Compulsory alienation of land plots: a historical review and some results of legal regulation

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Abstract. Ensuring the inviolability of the right of private property is one of the main constitutional guarantees of the subjective right of any person, and at the same time it acts as a condition for building and an indisputable requirement for a state governed by the rule of law. However, modern experience shows that under the conditions of present-day public life, the right of ownership is not absolute, not excluding land, and there is no unlimited power of the owner over the land plots belonging to him. The right of ownership is limited by considerations of the so-called social function of the state, service to public interests and other factors. State reserves the right and prescribes a special mechanism with a certain number of grounds that allow the compulsory restriction on private ownership of land in cases strictly specified by law. The possibility of restricting private property for various purposes comes from the doctrinal provision of the binding nature of property itself. However, the use of such instruments of influence should not be the subject of abuse by a State or officials in order to redistribute property. At the same time, the current legal regulation in any case is based on the historical experience of both Russia and foreign countries. Within the framework of the article, the authors attempt to give a brief analysis of the history of legal regulation on alienation of land plots, analyzing the relevant constitutional, civil, and criminal law norms.

1 Introduction

The historical study of the main stages of the development of the institution of compulsory alienation of land plots undoubtedly has not only a significant theoretical, but also a practical basis. The study of social legal relations of a particular epoch of human development makes it possible to understand the goals of creating appropriate legal norms, the mechanism of their implementation, as well as problematic aspects of practical application and ways to eliminate such.
The specifics of the study of the most significant issues of the problem put forward the need to consider the following periods of formation of the institute of compulsory purchase of land: the origin of the institute in the Ancient World (Ancient Greece, Ancient Rome, Kievan Rus); the development in the Middle Ages and Modern Times; legal regulation in pre-revolutionary Russia (the period of the Russian Empire); the development of legislation on compulsory purchase of land in The Soviet Union.

The purpose of the study is to conduct a retrospective analysis of the institution of compulsory purchase of land plots, as well as to identify and fix significant patterns in legal regulation and the studied relations both in overseas and domestic law.

The to be put forward brings to the solution of the following tasks:
1. To analyze the origin of the institution under study and its legal regulation in the states of the Ancient World;
2. To study the features of compulsory purchase of land in the Middle Ages and Modern times;
3. To investigate the legal regulations governing alienation on the territory of the Russian state in different periods up to and including the end of the existence of the Russian Empire;
4. To consider the specifics of the seizure of property, including land plots in accordance with the requirements of Soviet law.

2 Materials and methods

To achieve the goal of scientific research, theoretical, empirical and special legal methods are applied:
1) implementation of theoretical methods made it possible to analyze the regulatory framework, as well as literary sources;
2) empirical methods contributed to the disclosure of the experience of law enforcement in the area of compulsory purchase of land plots;
3) special legal methods implementation allowed consideration of the dynamics of legal regulation of the subject matter, analyze statistical data, identify problems and ways to solve them;
4) implementation of the historical and legal method, allowed to analyze the previously applied norms for regulating the legal relations under study.

3 Discussion

It is necessary to start studying the history of the development of the institution of compulsory purchase of land during the Ancient World by studying the legislation of Ancient Greece, in our opinion. This position is due to the fact that studies of the social structure and legal system of other civilizations of that time allow us to conclude that in their development the studied civilizations did not distinguish the institution of compulsory purchase of land from private ownership due to the absence or weak development of the institution of ownership of land or the insufficient level of development of relevant relations.

Ancient Greek civil law was archaic by its nature and was characterized by a weak development of institutions, including the institute for the protection of property rights. The subjective right to ownership was subject to protection only in private legal relations, if one of the participants was a public legal entity, then the private person had no chance to protect his rights and lost the right to land plot accordingly. There were no legal provisions on compensation and guarantees for the owners of the seized property. It is necessary to emphasize that there occurred the cases of forced redemption of slaves or a number of
different goods, that have come down to us thanks to historical sources, but this order did not apply to the land. In general, within the framework of Greek law, the state had significant opportunities to influence the scope and content of citizens' rights.

