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OBLIGATIONS TO ACQUIRE OR PRESERVE PROPERTY WITHOUT SUFFICIENT LEGAL BASIS

ABSTRACT

The article deals with theoretical and practical issues concerning obligations to acquire and preserve property without sufficient legal grounds. It analyzes the conditions for the emergence of obligations to acquire and retain property without sufficient legal grounds, the elements of a conditional obligation (object, subjects, and content), the relationship with other means of protection in the event of the invalidity of a transaction, violation of the owner's right to possession, causing damage, etc. The defining feature of a conditional obligation is the absence of legal grounds for acquiring or retaining assets gained at someone else's cost. For the sake of legal certainty, it is proposed to replace the wording "without sufficient legal grounds" with "without legal grounds." It is also advisable to supplement Chapter 83 of the Civil Code of Ukraine with the provision: "in the event of the victim's fault in acquiring or retaining property without legal grounds, the acquirer shall not be subject to the relevant obligations." The acquirer's good faith is irrelevant to the obligation to return the property, but is taken into account when deciding on compensation for income and expenses. It is specified that the provisions of Chapter 83 of the Civil Code of Ukraine apply: to claims for the return of property acquired under an invalid transaction, if only one of the parties to the invalid transaction has performed it; to the owner's claim for the return of property from another person's unlawful possession, if the object is an item that is identified by generic characteristics or if an item that is identified by individual characteristics has not been preserved in kind; for the return of performance by one of the parties to the obligation, for example, if there are no contractual obligations or they have ceased to exist.

Keywords: contract, *condictio actio*, acquisition of property, preservation of property, sufficient legal basis, contractual obligation, monetary obligation, lease, non-contractual obligation, unjust enrichment

JEL Classification: K11, K12, K13, D63

INTRODUCTION

Chapter 83 of the Civil Code of Ukraine (2003) provides for non-contractual obligations in connection with the acquisition and retention of property without sufficient legal grounds. According to Part 1 of Article 1212 of the Civil Code of Ukraine, a person who has acquired property or retained it at the expense of another person (the victim) without sufficient legal grounds (unjust enrichment) is obliged to return the property to the victim. A person is also obliged to return the property if the basis on which it was acquired subsequently ceased to exist. Obligations stemming from the acquisition or retention of property without a valid legal basis are considered property-related obligations, relative, non-contractual, protective, and compensatory obligations aimed at protecting subjective civil rights.

In accordance with Part 3 of Article 1212 of the Civil Code of Ukraine, the provisions of Chapter 83 also apply to claims for the return of property performed under an invalid transaction; the owner's claim for the return of property from another person's unlawful possession; the return of performance by one of the parties to the obligation; reparation of damages by a person who unlawfully acquired or retained property to the detriment of another. At the same time, the Civil Code of Ukraine provides for special means of protection, in particular bilateral restitution (Part 1 of Article 216 of the Civil Code of

Ukraine), vindication (Article 387 of the Civil Code of Ukraine), and compensation for damage (Chapter 82 of the Civil Code of Ukraine).

Under these conditions, it is important to distinguish between the areas of application of each institution and thereby promote certainty regarding the application of the provisions of Chapter 83 of the Civil Code of Ukraine. This is important for the correct choice of the method of protecting rights and the legal qualification of relations.

LITERATURE REVIEW

The issue of legal regulation of obligations to acquire and retain property without sufficient legal grounds has always been the focus of attention of civil law scholars. This is facilitated by the fact that the regulatory provisions governing these relations apply irrespective of whether the unjustified acquisition or retention of property resulted from the actions of the acquirer, the victim, third parties, or was the consequence of an event.

Conditional obligations have been the subject of analysis at the dissertation research level. In particular, it is worth mentioning the works of N. V. Berezhnyak ("Obligations to acquire and retain property without sufficient legal grounds in civil law of Ukraine" – dissertation for the degree of Doctor of Philosophy in Law) (Berezhnyak, 2021), I. E. Berestova ("Obligations to acquire and preserve property without sufficient legal grounds" – dissertation for the degree of Candidate of Legal Sciences) (Berestova, 2004), I. V. Goncharov ("Civil Law Obligations Arising from Unjust Enrichment (Comparative Legal Study under the Legislation of Ukraine and the Countries of the European Union)" – dissertation for the degree of Candidate of Legal Sciences (Goncharov, 2016), S. O. Demenko ("Duties resulting from the possession or acquisition of property without sufficient legal cause") – thesis for the degree of Candidate of Legal Sciences (Demenko, 2020). At the same time, many issues, in particular those concerning the relationship between vindicatory, negatory, obligatory-legal, and *condictio* actions, are covered in academic articles in professional publications and in Supreme Court rulings.

