

## PROBLEMS OF NATIONAL PUBLIC AND PRIVATE LAW

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### LEGAL STATUS OF INFORMATION IN THE REGISTER OF REAL RIGHTS TO IMMOVABLE PROPERTY

The great importance of various kinds of registers of rights, land cadasters and other databases attracts the attention of lawyers, both theoreticians and practitioners, as well as the legal status of information contained in state registers. In the process of working on the article, primarily the comparative legal method was used. During the study and processing of materials, the historical, systemic, and logical-legal methods were also used. In Ukraine, the legislation regulating the issues of entering information into state registers is quite young. Despite the constant amendments to legislative acts aimed at improving it, it contains a significant number of gaps and imperfect provisions that create certain problems in practice. The rights associated with the ownership of real estate, primarily land plots, and the use of real estate have become the most important institution for people since the first state formations appeared. Over time, the state has become more active in intervening in the process of using and disposing of the owners of their real estate. Sometimes the norms that determine the possibilities of access to the most important information for owners are influenced by legislative acts pursuing socio-political goals. The creation by the Ukrainian legislator of mechanisms for recording real estate objects and related rights and encumbrances is, in principle, a very timely and useful measure, which, if fully implemented, will play an important role both in protecting the rights of individuals and legal entities, and in streamlining legal and economic processes. However, it must be admitted that this company will have a fairly long-term nature and will require significant efforts from the state. Therefore, it is inappropriate at this stage to attach self-sufficient significance to the information entered to date in the unified state registers. It should be remembered that the introduced legal norm does not in itself lead to the emergence of legal relations. For this, first of all, the will of the parties is necessary, which the state will then regulate, streamline to the general benefit by introducing the rule of law. Therefore, given the very significant role of unified state registers, which are currently moving into the form of electronic databases, it would be premature to attach excessive importance to them as the only reliable source of information regarding the rights of subjects to real estate and related property rights and encumbrances.

**Keywords:** real estate, state register, the emergence of the right to real estate, access to information, raiding.

**Introduction.** The rights associated with the ownership of real estate, primarily land plots, and the use of real estate have become the most important institution for people since the first state formations appeared. Over time, the state has become more active in intervening in the process of using and disposing of the owners of their real estate. Ultimately, it became inevitable to create special centralized lists, registers, cadastres, etc., in which state bodies kept records of property rights to real estate belonging to subjects and other relations related to them (rent, mortgage).

They are convinced that properly registered title holders are more likely to invest in the local economy. In those countries where the system of registration of property was established relatively recently, there is an increase in the value of land and more efficient land use. For example, in Nicaragua, the introduction of an official title registration system increased the value of land by 30%. When a project was carried out

in Thailand for the issuance of official documents on land title, the value of real estate increased by 75-197%. But the point is not only that the owners of the land, after the official confirmation of the title, feel more confident, raise the value of their property and are not afraid to invest in its development. The World Bank experts make it very clear that reliable and up-to-date information in registers and land cadastres is needed by governments to properly assess property and collect taxes.

In Thailand, annual income from property taxes and transfer taxes rose from \$ 200 million in the 1980s to \$ 1.2 billion by 1995. One of the driving forces behind this income growth was the land rights program, which increased the number of registered property owners in the 1980s<sup>1</sup>. Indicative is the example of India, a country with a large number of farmers, which means a large number of land plots, and with very old legislation governing property relations in this area. As Indian experts admit, the real estate registration system in the country is very imperfect, based on outdated legislation and incomplete land registries. The process of registering property is made overly expensive (when registering the purchase of a land plot, fees and taxes can reach 12% of its value)<sup>2</sup>. As a result, landowners – farmers cannot get bank loans that are vital for them, there are a large number of land disputes in the country, etc. That is why the Digital India Land Records Modernization program has been launched, which is still far from complete, but is being successfully promoted. Of course, for Ukraine, in which the institution of private property rights to real estate was restored relatively recently, the transition to unified national electronic registers may seem easier than for India. Nevertheless, the process of transition to the electronic form of registration, given the huge paper archives of documents proving the presence of real estate among citizens, promises to be complicated and time-consuming. In addition, the imperfection of the legislative base, which is also constantly changing, gives rise to the possibility of different interpretations of norms and even abuse of the formal provisions of legislative acts.