According to V. P. Glinyany's definition, "there was a natural connection between the state and private land ownership. Land ownership was of a dual form - private ownership of land was considered to originate from the state, and the state existed in the form of private property" [1, pp. 149-150]. Thus, "The Archons, upon taking an office, annually announced the preservation of property belonging to citizens" [1, pp. 149-150]. The very name of the land plots comes from the word "lot" (kleros), that is, the plot received from the community as a result of a draw [1, pp. 149-150].

Greek law knew such a type of punishment as the forced free of compensation seizure of property, which in modern times is called confiscation. This type of punishment was applied only for the commission of the most serious types of crimes and only the highest judicial authorities had the right to impose such a sentence.

An important aspect of the development of the institution of compulsory purchase of land in Ancient Greece is the approval of the mortgage institution. The impetus for its appearance was the fact that in 621 BC, the ruler Dracont introduced norms according to which encroachments on private property were severely punished [2, p. 114]. The result of the development of property relations and the establishment of publicity in the early sixth century BC became a notion of mortgage. This concept was introduced into everyday life by Archon Solon, who legalized the established custom in 594 BC [3, p.28]. It was from this moment on that a pillar, called "Mortgage", was installed on the border of the debtor's land plot, on which all the debts of the owner were noted.

The owner of the property, which was assigned a certain encumbrance, lost the opportunity to move one or another movable property that was located on the site and lost the opportunity to re-mortgage the property, which, unfortunately, was a fairly common practice misleading bona fide creditors. Later, information about the mortgaged land plots was accumulated in special written documents, which significantly facilitated business turnover in the field of dead pledge relations.

A significant part of the provisions of the law of ancient Greece is reflected in Roman law. So, within its framework, we can trace the existence of norms allowing the compulsory purchase of land both in the interests of public legal entities and in private legal interests. [4, p. 17].

The most common practice in which land plots were alienated were cases when socially significant objects related, in particular, to water supply, sewerage and others were erected on the alienated site [5, p. 65]. Moreover, the compulsory purchase of land in favor of the state was not legally regulated, but technically it was carried out by issuing administrative regulations, and the practice based on reaching a consensus between the authorities and individual citizens was also widespread [4, p.17].

Roman law of the classical and, to a greater extent, post-classical period establishes the legal possibility of buying out a household with the land on which it was located, but differentiates according to the value of the subjects entitled to make such a decision.

Confiscation of land plots was also applied. At earlier stages of the development of Roman law, the institution of confiscation of property was one of the norms that had close connection to religion, since the confiscated property was transferred to the appropriate temple and could be assigned as a sanction only for a number of capital crimes. Later, confiscation was closely associated with penalties such as deprivation of citizenship and expulsion from the community. In some cases, individual family members of those deprived of citizenship and sentenced to exile could keep up to half of their property, but Roman law on such prescriptions was extremely variable throughout the history of its existence. In the period from the III century BC to the III century AD, the institution of mortgage borrowed
from the Greeks in its classical sense appeared in Roman law, where the pledged object is used by the debtor at his discretion and at the same time serves as a guarantee for the other party to the transaction. Basically, mortgages were distributed in relations to agricultural land.

Thus, the institution under the study, which originated in the ancient world, received a certain development, but its norms were still archaic, closely related to religion and did not undergo systematic change. At the same time, it is worth pointing out that some legal constructions which are in use today, originate from those described above.

As for the domestic state and law, in the studied times on the territory of Russia, the main document that regulated legal relations of that time was the “Rysskaya Pravda”. It was only the end of the XVIII century that became the landmark when systematic legal regulation of the studied relations finally occurred in Russian law. The determinants of this are the inability to ensure proper protection of the subjective rights of the title holder from various forms of illegal behavior on the part of government officials. [4, p. 17].

