

CONSTITUTIONAL GUARANTEES OF THE INVOLABILITY OF PROPERTY RIGHTS ON THE EXAMPLE OF UKRAINE, POLAND AND GERMANY

GARANTÍAS CONSTITUCIONALES DE LA INVOLABILIDAD DE LOS DERECHOS DE PROPIEDAD EN
EL EJEMPLO DE UCRAÑA, POLONIA Y ALEMANIA.

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Abstract: In the course of the modern state building processes, European integration of Ukraine, as well as negative events unfolding as a result of Russia's armed aggression, the property right as one of the fundamental constitutional rights is experiencing restrictions and transformations. The purpose of the scientific research is to highlight the content of the guarantee (principle) of the inviolability of property rights, and how they are embedded in the Fundamental Laws of Ukraine, Poland and Germany. The following general and specifically legal methods of scientific knowledge form the methodological basis of the study: the system-structural method, the method of comparison and logical-legal method. The analysis of constitutional

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guarantees regarding the inviolability of property rights on the example of Ukraine, Poland and Germany was conducted in the article. According to the results of the conducted research, it is proposed the following separation of the guarantees regarding the inviolability of property rights stipulated by the constitutions guarantees of legislative consolidation of rights and procedures; immediate principles and guarantees of effectuation of the property rights; guarantees of administrative support; guarantees of protection and defense of the property rights. Significance of results and the prospects for further research. The proposed classification makes it possible to more widely define the constitutional guarantees of the property rights, which also makes it possible to provide the legal protection to a wider range of public relations regarding the property.

Keywords: Comparative law, constitution, legal protection, normative consolidation, normative regulation.

Resumen: *En el curso de los procesos de construcción del estado moderno, la integración europea de Ucrania, así como los eventos negativos que se desarrollan como resultado de la agresión armada de Rusia, el derecho de propiedad como uno de los derechos constitucionales fundamentales está experimentando restricciones y transformaciones. El propósito de la investigación científica es resaltar el contenido de la garantía de la inviolabilidad de los derechos de propiedad, y cómo están incorporados en las Leyes Fundamentales de Ucrania, Polonia y Alemania. Los siguientes métodos generales y específicamente jurídicos del conocimiento científico constituyen la base metodológica del estudio: el método estructural-sistémico, el método de comparación y el método lógico-jurídico. El análisis de las garantías constitucionales con respecto a la inviolabilidad de los derechos de propiedad en el ejemplo de Ucrania, Polonia y Alemania se llevó a cabo en el artículo. De acuerdo con los resultados de la investigación realizada, se propone la siguiente separación de las garantías relativas a la inviolabilidad de los derechos de propiedad previstas en las constituciones: garantías de consolidación legislativa de derechos y procedimientos; principios y garantías inmediatas de efectivización de los derechos de propiedad; garantías de apoyo administrativo; garantías de protección y defensa de los derechos de propiedad. Importancia de los resultados y las perspectivas de futuras investigaciones. La clasificación propuesta permite definir con mayor amplitud las garantías constitucionales de los derechos*

de propiedad, lo que también posibilita brindar la protección jurídica a una gama más amplia de relaciones públicas en torno a la propiedad.

Palabras clave: *Derecho comparado, constitución, protección legal consolidación, regulación normativa.*

Summary. *I. Introduction. II. Materials and Methods. III. Results and Discussions. IV. Conclusions. References*

I. INTRODUCTION

The property right as one of the fundamental constitutional rights is under the constant attention of the legislator and scientific community. Any changes in the organization of power (for example, the formation, reorganization of courts, police reform) or socio-political environment cause a change in approaches to determining the content and scope of the property right. The problem of guaranteeing and protecting the property rights is particularly relevant at the present time, since this fundamental right is experiencing the greatest violations and restrictions caused by the Russia's armed aggression against Ukraine. The abstract-general way of presenting the provisions of the Constitution, as well as their status as "norms of direct action" allows actively working with the content of property right, as well as defining and expanding it, or in certain cases, limiting its content. This became especially relevant with the Ukraine's gaining of momentum of the European integration in 2022, as well as recognition of the precedent effect according to the legal positions of the Supreme Court and the Constitutional Court of Ukraine, in particular within the framework of a constitutional complaint (Maidanyk, 2013; Nikolenko, 2021).

