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THE RESOLUTION OF THE LEGAL CONTRADICTION BETWEEN THE STATICS AND DYNAMICS OF PRIVATE PROPERTY LAW

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The article is devoted to the study of legal tools for the acquisition of property by an illegal bona fide buyer. The fundamental difference of this process is assessed when the transfer of ownership occurs at the moment of receiving the thing from the incomplete alienator, and in the order of implementation of the mechanism of acquisitive prescription. The paper considers aspects of the legal conflict between the static ownership of a non-possessor and the dynamic right of a non-owner. The author justifies the legal position of the legislator to ensure balance in protecting the interests of the owner and bona fide purchaser. A comparative analysis of various scientific concepts aimed at enhancing the protection of the rights of the owner or, conversely, at raising the importance of civil turnover by normative support of a bona fide illegal occupier is made. The author's vision of this issue is presented.

Keywords: *acquisitive prescription, vindication, conscientious purchaser, property relations.*

APLANAREA CONTRADIȚIILOR JURIDICE ÎNTRE STAȚICA ȘI DINAMICA LEGII DE PROPRIETATE PRIVATĂ

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Articolul este dedicat studiului instrumentelor legale pentru achiziția de proprietăți de către un cumpărător legal de bunăcredință. Diferența fundamentală a acestui proces este evaluată atunci când transferul de proprietate are loc în momentul primirii lucrului de la alienatorul incomplet și în ordinea punerii în aplicare a mecanismului de prescripție achizitivă. Lucrarea are în vedere aspecte ale conflictului juridic dintre proprietate astatică a unui neposedator și dreptul dinamic al unui neproprietar. Autorul justifică poziția juridică a legiuitorului pentru a asigura echilibrul în protejarea intereselor proprietarului și a cumpărătorului de bunăcredință. Se face o analiză comparativă a diferitelor concepte științifice care vizează îmbunătățirea protecției drepturilor proprietarului sau în schimb creșterea importanței cifrei de afaceri civile prin sprijinul normativ al unui ocupant legal de bunăcredință. Este prezentată viziunea autorului despre această problemă.

Cuvinte-cheie: *prescripție dobândită, revendicare, cumpărător conștiincios, relații de proprietate.*

РАЗРЕШЕНИЕ ЮРИДИЧЕСКИХ ПРОТИВОРЕЧИЙ МЕЖДУ СТАТИКОЙ И ДИНАМИКОЙ ПРИВАТНОГО ВЕЩНОГО ПРАВА

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Статья посвящена изучению юридического инструментария при приобретении собственности незаконным добросовестным покупателем. Оценено принципиальное различие этого процесса, когда переход собственности происходит в момент получения вещи от полномочного отчуждателя и в порядке реализации механизма приобретательной давности. Рассмотрены аспекты правовой коллизии между статичным правом собственности невладельца и динамичным правом владеющего несобственника. Приведены обоснования правовой позиции законодателя по обеспечению баланса при защите интересов собственника и добросовестного приобретателя. Сделан сравнительный анализ различных научных концепций, направленных на усиление защиты прав собственника или, наоборот, на подъем значение гражданского оборота путем нормативной поддержки добросовестного незаконного оккупанта. Изложено видение автора этой проблематики.

Ключевые слова: *приобретательная давность, vindикация, добросовестный приобретатель, вещные отношения.*

Formulation of the problem. Ukrainian civil law purposefully introduces a mechanism for the exercise of the right to own someone else's property and the

right to protection from violation of such holder ship, including from the owner. In this context, the restoration of the mechanism for applying acquisitive prescription in domestic

legislation was caused by the needs of improving the legal regulation of real material interactions in property circulation; therefore it is positively assessed by most researchers [1, p.