**Literature Review.** The content of the works of researchers devoted to the registration of immovable property, of course, reflect the real historical, economic, and legal characteristics of the country. Experts from Western European countries state the existence of various registration systems, highlighting the so-called “deed system”, “title (Torren) system” and “Public Faith system” (*fides publica*) (*Öffentlicher Glaube*), analyzing their features from the point of view of the reliability of securing the right to real estate<sup>3</sup>. After the collapse of the European socialist camp the role of private property naturally increased in the former socialist countries, and the importance of securing the rights to private property in state registers became clear. This attracted the attention of Western researchers primarily from the point of view of the reliability of investments in these countries. The same aspect is of interest to Western experts in relation to property registration systems in countries with emerging economies<sup>4</sup>. Ukrainian lawyers are quite actively discussing the functioning of state registration procedures and their legal significance. The reason for this is the relatively recent creation of the legislative framework in this area and the frequently adopted amendments to legislative acts. Theorists consider the activities of state institutions aimed at streamlining civil circulation through the mechanisms of property registration<sup>5</sup>, the issues of the moment when property rights arise in connection with the registration of this right. They defend the thesis that state registration is the main method of securing property rights. The state register of real rights to real estate is a unified state information system that ensures the processing, storage and provision of information about registered real rights to real estate and their encumbrances, about objects and subjects of these rights. The wording of the law is clear and, it would seem, should not cause confusion. But what happens after the information is entered into the state register? How does this fact affect the emergence or transfer of ownership of real estate? Here the opinions of lawyers are divided. In the implementation of such a model, even the invalidity of the contract does not cancel the legal effect of the transfer of rights if such a transfer is reflected in the register.

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<sup>1</sup>The World Bank (2019). *Doing business. Registering Property. Why it matters?*

<<https://www.doingbusiness.org/en/data/exploretopics/registering-property/why-matters>> (2021, July, 12).

<sup>2</sup> Prachee, M., Roopal, S. (2017). Land records and titles in India. *Ideasforindia*, 2-4

<<https://www.ideasforindia.in/topics/macroeconomics/land-records-and-titles-in-india.html>> (2021, July, 12).

<sup>3</sup> Moerkerke, J. (2016). European Land Registry Association (ELRA). Property registration – challenges for the future <[https://www.fig.net/resources/proceedings/2016/2016\\_09\\_realestate/S6A\\_Moerkerke\\_Paper.pdf](https://www.fig.net/resources/proceedings/2016/2016_09_realestate/S6A_Moerkerke_Paper.pdf)> (2021, July, 12).

<sup>4</sup> Barthel, K., Stanfield, J. D., Barnes, G. (1999). Land Registration Modernization in Developing Economies: A Discussion of the Main Problems in Central/Eastern Europe, Latin America and the Caribbean. *URISA Conference, Chicago, August 21-25. Urban and Regional Information Association*

<https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.522.6053&rep=rep1&type=pdf> (2021, July, 12).

<sup>5</sup> Гурковський, М. П. (2012). *Ресурсна діяльність публічної адміністрації: організаційно-правовий аспект*. Львів: ЛьвДУВС.

Once there is an entry in the register, then the property belongs to the one who is recorded in the register as the owner. But what happens if the transaction on the transfer of ownership of real estate, the data about which was registered in the unified register, is subsequently terminated or invalidated by the court? These kinds of situations are of practical importance. There are known cases of using the acquired real estate as collateral for obtaining a loan from a bank, and after a third party challenged the act of purchase and sale, the bank was left without collateral, which caused very serious problems for it Resolution of the Grand Chamber of the Supreme Court, 2021. That is, can an entry in the unified register be considered sufficient evidence of ownership of real estate? But there is also a fundamentally different approach, in accordance with which state registration is nothing more than a way of notifying third parties about the emergence and transfer of rights and is not a necessary condition for fixing the subjects of real rights. According to the views of the supporters of this approach, the right itself arises (passes) through a private expression of will (when making a transaction) or from an actual action (creating a new real estate), and an entry in the register is needed only so that the right that has already arisen in the person becomes "opposed" to the third persons. Third parties, having received information from the register, gets a reason to consider the person entered in the register as the owner. From the point of view of the supporters of this approach, the entry about the right in the register means the presumption of knowledge of the third party about it. Thus, if a third party knows that a transaction has been made in respect of an immovable property, although the transfer of ownership has not yet been recorded in the register, then in relation to this third party, the buyer should also be considered the owner, despite the fact that there is no record of his rights in the register.