AIMS AND OBJECTIVES

The aim of this article is to undertake a comprehensive examination of the legal institution concerning the acquisition and retention of property without sufficient legal grounds. To this end, it is necessary to analyze the conditions for the emergence of an obligation to acquire and retain property without sufficient legal grounds, the elements of a conditional obligation (object, subjects, and content), the relationship with other means of protection in the event of the invalidity of a transaction, violation of the owner's right to possession, causing damage, etc.

METHODS

In the course of studying the problems of legal regulation, the acquisition and retention of property without adequate legal grounds, the general scientific dialectical-logical method, general methods, special, as well as private scientific methods were used.

The dialectical method underpinned the entire process of examining the issue, enabling a comprehensive analysis of the developmental trends within the institution of unjust enrichment, formulate our own vision of the need for its improvement under the current legislation of Ukraine and propose ways to achieve the specified goals; the methods of analysis and synthesis served to identify the features of conditional obligations; system-structural analysis was used to clarify the elements of binding relations that arise as a consequence of acquiring or retaining property without sufficient legal ground; the hermeneutic-legal method was used in formulating scientific proposals regarding changes and additions to the current regulatory provisions in Ukraine.

The generalization method provided an opportunity to summarize the results obtained and, on this basis, to substantiate conclusions and proposals. Using the modeling method, the impact of the proposed changes and additions to the current legislation of Ukraine on the state of regulation of the studied social relations was predicted. The use of the comparative law method was necessary to clarify modern concepts and trends in the development of the regulation of relations from unjust enrichment in the context of reform and recodification.

The choice and use of these methods in the scientific article are sometimes combined in nature, depending on the solution of specific research tasks.

RESULTS

Taking into account the legal position of the Supreme Court, the conditions for the emergence of a *condictio* obligation are (Table 1):

Table 1. Conditions for the Emergence of Condictio Obligations.

No.	Condition	Description	Example / Case
1	Acquisition or retention of property at another's expense	Active (acquisition) or passive (retention) without legal title	Receiving money without a sales contract
2	Damage to the injured party	Decrease or failure to increase the property that should legally belong to the victim	The landowner did not receive rent
3	Causal link	Gain by one party corresponds to a loss by another	Improvements made at the victim's expense
4	Absence of legal grounds	No legal basis for ownership at the time or after transformation	Court decision revoked – property must be returned

In principle, we can explain it as follows:

1. Acquisition or preservation of property by one person (the acquirer) at the expense of another (the victim). The actions of the acquirer can be expressed both passively—retention at the expense of another person—and actively—the transfer of another person's property into the acquirer's possession, which is not based on a specific title. Therefore, two types of *condictio* obligations can be distinguished: 1. as a result of the unjustified acquisition of property at the expense of another person; 2. as a result of the unjustified preservation of property at the expense of another person.
2. Damage in the form of a decrease or failure to increase the property of another person (the injured party). In this case, it is necessary to talk about the existence of certain economic losses in the property of the victim: on all legal grounds, the specified property should have been in the property ownership of the victim.
3. The conditionality of the increase or preservation of property on the part of the acquirer, by reducing or not increasing it on the part of the victim. In this case, we mean an increase in the value of the acquirer's own property, the addition of certain improvements to it, leading to an increase in the value of the property, or the preservation of property that, for any legal reasons, should have been removed from the acquirer's property.
4. The absence of a legal basis established by law or legal transaction for changing the property status of the parties from the very beginning of the legal relationship or as a result of its transformation (Decision of the Civil Cassation Court of the Supreme Court, 2022).

Unjust enrichment or retention of property may result from the conduct of the acquirer of the property (retention of property that must be returned after termination of the contract); the victim himself (a person mistakenly transfers funds to another person's account); other persons (performance of obligations to the wrong party); the consequences of an event (as a result of a strong gust of wind, the property ends up on another person's land). Therefore, for a *condictio* obligation to arise, it is the fact of unjustified acquisition or retention that is important, rather than the specific reason why it occurred (Table 2).

Table 2. Classification of Unjust Enrichment Situations.