58; 2, c. 152, 159–170]. In the current edition of Ukrainian civil law, this institution is somewhat different in content from legal constructions that ensured the achievement of the same result in previous codifications. It is easy to notice that the legal structure of the commented legal mechanism is quite specific; a person can obtain ownership of another person's property only if all the factors that are part of it and have legal significance are present. As indicated in Art. 344 of the CCU, the right to own property is acquired by a person who has taken possession of the property in the manner established by this norm, and continues to continue to openly and continuously hold it for certain periods.

So in the Ukrainian legal field, along with the application of the mechanism for acquiring own of property when receiving things from an incomplete transferor (Art. 330 of the Civil Code of Ukraine), serious steps have been taken to normatively resolve the issue of transferring property to the holder by acquisitive prescription (Art. 344 of the Civil Code of Ukraine). Moreover, in both cases, the conscientious status of the occupier is decisive; bona fides must be present upon receipt of the property. In other words, the acquirer should not be aware of the illegality of the alienation. The conscientiousness of holding someone else's thing is an internal indicator of the awareness of a certain property condition by the subject himself. Considering himself the legal acquirer of things, knowing the social value of his own personality, he simultaneously recognizes the autonomy of the counterparty and shows respect for him. And just in this way, this subject provides the strength of the material connection created by him. So, the concept of good faith is a manifestation of conformity with respect to the principles of justice, conscious and perceived by a person at the level of individual value orientations [3, p. 96–97].

At the same time, national legislation, unfortunately, does not draw a clear line between the prescription of property and the acquisition of this right immediately with the adoption of things from an incomplete alienator. Article 330 of the Civil Code of Ukraine provides for the latter situation if there is a full package of restrictions on vindication at the time of transfer of property. But, the key requirement for the implementation of such a mechanism is the good conscience of the purchaser at the time of receipt of the goods. Since this design is essentially very close to the other – the acquisition of ownership as a result of prolonged open and continuous holdership of other people's property, it becomes very relevant to clarify the relationship between the two seemingly fairly substantive mechanisms for acquiring ownership: when buying a thing with an incomplete transferor (Art. 330 CCU), and by acquisitive prescription (Art. 344 CCU). Despite a certain external similarity, they are still not the same in essence. Also very interesting and insufficiently studied is the problem of a legal conflict between the static ownership of a non-possessing owner and the dynamic right of a non-owner. Traditionally, in the science of civil law, it was decided to solve it by building the appropriate protective tools – vindication – on the one hand, and vindication restrictions – on the other. Therefore, the important question is whether the existing mechanism of legal protection of these rights of participants in relations is adequate, appropriate and effective?

Research state. The doctrine of the works of such scientists as M.A. Levitsky, G.F. Shershenevich, D.I. Meyer, I.V. Aksyuk, A.K. Butovsky, D.V. Dozhdev, K.I. Sklovsky, G.A. Hajiyevev, T.Yu. Drozdova, A.I. Avlasevich, P.V. Popovich, V.I. Tsikalo, V.P. Makovydevoted to issues related to legal instruments for obtaining property by an illegal occupier of another's property.

In these works, various legal assessments are made of the features of acquisitive holdership institutions that are being studied now. A number of fairly authoritative civilian scientists point to the existence of an exceptional mechanism for obtaining the ownership of the property. Moreover, depending on legal justification, such exceptional methods are associated either with the result of the expiration of the statute of limitations, or with another – bona fide purchase of an item from an incompetent trader. Moreover, these mechanisms are presented as mutually exclusive. In particular, it is indicated that a bona fide purchaser, in case of refusal to the owner of vindication harassment, is able to obtain a property right only by the prescription of possession, another method is not provided for by applicable law [4]. In other words, a conscientious person who has received protection from vindication continues to hold without a title, illegally, and to become an owner requires acquisitive prescription [5, p. 253; 6, c. 69–70]. Other researchers more tolerantly evaluate the legal mechanism for acquiring property in ownership at the time of bona fide receipt of a thing from an incomplete seller, but they also use the institution of prescription acquisitions, giving it zero duration (instant acquisitive prescription) [7, p. 138].