Given the above-mentioned, the purpose of the study is to highlight the content of guarantees of the property right's inviolability, as they are enshrined in the Constitution of Ukraine (1996); the Constitution of the Republic of Poland (1997); the Basic Law for the Federal Republic of Germany (1949). The Constitutions of Ukraine, Poland and Germany, as well as acts containing the interpretation of the norms of legal laws can be conditionally considered as the object of the study. The following tasks are proposed for solution:

1. Analysis of ways to consolidate the provisions relating to ensuring the property right in the Fundamental Laws of Ukraine, Poland and Germany.

2. Coverage of the guarantees established for the functioning of the institution of property.
3. Classification of guarantees regarding the inviolability of the property rights, considering the systematic interpretation of the norms of the Constitutions and constitutional acts of Ukraine, Poland and Germany.
4. Study of legislative and judicial approaches to the interpretation of the content of the Constitutions' provisions in terms of guaranteeing the inviolability of the property rights and establishing the legal significance of such forms of interpretation of the Fundamental Laws.

Scientific and theoretical research on the issues of legislative regulation of the institution of the property rights was carried out by the following scientists-constitutionalists: Ivershenko (2006), Kirichenko (2018), Gaevskaya (2016), Dakhova (2018), Kozlovska (2021), Orlyuk (2016), Kopylenko (2019), Sovgyrya and Shuklina (2019), etc., as well as specialists from the other branches of law: Gorobets (2018), Myronenko (2019), Soroka (2019), Khutor (2020) and others. The publications of the following individual authors from other countries are also interesting: Apolte (2015), Nawiasky (2021), Jarosz-Zukowska (2014; 2018) and others.

Despite the large number of publications in this area, the comparative studies have not yet received the necessary attention. The individual studies can be considered an exception, for example the dissertation research by the following scientists: the research by Dobrev (2021) regarding the establishing of compliance with the practice of the European Court of Human Rights of the constitutionally defined content of the triad of the owner's rights, the research by Ozimok (2020) regarding the comparison of constitutional regulation of the right to land in Ukraine and other countries, the research by Bocharova (2020) concerning the constitutional content of the intellectual property rights in the constitutional texts of the world countries, the developments by Savchenko et al. (2021), in which the authors conduct a comprehensive comparative study of the constitutional regulation of the private property rights in Ukraine and the European Union (EU) countries, as well as research by Kirichenko (2018) regarding the comparative analysis of the content of constitutions of the states-representatives of the Romano-Germanic legal family with the Basic Law of Ukraine (1996), and research by Gorobets (2018) regarding the establishing of the compliance of the Constitution of Ukraine with international standards

defined by the practice of the European Court of Human Rights. At the same time, the classifications of constitutional guarantees (principle) of the inviolability of property right have not been developed, and the existing classification divisions are either developed within the framework of sectoral sciences, regardless of constitutional provisions, or they are based on the legislation that has undergone reforms due to the European integration aspirations of Ukraine (Sikimić, 2022).

Positive results, which can be obtained through the comparison and contrasting, allow moving towards the integration and harmonization of the Ukrainian legislation with legislation of the developed European countries. Therefore, a comparison of constitutional provisions regarding the guarantees (principle) of the inviolability of property right is relevant research that will allow obtaining the new scientific results that can be fruitful for further improvement of the Ukrainian science of constitutional law and legislative activity.