One of the reasons was the lack of a clear established right of private ownership on land plots [6, p. 302]. The sources of ancient Russian law do not contain clear norms regulating legal relations in the sphere of turnover of immovable property, in particular, land as a commodity, and the later indication of ownership of land did not imply the amount of rights, the given state corresponds to modern legal regulation of the institution of property. It is also worth mentioning that the legal sources of the XVII – XVIII centuries indicate that the owners of land can be the feudal elite, the church and the community. We are not talking about the land market in the modern sense. The land itself was excluded from civil circulation and could not be an object of civil law, in particular, the conclusion of contracts was prohibited [7, p. 284]. The only form of collateral up to the XVII century was exclusively purchase (pledge of a person). Subsequently, from the 17th century, personal bail was officially prohibited. However, it continued to exist in an established form due to the pledge of the land on which the peasants lived. This continued until the middle of the 19th century [6, p. 303]. Regarding other types of forced alienation of land, there was only confiscation. It was fixed in the Russian Truth, called "giving to the stream and plundering" [6, p. 304]) and was the highest measure of punishment. The criminal and his family were expelled from the community, and the property was confiscated in favor of the community or the prince (including the land plot that the family cultivated). This punishment was imposed only in three cases: for murder during robbery (Article 7), horse theft (Article 35), arson (Article 83). In the Middle Ages in Europe, where Lehnsrecht norms were applied and the monarch was the owner of all lands within the state, which automatically made the institution of compulsory purchase of land irrelevant. Urban medieval law, due to the greater development of norms in the field of private land ownership, knew the institution of compulsory purchase of land. A striking historical example of the practical application of the institution of compulsory purchase of land on a compensatory basis is the royal decree adopted by the French monarch Philippe the Handsome, providing for the possibility of compulsory compensated seizure of land for the construction of religious buildings [8 p. 367]. The given example later found its development in the publication of relevant regulations on the compulsory paid seizure of land and for other purposes [4, p.18].

Medieval Germany knew the institution of compulsory purchase of land for public needs, but the list of cases involving this institute was limited to cases of the introduction of mining, construction, irrigation facilities, as well as water protection structures [8, pp. 367-371]. The German legal tradition does not perceive the right of ownership as an absolute exclusive right, perceiving it as one of the property rights. The general trend further on was an increase in the number of cases in which the application of the institute under study received proper theoretical development.
The term "the right of the state to forcibly alienate private property" was first used by the lawyer G. Grotius, who believed that the state had the right to seize or destroy property in the public interest. He set out these postulates in the work "De Jure Belli et Pacis" in 1625 and described the law as follows: "... the property of subjects is under the "eminent domain" (literally, the supreme authority) of the state, so that the state or whoever acts on its behalf can use and even alienate and destroy such property not only in case of extreme necessity, in which even private individuals have such a right to the property of others" [9, p. 443], but also for the ultimate satisfaction of public expediency, which essence is the emerging foundations of civil society that provided a presupposition of the intention of the bearer of personal interests to meet him halfway [9, p. 444]. However, it should be added that in such a case the state is obliged to compensate the losses for those who lost their property..." [9, p. 444]. According to G. Grotius, the monarch, as the supreme owner, has the right to perform any actions with the property of subjects, as well as other categories living on the territory of the state, up to interference at the level of private legal interests of the owners. The theoretical basis of this right is the doctrine of "dominium eminens". Moreover, the researcher characterized the mentioned competence not as personalized, but as the right of the state in general to alienate the property that is necessary to perform the function of the state. At the same time, G. Grotius clearly pointed out that the implementation of the principle of justice in law requires fair compensation to the owner of the damage suffered and, of course, alienation should be carried out only to satisfy public interests. [9; 448].

The idea of building a civil society as a society of owners is the most effective way to eliminate arbitrariness in the actions of state power [10, p. 172]. As stated by Sh. Montesquieu: "......when a society needs the property of a private person, one should never resort to the strictness of state law; victory should belong to the civil law, which, like a good father, looks with equal love at the whole society and at its individual member... If they say that the private good should be inferior to the public good, then this is only a false conclusion. This rule is inappropriate when applied to property issues, because the public good always requires that everyone invariably preserve the right to property secured to them by civil laws" [11, p. 356].

Being an advocate of the rights of a free person, S. Montesquieu pointed out that a legal structure should be used for compulsory alienation, within the framework of which such a public legal entity as the state will nevertheless act as a private legal entity, and this will allow the subject whose property was alienated to forcibly exercise all its powers within the framework of other relations.

The stated judgments became the doctrine that served as the basis for the formation of Modern European law. The doctrine directly formulated the idea of recognizing private property as inviolable, but specifically stipulated the legal possibility, in case of extreme necessity, to withdraw this property for a fee in favor of the state. It did not take long to wait and the legal regulation in this area has already been sufficiently detailed.