Purpose and objective of the article. The study of this issue and the development of practical recommendations on the real nature of each of the methods of acquiring property is the goal of this article. We consider the above legal approaches not entirely balanced. In fact, one cannot help but see the different legal nature of the acquisition of own property rights by a bona fide acquirer from an incomplete alienator and in the regime of acquisitive prescription. Despite the fact that at least outwardly the same result is achieved, excellent legal and social pillars are involved. Prescription as the basis for further



ownership implements the tacit approval of the preliminary holder of the right to assign to another person [8, p. 28], this happens with or without the consent of the owner, but his passivity during the period established by law is voluntarily or involuntarily of legal significance. But in the presence of the circumstances specified in P. 1 of Art. 388 of the Civil Code, the possibility of a person who has lost a thing to return it stops just not taking into account the long-term use of another entity, namely in connection with the acquisition of the own property right by the latter. And no matter how some researchers interpret this situation, the application of the rule of Article 330 of the Civil Code must be unambiguous: a conscientious purchaser of property from an incomplete alienator becomes its owner precisely at the time of transfer of the thing. Bona fides is of decisive importance here: a party, having concluded an agreement with a person who has only the appearance of authority, is protected not because the right has been transferred to her, but contrary to this [9, p. 273].

Statement of the main material.

It should be noted that the most significant element that conditions recognition of non-title holdership by prescription and provides the necessary result – the conversion of the right to unjustified holdership of other people's property into the right of ownership, is also the conscientiousness of the acquirer – bona fides. However, according to the requirements of P. 3 of Art. 344 of the Civil Code of Ukraine is not an exceptional way to obtain property by the prescription of holdership. The law also provides for cases of acquisition of such a right in case of failure to return over time the thing received from the owner or title holder. In the literature, such acquirers are often identified with unscrupulous holders [10, p. 48]. It is hardly possible to agree with this thesis, because the concept of “bad

faith”, as a matter of fact, and “good faith” in property law characterizes the relationship between the occupier and the incompetent trader, while in the situation referred to in P. 3 of Art. 344 CCU, there is another subject composition. Nevertheless, the situation with fair acquisition is the most indicative for the analysis of the long-standing acquisition mechanism. It is this aspect that is most interested in scientists in this field [11, p. 41–43].

The meaning and significance of acquiring ownership by prescription is that the owner has lost interest in the law and does not require its implementation [12, p. 125]. In the case of bona fide acquisition, the person continues to consider him the owner, tries in every possible way to return the thing, but the law does not provide him with such an opportunity. Therefore, there is a fundamental difference between the two indicated phenomena: the acquisition of property by prescription of ownership and the bona fide purchase of a thing from an incomplete alienator. It should be recognized as quite correct the statement of V.A. Rakhmilovich: acquisitive prescription is applied, in particular, in cases where property could be claimed from a bona fide purchaser, but when it could not be claimed – there is no place for acquisitive prescription [13, p. 127–128].

And with this in mind, the scope of application of acquisitive prescription for bona fide purchasers actually shrinks significantly: under current Ukrainian legislation, such entities will become owners of retained property only if they have complex actual composition: 1) the thing was received free of charge or it left the owner with a will defect; 2) the owner during the limitation period did not claim the case from bona fide illegal possession. When such circumstances are absent, we are talking about the presence of objections established by law against vindication, so the property is acquired by a bona fide illegal

occupier immediately upon receipt of the thing.

Thus, it is obvious the thesis that the transfer of ownership from an incomplete alienator to a bona fide acquirer in the presence of those provided for in Art. 330 CCU circumstances occur precisely at the time of the transfer of holdership. We consider such an approach to be adequate and the only right one. In the doctrine, such a position has definite, although far from universal support. Its supporters believe that the transfer of ownership from the previous owner to the illegal bona fide acquirer occurs regardless of the desire of the owner and participants in the alienation in the presence of a complete set of elements of legal structure. Elements of this composition have a separate legal significance, and only their combination causes the corresponding legal effect. This list includes the following legal facts: conclusion between an unauthorized alienator and the acquirer of an agreement on transfer of holdership; the acquirer is in good faith; the contract must be onerous; the actual transfer of property to the acquirer took place; the item is not withdrawn from circulation and its turnover is not limited; the thing has dropped out of the possession of the owner or the first title holder against their will [13, p. 132]. The focus of the law in this case is to protect the interests of a bona fide paid purchaser, who, on the basis of a comprehensive legal structure, immediately becomes the owner of the acquired property. That is why it is impossible to indict a thing that the acquirer has become its owner.