This approach can be conditionally called the "principle of opposition", since its supporters see the function of registration in ensuring the opposition of rights to third parties, that is, creating a convenient mechanism for publicly announcing the transfer of rights that has taken place. But the supporters of the "principle of opposition" also differ in two approaches. Some believe that registration creates a rebuttable presumption of knowledge of third parties about the emergence / transfer of law. This means that, in certain specific circumstances, third parties may prove that they were unaware of facts affecting ownership and related rights in good faith.

Others argue that this presumption is irrefutable. In their opinion, all third parties should be considered knowledgeable about the origin / transfer of rights. However, the point of view continues to exist according to which the properties of an entire legal institution are attributed to state registration. Thus, M. Gurkovsky classifies registration as an institution of administrative law<sup>1</sup>. J. Bartz expressed the opinion that "in essence, the state registration of rights to real estate is a complex legal institution that contains the norms of both civil and administrative law. The norms establishing the obligatory state registration of rights to real estate, the legal consequences of registration or its absence, belong to civil law"<sup>2</sup>.

O. Letneva expressed the idea that state registration of rights to real estate in administrative law and administrative-legal relations can be considered in four aspects: as a type of administrative proceedings, an institution of law and legislation, an administrative service, and a way of performing administrative functions by the state<sup>3</sup>.

She believes that registration "is a unique and special public law formation in private law relations, a kind of" public law element "in the legal mechanisms for the emergence, transfer and termination of rights"<sup>4</sup>. Ukrainian legislation provides that ownership, lease and other property rights arising from the ownership of real estate and land plots come into force after their state registration.

In other words, transactions with real estate can only be made after state registration of the relevant property rights. This is a natural requirement, since the completion of a transaction in relation to real estate requires appropriate registration, and if the new owner has not yet been entered in the register in this capacity, then he will not be able to prove his authority to perform any actions with respect to the acquired property. However, authors writing on the topic of registration of rights to real estate in a unified register sometimes still exaggerate the importance of entering information into this register. They argue that for the final acquisition of property rights, an element such as registration of rights is of decisive importance, "since

<sup>1</sup> Гурковський, М. П. (2012). *Рестраційна діяльність публічної адміністрації: організаційно-правовий аспект*. Львів: ЛьвДУВС, 7.

<sup>2</sup> Барц, Я. Є. (2012). Проблеми державної реєстрації речових прав на нерухоме майно в правовому регулюванні сучасного майнового обігу. *Бюлетень Міністерства юстиції України*, 1, 93.

<sup>3</sup> Летнева, О. С. (2016). Публічно-правова сутність державної реєстрації речових прав на нерухоме майно. *Ефективність державного управління*, 3, 111

<sup>4</sup> Ibid, 114

the ownership of real estate arises from the moment of its state registration"<sup>1</sup>. There are even more radical views that even notarization of a contract does not transfer it into the category of concluded contracts, if state registration is still required<sup>2</sup>.

Proponents of this approach believe that only after state registration, the right to use, possess and dispose of the property is transferred to the buyer. If you can still agree with the thesis that without state registration required by law, the buyer does not have the right to dispose of the acquired property, then the idea that the buyer cannot use the acquired property until the information about the transaction is entered into the state register is completely incomprehensible. Today, the Ukrainian law establishes a rule that the registration period should not exceed 14 working days. Practice will show to what extent this requirement is feasible, which will provide significant statistics for analysis in connection with the beginning of the land market in Ukraine. In any case, experts previously wrote that it takes about half a year to formalize a state deed of ownership of a land plot<sup>3</sup>.

Here, probably, one should not blame the Ukrainian state apparatus for its slow work. In European countries, it can take 4-6 months from the moment of the application for registration to the moment a decision is made by a state body<sup>4</sup>.