Further development of ideas is associated with the adoption of the French Declaration of Human and Civil Rights in 1789 [12, pp. 113-114]. One of the basic principles reflected there was the following: "since property is a sacred and inviolable right, no one can be deprived of it except in the case of a legally established social necessity and subject to fair and prior compensation" [13]. It is with this provision that pre-revolutionary civilists associate the development of the institution of expropriation in the states of Europe in the 19th century, which has a public legal nature. Currently, constitutionalists note its significant importance for the development of the constitutions of European states adopted in the XVIII- XIX centuries [12, pp. 113-114].

In the future, this fundamental principle was consistently reflected in constitutional acts, as well as in subsequent editions of the Declaration of Human and Civil Rights [14, p. 135]. At the same time, it is worth pointing out that the regulation of forced alienation gave
the executive authorities of the state significant powers in terms of both the alienation of specific property itself and determining the amount of compensation for it. The truly effective legal regulation of the studied relations in France became after the adoption of special laws during the time of Napoleon Bonaparte clearly describing the procedure of forced alienation [15, p. 224]. The main novelty in the Napoleonic legislation was the reduction of the role of executive authorities in this procedure, and the final decision on the need to withdraw and assign the amount of compensation was made by the judicial authorities. Accordingly, the executive authorities made decisions on the need for withdrawal and justified it, and the judicial authorities, in turn, clothed it all in a legal form.

The normative act that served as a model for reception by other states was the French Law of May 3, 1841. [14, p. 91].

Prussian legislation around the same period, from a group of separate specialized acts establishing the possibility of compulsory seizure of property, received in 1847 a detailed and, as it seems, more effective legal act than a similar French law of 1841 - the Law of 1847, which is progressive in nature. The provisions of this act generally correspond to modern ideas on the issue under study. The fundamental norms of this legislative act will be implanted in the Constitutional Charter of Prussia in 1850 [16, p. 261]. Using the apparatus of comparative studies in terms of the national European legislation of Modern times upon the present issues, it becomes obvious that during this period there are trends away from monarchical arbitrariness in resolving issues of alienation of property, and the interests of private individuals receive appropriate legal protection. It is also worth noting that despite the expansion of the category of property that could be forcibly seized, the seizure procedure involving only administrative authorities is gradually becoming a thing of the past, and the general trend is the participation of judicial authorities along with administrative ones in resolving issues of both the need for seizure, compliance with the relevant legal procedure, and the appointment of fair compensation for seized property.

Thus, one can notice that, in the legal regulation the existence of a compromise between the authorities and the owners of the alienated property. It is also worth noting that the European legislation of Modern times did not know a single approach to the assessment of alienated property and the category of public needs.

When studying the development of collateral in the XV-XVII centuries. We turn to the studies of the Cathedral Code of 1649 [17, p. 76]. The Code of 1649 reflected both old and newly formed forms of collateral law, characteristic of the period of development of feudal relations and the establishment of a centralized state. Later, the legal regulation of collateral relations was carried out by Volume 10 of the "Code of Civil and Boundary Laws", which was in force from the 40-s of the XIX century until 1917.

It is also worth considering the development of land confiscation in the epoch of the XII-XIX centuries. Thus, confiscation, as an institution, is contained in the Judicial Code of 1497, Article 8, 39 of which stated: ".....is the responsibility for robbery, murder, snitching or other dashing deed, indicating that the property remained after satisfying the demands of the "boyar and deacon should pertain the confiscated property" [17, p. 76]. At the same time, it is worth noting that the buyer of the confiscated property was not the treasury, but officials conducting legal proceedings [17, p. 76].

The next important document is the Council Code of 1649. Within its framework, confiscation as a measure of responsibility was applied both to the entire volume of the guilty person's property and to a part of the property [17, p. 76] It is worth pointing out that although confiscation was used less frequently than before, but persons sentenced to death still lost their property. Also the Letter "On assistance in the capture and eradication of robbers, tatars, murderers, witches and all sorts of thieving people" The year 1667 provided for measures of criminal legal impact, including the confiscation of land from various categories of the
As Amirova A.R. points out in: "in the military articles of 1714, confiscation of property, defined as "deprivation of possessions or deprivation of an estate" was provided in combination with the death penalty for failure to report blasphemy (Art. 5), for armed action against the tsar (Art. 19), for forcing an officer of soldiers to work on 54), for surrender, surrender, surrender of the fortress (Art. 117-118), for treason and correspondence with the enemy (Art. 124-125), etc." [18, p. 26].