This legal consequence – the acquisition by the acquirer of property takes place regardless of the will of the previous owner and his recognition of the fact of unlawful alienation. Actually, the presence of circumstances that form the content of objections to vindication, the valley is assumed, and when at a certain point in the future during the consideration of the relevant



vindication claim their presence will be refuted in court, the absence of the acquired right of ownership will be established by way of non-title alienation of the thing to a bona fide person. Otherwise, such an acquirer should be considered the owner. Then the circle of bona fide long-standing holders who did not receive property is significantly reduced. Only persons who receive property from an incompetent alienator free of charge refer to it, considering the latter to be the owner that is, conscientiously mistaken in this regard. Other categories of bona fide purchasers frankly do not fit their qualifications as long-standing holders. After all, a person who has received from a non-title trader a thing that once dropped out of the owner against his will (by deception, was stolen or taken out of possession with a different defect of will), not knowing about such defects, is fully covered by the concept of good faith set forth in the rule of Art. 330 CCU with the corresponding result – the recognition of the right of ownership from him from the time of occupation, of course, under the threat of a possible refutation of this fact in the indictment process in court.

Therefore, a classic vindication lawsuit as a procedural requirement of an undisputed non-possessing owner to an undoubtedly owning bona fide occupier is possible only if the latter receives property free of charge. In all other cases, when such a demand is submitted to the court for the seizure of a thing (from a formal point of view, this claim cannot be called vindication, because the question of whether the plaintiff has a title is still to be established), the dispute turns into establishing ownership of the disputed thing. If it turns out that the defendant has the whole set of statutory objections to claims for property (they are called objections against vindication in science), it will be established that the real owner, both at the time of the unlawful alienation and at the time of the trial, is a bona fide the

acquirer. Therefore, his right will be protected by refusing a lawsuit against a person who has presented harassment. And the indicated consequence will come not because the defendant applied his objections to vindication (after all, by definition, vindication is the court's claim of the owner against the holder), but because the plaintiff, who was once deprived of the title by law, does not have the right to defense. In turn, the defendant is the owner and has the right to protect his right not only from the former owner, but also from other persons not endowed with the corresponding title.

In the case when, when considering such a claim, it turns out that the defendant, a bona fide illegal acquirer of the property, does not have a full set of objections to the requirements prescribed by law, a number of other legal consequences will be established. Firstly, it establishes the absence of legislative presumption about the acquisition of the right of ownership at the time of transfer of the thing. Secondly, the process acquires the signs of vindication, and the holder qualifies as a long-standing bona fide holder. Finally, thirdly, the plaintiff, whose ownership right, and therefore the possibility of his judicial defense, is confirmed in this very process, can claim his property. But such a consequence of satisfying his claim occurs only when the statute of limitations for the relevant claims has not expired, as announced by the occupier. Otherwise, even being authorized to claim, the owner receives a procedural decision to refuse. And the illegal occupier, qualified in the framework of this process as a prescriptive holder from the moment of receiving the property, to continue further holdership of other people's property until he acquires a complete set of factors for transferring such holdership into ownership by acquisitive prescription.