II. MATERIALS AND METHODS

The general and special legal methods of scientific cognition are the methodological basis of the proposed scientific research. Given the fact that the proposed article is related to the comparative studies of the Fundamental Laws of Ukraine, Poland and Germany, the work is based on a comparative-legal method of scientific cognition. The authors of the work compare the constitutional provisions of the property rights (and powers derived from it) in the Constitutions of Ukraine (1996), Poland (1997) and Germany (1949). The corresponding comparison was carried out in several stages:

1. First, it was compared the constitutional legal norms that directly regulate the concepts, forms, content of the property right and its subjects.
2. The legal norms of constitutions that indirectly regulate the interrelation of property and derivative rights (in particular, the emphasis is on the powers of competent authorities regarding the adoption of acts for legislative consolidation, interpretation and regulation by means of applying these norms to relations of property and competence regarding the protection of property rights and derivative rights by the law enforcement and judicial authorities).
3. The authors analyzed the advantages and disadvantages of constitutional norms that devoted to the property right and the relations arising from it through their comparison with the

corresponding provisions of the constitutions of Ukraine, Poland and Germany.

4. It was conducted an analysis of judicial practice regarding the establishing of the compliance of regulatory legal acts with the constitutional guarantee (principle) of the inviolability of property rights (through the prism of powers regarding the creation of a precedent by the Constitutional and Supreme Courts).

The publication is also based on a system-structural method, which has helped determining the place of the property right in the structure of constitutional rights and freedoms. With the help of the logical-legal method, it was conducted the analysis of the content of norms enshrined in the Fundamental Laws of other states and Ukraine that regulate the guarantees for realization of the property right. Methods of formalization and generalization made it possible to group the provisions of the Fundamental Laws and highlight the classification divisions. The formal-logical methods, in particular, deduction and induction, are used in the article when formulating conclusions regarding the constitutional and legal regulation of the property rights in Ukraine and in other countries. The functional method is applied in terms of studying and analyzing the case law of the Supreme and Constitutional Courts regarding the interpretation and application of constitutional provisions for the protection and defense of human rights to property. When writing this article, other methods of scientific cognition were also used, however, given their slight influence on the fulfillment of goals set by the study and the formulation of the author's conclusions, such methods will not be additionally covered and analyzed.

III. RESULTS AND DISCUSSION

According to the current Constitution, the modern science of constitutional law includes a significant number of terms related to the legal protection and defense of the property rights. First of all, this is about the following concepts: "guaranteeing the property right", "guaranteeing the inviolability of the property right", "the principle of inviolability of the property right", "guaranteeing the principle of inviolability of the property right" and so on. The above-mentioned concepts, undoubtedly, indicate a considerable attention to the institution of property, and therefore, the need for constant systematization of the obtained scientific results. This process has quite practical significance in addition to the theoretical one:

- a) The Constitution norms are the norms of direct action that requires the achievement of unity in their application.
- b) The current sectoral procedural codes provide for the possibility of using scientific conclusions on the application of the rule of law, formulated by the Scientific Advisory Council under the Supreme Court.
- c) The civil and economic process received innovations in the form of possibility of using the conclusion of an expert in the field of law as an auxiliary means.

In addition to other basics, this conclusion is made based on the doctrinal understanding of application of the analogy of law and the analogy of right, generally accepted interpretations and recognized scientific achievements in a foreign state. Thus, the foreign legislation and practice of its application, as well as corresponding doctrine are important for the formulation of the Ukrainian constitutionalism. The legal provisions regarding the ensuring of inviolability of the property rights in the Constitution of Ukraine (1996) are close to the content.

The Constitution of the Republic of Poland (1997) provides for special legal protection of private property rights (Articles 20, 21, 46, 64), intellectual property rights (Article 73), it is provided the special guarantees for securing property rights (also other rights in rem) for housing (Articles 50, 75). In addition to the above-mentioned, each basic law also provides the guarantees for functioning (for example, the power to adopt normative acts, law enforcement acts and law-interpreting acts, registration actions on things and rights to them, etc.) and protection of the property rights by the judicial and law enforcement agencies, or by the Commissioner for Civil Rights (human rights). The constitutions also provide for the principles of compensation for harm, restrictions on the property rights during a state of emergency, it is also established the special mechanisms to prevent violations of the property rights, for example a special procedure for introducing legislative changes to the Constitution in the relevant part, the adoption of new acts that affect the content and scope of the property rights, ratification of international agreements, etc. (Bartczak, 2022).

