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Protection of property rights in international law

Abstract. Protection of property rights is one of the most important priorities of any rule of law. Property right in the modern legal literature is treated as an institution of civil society, a fundamental Institute of private rights and it is declared as universal value. The article deals with the problems of development of the concept of the property rights in the context of its various historical models: elementary, model of branched property, liberal and social-oriented. The conclusion shows that in the process of integration of countries this institution has separated from the framework of national law and derives its consolidation in the international legal instruments. According to the grounded conclusion, in international law axiological concept of property rights has been accepted, which is based on the equality of privately owned entities, distributing the ownership of objects that have traits of economic value and cash flow, regardless of material or nonmaterial nature, the range of the powers of the owner, the existence of an indefinite passive range of media obligations, as well as assignment on the State additional responsibilities for active ensuring of property rights. If the European model of property rights is based on the value approach, the model property of the CIS countries, including Kazakhstan, is based on the proprietary-legal concept of property rights with its traditional triad concept of proprietary rights to possess, use and dispose of property belonging to him.

The article analyses the international standards of legal regulation of property rights, which are justified with the modern doctrine of the property rights and the practice of the European Court of human rights: the principle of the rule of law, the principle of balance between public and private interests, the principle of judicial control, the principle of the autonomy of the concept of property rights, the principle of legality, the principle of legitimate aim interference into the property rights, the principle of proportionality of the interference into the property rights according to the aim pursued.

The following scientific problem arises: solid and consistent theory of protection of property rights is not developed, methodological approaches for the implementation of its development are not defined in the national and international law. It appears necessary in the international law to develop a universal treaty standards of the property rights - for regulation of issues of property rights, the implementation of its effective protection. In the modern period, one of the actual trends in the doctrine of property law and international jurisprudence is the development of an international legal institution of protection of property rights in the two – pronged way – as an institution of international law and human rights and as a factor in the modernization of the National Institute of the property rights.

Key words: the right to property, the protection of property rights, international standards, legal regulation.

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Īpašuma tiesību aizsardzība starptautiskajās tiesībās

Anotācija. Īpašuma tiesību aizsardzībai ir būtiska prioritāte jebkurā tiesiskuma izpausmē. Īpašumtiesības mūsdienu juridiskajā literatūrā tiek traktētas kā pilsoniskas sabiedrības institūts, privāttiesību fundamentāls institūts un atzītas par universālu vērtību.

Rakstā aplūkotas īpašumtiesību koncepcijas attīstības problēmas kontekstā ar tās dažādiem vēsturiskiem modeļiem: elementārais, sazarotu īpašumtiesību modelis, liberālais, sociāli orientētais modelis.

Tiek secināts, ka valsts integrācijas procesa laikā šis institūts izdalījās no nacionālo tiesību jomas un nostiprinājās starptautiskos tiesību aktos.

Ir nopamatots secinājums par to, ka starptautiskajās tiesībās pieņemta īpašuma tiesību koncepcija, pamatojoties uz īpašumtiesību subjektu vienlīdzību, īpašumtiesību izplatīšanos uz objektiem ar ekonomiskās vērtības pazīmēm, neatkarīgi no to materiālā vai nemateriālā rakstura, pamatojoties uz īpašnieka pilnvarām, nenoteikta loka nesēju pasīviem pienākumiem, kā arī pamatojoties uz papildu aktīvu pienākumu piemērošanu valstij, lai nodrošinātu īpašumtiesības.

Ja Eiropas īpašumtiesību modeļa pamatā ir vērtības pieeja, tad NVS valstīs, ieskaitot Kazahstānu, tas ir balstīts uz īpašumtiesību koncepciju, ietverot tradicionālo triādes koncepciju par īpašnieka pilnvarām un tiesībām pārvaldīt, izmantot un atsavināt viņam piederošu nekustamo īpašumu.

Rakstā analizēti īpašumtiesību tiesiskas regulēšanas starptautiski standarti, kas nopamatoti ar mūsdienu īpašumtiesību doktrīnu un Eiropas tiesas praksi: tiesiskuma princips, sabiedrisko un privāto interešu līdzsvara princips, tiesas kontroles princips, īpašumtiesību jēdziena autonomijas princips, likumības princips, leģitīmas iejaukšanās īpašumtiesībās princips, samērīguma princips īpašumtiesībās mērķa sasniegšanas dēļ.