Only in this way will we avoid the accusations of many apologists

for the theory of violations in the vindication process of the right of either the owner or the illegal acquirer. Departing when resolving the dispute from the classic but, as we see, the essentially wrong question about the presence of objections to vindication in this case, and putting emphasis on the presence or absence of the right to claim protected by law, we practically shift the focus on the subject of consideration to the plane of the legal dispute. In fact, a non-contractual dispute between persons regarding the fact of ownership of disputed property that is not formally associated with specific requirements for returning a thing or removing obstacles in its content is subject to resolution. Therefore, it is necessary to understand just the primary goal, the achievement of which the specified method of protection is aimed at. It is this issue that is solved first, and only then comes a resolution to protect the existing right by satisfying the claim or rejecting it. At the same time, the actual location of the property by the plaintiff or defendant is not critical for resolving the issue of protection. In any case, only the right that will be established in the process of deciding the issue of recognition should be protected. Thus, as we see, the classical concept of vindication or is used in our doctrine is incorrect, violating the proprietary right of the illegal bona fide acquirer, provided for by Art. 330 CCU, or has lost its real nature, taking into account the above specific features.

Thus, a good conscience is the basis for the acquirer in some cases to have ownership right at the time of transfer of the thing (Art. 330 of the Civil Code of Ukraine), in others – the right to preserve holdership with the possibility of acquiring property in the future after expiration of acquisitive prescription. But during the period of the due date, such an owner, even despite his conscientiousness, is not able to oppose it to the requirements of verification. Because the law defines a clear list of objections to



vindication. Within the meaning of Art. 388 of the Civil Code of Ukraine in relation to a person who in good faith received property that has dropped out of the owner's possession against or against his will or free of charge, the provisions on limiting vindication do not apply. A properly and timely lawsuit filed by the owner to recover the thing from the bona fide holder is subject to satisfaction. Since this property can be vindicated, the acquirer does not receive ownership of it at the time of transfer and by virtue of the provisions of Art. 330 of the CCU. What is the significance of honesty in such a situation? It is obvious that a good conscience at the time of the occupation of things is a qualifying attribute of a long-standing holder, which, in accordance with the requirements of the same law, allows you to obtain ownership of other people's property.

The rule by which the owner can demand property from persons possessing it without a proper legal basis has long been applied in civil law. However, the boundaries of its application have not historically been constant. In the law of ancient Rome, the principle of full vindication "ubi rem meam inuenio, ibi vindico" acted, which meant "where I find my thing, I vindicate it there". Subsequently, the other principle of "Hand muss Hand wahren" (hand in hand corresponds), which in the doctrine received the abbreviated designation "H. w. H.". According to him, only things that are retired from the titular holder (including the owner) against his will can be vindicated from any third party. This approach was most consistently applied in German civil law, later it was supported by many scientists in other countries, including in pre-revolutionary Russia. According to him, the owner could withdraw in court his thing only from an unscrupulous holder. As for the conscientious, the thing was taken from him only when she dropped out of the holdership of the owner with a defect in the will of

the latter. Corresponding changes in the theoretical substantiation are reflected in modern legislation.

However, far from all researchers agree with the existing limitations of vindication, arguing that this violates the rights of the owner. In different periods, these legal approaches had both their supporters and opponents. It is quite logical that the modernization of the stable provision of Roman law on vindication in favor of protecting the interests of a bona fide holder could not be perceived as a restriction of the rights of the owner. At the same time, some scholars categorically declared the undesirability of such a transformation, noting that it violates the basic principle of inviolability of private property, and the rules of the law on the protection of a bona fide holder against the owner were qualified as actual confiscation of property [14, p. 120–122]. Indeed, from the classical point of view, it seems rather unjustified to provide a person with the legal opportunity to exercise other people's rights without proper authority from their true bearer. This contradicts both the interests of the latter and of society. After all, the previous owner at the time was also a bona fide acquirer; he also rightfully performed all the powers of the owner. If you transfer the ownership right to a non-titular acquirer, it turns out that the law provides its good conscience with the highest value, compared with the same characteristics of the owner, is completely unjustified. Actually, it is rather difficult to refute the given argumentation. Therefore, other researchers, defending the priority of interest of a bona fide acquirer, did not object to the fact of a possible infringement of the interests of the owner in case of restriction of vindication. They only pointed to the overlapping of these shortcomings with positive effects for civil circulation in the case of application of this legal toolkit.