The constitutional right of property has a rather ramified method of enshrinement in almost all Constitutions. This is about both the text of the main laws and the results of their official interpretation. For example, the Basic Law for the Federal Republic of Germany (1949) provides for separate regulation of the property rights of the religious and commercial organizations, author's right and publishing right (the author's and publishing right is in the context of intellectual property rights) (Articles 14,

73). Particular attention is also paid to the regulation of property rights of the municipalities and the Federal government (also the federal property), in particular in the context of guarantees of their legislative consolidation. Some guarantees are also provided for the property rights to housing, land, natural resources and means of production (Articles 13, 15), etc. Special attention is paid to the so-called "right of recourse" or, which is a more accurate translation, the "right to return" things or rights to the previous owner, or to another person specified by the law (Article 134). At the same time, the power of the Federal Constitutional Court of Germany reserves the central place to create the case law regarding the proper application of the Constitution provisions (in fact, this is about the right of official casual interpretation) (Article 93).

According to the stated above, it is obvious that the constitutional acts of mentioned countries contain the legal guarantees of inviolability of the property right of different content and the degree of concretization. In order to achieve scientific validity of the results of the proposed study, it is advisable to classify the relevant constitutional guarantees of the inviolability of property rights, as they are enshrined in the acts of Ukraine, Poland and Germany. The expediency of implementation of classifications as one of the most effective methods of studying human rights is highly valued in the science of constitutional law. In this context, Kirichenko (2018) highlights in his dissertation the main methodological approaches to the classification of constitutional human rights: international-normative (provided for by international acts); national-normative (enshrined in the Fundamental Laws of continental Europe); conceptual-authorial (positions of authors). The selection of the first two criteria can be considered a conditional concept in a certain way, since the general international principles just get their further development in the constitutions of specific states and, conversely, the recognition of a certain right by many states entails its consolidation at the international level. It is considered advisable to apply the methodological approaches developed Kirichenko (2018) to conducting the classification of constitutional human rights in a narrower area – a single constitutional property right.

First, let's pay attention to the already existing classification criteria, which are directly or indirectly applicable to the institution of the property rights. In general, to determine the place of property rights among other constitutional rights, the following classification criteria are used: in essence, in subject (or content), by entities, by age, by genesis, by the nature

of formation, by the order of inclusion in the Constitution, by the degree of absolutization etc. (Savchenko et al., 2021; Mura and Hajduová, 2021). In the scientific literature, special classification criteria have also been partially developed, dedicated to the individual sub-institutions of the property right. Thus, Besshtanko (2002) has classified the European constitutions based on their relationship to the right to private property. The author singled out the following criteria, in particular:

1. Depending on the depth of revealing the concept of private property rights (according to this criterion, constitutions are divided into those that allocate powers in the right of private property, and those that do not allocate them). According to the content of the constitutional acts that have been analyzed, it follows that only the Constitution of Ukraine (1996) (Article 41) provides for the allocation of the owner's power. The Constitution of the Republic of Poland (1997) contains a distinction between the property right and other property rights (Article 64) (Savchenko et al., 2021).

2. According to the degree of detailing of the constitutional and legal regulation of property relations:

2.1 Constitutional acts that regulate both the material and procedural aspects of the implementation of the right of private property.

2.2 Constitutional acts that contain only a brief mention of the property right, without revealing the content of this concept. As it turns out, in the context of this study, this criterion will not allow obtaining the significant scientific results, primarily due to the fact that the considered acts have been developed within the framework of the same legal family and contain a similar approach to the normative consolidation of the property right (Savchenko et al. 2021).

In the context of comparing the constitutional acts, Kirichenko (2018) has also considered the institute of the property right, however, the author does not offer independent conclusions in this part of the guarantee. The legal theorist Ivershenko (2006) also offered an important classification. In its expanded form, it looks as follows (according to the criterion of approach to the regulation of the right to private property):

The constitutions only guarantee the right to private property and stipulate that expropriation is possible only in the public interest, and subject to appropriate compensation.