Tiek aktualizēta zinātniska problēma: nacionālās un starptautiskās tiesībās nav izstrādāta vesela un nepretrunīga īpašuma tiesību aizstavēšanas teorija, nav noteiktas metodoloģiskas pieejas tādas teorijas izstrādes realizācijā.

Ir nepieciešams starptautiskās tiesībās izstrādāt universālas vienošanās normas par īpašuma tiesībām, lai varētu regulēt īpašumtiesību jautājumus to efektīvai aizsardzībai.

Pašlaik viens no aktuālākajiem virzieniem īpašuma tiesību doktrīnā un starptautiskajā tiesību praksē ir īpašumtiesību aizsardzības starptautiski-tiesiska institūta attīstība divkāršā veidā – kā starptautisko cilvēktiesību institūts un kā īpašumtiesību nacionāla institūta modernizācijas faktors.

Atslēgvārdi: īpašuma tiesības, īpašuma tiesību aizsardzība, starptautiski standarti, tiesisks regulējums, tiesību aizsardzība.

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Защита права собственности в международном праве

Аннотация. Защита права собственности является важнейшим приоритетом любого правопорядка. Право собственности в современной юридической литературе трактуется как институт гражданского общества, фундаментальный институт частного права и признано универсальной ценностью. В статье рассмотрены проблемы развития концепции права собственности в контексте различных его исторических моделей: элементарной, модели разветвленной собственности, либеральной, социально-ориентированной. Сделан вывод о том, что в процессе интеграции государств данный институт выделился из рамок национального права и получил свое закрепление в международно-правовых актах. Обосновано заключение о том, что в международном праве принята ценностная концепция права собственности, основанная на равенстве субъектов частной собственности, распространении права собственности на объекты, обладающие признаками экономической ценности и наличности, вне зависимости от их материальной или нематериальной природы, широте полномочий собственника, существовании неопределенного круга носителей пассивных обязанностей, а также возложении на государство дополнительно активных обязанностей по обеспечению права собственности. Если европейская модель права собственности основана на ценностном подходе, то модель собственности стран СНГ, в том числе казахстанская, опирается на вещно-правовую концепцию права собственности с ее традиционной триадной концепцией правомочий собственника владеть, пользоваться и распоряжаться принадлежащим ему имуществом.

В статье проанализированы обоснованные современной доктриной права собственности и практикой Европейского суда по правам человека международные стандарты правового регулирования права собственности: принцип верховенства права, принцип баланса публичных и частных интересов, принцип судебного контроля, принцип автономности понятия права собственности, принцип законности, принцип правомерной цели вмешательства в право собственности, принцип соразмерности вмешательства в право собственности преследуемой цели.

Актуализируется научная проблема: в национальном и международном праве не разработана цельная и непротиворечивая теория защиты права собственности, не определены методологические подходы для осуществления ее разработки. Представляется необходимым в международном праве разработать универсальную договорную норму о праве собственности - для регламентации вопросов права собственности и осуществления ее эффективной защиты.

В современный период одним из актуальных направлений в доктрине права собственности и международной судебной практике является развитие международно-правового института защиты права собственности в двуедином ключе – как института международного права прав человека и как фактора модернизации национального института права собственности.

Ключевые слова: право собственности, защита права собственности, международные стандарты, правовое регулирование, способы защиты права.

Introduction
Statement of the problem and its topicality

Problems of protection of property rights in the national and international law are investigated by scientists from different countries very fruitfully. This fact indicates that the protection of property rights is the most important priority of any rule of law. The property right in the modern legal literature is treated as an institution of civil society, a fundamental Institute of private rights and it is declared as universal value.