Source	Situation	Applies under Article 1212?
Actions of the acquirer	Retaining property after contract termination	Yes
Actions of the victim	Mistaken money transfer	Yes
Actions of a third party	Fulfilling an obligation to the wrong person	Yes
External events	Wind moves property onto another's land	Yes
Legal basis exists	Dividends paid per valid company meeting	No
Basis ceased to exist	The court ruling canceled debt enforcement	Yes

It should be noted that the use of the phrase “without sufficient legal grounds” does not contribute to legal certainty. We are talking about the acquisition or retention of property without legal grounds.

Condictio is an appropriate means of protection for the return of property that was transferred before the emergence of contractual obligations, in particular, monetary obligations. Until the owner of the immovable property registers the right to lease the land plot on which the property is located, the relationship of actual use of the land plot without a lease agreement and the owner's loss of income in the form of rent is, in essence, conditional. The actual user of a land plot who, without sufficient legal grounds, retained funds that he was supposed to pay for the use of the land at the expense of the owner of the land plot, is obliged to return these funds to the owner of the land plot on the basis of Part 1 of Article 1212 of the Civil Code of Ukraine (Resolution of the Grand Chamber of the Supreme Court, 2020). If no agreement was concluded between the parties, i.e., there is no legal basis for the transfer of funds at the time of their transfer, Article 1212 of the Civil Code of Ukraine applies to the legal relationship. According to the case file, PERSON_2 received from PERSON_1 funds in the amount of USD 4,200 for the sale of a car that did not belong to him, and subsequently, no contract of sale for this vehicle was concluded. The court correctly concluded that the defendant had acquired the funds without legal grounds and reasonably recovered the specified amount in accordance with Article 1212 of the Civil Code of Ukraine (Decision of the Supreme Court of Cassation, 2019).

A condictio action is an appropriate means of protection if the basis for acquisition has subsequently ceased to exist. For example, the fact that an enforcement order (on the basis of which funds were recovered from the plaintiff in enforcement proceedings) was recognized as unenforceable is grounds for the return of funds in accordance with Article 1212 of the Civil Code of Ukraine (Decision of the Supreme Court of Cassation, 2021). In the event of cancellation of the decision of the state enforcement service on the collection of enforcement fees by a court decision, such funds shall be refunded on the basis of Article 1212 of the Civil Code of Ukraine (Decision of the Supreme Court of Cassation, 2018). If public auctions are declared invalid and property is seized from the winning bidder who paid for the purchased property, the latter has the right to demand the return of such funds on the basis of Article 1212 of the Civil Code of Ukraine (Resolution of the Supreme Court, 2020). At the same time, it should be noted that the provisions of Articles 1212–1215 of the Civil Code of Ukraine on the return of unjustly acquired property cannot be applied when considering the issue of reversal of the enforcement of a decision (Resolution of the Supreme Court, 2019).

If there is a legal basis for the acquisition of property and it has not ceased to exist, there are no grounds for condictio claims. For example, if the participants of a company acquired funds in the form of dividends on the basis of a valid decision of the general meeting, such funds were acquired by the participants of the company on the basis of a legal basis, therefore they cannot be returned on the basis of Article 1212 of the Civil Code of Ukraine (Resolution of the Supreme Court, 2018). Funds paid by the debtor as compensation for moral damage on the basis of a court decision that has not been canceled or changed are not unjustly acquired and are not subject to recovery on the basis of Article 1212 of the Civil Code of Ukraine (Decision of the Supreme Court of Cassation, 2021). The elements of the obligation to acquire and preserve property without sufficient legal grounds are the object, subjects, and content.

The object of a conditional obligation can be any property, both individually defined and defined by generic features, including money. The Grand Chamber of the Supreme Court indicates that the analysis of the norms of Chapter 83 of the Civil Code of Ukraine shows that the Civil Code of Ukraine does not differentiate the features of the application of a conditional obligation depending on the generic or individual features of its object and, accordingly, does not limit the scope of its application exclusively to things defined by generic features. In the event of the impossibility of returning the property to the owner after a court decision on vindication (Articles 387, 388 of the Civil Code of Ukraine), the rules on illegal enrichment are applied subsidiary in accordance with Part 3 of Article 1212 of the Civil Code of Ukraine and the restoration of the violated right of the owner occurs with the application of a conditional claim (Resolution of the Supreme Court, 2024).

According to Article 1215 of the Civil Code of Ukraine, the following unreasonably acquired assets are not subject to return: 1) wages including payments of a similar nature, such as pensions, state benefits, educational grants, damages for personal injury, health-related harm or loss of life, and spousal or child support, and other monetary amounts furnished to an individual to secure minimum living conditions, provided that such payments were made voluntarily by an individual or legal entity, without accounting errors on their part and in the absence of the acquirer's bad faith; 2) other types of property, as may be prescribed by law. For example, property transferred for the performance of an obligation before the expiration of the performance period (Article 531 of the Civil Code of Ukraine), performed by a person who returned the debt after the statute of limitations (Article 267 of the Civil Code of Ukraine).