Certain issues of the property right to land and the features of realization of the relevant right by foreigners are additionally regulated in the text of the Constitution (thus, Constitution of the Republic of Poland (1997) in Article 46 provides that confiscation is possible only in cases

specified by the law and solely on the basis of a court decision; similar to the Constitution of Ukraine (1996)).

The basic law also contains a solution to the issues of the property rights to the means of production, the objectives of agricultural policy and the features of the expropriation procedure (Basic Law for the Federal Republic of Germany (1949), for example, it contains a description of return of the German Reich property to the ownership of the Federation) (Savchenko et al., 2021; Ivershenko, 2006).

Researcher Bocharova (2020) draws parallels between this right and other constitutional rights, by analyzing the right to intellectual property. The scientist comes to conclusions regarding the presence of both general and special features of the right to intellectual property. The author relates the right of intellectual property to the fact that creative activity is the basis of this right, which is not an object of legal regulation, as well as the fact that the constitutional right to the results of creative activity is associated with the constitutional right-principle of freedom. The latter concept is the subject of independent constitutional regulation, it has its own special guarantees of implementation and protection (Pakhomova et al., 2023). Thus, according to the above-mentioned, it is possible to distinguish the following criteria:

1. In terms of compliance with the concept of "constitutional right":
 - a) Contain the general features of any constitutional right.
 - b) Contain additional, special features.
 - c) Do not correspond to the content of the concept "constitutional right", but they are provided for in the constitutional act.

Bocharova (2020) considers the following property rights as the signs of any constitutional right:

- a) Those that have supremacy.
- b) Those that are the norms of direct effect and have the guaranteed protection.
- c) Those that are based on the constitutional principles of equality, cannot be limited or canceled.
- d) Those that belong to a person from the moment of birth.
- e) Those, whose level of quality depends on the level of socio-economic, political, cultural and other development of society and the state.

The mentioned separation is relevant in case of its application to the property right as "the rights of the person and the citizen". However, when it comes to the specific institutions of the right of state property, the municipal property, the property rights of people and the procedures for acquiring or depriving the corresponding right, then the study proposed by Bocharova (2020) is not applicable.

In this context, the powers to interpret constitutional norms and the proceedings on constitutional complaints are of great interest. According to the mentioned procedures, it is observed the occurrence of a casual, often broad interpretation of the legal norms of the fundamental laws. For example, the case-law of the Federal Constitutional Court of Germany in the Proceedings on constitutional complaint 2 BvR 403/02 (2002) made a legal conclusion about the possibility of applying a special constitutional procedure for the return of Reich assets to the previous owner on the basis of the first sentence of the Article 14 of the Basic Law for the Federal Republic of Germany (1949) (section 1 "Basic rights"). The right of return is governed by the Article 134 of the Basic Law for the Federal Republic of Germany (1949). According to the content of this article, the property of the German Reich becomes the property of the Federation. The constitutional complaint raised the issue of returning the lands to the private property of the citizens that were transferred to the construction of a military garrison of the German Reich. The Federal Constitutional Court (1951) has concluded that the right of return does not fall within the concept of property provided for in the Article 14. It acts as a public law claim, which is not predetermined in the civil or administrative law, but it is constituted by the Constitution. Despite the position that the right of return does not apply to individuals and legal entities of private law, the Federal Constitutional Court (1951) recognized such a right for the municipalities that act as the owners of property (this is about the municipalities that implement the powers of the owner of land plots (as subjects of civil/economic legal relations).

2. By the presence/absence of connections with other constitutional rights:
 - a) Have significant connections with other constitutional rights.
 - b) Do not have significant connections with other constitutional rights.