First, the property right was regulated as one of the basic human rights in the legal sources of international scope: in the 17thArticle of the Universal Declaration of Human Rights of 1948 [1, 260] and in the 1stArticle of Protocol №1 of the European Convention on Human Rights of 1950 [2, 266]. The problems of property rights were viewed mainly in the framework of national law; in the modern period they are studied by researchers in the context of international law. In the practice of the European Court of Human Rights the potential of the basic provisions of the modern institution of property rights are formed; standards of the institute of the property rights are subjected to unification. As a result of judicial interpretation common international standard in the field of protection of property rights are developed.

The aim of this research is to analyse the problems of protection of property rights in the international law.

The analysis of publications on studied topics. The status of elaboration of modern scientific institute of the property rights, its content and mechanisms of protection is characterized by a large number of comprehensive research of this problem. Modern international institution of the property rights protection has been formed on the basis of the research of theorists and jurists throughout the world. Modern authors have examined in detail the content and the protection of property rights, the theoretical and practical aspects of the effect of different mechanisms of the property rights protection, the correlation of international and national institutions of property rights. Serious development of topics of the property rights protection is contained in the research of D. Harris «Property problems from Genes to Pension Funds» (Kluwer Law International, 1999), U. Mattei «Basic Principles of Property Law: A Comparative Legal and Economic Introduction (USA, 2000), Sudre Frederic «Droit International et europeen des droits de l'Homme» (Paris, 1999), Golay C. and Cismas L. «Legal Opinion: The Right to Property from a Human Rights Perspective. International Centre for Human Rights and Democratic Development» (2010), S.S. Alekseyev «Property rights. Problems of theory «(Moscow, 2010), M.K. Suleymenov «Property rights in the Republic of Kazakhstan» (Almaty, 2006),S.V. Scryabin «Property Law» (Almaty, 2009), I.V.Mingazova «The right of property in the international law» (Moscow, 2007), A.V.Milkov «Legal regulation of protection of civil rights and legal interests» (Moscow, 2015), the thesis for the degree of Doctor of Legal Sciences I.B.Zhivikhina «Civil-law problems of security and the protection of property rights» (Moscow, 2006), A.V.Milkov «Legal regulation of protection of civil rights and legal interests» (Moscow, 2015), U.B.Filatova «Institute of common property rights in the countries of the Romano-Germanic legal family (Germany, Austria, Switzerland, France and Russia: Com-

parative-legal research)» (Moscow, 2015), the thesis for the degree of Candidate of Legal Sciences V.V.Starzhenetsky «The correlation of international (European) and Russian legal regulation of the institution of property» (Moscow, 2003), M.Y.Vodkin «The problems of the reception of Roman property rights in the European codifications of XIX-XX centuries.» (Kazan, 2007), P.O. Kirienkov "Protection of property rights under the European law «(Moscow, 2012), Y.G. Saveleva «The protection of property rights as one of the fundamental human rights (international legal aspects)» (Moscow, 2013), Y.L. Orlova "Vindication and legal protection of property rights and other proprietary rights" (Moscow, 2013), etc.

However, it should be noted that in the national and international law solid and consistent theory of protection of property rights is not developed, methodological approaches for the implementation of its development are not defined. It appears necessary to develop a universal international law treaty standards of property rights - to regulate issues of the property rights and the implementation of its effective protection.

The research of the problems of the property rights protection in contemporary international law is based on the following methods – historical and legal, system analysis, comparative and legal, comparison and analogy, forecasting, etc.

Protection of property rights in the historical retrospective

Modern international legal doctrine claims that initially the property right was regulated as one of the basic human rights in the legal sources of international scope: in the 17th Article of the Universal Declaration of Human Rights of 1948 and in the 1st Article of Protocol №1 of the European Convention on Human Rights of 1950. However, historical evidence suggests that the «standards of property rights are very ancient, more ancient than the idea of the state itself» [3, 23]. Private property as a primary form of ownership occurs at the level of property and social differentiation in the primitive society [4, 175]. Genesis of the property right is associated with the historic moment of the first conflict over the distribution of wealth. In the literature this structure of the property right is called an elementary model of the property right and regulates social relations till the era of feudalism.