The subjects of the conditional obligation are (Table 3).

Table 3. Subjects of Conductio Obligation.

Subject	Description	Note / Judicial Practice
Acquirer (Debtor)	Owns or retains property at the time of litigation	Good faith is not a precondition
Victim (Creditor)	The rightful claimant or owner	Good faith of the victim is relevant in some cases

As we can see in Table 3:

1. The acquirer of property (debtor) - a person who, at the time of the decision on the merits of the case, owns or does not own property in kind. The Civil Code of Ukraine does not provide for the bad faith of the acquirer of property as a condition for the return of unjustly acquired or preserved property. The law does not define the fault of the debtor as a condition for the emergence of conditional obligations. The good faith of the acquirer of property is taken into account only when satisfying the requirements for the return of income and reimbursement of expenses.
2. The victim (creditor). This is the owner of the property (title holder), who has the right to claim under the obligation. The Civil Code of Ukraine does not provide for any reservations regarding the good faith or bad faith of the victim. However, it is worth noting the judicial practice that takes into account the fault of the victim in the emergence of the grounds for the conditional obligation. When determining whether unjustly acquired funds are subject to return to the injured person, it should be taken into account that civil legislation acts must comply with the content of general principles, in particular, good faith. Unjustly acquired funds are not subject to return if the injured person knows that he has no obligation (no duty) to pay the funds, but makes such a payment because the specified person behaves inconsistently if he subsequently demands the return of the paid funds (Supreme Court ruling, 2021). It seems appropriate to supplement the Civil Code of Ukraine with a provision stating that if the acquisition and preservation of property occurred at the will of the injured person, the acquirer is released from obligations under the conditional obligation.

The content of the conditional obligation covers the following obligations of the acquirer (Table 4):

Table 4. Content of Conditional Obligation.

No.	Provision
1	The acquirer must return unjustly acquired property in kind or compensate for its value if return is impossible. The value is determined at the time of case consideration (Art. 1213 CCU).
2	The obligation arises upon acquisition of property without sufficient legal grounds or upon loss of such grounds (Art. 1212 CCU), and must be fulfilled immediately.
3	There is a judicial opinion that the obligation arises only after the acquirer knew or could have known of the unjust enrichment, depending on their good faith (Grand Chamber SC, 2024).
4	Compensation for value is applied only when return in kind is impossible (e.g., destruction, transfer, loss). It replaces, not supplements, return in kind (Rozgon, 2024).
5	The acquirer must compensate all actual or potential income from the property starting from when they knew or should have known of the lack of legal grounds (Art. 1214(1) CCU).
6	Good faith is a central criterion — based on honesty, openness, and respect for other parties in civil relations. Civil turnover presumes good faith.
7	A conditional obligation serves to restore property balance when no other legal remedy (contract, tort, statute) is available. It should not overburden the acquirer or unjustly enrich the claimant (Constitutional Court, 2025).
8	The acquirer must pay interest for using another's money (Arts. 1214(2), 536 CCU).
9	The acquirer may claim reimbursement of necessary expenses related to the property from the moment their obligation to return income arises (Art. 1214(1) CCU).
10	In case of delay, 3% per annum interest is charged on the overdue amount (Art. 625(2) CCU).
11	Conditional claims are applicable when unjust enrichment cannot be addressed by vindication, restitution, or compensation for damage.
12	If only one party performs under an invalid transaction, the return is governed by Art. 1212 CCU; bilateral restitution under Art. 216 CCU applies only if both parties performed.
13	Example: A buyer transferred UAH 147,250 under an invalid contract. The seller took no action. Return of funds is regulated under Art. 1212 CCU (Supreme Court Resolution, 2019).