Is it possible that the new owner of the land plot does not have the right, without a document certifying his ownership of the land plot, to use the land plot he has acquired? What rights, in this case, does a person acquire by concluding a contract? "What is more important in general – a registered contract on the basis of which a person acquires a land plot, or a registered document confirming ownership of a land plot?" – ask experts of the law firm "Vasil Kisil & Partners"<sup>5</sup>. So does the entry of information into the State Register mean the establishment of law? Authoritative experts say no.

The right is established at the will of the person. If the law requires that this will be clothed in a certain form (written agreement, notarial certification), for the emergence of the right, these requirements must be met. Summing up the discussion on the legal status of the property registration act and the status of information contained in the state register of property rights, it seems appropriate to note the following. With all the necessity and usefulness of having a single register of real rights, given the fact that its formation is still very far from completion, it is currently unreasonable to exaggerate the value of the entry made in it and, as will be shown below, even dangerous. In the process of working on the article, primarily the comparative legal method was used. During the study and processing of materials, the historical, systemic and logical-legal methods were also used.

**Methods.** In the process of working on the article, primarily the comparative legal method was used. During the study and processing of materials, the historical, systemic and logical-legal methods were also used.

**Result and discussion.** The question of whether the right to real estate gives rise to the fact of entering information about this in the state register, or whether it is simply a technical action that fixes the existence of such a right, as it turned out, has a serious practical significance. Experts admit that the system of state registration of property rights in Ukraine has evolved over the past few years and has not yet been finalized.

Thus, M. Gurkovky writes: "An analysis of the current legal framework, which regulates the institution of registration and accordingly regulates the registration activities of public administration, allows us to state that the existing registration area is unsystematic, disordered, with frequent cases of duplication and inconsistencies in the content of norms."<sup>6</sup> In modern Ukraine, registration activities are carried out by more than 50 public administration bodies, which almost do not interact with each other, and the level of services provided by them does not meet European standards. These realities are the result of an outdated approach to registration, an attempt to apply traditional mechanisms to the modern model of public relations. The fact

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<sup>1</sup> Колесников, В. (2018). Як виникає право власності. *ЛІГАБізнесІнформ* <<https://blog.liga.net/user/vkolesnikov/article/31371>> (2021, July, 12).

<sup>2</sup> Кириченко, Т. (2021). Набуття права власності на нерухоме майно із правочинів. *Міністерство юстиції України* <[https://minjust.gov.ua/m/str\\_8160](https://minjust.gov.ua/m/str_8160)> (2021, July, 12).

<sup>3</sup> Vasil Kisil and Partners (2021). *Publications* <<https://vkr.ua/en/publications>> (2021, July, 12).

<sup>4</sup> NLS (2021). National Land Survey of Finland. Register your ownership of a property. *Maanmittauslaitos – Lantmäteriverket* <<https://www.maanmittauslaitos.fi/en/apartments-and-real-property/services/register-your-ownership-property>> (2021, July, 12).

<sup>5</sup> Vasil Kisil and Partners (2021). *Publications* <<https://vkr.ua/en/publications>> (2021, July, 12).

<sup>6</sup> Гурковський, М. П. (2012). *Ресурсна діяльність публічної адміністрації: організаційно-правовий аспект*. Львів: ЛьВДУВС.

that a large number of amendments have already been made to the law since its adoption testifies, on the one hand, that it does not fully meet the needs of the real situation, and, on the other hand, that the state is striving to achieve its maximum efficiency. In addition, the very concept of information is inextricably linked with the concept of access to information. And since information about property located in a common storage is available to a wide range of people and can be used for criminal purposes, this has become a very sensitive issue for many owners. It should be borne in mind that electronic registers have emerged relatively recently. The state, enacting the law on the unified electronic register, implies that all real estate will soon be recorded in it. But this task is not too easy. Firstly, the ownership of real estate was consolidated in the process of historical development by various forms of documents. And these documents cannot be deprived of their legal force. “Today the most widespread problem is the transfer of data on previously registered real estate objects from previous registers to the State Register of Rights. Despite the fact that the Law on Registration recognizes real rights to real estate that were registered before 01.01.2013, it does not provide for the automatic transfer of information from previously created registers to the State Register of Rights, nor does it determine those responsible for such a transfer,” – expert practitioners write<sup>1</sup>. Thus, for a long time, various forms of fixing the right to real estate will exist in parallel.