Investigating the problems of proprietary relations, it should be emphasized that the property right is referred to the «eternal» legal categories that perpetuate the attitude of a person to a thing (property), providing by this thing satisfaction of different needs. The category of property right has always attracted attention of the civil law thought. The doctrinal notions of the property right have passed a long evolutionary path from legal naturalism (the relationship of a person to a thing) to the modern understanding of the nature of any relationship as a relationship between people. The first in the history of political and legal thought of the study of property rights problems were the Roman lawyers, dedicating his research mainly to the interpreting the standards of private property rights. According to the beliefs of the Roman lawyers, property law as the attitude of a person to a thing goes against the concept of ownership, establishing the factual and legal distribution of things.

The history of Roman law includes the archaic era of the concept development of «relative property», which was criticized for unauthorized distribution of procedural features to the material object. The property right in the era of the laws of 12 tables is known as «Quirites' property « - the ancient Roman property «by the right of Quirites» (ex jure Quiritium), characterized by special way of acquisition (Mancipatio) and a special suit to protect (actioauctoritatis, the most ancient vindication).

Subsequently bonitarium (conscientious) property was formed and it is presented in the doctrine as an intermediate category of legal ownership to the rightful property. In the literature is noted the importance of establishing of the bonitarium property institution in the Roman law: the owner is given subjective rights and duties, the personal factor in the possession of the property on the property right is eliminated, legal grounds of possession, use and dispose of a thing are clearly defined. Reforms of Justinian completed the formation of the property right in the Roman law, and already in

the status of a classic sample it was subjected to the reception by the national legislations of many countries [5, 69].

Fundamentals of the Roman law, concerning the property right and other proprietary rights, were transformed at all stages of the evolution of the legal institution into all existing and developing legal systems. The social function of property rights in the feudal era underwent the transformation of the elementary model of property rights in the branched model of property rights [6, 82-88], which was formed into the appropriate theory for the regulation of relations connected with land ownership.

New content of institution of private property was filled into the next era under the influence of historical, natural law school, when the emergence of a conflict law situation was stated, connected with the possibility of the state intervention in the legal sphere of autonomy of a person as a legal subject. Liberal model of property rights is formed, which is based on the acceptance of private ownership as a natural law and a humanitarian value.

The later unified civil codes of France (1804.) and Germany (1896.) substantially completed the existing concepts of property rights and other proprietary rights [7, 27]. The French Civil Code among the main types of proprietary rights determines the property rights, the right of usufruct, the right of use and residence, servitude rights, different varieties of bails.

Since the middle of the 19th century liberal conception of property rights based on the principle of balance between public and private interests has transformed into the model, which is called in the literature as social-oriented.

In the Civil Code of the Republic of Kazakhstan the relations of property and other proprietary rights are governed by the rules and the provisions of Section 2 «The property rights and other proprietary rights.» The concept of the property rights is given in the most general form: property right is a right of a subject, which is recognized and protected by the legislative acts, in his sole discretion to possess, use and dispose of the property belonging to him. Accordingly, the content of the triad of property rights are disclosed. The articles 191-195 of the Civil Code of the Republic of Kazakhstan differentiate the types of property: private property as the property of citizens and non-governmental entities and their associations; state property rights in the form of republican and communal property; state property rights of land and other natural resources; property rights and other proprietary rights to housing; the rights of non-owners: 1) the right of land use; 2) the right of economic management; 3) the right of operational management; 3-1) the right of limited use of someone else's target property (servitude); 4) other proprietary rights, which are stipulated by the Civil Code of the Republic of Kazakhstan and other legislative acts (e.g. servitude, the subsoil use right, the right of temporary use of land, which is in a private property, bail). To the proprietary rights, the standards of property rights are applied, if other standards are not provided by law or are not contradicted to the nature of the property law.

Modern researchers of CIS countries are trying to raise to the macro level the idea of the need for a more specific definition of the logical boundaries of legal concepts - such a necessity is determined by the establishment and management of new social and economic foundations through legal instruments. So, as stated, the erosion of the concepts and definitions leads to their devaluation, the loss of cognitive value as well as practical meaning [8, 241]. Among the legal institutions, which need better definition of the concept and features, the institution of property rights and other proprietary rights are included. Despite a great number of attempts to define the property rights, property law, its general standard is achieved neither in the science of civil law nor in the current legislation. The most detailed definition of property rights as a conglomeration of its features is shown in a scientific classification of Y.A. Sukhanov [9, 7, 142-146]. In general, the «category of proprietary rights covers, firstly, the property rights - the most widespread in terms of competences property law ... Secondly, it includes other limited (compared with the content of the property rights) proprietary rights « [3, 309-310].