The analyzed constitutional acts do not directly indicate the connection between the content of different constitutional rights, but it becomes visible according to their analysis (for example, the intellectual property right has the corresponding connections with freedom of creativity as an element of the constitutional system of rights and freedoms

(Bocharova, 2020; Krawczyk, 2022). Gaevskaya (2016) raised the issue regarding the difference between "guarantees of the inviolability of property rights" and "the principle of inviolability of the property rights", however, the author did not make a distinction. Ukrainian legal science only terminologically distinguishes the concept of classification of the constitutional human rights, in particular in relation to the property rights and guarantees (inviolability) of the property rights. According to the most authors, the guarantees act as the means of ensuring any constitutional right, in particular the property rights, as well as determine its content and scope. It is also possible to highlight the specifics of using the certain terms in a test form. Thus, in one case, this is about the guarantees for ensuring constitutional rights and freedoms, but in the other case, this is the about guarantees for protection, defense or implementation of constitutional law (Bocharova, 2020; Dakhova, 2018). The phrase "rights-guarantees" seems very interesting (Bocharova, 2020). The corresponding phrase allows concluding that each guarantee represents a certain and primarily procedural right (respectively, an obligation) (Ozimok, 2020).

In general, when the term "guarantees" is used, it primarily refers to the obligations of the state in a certain area. Modern legal literature divides the guarantees into two groups: general legal and special. The first group means that the state has assumed an obligation to guarantee the entire range of human rights, including the property right. Special guarantees are dedicated to the performance of legally established functions to ensure the property right, the organization of activities of state agencies in this area, the establishment of special mechanisms for decision-making process, registration, acquisition, sale, termination of the property right through the administrative and judicial procedures. Recently, some researchers have also distinguished the additional specific guarantees. For example, Orlyuk (2016) writes about the guarantees to ensure respect for intellectual property. Constitutional guarantees for the protection of property rights are not systematized in the context of their enshrining in the constitutions of the countries under consideration. They are located in different sections of constitutional acts and have different legal focus. For the most complete coverage of the results of this study, all the guarantees related to the constitutional right of property will be divided into four main groups:

Guarantees of legislative consolidation of rights and procedures;
direct principles and guarantees for realization of the property rights;

guarantees of administrative support; guarantees of protection and defense of the property rights.

The first group includes the guarantees of legislative consolidation of rights and procedures related to the institution of property rights. This group covers the powers of the legislative branch of government on the normative consolidation of property rights in the Constitution, the status of individual objects of property rights, the ratification of international agreements, the issuance of acts of official interpretation of the fundamental law on relevant issues of the application of constitutional norms, this also includes the legislative regulation of the right to referendum. Within the framework of this group, it should also be considered the legislative regulation of the procedure for a sale, registration and termination of the property right. In the context of this criterion, the Constitutions of Ukraine (1996), Poland (1997) and Germany (1949) provide for the following legal provisions:

1. Regulations that establish the status of property rights, its objects, types and powers (parts 1 and 2 of Article 13, Articles 26, 27, 30, 41, 47, 54 of the Constitution of Ukraine (1996), Articles 37, 50, 73, 75 of the Constitution of the Republic of Poland (1997) (legal status of the objects of property rights of the Ukrainian people and entities exercising the powers of the owner, guarantees of the property rights to housing and intellectual property, the right of foreigners and stateless persons to property in Ukraine). Accordingly: Articles 13 of the Basic Law for the Federal Republic of Germany (1949) (the property right to housing), and 134 (special constitutional procedure for the return of Reich assets to the previous owner).
2. The constitutional norms that determine the legislative regulation of the institution of property, are determined by the authorities that are competent to carry out regulatory regulation in this area (Article 9, part 3 of Article 22 of the Constitution of Ukraine (1996), Article 89 of the Constitution of the Republic of Poland (1997) (status of international and domestic regulations), Article 25 of the Basic Law for the Federal Republic of Germany (1949), part 3 Article 22, Articles 85 and 101 of the Constitution of Ukraine (1996), Articles 118, 141 of the Constitution of the Republic of Poland (1997) (powers of the legislative authority). Article 1 (3) of the Basic Law for the Federal Republic of Germany (1949) (Norms of the Constitution as the norms of direct action), Article 19 (1 and 2) of the Basic Law for the Federal Republic of Germany (1949) (limitation of constitutional rights), Articles 70, 73, 74 of the Basic

Law for the Federal Republic of Germany (1949) (legislative powers of the lands of the federation).