Legal regulation in pre-revolutionary Russia (Russian Empire). In the Russian Empire, there is a lack of comprehensive legal regulation of forced alienation of land plots as an institution, but only such separate grounds as forced alienation for public needs, recovery in case of obligations (pledge) and confiscation.

Examining the history of the development of compulsory purchase of land for public needs in the Russian Empire, it is worth noting that German legislation was the source for legal acts adopted on the case [19, p. 251].

The Law of the Russian Empire "On Expropriation" of June 7, 1833 and its new version, adopted on May 19, 1887, required that in all cases when land was forcibly alienated for state and public needs, imperial decrees submitted by the State Council should be adopted. The legislation of this period is aimed at protecting the interests of land owners through its correct evaluation and timely payment of accrued compensation. It should be noted that in the Russian Empire in the second half of the XVIII century, the principle of full compensation to owners for losses caused by the alienation of their land was in effect. The decree of Empress Catherine II to the Prosecutor General dated July 30, 1767 stated: "when land belonging to a private person is needed for the common good, then the civil law must prevail ... according to which, if a private land plot was alienated, then the said person must fully be compensated for their losses." This legal norm subsequently extended to the Russian legislation of the second half of the XIX - early XX century. In particular, in accordance with Art. 575 civil laws, the alienation of immovable property was allowed "not otherwise than for a fair and decent remuneration" [20, p. 202].

The right to alienate property for State and public needs was granted to government and public institutions and private companies that were authorized by the Government. According to the legal norms of that time, there were uniform rules and procedures for all alienators, according to which the alienation of property was carried out that are - by voluntary consent; by exchanging property for an equivalent one; by compulsory means, that is, by setting the price of property (the so-called valuation procedure). The legislation in force at that time recognized as legitimate the procedure for evaluating land and paying compensation for alienated property by voluntary consent of the parties.

While alienating the lands, the authorities were guided by the rules recognized by Articles 1103-1110 of the Charter of Civil Procedure and Article 851 of Civil Law, which noted that if private property was alienated for constructions of various ministries and departments, then its alienation was carried out in the presence of representatives of the said department. For example, during the construction of railway lines, when the work required speeding up the transfer of land that went under the road, deviations from the general law were allowed. Such alienation was carried out after the "Supreme Command" had been promulgated [19, p. 257]. The civil laws of 1914 changed almost nothing in the order of compulsory alienation, established back in the XVIII - XIX centuries. Despite the detailed legislative regulation of the compulsory alienation of property for state or public benefit, there was no unity of views in pre-revolutionary legal science regarding its essence, essential features and legal nature. All lawyers of that time recognized that expropriation was based on the general principle that in the event of a conflict of interest, public interests had an advantage over the interest of a private owner. However, given the objective uncertainty of
the category of "public interest", each lawyer had his own idea of it, which completely depended on whether he was a supporter of an individualistic or social trend or did not share any of them [19, p. 251].

Representatives of the individualist trend defended the personal freedom of a person and the complete inviolability of his rights, in particular, the rights to private property. They opposed the interests of an individual to the interests of society, they believed that the latter are peculiar only to the most important goals for humanity, the achievement of which is a necessary condition for the existence of people and their well-being, which means that only for the sake of this can the violation of such a sacred right as the right of private property be justified. It is used in cases of extreme necessity, when, in order to prevent danger as soon as possible, there is a need for compulsory alienation of private property. The Russian expert in civil law A.N. Gulyaev wrote that expropriation is an extraordinary, exceptional way of terminating the right of private property, which finds no justification, in terms of an exclusive right, independent of an outward affect, an eternal and inherited right [21, p. 323].