Thus, the institution of property rights in the process of integration of the countries has been separated from the framework of national law and has derived its consolidation in the international legal acts. In the European law main (basic) standards of property rights have been developed, the study of which has led to the conclusion that in the international law the concept of values of property rights is accepted. Specificity of the concept of values is shown in the following features: equality of subjects of private property, distributing of the property rights to the objects, that have traits of economic value and cash flow, regardless of material or nonmaterial nature, the range of the powers of the owner, the existence of an indefinite number of passive obligations owners, as well as an assignment to the state of additional active duties to ensure the property rights.

The definition of property rights in the Republic of Kazakhstan has the same international legal concept of the Institute for the basic overlap positions. However, we should pay attention to the principle character of these specifics. If the European model of the property right is based on the value approach, the model of Kazakhstan is based on the proprietary-legal concept of property rights with its traditional triad concept of proprietary rights to possess, use and dispose of property belonging to the subject.

International legal regulation of standards and provisions of the property rights

International legal standards of property rights protection as a universal value are included into many international legal acts of human rights. Problems of their application and interpretation in the process of development and adoption of international legal acts go out of the frame of the domestic regulation and cease to be the exclusive jurisdiction of the states, obtaining the scale of the international interest. It is logical that the powers of interpreting and applying the standards and provisions of international legal acts, containing the standards of legal regulation of property rights and their protection, are passed to international authorities. Consequently, the modern practice of protection of property rights is carried out both at the national legal and the international legal levels. It is stated in the literature that «the general tendency in the system of protection of property rights of foreign persons is the gradual replacement of the national mechanisms (guarantees) by the international protection mechanisms» [10, 6].

The doctrinal sources contain elaboration of problems of international legal regulation of the property rights protection in the international legal acts in the context of their interpretation and application. Classification of international legal acts, depending on the scope, universal and regional, is generally accepted. Historical and legal sources of the international law indicate that the formation of the institute of international legal protection of property rights at the universal level has its own specifics. The main feature lies in the fact that legal regulation of property relations is carried out taking into consideration the specific sphere. Here we talk about the international legal regulation of the protection of property rights issues in the specific groups of relations - in the period of armed conflict in respect of the special status of subjects (refugees, stateless persons, women, the disabled and others). Also we should highlight earlier conventional sources, containing provisions on the protection of property rights - The Hague Conventions of 1899 and 1907, which approved the principles of inviolability of private property during the armed conflict and have got subsequently the development in the provisions of Geneva Conventions of 1949. Undoubtedly, the earlier international legal acts are of great importance for determination of the sources of international legal regulation of property rights and their protection, among them are - the Magna Carta of 1215, the French Declaration of the Human and Citizen Rights of 1789. Magna Carta for the first time accepted the property right of a free man, coupled with the need to protect this right, thus having formed its fundamental basis. The French Declaration proclaimed that the right of property is inviolable and sacred.

The list of universal international legal acts of the UN system, comprising the provisions of property rights protection, opens with the Universal Declaration of Human

Rights and Fundamental Freedoms of 1948. The list also includes the Convention on the Status of Refugees of 1951, the Convention on the Status of Stateless Persons of 1954, the International Covenant on Civil and Political Rights of 1966, the International Covenant on Economic, Social and Cultural Rights of 1966, the ILO Convention concerning Indigenous and Tribal Peoples, leading the tribal lifestyle in independent countries, the International Convention on the Elimination of all forms of racial discrimination of 1965, the International Convention on the Elimination of all forms of discrimination against women of 1979, the International Convention on the protection of the rights of all migrant workers and members of their families of 1990, Declaration of Social progress and development of 1969, the Declaration on the Rights of Persons with Disabilities of 1975 and other internationally legal acts.