3. General guarantees regarding the normative regulation of the institution of property (Articles 22, 57, part 4 Articles 41, 58, 64, 92 of the Constitution of Ukraine (1996), Articles 20, 21, 46, 64, 233 of the Constitution of the Republic of Poland (1997) (inviolability of the property rights, special procedures and conditions for its limitation, determination of the content and scope of the property rights exclusively by laws), Articles 3 and 14 of the Basic Law for the Federal Republic of Germany (1949).

The second group under consideration covers the constitutional principles and guarantees for the realization of the property rights. First of all, this should include the constitutional provisions that define general constitutional principles, for example: the principle of universal equality (part 4 Article 13 of the Constitution of Ukraine (1996), Article 33 (1) of the Basic Law for the Federal Republic of Germany (1949)), the constitutional provision "property obliges" (Part 3, Article 13 of the Constitution of Ukraine (1996)), the principle of equality of people in dignity and rights (Article 21 of the Constitution of Ukraine (1996)), the inalienability of the property rights, the inexhaustibility of human and civil rights, the impossibility of canceling the rights and freedoms, including the property right (Articles 22 and 24 of the Constitution of Ukraine (1996)). The last guarantee can be attributed to the first group that has already been considered.

The next group includes guarantees for the administrative ensuring of the property rights. It should include the constitutionally defined powers of public authorities and local authorities acting as the power entity, as well as administrative procedures related to the state regulation of acquiring of changes regarding the termination of the property right. The separate subgroup should include the possibility of involving citizens in the formation of legislation in the field of ensuring the property right (the right of citizens to participate in the management of public affairs, participate in all-Ukrainian and local referendums, the right to elect and be elected to state authorities and local authorities) (Articles 106, 116, 119, 154-159, paragraph 1 of the Section 15 of the Constitution of Ukraine (1996), Articles 125, 202, 203 of the Constitution of the Republic of Poland (1997) (regarding the power of the Supreme Chamber of Control), Articles 20 (2), 33 of the Basic Law for the Federal Republic of Germany (1949)).

The last group is associated with the constitutional establishment of guarantees for the protection and defense of the property rights. The highlighting of the term "protection" is rather conditional concept regarding the fact that this concept covers the ensuring of the property right until the moment of its violation (Kinal, 2022; Nurtas et al., 2020). Accordingly, the powers of state authorities on legislative and administrative regulation can be considered as the protection of property right (Stepanchuk et al., 2016). It is appropriate to include in this group the following:

The powers of judicial and law enforcement agencies to protect the violated property rights and the possibility of obtaining compensation (Article 13 of the Constitution of Ukraine (1996) (ensuring the protection of the rights of the subjects' property rights); articles 55, 59, 124, 127, 131-1, 131-2 of the Constitution of Ukraine (1996), Articles 78, 79, 122, 208 of the Constitution of the Republic of Poland (1997), Articles 19 (4), 95, 103 of the Basic Law for the Federal Republic of Germany (1949), (guaranteeing the protection of property rights through the court, the Commissioner of Ukrainian Parliament for Human Rights (Civil Rights), Constitutional Court/Constitutional Tribunal (Poland)/Federal Constitutional Court of Germany, the Supreme Federal Court, the use of international institutions to protect the property rights);

Guarantees of proper functioning of the judicial system (Articles 125-130 of the Constitution of Ukraine (1996), Articles 175, 186 of the Constitution of the Republic of Poland (1997), Articles 92, 96, 97-101 of the Basic Law for the Federal Republic of Germany (1949)); Guarantees are related to the institution of constitutional justice (interpretation of the texts of constitutions, development of legal precedent, institution of the constitutional complaint) (Articles 147, 150-152 of the Constitution of Ukraine (1996), Articles 183, 188, 189 of the Constitution of the Republic of Poland (1997), Articles 61 (2), 93 of the Basic Law for the Federal Republic of Germany (1949)); guarantees regarding the right to compensation for material and moral damage caused as a result of violation of the property rights (Article 56 of the Constitution of Ukraine (1996), Article 77, part 4 Article 288 of the Constitution of the Republic of Poland (1997), Article 34, 100 (3) of the Basic Law for the Federal Republic of Germany (1949)).