We can annotate the data in the table as follows:

1. Restitution in kind of the unlawfully acquired property shall be made by the acquirer to the victim. In case of impossibility to return the unjust enrichment to the person from whom it was taken in kind, its value is compensated, which is determined at the time of consideration by the court of the case on the return of property (Article 1213 of the Civil Code of Ukraine). Regarding the moment of occurrence of the delay in the fulfillment of the obligation to return the unjustly acquired property on the basis of Article 1212 of the Civil Code of Ukraine, the Supreme Court of Ukraine notes that the obligation to return the unjustly acquired property arises for a person directly from the norm of Article 1212 of the Civil Code of Ukraine on the basis of the fact of acquisition by him of property (funds) without sufficient legal basis or the fact of the disappearance of the basis for the acquisition of this property (funds) subsequently. A person must fulfill such an obligation immediately after he has unjustly received the property or when the grounds for such receipt have ceased to exist (Resolution of the Supreme Court, 2024). In a separate opinion of the judges of the Grand Chamber of the Supreme Court Pogribny S. O., Korol V. V., Tkach I. V. to this court decision, the position is substantiated that a person cannot be considered to be obliged to return unjustly acquired property (in particular, money) until he, acting in accordance with the requirements of business turnover, with a proper level of reasonableness and prudence, learned or could not learn about the very fact of his unjust enrichment. When deciding the question of the moment when the acquirer not only learned, but could have learned, it is necessary to take into account the good faith of the acquirer's behavior (Separate opinion of the judges of the Grand Chamber of the Supreme Court, 2024). This opinion is quite debatable. If we link the condition with the knowledge of the acquirer, this will lead to a blurring of a clear criterion - the presence or absence of a legal basis. Then the subject of the dispute will not be the fact of groundlessness, but the good faith of the acquirer.
2. Regarding the compensation for the value of unjustly retained property, in the legal literature, there is a position that these relations are not purely conditional in their content (in a narrow or broad sense) but are associated with the adoption of special measures instead of returning unjustly retained property due to the impossibility of its return in kind. The interpretation of Art. 1213 of the Civil Code gives grounds for the conclusion that compensation for the value of unjustly retained property is applied in the event of establishing the impossibility of returning the property in kind, which may be associated with the destruction of the thing, its processing, loss, unlawful transfer to a third party, etc. Compensation for the value of unjustly retained property is a measure that is taken instead of returning such property in kind, and not together with it (Rozgon, 2024).
3. The acquirer is obligated to compensate for all income actually received or that could have been received from the property, starting from the moment they knew or should have known that their possession of the property lacked sufficient legal grounds (Part 1 of Article 1214 of the Civil Code of Ukraine). The issue of determining the good faith of the acquirer is important. Good faith is the compliance conduct of parties involved in civil legal relationships in line with a defined standard of behavior marked by honesty, openness, and consideration for the interests of the counterpart in the contract or related legal interaction. That is, civil turnover is based on the presumption of good faith and honesty of participants in civil relations, who have the right to count on such behavior of other participants that will meet the specified criteria and ideas about honor and conscience. According to the principle of good faith, parties are obligated to act with honesty and fairness when exercising their rights and fulfilling their contractual and/or legal obligations. According to the panel of judges, the provisions of Art. 1214 of the Civil Code of Ukraine allows placing the victim and the person who unjustifiably acquired or retained property on equal terms, since the victim has the right to restore his property sphere. At the same time, the obligation of unjust enrichment is a general basis for restoring the property status of persons (restoration of justice) in the absence of other grounds for this, if the protection of the rights of the person cannot be carried out on the basis of a contract, tort, law, etc. However, it cannot constitute an unreasonable burden for the defendant and be a source of unjustified additional profits for the victim. Therefore, for the consideration of a specific case, among other things, the issue of compliance by both the defendant and the plaintiff with the principle of good faith behavior when applying the provisions of Art. 1214 of the Civil Code of Ukraine to the disputed legal relationship must be investigated (Resolution of the Constitutional Court of Ukraine, 2025).
4. The acquirer is obliged to pay interest for the use of someone else's money (Part 2 of Articles 1214, 536 of the Civil Code of Ukraine).
5. The acquirer is entitled to claim compensation for necessary expenses incurred in relation to the property, starting from the moment they are obliged to return the income derived from it (Part 1 of Article 1214 of the Civil Code of Ukraine).

In case of delay in the performance of an obligation, in particular regarding the return of unjustly received or saved money on the basis of Art. 1212 of the Civil Code of Ukraine, 3% per annum of the overdue amount shall be charged in accordance with Part 2 of Article 625 of the Civil Code of Ukraine (Resolution of the Supreme Court of Ukraine, 2018).

Conditional claims are an appropriate method of protection only in situations where one person is unjustly enriched to the detriment of another, and cannot be remedied through other, specific legal remedies of protection (vindication, restitution, compensation for damage). Conditional claims can be brought independently or together with others. Therefore, it is important to clarify the conditions for distinguishing a conditional claim from claims: on the application of the legal consequences of the invalidity of a transaction (restitution), a vindication claim, and a claim for compensation for damage.