Famous German lawyer R. Iering and his follower Y.S. Gambarov tended to a different direction - the public one. Unlike the individualists, who recognized the private property rights as absolute and viewed the public interest in a too narrow sense, took the opposite position: they neglected private property and exalted the importance of public interest. According to Y.S. Gambarova, since the principle of the priority of public interest over private is recognized as unconditional, expropriation must be understood in a broad sense - as any alienation characterized by coercion and having a socially useful purpose. Moreover, it is not necessarily reimbursed. In certain cases, (for example, during the implementation of land reform, when land is seized by the state), if the payment of remuneration is burdensome for the state authorities or it contradicts existing ideas of justice, a person may be deprived of his land plot for free, because "the lack of remuneration is combined with the concept of expropriation" [22, p. 210].

The majority of pre-revolutionary lawyers (M.V. Venetsianov, E.V. Vaskovsky, I.M. Trepitsyn) did not share such views. They noted that public and private interests should not be opposed, because law serves the common good and has a public character: "it is created by the life of people in society and is designed to create conditions for such a life that are the most convenient and favorable for everyone around" [13]. It is further noted that: "... all private law, including the right of private property, is consistent with the idea of public interest" [13]. M.V. Venetsianov, as the only researcher who applied a systematic approach to the problems of confiscation and expropriation, wrote that this phenomenon, based on the idea of the common good, has special grounds that guarantee the inviolability of the property rights of a private owner. The owner should be guaranteed that his property is alienated for the implementation of an appropriate socially useful event, as well as that the owner receives full remuneration for his property, that is, all losses caused by expropriation are compensated. According to M.V. Venetsianova, expropriation is not a separate or extraordinary fact, but a constantly and correctly functioning legal institution, thanks to which a balance is maintained between the welfare of society and the independence of a private person [13]. E.V. Vaskovsky and I.M. Trepitsyn understood expropriation in a similar way. In their opinion, despite the kinship between the right of extreme necessity and expropriation (both are methods of forced alienation of private property in the interests of the public good), there is still a significant difference between them: the first is a temporary and exceptional phenomenon, the second is a common and permanent institution [23]. The famous Russian scientist G.F. Shershenevich wrote that "the deprivation of a person's rights must have a good reason, which can only be the common good, the public benefit of the event being taken" [24, p.651].

As for the legal nature of expropriation, we emphasize that 3 theories were formed in the pre-revolutionary doctrine - private law, public law and mixed. Supporters of the former
considered this phenomenon to be an institution of civil law and proposed to qualify it as a compulsory purchase and sale agreement. Disagreeing with this thesis, experts noted that such an interpretation contains a deep internal contradiction, since the contract of sale, like any other, provides for the free consent of the parties and cannot be forced.

Some scientists (A.A. Bashmakov, K.P. Pobedonostsev) argued that the institution of compulsory seizure or expropriation in public law, according to A.A. Bashmakov, immovable property is withdrawn for public benefit without the consent of the owner, "....the right of the state is acquired as a result of the manifestation of the force of law, without any initiative of private will" [25, p. 103]. K.P. Pobedonostsev also wrote that "expropriation has the property of a public, not a private demand, is based on public, not private law" [25, p. 109]. Soon, the public law theory of the legal nature of expropriation revealed its practical inconsistency, since it ignored the essential feature of expropriation - the private law principle of full remuneration of the owner for the alienated immovable property. On this basis, a third, mixed theory arose, according to which expropriation is on the verge of public and private law and contains both public law and private law elements [25, p. 109].

The legal regulations of the time of Peter I contained rules on the confiscation of property for a fairly wide range of acts and in relation to a wide range of subjects. Later, in 1802, confiscation was abolished as a form of punishment, and in 1826 it was restored, but only for cases when particularly capital crimes against the state or the person of the monarch were committed. The "Code of Punishments" of 1885 and the "Criminal Code of the Russian Empire" of 1903 did not recognize the institution of confiscation of property.

The pledge of land plots also developed in the Russian Empire. So, in the XVIII century the loan of money secured by estates (collateral concession) has become particularly widespread. The procedure for the transfer of estates to a collateral estate varied depending on historical conditions. The transformation of the institution of collateral was closely connected with the growth of the factory industry, the development of trade, and entrepreneurs were increasingly forced to apply for loans from banks. By establishing such banks, the government acted as a lender (in 1786, the State Loan Bank was founded, which existed until 1860). During this period, under the influence of general discontent on the part of creditors and debtors, the law of May 11, 1744 abolished the collateral sale of property in case of non-payable debt. The regulation of collateral returned to the system with the Code of 1849.