In Ukraine, the introduction of a unified electronic register of immovable property also pursues the socio-political goal of combating illegal enrichment and corruption, since it allows collecting information on the property of persons suspected of using illegal incomes or incomes hidden from taxation. Experts note that in comparison with the old version of the 2004 law, the circle of persons who have access to the information of the register has significantly expanded. The legislator argued for such an expansion of the circle of persons with access to information from the State Register by the need to ensure the implementation of another law<sup>2</sup>, which should help to reduce the level of corruption in the country, as well as openness and transparency in the provision of administrative services.

If, under the previous Law, information about real estate was provided exclusively by the state registration authority and / or a notary, and the circle of subjects entitled to receive such information was very limited (owners, heirs and a number of state bodies<sup>3</sup>. In the new law, the circle of persons with access to such information has greatly expanded. It includes individuals and legal entities and officials of government bodies, local governments, courts, internal affairs, prosecutors, the Security Service of Ukraine, lawyers and notaries. At the same time, individuals and legal entities can receive information only on the real estate object, but officials, government agencies, lawyers and notaries have the right to receive information about both the real estate object and the subject of law. Some authors consider this to be a positive change<sup>4</sup>.

However, law enforcement agencies have previously had access to information in the register, and such an increase in the circle of persons who can gain access to information that is sensitive to millions of citizens is a very dubious achievement. It should be noted that Ukrainian legislation requires the entry into the state register of property rights of very extensive and detailed information regarding the registered immovable property. So, when registering, it is necessary to enter in the register information not only about the property right and trust property, but a list of rights derived from the property right: the right to use (servitut), the right to use a plot for agricultural needs (emphyteusis), the right to build (superficies), the right to economic management, operational management, permanent use, lease and sublease, and additionally all existing encumbrances – arrest, prohibition on alienation, tax lien and even the owner’s requirement for the obligatory notarization of the transaction. According to Ukrainian legislation, a very large role in the process of registering the right to real estate is assigned to the registrar – i.e. a person who directly enters data into the register of property rights.

The registrar is obliged to establish the compliance of the declared rights and the documents provided with the requirements of the legislation, check the powers of the person submitting documents for registration of real estate, compare the information on property rights and their encumbrances contained in the State

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<sup>1</sup> Кот, А., Буртовой, А. (2021). Державна реєстрація речових прав на нерухоме майно та їх обтяжень: новий порядок. *Commercialproperty.ua* <<https://commercialproperty.ua/cp-articles/gosregistratsiya-veshchnykh-prav-na-nedvizhimoe-imushchestvo-i-ikh-obremeneni-ny-novu-poryadok/>> (2021, July, 12).

<sup>2</sup> Закон України Про внесення змін до деяких законів України щодо відомостей про кінцевого бенефіціарного власника (контролера) юридичної особи, 2015 (Верховна Рада України). *Офіційний сайт Верховної Ради України* <<https://zakon.rada.gov.ua/laws/show/475-19#Text>> (2021, July, 12).

<sup>3</sup> Ibid.

<sup>4</sup> Сібірцева, О. (2015). Без надії сподіваємось. *Юридична газета online* <<https://yur-gazeta.com/publications/practice/inshe/bez-nadiyi-spodivaemos.html>> (2021, July, 12).

Register with the information in the documents provided, checks the fact of compliance with the terms of the transaction, which is the basis for registration of rights. In the event that the rights that arose before 2013 are registered, i.e. before the entry into force of the new law, the state registrar must request and receive from the authorities that performed such registration, all the necessary documents related to the registered property rights.

The registrar is obliged to use information from the State Land Cadastre and the Unified Register of Permitting Documents, as well as information from other registers (cadastres) and automated information systems held by state bodies, including information containing personal data of a person; he also creates electronic copies of documents submitted in paper form and at the same time forms and maintains registration files in paper form<sup>1</sup>. It should be borne in mind that the material and procedural legislation continues to change permanently. When considering disputes about rights to real estate, the courts each time are forced to give explanations on the arguments of the parties, and explain why the chosen method of protecting rights – a claim to cancel the decisions of state registrars, records of state registration of rights, is ineffective. Changes can be made to the state register on the basis of an application by the owner, consignor or recipient, the discovery of a technical error and a court decision to cancel the state registration.