But, back to the issue of resolving the existing conflict between statics and the dynamics

of material-material relations in civil law. The above prescription, even after a court decision to refuse to satisfy a vindication claim due to the expiration of the statute of limitations, in no way transforms the holdership right into ownership. It continues until the circumstances provided for in Art. 344 of the CCU. This can last a long time and the holder will be in a similar status all the time. Moreover, the right of ownership may not be acquired at all, at least for an arbitrarily long time: possession may expire before the statutory limitation period expires; the occupier may change, etc. Therefore, a new acquisition period begins and so can continue indefinitely. In this case, holdership will not be provided with any legal title. In turn, a person who has received a judicial refusal to claim his property does not lose the status of owner, although he possesses property. He has a legal title, but can the subject get any practical reason from this by realizing it?

The question is not so simple. Say, the owner can demonstrate arbitrariness and independently take away property from a bona fide prescriptive holder. Actually, in this case he will be outside the law and such actions will be illegal. But the question arises as to how the prescriptive holder can protect his possession, which was illegally terminated. In addition to the moral side of the case, when the court will have to defend the illegal occupier against the real owner, there is a problem of legal justification for such a court claim. Indeed, strictly speaking, the rule of P. 3 of Art. 344 of the Civil Code, which seems quite progressive and adequate, actually concerns only one aspect of possible situational issues - the impossibility of unlawful seizure of property by its owner from a person who at one time acquired the authority of a long-time holder in case of timely non-return of the thing. This rule does not directly apply to cases of bona fide possession of property in the order of its use for prescription. We



consider this a significant drawback of the current civil law, which must be eliminated by providing the indicated rule with a general rather than local character in the implementation of any mechanisms for the prescription of property. But even this is not enough now. Actual legal definition of the whole system of possession protection.

At the same time, another major factor in this process is ensuring a reliable balance in protecting the rights of the owner and the long-standing holder. In particular, for the stability of material circulation, adequate protection of property rights must be guaranteed. Considering the situation when the owner, having passed the statute of limitations on the vindication claims, does not cease to have a legal title, but is deprived of the opportunity to legally claim his property, they must say that this rule should not be absolute. Otherwise, the fundamental presence of a title that has forever lost its ability to realize is simply not clear. Actually, according to the general laws of nature, the existence of any phenomenon that is devoid of a real property to be realized is impossible. Therefore, in accordance with the rules of the material world, a legal mechanism regulating specific relations in society must also work.

The rule must be clearly spelled out, according to which, in the event of the termination of the prescription of long-term acquisition of the illegal occupant, the same holdership begins on the part of the new acquirer, if in essence it complies with the rules of Art. 344 of the CCU. However, it is significant that under such circumstances a new violation of the rights of the non-possessing owner occurs. This is logical. Indeed, according to the general rule of substantive legal regulation, a violation of the right of ownership with respect to deprivation of the right of possession is not the seizure of property, but its unlawful retention. Therefore, the violator of the proprietary right of ownership

will not be the person who seized the thing from the owner against his will, but just the illegal acquirer, even despite his good faith. Thus, regardless of whether the new occupier has a good conscience or not, whether the new ownership has a prescriptive character or not, a new violation of the ownership right of the person who continues to hold the possessive title occurs at the time of the next occupation. This offense, although it has the same subject as before, contains a new subjective composition. Therefore, just such a content violation occurred for the first time. So, within the meaning of the current temporal civil legal institute of statute of limitations, the new term for the requirements to claim the thing from the unlawful owner begins from the day when the person learned about the violation and about the identity of the offender (Art. 261 of the Civil Code of Ukraine). And the right of ownership, which, it would seem, has lost its ability to exercise, gains new strength. It's another matter that with his vindication protection, the owner may have additional problems related to the need to refute the objection against vindication that the new holder has, arising from the actual circumstances of the new occupation.