The collateral creditor was not only put into possession, but also received the general right to use the collateral property. In the era following the great reforms of the 60s, Russian law accepts the institution of mortgage as a kind of collateral and security relations. Mortgage as a form of collateral, which, unlike the previous one, was of considerable interest to all subjects of the collateral relationship, since the pledger continued to use the pledged property, and the pledgee was guaranteed "stable security, independent of the rights that a third party could present" [25, p. 109]. From the beginning of the 20th century until 1917, the basic rules on collateral remained unchanged.

The revolutionary events of February and October 1917 brought about a fundamental change in the regulation of property relations. Movable and immovable property could be seized in favor of the State on the basis of administrative decisions. Such seizures were wrapped in various linguistic categories, but the essence remained the same – the property of the former privileged classes was seized, requisitioned, etc.

Basically, at the initial stage, the means of production were nationalized, most often on a gratuitous basis.

The legal regulation of the above-mentioned processes in Soviet times was ensured by relevant decrees, and was carried out locally by both authorities and organizations such as "Committees of the Poor". The nature of the constitutional act containing an economic component and the "Declaration of the Rights of the Working and Exploited People" of 1918
[26, p.86], it directly proclaimed lands as the national property and abolished the right of private ownership of land plots. In the same year of 1918, the Constitution of the RSFSR was adopted, which did not provide for private property as a form of ownership.

It is quite obvious that the absence of private ownership of land does not imply the existence of a regulatory order governing compulsory seizure, since there was no land in private ownership.

The further formation of Soviet statehood required the inclusion of norms regarding the seizure of movable property, which was reflected in the institute of requisition, the norms of which were contained in the Civil Code of the RSFSR of 1922. This event was associated with the payment of funds to the owner of the property in the amount of average market prices that existed before the seizure of the property [27].

Further legal regulation of the studied relations was reflected in the norms of the specific Law of 1927 "On the Requisition and Confiscation of Property". Its prescriptions conditioned the possibility of compulsory seizure of property for state needs. It seems that the adoption of this Law is due to the insufficient level of regulatory regulation of compulsory seizure only by the norms of the Civil Code of the RSFSR. The specified Law outlined an exhaustive list of bodies making decisions on requisition (the Economic Council of the RSFSR), and also indicated that under martial law, Military Revolutionary Committees were entitled to carry out requisition, and in areas affected by natural disasters, the corresponding executive committees are. This law also regulated the documentary side of the seizure, the evaluation procedure and payment of remuneration for the seized property.

Confiscation as a form of punishment for crimes was restored already in the first months of the existence of Soviet State. The instruction of the People's Commissariat of Justice by the military tribunal of December 1917 did not ambiguously provide for the possibility of full or partial confiscation of property as a punishment measure. In addition, there were a number of independent regulations that allowed the confiscation of property for the commission of certain crimes, most often in order to punish illegal income.

The legal definition of confiscation in the period under study is contained in the Decree of the Council of People's Commissars of the RSFSR "On Requisition and Confiscation" of 1920, where the latter is defined as "gratuitous compulsory alienation by the state of property owned by individuals and societies" (art. 3). It is worth noting that confiscation was not the seizure of absolutely all property, in the interests of the family it was prohibited to seize the property necessary for household management and certain means of production.

The legal regulation of the institution of confiscation has undergone changes since 1927 after the adoption of the Decree of the Central Executive Committee and the Council of People's Commissars of the USSR "On the limitation of confiscation by court", according to which the institution of confiscation was further developed, the latter began to be applied as the main and additional punishment, mainly for crimes against the state, military crimes, a number of economic and official crimes [28, p. 296].