The use of a conditional claim for the return of what was performed under an invalid transaction. In Part 1 of Art. 216 of the Civil Code of Ukraine provides for the legal consequences of the invalidity of a transaction, bilateral restitution - each party is obligated to return to the other, in kind, all that was received in execution of the transaction. If such return is impossible — particularly in cases where the subject of performance consisted of the use of property, completed work, or services rendered — the party must reimburse the value of what was received, based on the prices applicable at the time of reimbursement. If only one of the parties to an invalid transaction has performed it, the provisions of Article 1212 of the Civil Code of Ukraine shall apply to the return of what was performed. According to the materials of the court case, in confirmation of its obligations under the contract of sale of real estate, the buyer transferred funds to the seller in the amount of UAH 147,250, which is confirmed by a receipt. However, the seller did not take any action to fulfill the agreement under the contract, and refused to certify the contract in a notarial manner. The systematic interpretation of paragraph 1 of part 1 of Article 216 of the Civil Code of Ukraine and paragraph 1 of part 3 of Article 1212 of the Civil Code of Ukraine shows that: (a) the legislator did not provide for the possibility of unilateral restitution; (b) the rules of paragraph 1 of part 1 of Article 216 of the Civil Code of Ukraine apply when bilateral restitution occurs; (c) in the event that only one of the parties to an invalid transaction has performed it, the provisions of Chapter 83 of the Civil Code of Ukraine shall be applied to return the performed transaction (Resolution of the Central Committee of the Supreme Court, 2019).

Use of a *condictio action* to recover property from unlawful possession by another person

According to Art. 387 of the Civil Code of Ukraine, the owner has the right to claim his property from a person who illegally, without appropriate legal grounds, took possession of it. This is a real-legal method of protection (vindication claim), which is used in the absence of contractual relations and cases of invalidity of transactions. Money and bearer securities in physical form cannot be reclaimed from a bona fide acquirer (Art. 389 of the Civil Code of Ukraine).

Considering that a vindication claim is an appropriate method of protection for things defined by individual characteristics, a condition claim can be a method of protection for things defined by generic characteristics. As already noted above, the object of a conditional obligation can also be a thing defined by individual characteristics. However, a condition claim cannot replace a vindication claim. Therefore, it can only be applied in cases where there are no grounds for vindication, in particular in the case of failure to preserve property in kind.

Use of a conditional claim to recover performance by one of the parties to an obligation

The very wording of the obligation “to acquire, preserve property without legal grounds” literally excludes the possibility of applying the institution of unjust enrichment to contractual relations. In the event of a dispute regarding the acquisition of property or its preservation without sufficient legal grounds, the contractual nature of the disputed legal relations excludes the possibility of the court applying the provisions of Chapter 83 of the Civil Code of Ukraine to them (Decision of the Supreme Court of Cassation, 2018). Conditional obligations can arise only if the contractual obligations have ceased. That is, if the party that performed the performance, but did not receive a counter-performance in the amount corresponding to the transferred property (paid funds) and subsequently withdrew from the contract, then it may demand from the party that violated the contract and did not make a counter-performance, the return of the property (funds) on the basis of Clause 3, Part 3, Article 1212 of the Civil Code of Ukraine (Resolution of the Supreme Court, 2019).

The expiration of the contract term is not a basis for terminating an obligation that has remained unfulfilled. For example, after the expiration of the contract term, an unused advance payment transferred for the performance of such a contract cannot be claimed in accordance with the provisions of Art. 1212 of the Civil Code of Ukraine as unjust enrichment (Decision of the Supreme Court of Cassation, 2018). In contrast, with the termination of a contract due to the customer's withdrawal from such a contract, the payment made as an advance payment loses the characteristics of an advance payment and becomes property (cash) acquired by the contractor without sufficient legal grounds, which is subject to recovery under Art. 1212 of the Civil Code of Ukraine.

In judicial practice, there is a position that a condition claim is an appropriate method of protection in the event that property is unjustifiably acquired in connection with an obligation (transaction), but not in accordance with its terms. For example, as established by the courts of previous instances, the basis for the plaintiff's transfer of UAH 18,454,848.76 in favor of JSC "Ukrtransgaz" was unfounded, that is, without observing the procedure for settling the negative monthly imbalance established by the Agreement and legislation, the accrual of JSC "Ukrtransgaz" LLC "Lugansk Zbut" of a fee for commercial balancing services of natural gas for December 2018. Therefore, the accrual of the payment for commercial balancing services of natural gas for December 2018 to JSC Ukrtransgaz actually occurred outside the conditions stipulated by the natural gas transportation contract dated 07/25/2017 No. 1707000361. The above indicates that the appellate court correctly qualified the disputed legal relationship under Art. 1212 of the Civil Code of Ukraine (Resolution of the Supreme Court, 2021).