If a technical error in the registry entries affects the rights of third parties, the amendment may be authorized by a court decision. To make changes, you need to repeat the state registration procedure. At the same time, it is recognized that technical errors may appear in the state register through the fault of not only the applicant, but also the registrar. An error can be noticed by the registrar himself, he is also obliged to inform the owner about the existing inaccuracy. But this inaccuracy can be corrected only after the owner's statement with the requirement to correct the error.

Experts note that recent changes in legislation make it very difficult, if not hopeless, to attempt to cancel an entry in the state register through a court decision. The court may cancel decisions on state registration of rights, invalidation or cancellation of documents on the basis of which registration was carried out, cancellation of state registration of rights only with the simultaneous recognition, change or termination of the registered rights and encumbrances by the same court decision. That is, there should be a private law dispute concerning the violation, non-recognition or challenge of these very rights. From January 16, 2020, a court decision on the cancellation of the record on state registration of rights as a method of protection can no longer lead to real consequences concerning the cancellation of state registration of rights. Although the previous edition provided for such methods of judicial protection as cancellation of records on the state registration of rights and cancellation of documents on the basis of which the state registration of rights was carried out. Since the dispute about the right is a private law, the state registrar who registered the disputed rights is not a direct respondent, since it does not claim the right, but performs a state function. Despite the fact that the conclusion of a contract or a court decision, the presentation of original documents would seem to have more force than the entry made in the register, in practice the registration information shows quite a lot of resistance to attempts to amend it. In accordance with, and this often creates problems for completely law-abiding subjects, on the contrary, providing opportunities for intruders to carry out criminal actions. A number of authors note that it was the shortcomings in the property rights registration system that contributed to the emergence of such criminal activities as "raiding". The problem arises exactly where the most powerful bastion of resistance to illegal manipulation of real estate rights should have been. As noted in one of the publications of the National Bar Association of Ukraine, the basis for the functioning of the system of state registers is the presumption of the reliability of the information contained in them. Therefore, the information that is included in the state register began to play a very important role – it does not matter who actually owns the property, it is important who is listed in the state register as the owner.

In 2015, a reform of the system of state registers was carried out in Ukraine, as a result of which the centralized state registration service ceased to exist, and its powers were delegated to "independent registrars" (registrars that are independent of the Ministry of Justice of Ukraine – registrars of local authorities, state and municipal enterprises, as well as notaries). Access to the state register of rights became public, and documents of title to real estate in paper form were no longer mandatory. The new procedures for state registration began to operate on 01.01.2016 and led to unexpected negative consequences.

The simplification of registration procedures has led to an easier opportunity for fraud, and in Ukraine, the number of cases of raider seizure of businesses and real estate has significantly increased. To carry out this

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<sup>1</sup> Закон України Про державну реєстрацію речових прав на нерухоме майно та їх обтяжень, 2004 (Верховна Рада України). Офіційний сайт Верховної Ради України <<https://zakon.rada.gov.ua/laws/show/1952-15#Text>> (2021, July, 12).

criminal operation, false information is entered into the state register. These actions do not fall under the qualification of "fraud", since the seizure of other people's property does not occur. In many cases, changes in the registry necessary for "raiders" are made on the basis of judicial decisions that are binding. At the same time, it is extremely difficult to prove the fact of a deliberately unjust decision made by a judge. If the judge did not commit gross procedural violations, it will be impossible to bring him to justice. The court decision made by him will formally look legal, even if the basis for its adoption was fake documents. At the same time, it is also very difficult to prove the guilt of lawyers who filed forged documents in court, since it is necessary to prove that they knew in advance that the documents were forged. The physical violent seizure of an object by "raiders" takes place under the guise of official information from the state register, which makes these actions appear legal and deprives law enforcement agencies of the ability to effectively resist the seizure.

Thanks to the link to the official information of the state registers, the actions of the "raiders" formally look legitimate and the police have no reason to react. The subsequent resale of the seized object to a "bona fide acquirer" has signs of legalization of property obtained by criminal means, but this *corpus delicti* requires proof of intent on the part of the so-called "bona fide acquirer", which is almost impossible to implement in practice. The fact of going to court or the fact of submitting documents for making changes to the register cannot be recognized as unlawful. In this case, the objective side of the actions of the "raiders" will not differ from similar legal actions, and the differences will exist only in terms of intent.

