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MODERN REALITIES OF LAND ALIENATION FOR PUBLIC NEEDS IN UKRAINE

Introduction. The legal basis for forced alienation or confiscation of property under the legal regime of martial law or a state of emergency is the Constitution of Ukraine, this Law, other laws of Ukraine and the decree of the President of Ukraine on the introduction of a state of emergency or martial law in Ukraine or in some of its localities, approved by the Verkhovna Rada of Ukraine.

Compulsory expropriation of property under the legal regime of war or state of emergency may be carried out with prior full reimbursement of its value.

In case of impossibility of prior full compensation for compulsorily expropriated property, such property shall be compulsorily expropriated with subsequent full compensation of its value.

Compulsory alienation or confiscation of property in connection with the introduction and implementation of measures of the legal regime of martial law is carried out by the decision of the military command, agreed by the relevant state authorities or local self-government bodies.

In areas where hostilities are taking place, forced alienation or confiscation of property is carried out by decision of the military command without the consent of state authorities or local self-government bodies.

Forced expropriation of property privatized during the period of martial law is allowed only in areas where hostilities are taking place, and is carried out by decision of the Commander-in-Chief of the Armed Forces of Ukraine, without the consent of the relevant executive bodies or the executive body of the relevant local council.

Compensation for forcibly expropriated property under the legal regime of martial law followed by full reimbursement of its value is carried out within the next five budget periods, after the abolition of the legal regime of martial law at the expense of the state budget.

The preparation of documents for forced alienation of property, as well as the payment of costs for the assessment of property to be alienated, are carried out by the military command, the body that made the decision on such alienation, at the expense of the state budget.

Methods. Peculiarities of the transfer and forced alienation of communal property in the conditions of the legal regime of martial law:

With the initiative for the free transfer of communal property into state ownership, the relevant local council is addressed - to meet the needs of the state under the conditions of the legal regime of martial law - the military command;

The transfer of communal property into state ownership is carried out by decision:

- village, settlement, city, district councils in cities - regarding objects of communal property rights of the respective territorial communities;

- district, oblast councils - regarding objects of joint property rights of territorial communities of villages, towns, and cities under the management of district, oblast councils.

In the event that the local council is unable to make a decision on the transfer of communal property into state ownership, such a decision is made by the village, settlement, city mayor, the head of the district in the city, district, oblast council or the secretary, deputy chairman of the relevant council, with subsequent approval by the relevant council in accordance with the law. The relevant decision is taken by the specified persons in the manner established by law.

Preliminary full reimbursement of the value of forcibly expropriated property is carried out on the basis of a document containing a conclusion on the value of the property on the date of its assessment, which was carried out in connection with the adoption of a decision on its forced expropriation.

In order to receive the next full compensation for property forcibly expropriated under the conditions of martial law, its former owner or a person authorized by him after the cancellation of the legal regime of martial law applies to the territorial center of recruitment and social support at the place of alienation of the property with an application, to which is attached a deed and a document, containing a conclusion on the value of the property.

The procedure for considering applications and making payments for the purpose of subsequent full compensation for property forcibly expropriated under the legal regime of martial law or a state of emergency is established by the Cabinet of Ministers of Ukraine.

If, after the abolition of the legal regime, military property that was forcibly expropriated remains, and the former owner or a person authorized by him insists on the return of the property, such return is carried out in court.

The basis for the return of property is a court decision that has entered into force.

If property is returned to a person, ownership of this property is restored. At the same time, the person undertakes to return the amount of money received by him in connection with the alienation of the property, with the deduction of a reasonable fee for the use of this property.

The former owner of the property that was forcibly expropriated may demand that another property be given to him in return, if possible.

Disputes related to the reimbursement of the value of forcibly expropriated property shall be resolved in court.

Persons guilty of violating the legislation on the compensation of the value of forcibly alienated property and on the return of forcibly alienated property, which has been preserved, are liable in accordance with the law.

Results. If, after the abolition of the legal regime of martial law, the property that was forcibly alienated remains, and the former owner or a person authorized by him insists on the return of the property, such return shall be carried out in court. The basis for the return of property is a court decision that has entered into force.

If property is returned to a person, ownership of this property is restored. At the same time, the person undertakes to return the amount of money received by him in connection with the alienation of the property, with the deduction of a reasonable fee for the use of this property. The former owner of the property that was forcibly expropriated may demand that another property be given to him in return, if possible.

References

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