Conclusions. From the foregoing, we can draw the following conclusions. In order to ensure a more rational and effective dynamics of material circulation, civil law recognizes the existence of full holdership of someone else's thing and in a certain way tries to ensure its protection. Given this, we can talk about the existence of subjective substantive law – the right to illegally hold someone else's property. Moreover, under certain circumstances, a bona fide illegal holder gains ownership of such property. It is from this point of view that the provisions of the code on the acquisition of property at the time of transfer of the thing from an incompetent trader and on acquisitive prescription should

be considered. According to these rules, a bona fide purchaser becomes either the owner of the property immediately after receiving the thing (Art. 330 of the Civil Code of Ukraine), or a prescription holder (p. 1 of Art. 344 of the Civil Code of Ukraine). In the latter case, although he does not have the right to object to vindication, under certain circumstances (refusal of a lawsuit due to the expiration of the statute of limitations upon the demand for the claim of the thing, non-presentation of such a claim in general, expiration of the right of prescription), he may obtain the right to own someone else's property. When, at the time of receipt of the property, the acquirer has a full package of objections to vindication, he becomes the owner from the time of transfer and the presence of such a package should be presumed.

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CARACTERISTICI ALE PROTECȚIEI ȘI CONSERVĂRII MEDIULUI MARIN ÎN ZONA ECONOMICĂ EXCLUSIVĂ A UNUI STAT DE COASTĂ

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Protecția și conservarea mediului marin sunt cele mai importante principii ale dreptului internațional al mării. Asociat cu dezvoltarea progresului tehnologic în a doua jumătate a secolului al XX-lea, poluarea mediului marin a dus la determinarea statelor de a lua măsuri pentru reglementarea activităților statelor din oceane pentru a preveni poluarea ulterioară a mediului marin.

Partea 12 a Convenției ONU privind dreptul mării din 1982 este dedicată reglementării legale a protecției și conservării mediului marin. Articolul 192 din Convenție definește obligația generală a statelor în ceea ce privește mediul marin: „Statele sunt obligate să protejeze și să păstreze mediul marin”.

Conținutul legal al principiului protecției și conservării mediului marin este de a limita libertatea statelor în exercitarea drepturilor lor suverane în dezvoltarea resurselor naturale, a obligației de a preveni poluarea mediului marin și de a lua măsuri pentru a reduce poluarea deja existentă (articolele 193, 194 din Convenție).

Acest principiu formulat, în general, își găsește dezvoltarea în obligațiile specifice ale statelor de a proteja și păstra mediul marin în conformitate cu partea 12 a Convenției ONU din 1982 privind dreptul mării.

Cuvintele-cheie: dreptul mării, mediul marin, conservarea mediului marin, Regimul spațiilor maritime.

CHARACTERISTICS OF THE PROTECTION AND CONSERVATION OF THE MARINE ENVIRONMENT IN THE EXCLUSIVE ECONOMIC AREA OF A COASTAL STATE

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The protection and preservation of the marine environment are the most important principles of international law of the sea.

Associated with the development of technological progress in the second half of the 20th century, pollution of the marine environment led to the determination of states to take measures to regulate the activities of states in the oceans to prevent further pollution of the marine environment.

Part 12 of the 1982 UN Convention on the Law of the Sea is devoted to the legal regulation of the protection and preservation of the marine environment. Article 192 of the Convention defines the general obligation of States with respect to the marine environment: “States are obligated to protect and preserve the marine environment”.

The legal content of the principle of protecting and preserving the marine environment is to limit the freedom of states in exercising their sovereign rights in the development of natural resources, the obligation to prevent pollution of the marine environment, and also take measures to reduce existing pollution sites (Articles 193, 194 of the Convention).

This generally formulated principle finds its development in the specific obligations of states to protect and preserve the marine environment in accordance with part 12 of the 1982 UN Convention on the Law of the Sea.

Keywords: maritime law, marine environment, conservation of the marine environment, maritime regime.