The proposed classification is conditional one to a certain extent, which is primarily due to the fact that the constitutional norms are of a complex nature, but the norms-principles, which have been attributed to the first group of guarantees, receive their concretization in specific guarantees that are distributed in other identified groups. Nevertheless, this method of

distributing guarantees of the inviolability of the property rights has its advantages: based on it, it is possible to trace not only the distribution of general and specific legal guarantees in the texts of constitutional acts, but also to trace the process of their transition from the norms-principles to specific legal prescriptions, which fully correspond to the content of the Constitution provisions as the norms of direct action. There is another positive moment that lies in the fact that it is possible to track both the relationship between guarantees of the same level and inter-level connections, based on the proposed classification.

IV. CONCLUSIONS

The property right as one of the central constitutional rights is under the close attention of the legislator. The constitutional acts of Ukraine, the Republic of Poland and the Federal Republic of Germany, chosen as the object of this study, include a whole range of legal norms of various directions, which regulate the property right directly or indirectly. This concept is due to the fact that the legislative regulation of the property rights, as well as special institutions designed to ensure the effectiveness of such regulation (for example, the institution of the Ukrainian parliament for Human Rights (Commissioner for Civil Rights in the Republic of Poland), the institution of courts of the constitutional jurisdiction, special control authorities, law enforcement agencies and general courts, etc.) and the relevant legal procedures (proceedings on the constitutional complaints, interpretation of texts of the Constitution, development of the judicial precedent, etc.), have received their general reflection in the fundamental laws. The provisions of the fundamental laws of the mentioned states have a heterogeneous and unsystematized presentation of the norms related to the institution of property. None of the analyzed constitutional acts singles out a complete list of the forms of the property rights, its content, subjects, restrictions on implementation, etc.

It has been established that guarantees constitute a significant part of the content of the property right. Depending on the chosen approach, it can be said about different types of guarantees. It is often observed the synonymous use of the concept of property rights and the concept of guaranteeing the property rights in the scientific texts, which is considered the peculiarities of the Ukrainian science. The latter concept is also confirmed by the fact that the term right-guarantee has begun to be used in

the legal literature. Considering the above-mentioned, it can be stated that most of classifications that use constitutional rights, including the property rights, can be understood as classifications of guarantees of the property rights. As part of the study, it was made an analysis regarding the guarantee (inviolability) of the property rights, they are reflected in the fundamental laws of Ukraine, the Republic of Poland and the Federal Republic of Germany. Despite the lack of systematic presentation of the legal foundations of the ownership, it is possible to single out the guarantees of the inviolability of the property rights from the fundamental laws of each of the states under consideration. According to the results of the study, it is proposed the following division:

- a) Guarantees of legislative consolidation of rights and procedures.
- b) Direct principles and guarantees for exercising the property right (including the possibility of restricting the property right through a direct indication of the law, the inviolability of the property right, the triad of owner's powers).
- c) Guarantees of administrative support (especially within the framework of determining the competence of the authorities regarding the management of the property entrusted to them, registration actions, expropriation procedures).
- d) Guarantees for the protection and defense of the property rights (protection of the property rights through the activities of the legal protection authorities and courts, with an emphasis on the powers of the highest judicial agency regarding the consideration of constitutional complaints, interpretation of the Basic Law, establishing the conformity of laws in terms of the constitutional guarantee of inviolability of the property rights, creation of a precedent by the Federal Constitutional Court, Constitutional Courts (Tribunals) and Supreme Courts).

The proposed classification makes it possible to more broadly define the constitutional guarantees of the property rights, which also makes it possible to provide the legal protection to a wider range of public relations regarding the property. Prospects for further research are seen in the detailed coverage of ways to ensure the guarantee of the inviolability of the property rights through the activities of law enforcement agencies and courts. The following concepts can be considered an important addition: comparison of the constitutional principles and guarantees of the property rights in specific constitutional acts and international documents, highlighting the features of the case law of higher judicial instances and courts of constitutional jurisdiction.

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