This position is debatable, since the funds were transferred on the basis of the contract itself, although in violation of its terms. In some cases, the legislator himself determines the legal consequences of the transfer of property in violation of the requirements of the contract within the provisions on a separate contract. For example, in accordance with Part 2, 3 of Art. 670 of the Civil Code of Ukraine, in the event that the seller delivers to the buyer a quantity of goods exceeding that specified in the contract of sale, the buyer is required to notify the seller accordingly. Should the seller fail to dispose of the excess goods within a reasonable period following such notification, the buyer shall be entitled to accept the entire quantity, except as otherwise provided by the contract. If the buyer accepts a quantity of goods exceeding the contractual agreement, they shall be obliged to pay for the surplus at the contractual price, unless the parties have agreed upon a different price. Therefore, when property is acquired under the contract, but in violation of its requirements, it is advisable to use contractual methods of protection.

Use of a *condictio action* to recover damages from a person who has unlawfully acquired property or retained it at the expense of another person

In this case, it is worth comparing tortious obligations and obligations in connection with the acquisition or retention of property without valid legal grounds.

1. The basis for compensation is the presence of such elements of a civil offense as: damage; unlawful behavior of its perpetrator; causal connection between the damage and the unlawful behavior of the perpetrator; fault. In the absence of at least one of these elements, civil liability does not arise. At the same time, it should be noted that the Civil Code of Ukraine provides for cases of civil liability in the absence of fault, for example, when causing damage by a source of increased danger).
2. For conditional obligations, an important fact is the unlawful acquisition (preservation) of property by one person at the expense of another. Fault is not a mandatory condition. In conditional obligations, the debtor is presumed innocent until the moment when he learned or should have learned about the unjust enrichment.
3. Compensation for damage is a measure of civil liability for the debtor. Property damage is compensated in full by the person who caused it (Part 1 of Article 1166 of the Civil Code of Ukraine). The obligation to cause damage ensures the restoration of the property sphere of the victim, according to the principle of full compensation (return of property equals the amount of damage). When acquiring or preserving property without sufficient legal grounds, property damage to the victim is compensated only for the amount by which the debtor became rich. The debtor does not bear any property losses; he undertakes to return only the property that he unjustly retained, and in cases where the property can generate income, all income, because they also belong to the property sphere of the victim. Conditional obligations are aimed at returning unjustly acquired property to the victim; that is, they are aimed at restoring the previous property status of the parties.
4. The court is entitled to reduce the amount of compensation for damages caused by an individual, taking into account their financial circumstances, except in instances where the harm resulted from the commission of a criminal offense (Part 4 of Article 1193 of the Civil Code of Ukraine). The amount of conditional compensation cannot be changed, unlike tortious compensation.

The comparative analysis of conditional and tortious obligations shows that these are legal relations that are different in their legal nature. A person whose rights have been violated has the right to choose a method of protection.

DISCUSSION

According to Part 1 of Article 316 of the Civil Code of Ukraine, the right of ownership is the legal entitlement of an individual to possess and control an item (property) at their own discretion, in accordance with the law, irrespective of the will of others. Pursuant to Article 41 of the Constitution of Ukraine, every person has the right to own, use, and dispose of their property, as well as the results of their intellectual and creative activity. The right to private property is acquired following the procedure established by law. Furthermore, no one shall be unlawfully deprived of ownership, and the right to private property is inviolable. Thus, the “inviolability” of the right of ownership acquires the status of a constitutional principle, which is reflected in Articles 3 and 321 of the Civil Code of Ukraine. Accordingly, Article 3 of the Civil Code of Ukraine establishes the principle of the prohibition of deprivation of property rights, except in cases explicitly prescribed by the Constitution and law, thereby ensuring that owners may use their property in their own interests without the risk of arbitrary seizure, prohibition, or restriction of use. Therefore, the issue of acquiring or retaining property without sufficient legal grounds and its legal consequences cannot be ignored by the legislator. Accordingly, mechanisms for protecting violated, disputed, or unrecognized rights of owners must be established and function effectively. Issues remain debatable regarding the choice of method for protecting the rights of the injured party and the elements that must be established in each specific case in order to achieve the goal of legal protection. To this end, it is necessary to develop specific proposals for amendments and additions to the current regulatory framework, which, in turn, will avoid misinterpretations and reduce the number of different approaches in judicial practice. The discussion on the regulation of *condictio* relations is intended to achieve an effective level and result in the improvement of the regulation regarding the institution of acquisition or retention of property without sufficient legal grounds in the context of the reform and recodification of the civil legislation of Ukraine.