The discussion about the confiscation as an institution took place in the late 50s of the last century and preceded the codification works of the 60s. Various opinions were expressed on the need to expand the use of confiscation as a type of criminal punishment [28, p.294] and on the need to exclude confiscation from punishments altogether [28, p. 295]. As a result, the Soviet criminal codification of the 60s retained the institution of confiscation, but only as an additional punishment. The range of crimes for which it could be appointed was narrowed and limited to crimes against the state, state property, as well as personal property of citizens [28, p. 297]. The development of legal regulation of another institution of compulsory alienation of land plots – the pledge during the Soviet Union was associated with the abolition of private property, after which, as scientists note, the functioning of the pledge became practically impossible [29, p.74].
According to the "Civil Code of the RSFSR of 1922, the creditor (pledgee) had the right, in case of non-fulfillment of a secured claim, to receive satisfaction from the value of the pledged property over other creditors (Article 85 of the Civil Code of 1922)." The pledge was added to any obligation [30, p. 244]; the transfer of property to the creditor's ownership was not carried out [31, p. 14]. In accordance with the Civil Code of the RSFSR of 1922, mortgages were provided only for buildings and construction rights. With the abolition of private ownership of land, subsoil, water, etc., the pledge of property was extremely limited, and such a type of pledge as a mortgage of land disappears altogether.

The next stage in the development of collateral legislation was the adoption in 1961 of the "Fundamentals of Civil Legislation of the USSR and the Union Republics", on the basis of which the civil codes of the Union Republics of 1964, including the Civil Code of the RSFSR of 1964, were adopted. This act devoted only 10 articles to the institution of collateral. This pledge, unlike the norms of the Civil Code of 1922, was regulated by the section "Ensuring the fulfillment of obligations", which made it possible for the secured creditor in case of default by the debtor to receive payment from the value of the pledged property. In the Civil Code of 1964 certain exceptions were established, according to which it was impossible to foreclose on land, its subsoil, waters and forests, which were exclusively the property of the state, could not be the subject of collateral (Article 93). On February 28, 1990, the Supreme Counsel of the USSR adopted the Fundamentals of the Legislation of the USSR and the Union Republics "On Land", on the basis of which Union codes are being adopted.

In general, during this period, the legal regulation of the relations of forced alienation of land plots was carried out in accordance with the economic and political transformations in society. The existence of a state monopoly on the means of production during the existence of the USSR was the basis for the seizure of land from land users and was based on the powers of the state as the owner of the land. In the transitional stage, a number of normative legal acts are adopted, which become the basis for the formation of modern legislation through the adoption of the Constitution of 1993 and the new Civil Code. The development of scientific thought in the field of forced alienation of property and land plots began to take place very actively.

4 Conclusion

The institution of compulsory purchase of land, which originated in the ancient world, acquired some development there, but its norms were archaic, closely related to religion and did not receive systematic development. At the same time, it is worth pointing out that some legal constructions which are currently applicable directly originate from those described above.

Medieval legal regulation in European states was mostly fragmented and alienation was carried out strictly for certain needs specified in certain regulations. There was no single norm regulating the studied relations.

Using the apparatus of comparative studies in relation to the national European legislation of Modern times on the issues under the study, it becomes obvious that during this period there are trends away from monarchical arbitrariness in resolving issues the institution of compulsory purchase of land, and the interests of private individuals receive appropriate legal protection. It is also worth noting that despite the expansion of the category of property that could be forcibly seized, the seizure procedure involving only administrative authorities is gradually becoming a thing of the past, and the general trend is the participation of judicial authorities along with administrative ones in resolving issues of both the need for seizure, compliance with the relevant legal procedure, and the appointment of fair compensation for seized property.
Thus, we see in the legal regulation the existence of a compromise between the authorities and the owners of the alienated property. It is also worth noting that the European legislation of Modern times did not know a single approach to the assessment of alienated property and the category of public needs.

Russian legislation during the Middle Ages and Modern Times followed in line with pan-European trends with certain national characteristics. In general, since Modern times, there has been a noticeable orientation towards German law. From time to time, the institution of confiscation appeared and disappeared from the norms of criminal law. A new milestone in the regulation of civil law relations was the adoption of the Code of Laws of the Russian Empire and the Great Reforms of the 60s of the 19th century.

Characterizing the Soviet period, it is worth pointing out that land in all periods of the Soviet State was excluded from civil circulation with the participation of individuals. At the same time, the institution of confiscation was present in criminal law.

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