is no provision for the admissibility of restricting property rights in the constitutions of Turkmenistan, Uzbekistan, and Ukraine (under the normal regime), as well as Kazakhstan, Kyrgyzstan, Moldova and Uzbekistan (under special regimes).

Based on the constitutional formulations, we specify the above, taking into account the goals and interests of such a restriction. So, Part 3, Art.60 of the Constitution of Armenia provides for the possibility of limiting property rights "in order to protect the interests of society or the fundamental rights and freedoms of others". A similar provision is also indicated in the Constitution of Georgia (Part 2, Art. 19). In this case, there is a direct indication of the possibility to limit the right of property. [Sicat, G. P., & Makasiar-Sicat, L. \(2004\).](#)

The indirect indication of the possibility of restricting property rights is reflected in the constitutions of Azerbaijan (part 2 of art. 71), Belarus (Art. 23), Kazakhstan (Part 1 of Art. 39), Kyrgyzstan (Part 2 of Art. 20), Moldavia (part 2 of article 54), Russia (Part 3, Art. 55) and Tajikistan (Art. 14). Thus, the Constitution of Belarus (Article 23) states: "Limitation of rights and freedoms shall be permitted only in cases stipulated by law, in the interests of national security, public order, and protection of morality, health, rights and freedoms of others". As can be seen from the above example, an indefinite list of rights and freedoms may be limited (the exceptions are the rights specified in Part 3, Art.39 of the Constitution of Belarus), the cases of imposing restrictions are provided by law, the purpose of imposing restrictions is to ensure socially significant interests. A similar logic of formulations is applied in all constitutional texts providing for the possibility of indirect restriction of rights. [Sicat, G. P., & Makasiar-Sicat, L. \(2004\).](#)

In addition, it is provided constitutionally for the possibility of temporary restriction of certain fundamental rights and freedoms of a person and citizen (including property rights) in accordance with the procedure established by law in special legal regimes: martial law or a law in a state of emergency (the Azerbaijani Constitution (Part 3, Art. 71), Armenia (art. 76), Belarus (Art. 63), Georgia (part 4 of art. 71), Russia (Part 1 of Art. 56), Tajikistan (Art. 47), Turkmenistan (Art. 47) and Ukraine (Art. 64). It is worth noting that, with the exception of the Constitution of Georgia, in the aforementioned constitutional texts there is no direct fixation of the possibility of restricting the right of ownership. The main law of Georgia, in turn, lists the rights (including the right of ownership), which are subject to restriction in times of martial law or a state of emergency. [Kubicek, P. \(2002\).](#)

The above constitutional approaches of post-Soviet countries have clearly shown that the right of ownership is included in the list of constitutional rights that may be limited, including under conditions of exceptional regimes - state of emergency or martial law.

In connection with the constitutional admissibility of restricting the right to property, we consider it logical to draw attention to the deprivation of this right. In the constitutional texts of all countries of the post-Soviet space, there are provisions that provide for the admissibility of deprivation (withdrawal, alienation) of the property right. This, in our opinion, can be considered as an extreme form of restriction of this right (Azerbaijan - Part 4 of Art. 29, Armenia - Part 4 of Art. 60, Belarus - art. 44, Georgia - Part 3, Art. 19, Kazakhstan - Part 3, Art. 26, Kyrgyzstan - Part 2 of Art. 12, Moldova - Part 2 of Art. 46, Russia - Part 3, Art. 35, Tajikistan - art. 32, Turkmenistan - art. 9, Uzbekistan - Art. 53, Ukraine - Art. 41). [Sicat, G. P., & Makasiar-Sicat, L. \(2004\).](#)