CONCLUSIONS

The obligation to acquire or retain property without sufficient legal grounds is protective and compensatory in nature, aimed at restoring the property status of the injured party by returning the unjustly acquired property or its value.

The defining feature of a *condictio* obligation is the absence of legal grounds for acquiring or retaining property obtained to the detriment of another person. For the sake of legal certainty, it is advisable to replace the phrase “without sufficient legal grounds” with “without legal grounds”.

It is also advisable to supplement Chapter 83 of the Civil Code of Ukraine with the following provision: “in the event of the victim's fault in acquiring or retaining property without legal grounds, the acquirer shall not be subject to any corresponding obligations”. The acquirer's good faith is irrelevant to the obligation to return the property, but is taken into account when deciding on compensation for income and expenses.

The provisions of Chapter 83 of the Civil Code of Ukraine apply:

- to claims for the return of performance under an invalid transaction, if only one of the parties to the invalid transaction has performed it;
- to the owner's claim for the return of property from another person's unlawful possession, if the object is an item that is defined by generic characteristics or if an item that is defined by individual characteristics has not been preserved in kind;
- to the return of performance by one of the parties to an obligation, for example, if there are no contractual obligations or if they have been terminated.

The obligation to acquire and preserve without sufficient legal grounds, provided for in Chapter 83 of the Civil Code of Ukraine, and the obligation to compensate for damage, provided for in Chapter 82, differ in their legal nature and conditions of occurrence. A person whose rights have been violated has the right to choose the method of protection.

Further research should be devoted to the choice of the method of protection of the rights of the injured party and the elements that must be established in each case to achieve the goal of legal protection. Also, further research should be aimed at developing proposals for amendments and additions to the current regulatory framework to avoid misinterpretations and reduce the number of different approaches in judicial practice.

ADDITIONAL INFORMATION

AUTHOR CONTRIBUTIONS

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CONFLICT OF INTEREST

The Authors declare that there is no conflict of interest.

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ЗОБОВ'ЯЗАННЯ З НАБУТТЯ, ЗБЕРЕЖЕННЯ МАЙНА БЕЗ ДОСТАТНЬОЇ ПРАВОВОЇ ПІДСТАВИ

У статті здійснено теоретичний аналіз і розглянуті практичні аспекти відповідальності, що виникає через набуття або утримання майна без належних правових підстав. Проаналізовано умови виникнення зобов'язання з набуття, збереження майна без достатніх правових підстав; елементи кондикційного зобов'язання (об'єкт, суб'єкти й зміст), співвідношення з іншими способами захисту в разі недійсності правочину, порушення правомірності власника щодо володіння, заподіяння шкоди тощо. Визначальною рисою кондикційного зобов'язання є відсутність правомірної підстави, яка б легітимізувала набуття або утримання майна однією особою за рахунок іншої. З метою правової визначеності формулювання «без достатньої правової підстави» запропоновано замінити на «без правової підстави». Доцільно також доповнити главу 83 ЦК України положенням: «У випадку наявності вини потерпілого щодо набуття або збереження майна без законних підстав відповідні зобов'язання в набувача не виникають». Добросовісність набувача не має значення для виникнення обов'язку повернення майна, однак враховується при розв'язанні питань про відшкодування доходів і витрат. Визначено, що правове регулювання відносин, які виникають унаслідок повернення майна або компенсації його вартості у зв'язку з виконанням недійсного правочину, здійснюється на підставі положень глави 83 Цивільного кодексу України, якщо тільки одна зі сторін недійсного правочину здійснила його виконання; для витребування майна власником із чужого незаконного володіння, якщо об'єктом є річ, яка визначена родовими ознаками або за умови незбереження в натурі речі, яка визначена індивідуальними ознаками; для повернення того, що було виконано однією зі сторін за зобов'язанням, наприклад, якщо відсутні договірні зобов'язання або вони припинилися.

Ключові слова: договір, кондикційний позов, набуття майна, збереження майна, достатня правова підстава, договірне зобов'язання, грошове зобов'язання, оренда, недоговірне зобов'язання, безпідставно набуте майно

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