At the same time, it is obvious that at the heart of the phenomenon, which received the name "raiding", there is a gap in the regulation of legal relations, when the moment of entering information about a person's right to property (to manage property) into state registers does not coincide with the moment of the voluntary transfer by the previous subject of the right of physical control opportunity over such property. That is, the phenomenon of "raiding" is directly related to the system of functioning of state registers. How can an owner who has suffered from illegal seizure of property protect himself? We can only advise our legislator to borrow the experience of Japan. In Japanese law, in the case when a bona fide acquirer believes that he acquired the property from the true owner of the title, but in fact the owner was another person, the following provision applies: «Indefeasibility does not apply to registration in Japan. Accordingly, no matter if real property is purchased from a registered right holder thinking that the registered right holder is the true owner, real property cannot be taken away from the true owner if there is a true owner»<sup>1</sup>. It turned out to be quite difficult to reverse the changes made to the state register for criminal purposes. The actions of state registrars to cancel registration of rights to real estate often become a source of disputes with individuals and legal entities. The latter, considering their rights violated, challenge the legality of the decisions taken by the registrars in court.

However, their requirements do not always coincide with the requirements of the current legislation<sup>2</sup>. In the agricultural sector, especially dangerous attacks on businesses are aimed primarily at seizing land. Opportunities for such attacks, again, arise from inadequacies in land registration and clearance or improper execution of land lease agreements. If land plots were registered under contracts before 2013, and today such contracts have not been reissued, and these land plots are not included in the State Land Cadastre, this can be used as groundless, but supported by other actions, non-recognition of rights to such land plots. In land cadastres, errors occur, overlapping land plots on top of each other on the public cadastral map (and, accordingly, in the information of the State Land Cadastre) Data in the State Register of Rights and in the State Land Cadastre sometimes do not coincide. The cybercriminals are using false data, but they are taking it from official sources. Until 2013, state registration of property rights and contracts, including lease of land plots, was carried out by territorial bodies of land resources by registering contracts and entering information in the land register and entries in the book of records on state registration of state acts on the ownership of the land plot and the right permanent use of a land plot, land lease agreements, made up the State Register of Lands. Since 2013, the State Register of Real Rights to Real Estate and Their Encumbrances began to function, in which not the contract itself is subject to registration, but the right to lease. In addition, a new system for maintaining the State Land Cadastre has been introduced, which differs from the previous one. At the same time, there was no automatic transfer of information on the registration of land lease agreements from the State Register of Lands to the State Register of Real Rights to Real Estate.

<sup>1</sup> The World Bank (2019). *Doing business. Registering Property. Why it matters?*

<<https://www.doingbusiness.org/en/data/exploretopics/registering-property/why-matters>> (2021, July, 12).

<sup>2</sup> Кравченко, Т. (2020). Проблеми скасування державної реєстрації речових прав на нерухоме майно. *Місцеве самоврядування*, 5/1. <<https://i.factor.ua/ukr/journals/ms/2020/may/issue-5/1/article-108486.html>> (2021, July, 12).

This led to the fact that in the State Register of Rights to Real Estate there was no information about the current legal relations of leasing land plots, the rights to which arose before 2013. Under such conditions, an unscrupulous tenant, often in a criminal conspiracy with the state registrar, registered in the State Register of Rights the right to lease under a forged agreement. As a result, on the basis of the allegedly legal registration of the lease right, the crop grown by another tenant was seized. Long-term legal wars began between a conscientious tenant and an unscrupulous one in the hope of defending their rights. This all ends, as a rule, with the forceful seizure of the enterprise with the help of armed people. Another practical problem arises when notaries who have access to a unified register, being in a criminal conspiracy by the parties to a transaction for the sale of, for example, housing, extract incomplete data from the register, ignoring the rights to real estate of subjects who were not present during the procedure.