Thus, as international practice shows the institution of property rights in the modern period has been subjected to the substantial transformation: the range of issues, concerning the legal regulation of the institution and crossing the border of domestic jurisdiction of states, has become more extensive. Doctrinal sources and international legal acts indicate that the property right is approved in the field of international legal regulation. In the literature the following fact is convincingly proved: «for the right of property the feature of absoluteness is no longer characterized by the extent to which it is admitted in the classical liberal model ... there are significant changes in the structure of property rights, the owner credentials, there are new types of property ...". In general, there is the evolution of the institution of property rights towards its broader understanding, which is reflected in the international acts, in the practice of international Judicial authorities, particularly, in the practice of the European Court of human rights and in the international legal doctrine «[10, 4]. However, the statement, that the doctrine still cannot adequately describe and explain all the complex interactions of relations of participants of property relations and offer the legislator effective legal means to resolve them, is true [11, 6].

International and regional mechanisms of the property rights protection

In addition to the universal means of property rights protection, international and regional mechanisms of the property rights protection are also efficient means. These mechanisms in the international law are presented as regional and international treaties and relevant international judicial institutional entities, whose activity is aimed to the ensuring and protecting of human rights. The most expressive, in our point of view, are the provisions concerning regional and international treaties, governing the protection of property rights, and the corresponding practice of the international courts: the 1stArticle of Protocol №1 to the European Convention on Human Rights and Fundamental Freedoms of 1950 and the case law of the European Court of Human Rights; the 21stArticle of the American Convention on Human Rights of 1969 and the case law of the Inter-American Court of Human Rights; the 17thArticle of the Charter of Fundamental Rights of the European Union and the case law of the EU Court of Justice; Paragraph 3 of the 13thArticle and the 14thArticle of the African Charter on Human and Peoples' Rights of 1981 and decisions (reports about the facts) of the African Commission on Human and Peoples' Rights; the 26thArticle of the Convention of the Commonwealth of Independent States on Human Rights and Fundamental Freedoms of 1995; the 31st Article of the Arab Charter of Human Rights of 2004.

The most significant practice is the practice of the European Court of Human Rights, which has clarified and extended the notion of property, meaning and significance of the institution of property rights protection. The 1stArticle of Protocol №1 of the European Convention on Human Rights of 1950 guarantees the property rights, based primarily on the principle of respect of property: «Every natural or legal person is entitled to the respect of his possessions". Further, this article regulates the standards of eviction of property, which is possible in the strict compliance of certain conditions: «no one can be deprived of his possessions, except in the public interest and in terms of the conditions, which are provided by law and

by the general principles of international law». The third standard of article lies in the content of the second paragraph: «The preceding provisions can not detract the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties» [2, 266].

Legal regulation of the subjective property rights is based on the international standards that have been formed in the process of applying of a mandatory for European States Article 1 of Protocol №1 of the European Convention on Human Rights of 1950 Property Protection in the European Court of Human Rights. The development and adoption of international legal regulation of property rights standards contributes to harmonization of national legal systems, and unification of the regime of property rights in the modern period.

The basic international standards of property rights protection are incorporated in the content of the fundamental principles of the European Convention on Human Rights: the rule of law, the principle of balance between public and private interests, and the principle of judicial control. The principles above are common to the national and international legal systems; they are inherent to the law as a social regulator [10, 123]. The following standards are reasonably included into the complex of basic international regulatory standards: the principle of autonomy of the concept of property rights, the principle of legality, the principle of legitimate aim interference into the property rights, the principle of proportionality of the interference into the property rights to the aim pursued. [12, 14-15].

The rule of law does not allow a legal vacuum - social relations are subjected to the legal regulation that meets the requirements of the rule of law (provided by the law), accessibility and foreseeing ability, legal certainty of the established rules of conduct, and efficiency of the guaranteed subjective rights.