Most of the studied constitutions of the post-Soviet states provide for the need for a court decision in order to implement deprivation of property rights. The exceptions are the basic laws of Moldova, Turkmenistan, and Tajikistan. The Constitution of Georgia (part 3 of article 19) provides that the deprivation of property "is allowed in cases expressly provided by law for the necessary public needs by a court decision or in the cases of emergency established by law." The Constitution of Kyrgyzstan (part 2. Art. 12), also provides for the possibility of forcible seizure of property without a court decision in cases provided for by law in order to protect national security, public order, protect public health and morals, protect the rights and freedoms of others. However, the legality of such an exemption is subject to mandatory review by a court. [Kubicek, P. \(2002\).](#)

Further analysis of the constitutional texts for this focal group of countries revealed the possibility of compensable deprivation (seizure, alienation) of property. Thus, a "preliminary fair reimbursement" of the property value is possible (Azerbaijan (part 4, art.29), Moldova (part 2, article 46)), "prior equivalent compensation" (Armenia (part 5 of article 60)), "timely and full compensation for the value of the alienated property" (Belarus (article 44)), "full and fair compensation" (Georgia (part 3 of article 19)), "equivalent compensation" (Kazakhstan (part 3 of article 26)), "fair and preliminary provision of compensation for the value of this property and other losses caused by deprivation" (Kyrgyzstan (part 2 of article 12)), "preliminary and equivalent compensation" (Russia, part 3 of article 35), "full refund of value" (Tajikistan (art. 32)), the "preliminary and full compensation for the value of private property" (Ukraine (Art. 41)). The Constitution of Turkmenistan (Article 12), in turn, provides for the possibility of "compulsory paid seizure of property". At the same time, the basic law of Uzbekistan, not including similar provisions, enshrines the reference rule, according to which the deprivation of property rights is permitted in the case and manner prescribed by law (Art. 53). This, in our opinion, can give the legislator the opportunity for appropriate "maneuvers". [Kubicek, P. \(2002\).](#)

The reasons for the seizure of property are defined constitutionally: “for state or for public needs” (Azerbaijan (part 4 of article 29)), “for the needs of society and the state”, “in order to ensure the highest public interests in exceptional cases” (Armenia (part. 5, Art. 60)), “for reasons of social need” (Belarus (Art. 44)), “for necessary social needs” (Georgia (Part 3 of Art. 19)), “for state needs in exceptional cases” (Kazakhstan (part 3 of article 26)), “for public needs defined in the law” (Kyrgyzstan (part 2 of article 12)), “in the case of social necessity determined by public law” (Moldova (part 2 of article 46)), “for state needs” (Russia (part 3 of article 35)), “for public needs” (Tajikistan (article 32)), “as exception on the grounds of social necessity, on the basis of and in the manner established by law” (Ukraine (Art. 41)). As for the constitutional text of Turkmenistan (Art. 12), then it states that “compulsory paid seizure of property is permitted only in cases provided for by law”. A similar provision, with some lexical differences included, is specified in the Constitution of Uzbekistan (Art. 53). A feature of the Constitution of Tajikistan, in comparison with other countries of the former Soviet Union on the issue of seizure of property for public use, is the need for the consent of the owner (Art. 32).

## CONCLUSIONS

Thus, in a number of constitutions of the post-Soviet countries, the right of ownership, being an integral part of the legal status of an individual, may be restricted. The admissibility of such a restriction may be indicated directly, or follow from the general rule on the permissibility of a restriction of human rights. At the same time, restrictions are possible in the mode of “normal” functioning of the state and separately during periods of emergency or martial law (Novikova, I. N., Popova, L. G., Shatilova, L. M., Biryukova, E. V., Guseva, A. E., & Khukhuni, G. T. 2018; Nisawa, Y. 2018).

Most of the considered constitutional texts allow the restriction of the right of ownership as a human and citizen's right on the basis of or in the cases provided by law, in the presence of certain circumstances. Also with respect to the property, deprivation (expropriation, alienation) is allowed, which is carried out, as a rule, on the basis of a court decision. At the same time, to achieve socially significant and other goals, it is also provided for compensated withdrawal (alienation) of property, which is carried out if certain circumstances are available.

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