As a result, the new owner can claim that he did not know about any restrictions on the acquired property and is its bona fide acquirer. This situation puts persons deprived of their property rights in a very difficult situation. State registration of rights to immovable property is a powerful tool to ensure and protect the rights of owners, provides for the formation of the necessary information space for the official regulation of the state of the rights of individuals and legal entities to immovable property. Undoubtedly, entering information in a state register allows for the existence of an organizational and legal basis for registration of all rights to immovable property, provides a plot to implement key guarantees established by the Constitution and laws of Ukraine. Legislative innovations and current decisions regarding the issues of state registration of rights force constant discussions of key registration mechanisms and practices, within which problematic issues arise. To date, the following issues remain relevant: determination of the terms of validity of rights to real estate, taking into account the updated software of the Register; entering information on land plots that are required to be entered into the State Register of Rights; registration of ownership at the request of the heir; documents that are submitted for the state registration of property rights to individual (estate) residential houses, garden, country houses, utility (backyard) buildings and structures, extensions to them, the construction of which was completed before August 5, 1992; specifics of state registration of rights to real estate based on court decisions; renewal of land lease agreements; the tenant's preemptive right to conclude a land lease agreement for a new term, etc.<sup>1</sup>

In addition to issues related to the procedure and legality of entering information in the Register, it is important to ensure protection of information, fully guarantee the rights of owners, to develop registration mechanisms that have a positive practice of application. Key aspects that must be ensured in functioning of state registration institute are reliability of protection of ownership rights and related rights, stipulated freedoms, and interests of citizens, as well as provision of real possibility to conduct operations with property in accordance with the current legislation. Constant reforms in the system of state registration of rights, changes in the procedure of registration activities, problems of staffing create challenges and obstacles for the formation and progressive development of a single model of state registration of rights. Changes which occur in the sphere of registration of property rights require detailed generalization and discussion. It is important that education and training of registrars meet the requirements and tasks necessary for effective support and regulation of property relations. Recognition of the importance of entering reliable, consistent information in the registry, clear interaction between authorized entities, judicial and law enforcement agencies, compliance with established procedures for entering information are necessary steps not only to legalize certain legal facts, agreements, and is a necessary step to build a state governed by the rule of law. Clarification of the legal status of information in state registers, the formation of a unified vision of the process of creating an information field in the context of registration of rights to immovable property is essential for further research of this tool to ensure the rights, highlighting the problem aspects of the implementation of legislative provisions and practices used in the process of entering the relevant information in the State Register of real rights to immovable property.

**Conclusions.** The creation by the Ukrainian legislator of mechanisms for recording real estate objects and related rights and encumbrances is, in principle, a very timely and useful measure, which, if fully implemented, will play an important role both in protecting the rights of individuals and legal entities, and in streamlining legal and economic processes. However, it must be admitted that this company will have a fairly long-term nature and will require significant efforts from the state. Therefore, it is inappropriate at this stage to attach self-sufficient significance to the information entered to date in the unified state registers. It should

<sup>1</sup> Південне міжрегіональне управління Міністерства юстиції (2020). *Проведено онлайн семінари-тренінги з державними реєстраторами щодо новел в українському законодавстві* <[https://just.odessa.gov.ua/?view=viewnews&page\\_id=439](https://just.odessa.gov.ua/?view=viewnews&page_id=439)> (2021, July, 12).



be remembered that the introduced legal norm does not in itself lead to the emergence of legal relations. For this, first of all, the will of the parties is necessary, which the state will then regulate, streamline to the general benefit by introducing the rule of law. Attempts to consider the information recorded in the register on rights related to real estate as the main, sufficient or sole basis for the emergence and recognition of such rights will surely face resistance from the subjects of law in practice. Giving an exaggerated meaning, an excessive legal status of information in state registers, leads, as shown above, to problems of civil circulation, creates an opportunity for criminal actions that violate the rights of legal owners. The transfer of a large array of information on rights related to real estate from the old archives to the new electronic register will probably take a lot of time, especially since the Ukrainian legislator has not identified the institutions responsible for this process.

Thus, everything is left to the owners' initiative. But the owners will feel the need to register in accordance with the new procedure only when making, say, a purchase sale or concluding a lease or mortgage agreement. Without experiencing the need for such operations, the owner will not be motivated to enter information about his property and rights to it in the unified state register. In addition, it is very important to ensure the safety of information stored in the registry, its protection from malicious interference and hacker attacks. The larger the share of information about real estate will be recorded in a single register, the more important the requirement to provide them with protection becomes. Based on the above, it seems that the information entered in the unified state register of real rights will remain important for a long time, if not forever, but an additional source of information about ownership, confirming the existence of property rights, but not establishing it.

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