In the doctrinal sources it is proved that «from the point of view of the conformity of the objectives and results, the legal regulation must satisfy the requirement of balance of public and private interests. This requirement specifies the limits of intervention in the private relations that arise from the relationship of the state and civil society: 1) the state may restrict the right of property in the public interests, but 2) the public interests should not overwhelm the interests of individuals or neutralize them, and 3) an individual should not be imposed with an excessive burden as a result of restriction of property rights» [13, 94]. International court can assess the activity of all authorities in the constitutional system of the power separation. In this case the court takes into account forms of intervention: deprivation, control measures (and others), as well as other factors such as socio-economic situation, position of the property owners, the taken procedures, terms, during which restrictions are applied. Depending on the complex of conditions, the «requirement of the balance of interests will imply a differentiation of legal regulation under the specific factual circumstances» [13, 94]. A great emphasis is attached to the deprivation of property, which takes place only on the legal grounds [14, 527]. There is a trend of transition from general customary law of State responsibility to the contractual regulations and other special mechanisms: compensation issues are resolved at the level of bilateral treaties, the resolution of disputes by international arbitration has the priority, and insurance against commercial risks is carried out [15, 778].

Judicial control contributes to the ensuring of the rule of law and the proper level of balance of interests. Judicial control is a function, which is realized by the national courts and the judicial authorities of international scope for the protection of subjective rights in the specific cases. The judicial authorities in the modern period of the development of the international community are raised to the rank of control subjects, ensuring its legitimacy. The result of judicial review is the imposition of obligatory act of justice, called for the legal resolution of the dispute between the parties [16, 188].

The mechanism of action of judicial control in the international law is conditioned by the presence in the subject, the right to access to the court, the right to a fair trial, due process guarantees and a binding judgment decision (the 7th and 28thArticles of the Universal Dec-

laration of Human Rights of 1948 [1, 259, 263] and the 6thArticle of the European Convention on Human Rights of 1950 [2, 83]). Thus, the property rights are provided from the position of an integrated approach to the legal regulation of this institution. Analysing the problem of property rights protection in the context of the European Convention on Human Rights of 1950, the ratio of the 1stArticle of Protocol №1 and the 6thArticle of the Convention should be emphasized as binding interdependent parts of the internationally legal standards of property rights regulation. In the practice of the European Court of Human Rights the trend is formed and approved according to the consideration of a particular dispute between an individual and the state, and all efforts are aimed at the protection of the individual by extending the scope of the 6th Article of the Convention. It should be noted that the scope of the 1stArticle of Protocol №1 and the 6thArticle of the Convention coincide with rare cases of controversy exceptions when public element is completely dominated. The need to consider the public interest in the restriction or limitation of judicial control occurs when the subject of the dispute is the issue of the payment of taxes, or in accordance with principles of international law (judicial immunity of the state, international organization).

Conclusion

Having emerged in the archaic times, the concept of property rights in the historical retrospective was subjected to modernization and was transformed into the hypostasis of different models: elementary, branched property, liberal, and social-oriented.

The analysis of the historical and legal development of the institution of property rights leads to the conclusion that in the process of integration of the countries this institution has been separated from the framework of the national law and derives its consolidation in the international law acts. The research of standards of property rights developed in international law, particularly in the European law, provides the basis to the conclusion that in the international law axiological concept of property rights has been accepted based on the equality of subjects of private property, distribution of the property rights to the objects that have traits of economic value and cash flow regardless of their material or nonmaterial nature, the range of the powers of the owner, the existence of an indefinite number of passive obligations of owners, as well as an assignment to the state of additional active duties to ensure the property rights. If the European model of the property rights is based on the value approach, the model of Kazakhstan is based on the proprietary-legal concept of property rights with its traditional triad concept of proprietary rights to possess, use and dispose of property belonging to the subject.

In the modern doctrine of property rights and the practice of the European Court of human rights the basic international standards of legal regulation of property rights are determined: the principle of the rule of law , the principle of balance between public and private interests, the principle of judicial control, the principle of the autonomy of the concept of property rights, the principle of legality, the principle of legitimate aim interference into the property rights, and the principle of proportionality of the interference into the property rights according to the aim pursued.

Thus, it can be summarized: in the modern period one of the most actual trends in the doctrine of property law and international jurisprudence is the development of the international legal institution of protection of property rights in a two-pronged way - as an institution of international law of human rights and as a factor of modernization of the National Institution of property rights.

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