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Concept and grounds for the acquisition of ownership rights in the civil law of the Russian Federation

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Abstract

The purpose of the article was to study the legal nature, concept, and motives for the acquisition of property rights in Russian civil law. The main method of documentary research. The article also uses the inductive method, the method of systematic scientific analysis, comparative legal methods, and historical methods. The main method underlying the solution of the problem is to study the legal bases and characteristics of the acquisition of property rights. The article demonstrates the theoretical irresolubility of the problem of scientific understanding of the grounds for acquiring property rights in the civil law of Russia and other countries. The authors of the article consider that the interpretation of Russian legal norms on property rights is multidimensional in contrast to the relatively recent past. It is concluded that judicial argumentation has occupied an important place in the modern scientific interpretation of civil law rules on property rights. Both the modern legal state and the constitution were created by interpretation and argumentation, including the rules of the property law institute.

Keywords: human rights; civil code; property institute; private property; law in Russia.

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Concepto y motivos para la adquisición de derechos de propiedad en el derecho civil de la Federación de Rusia

Resumen

El propósito del artículo fue estudiar la naturaleza legal, el concepto y los motivos para la adquisición de derechos de propiedad en el derecho civil de Rusia. El principal método de investigación documental. El artículo además utiliza el método inductivo, el método de análisis científico sistemático, los métodos jurídicos comparativos y los métodos históricos. El método principal que subyace a la solución del problema es estudiar los fundamentos jurídicos y las características de la adquisición de derechos de propiedad. El artículo demuestra la irresolubilidad teórica del problema de la comprensión científica de los motivos para adquirir derechos de propiedad en el derecho civil de Rusia y otros países. Los autores del artículo consideran que la interpretación de las normas jurídicas rusas sobre los derechos de propiedad es multidimensional en contraste con el pasado relativamente reciente. Se concluye que la argumentación judicial ha ocupado un lugar importante en la interpretación científica moderna de las normas de derecho civil sobre los derechos de propiedad. Tanto el estado legal moderno como la constitución fueron creados por la interpretación y la argumentación, incluidas las normas del instituto del derecho de propiedad.

Palabras clave: derechos humanos; código civil; instituto de propiedad; propiedad privada; derecho en Rusia.

Introduction

Based on the analysis of the legislation of countries with developed market economies, we observe that new trends in the legislation of economically developed countries do not mean a reduction in the role of private ownership. The grounds for the emergence of real rights are usually divided into initial and derivative ones. In a subjective sense, the ownership right is considered as a subjective civil law, i.e., as a legal measure of the possible (permissible) behavior of the authorized person (owner).

The content of the ownership right (Article 209 of the Civil Code of the Russian Federation) determines the legal possibilities. The possession means the ability to have a thing in its real ownership. The utilization, as the right of the owner, is the use of an object, the extraction of useful properties from a thing. The disposal is the ability to perform any legal, factual actions in relation to a thing (sale of a thing, renting out, donating, destroying, etc.) (Shevchenko et al., 2019).

Let us consider some types of state registration of ownership rights in the Russian Federation.

State registration of the ownership rights of housing association members based on the housing association certificate of the paid share. The basis is a certificate of the paid share, and the registration of the right is at the same time the state registration of the right of common shared ownership to common ownership that is inextricably linked to it.

State registration of rights to newly created immovable property. The right is registered based on documents confirming the fact of the creation of the object. The basis for state registration can be: Resolution on the construction of an object, land acquisition (lease or other grounds), an act of acceptance of a finished object into operation by a state commission, data from the TIB. If the rights to an object under construction are registered, it is registered based on the land allocation for the construction of this object with its description or design and estimate documentation attached.

State registration of rights based on a contract for the transfer of residential premises in the order of privatization. The basis for state registration is an application and a transfer agreement between the citizens occupying the area and the owner of the housing.

State registration during the alienation of residential premises (purchase and sale, exchange, donation, rent, etc.). Both the contract and the resulting right (transfer of the right) are registered. A basis is a contract. When the rent is registered, both the right of the renter and the pledge by virtue of the law in favor of the renter are registered, the amount of maintenance per month is indicated.

The encumbrance of the pledge is terminated by the death of the renter. The rights and obligations under the contract are considered to have arisen and are binding after the state registration of the transaction with the appropriate inscription on the contract. Registration of the right can be made both simultaneously with the contract, and after the parties fulfill their obligations to each other (Singer, 1993).

In relation to the real estate object, the information is indicated in accordance with the plan of the primary (secondary) real estate object, the cadastral plan of the land plot, the passport for the apartment. After the court makes a decision, the judge should pay attention to the indication of information about the rightsholder and the real estate object in the court decision, and also make sure that the court has copies of all necessary documents: a photocopy of the owner's passport, a certificate of registration of a legal entity, a certificate of assignment of a TIN, a plan of the real estate object, etc.

After receiving the decision from the office, it is necessary to check the presence of the specified information in the decision and the absence of technical errors in it. The decision must be signed by a judge and sealed with an official stamp, and the decision must be with a mark on its entry into legal force. If the solution is on several sheets, it must be sewn, numbered, and sealed with the stamp of the office (Grudtsina *et al*., 2018).

If there is no information about the right holder and the real estate object in the decision submitted for registration, the registration of the ownership right is suspended and an application for clarification of the procedure for its execution is sent to the court that issued the decision. The court, having received the specified application, makes a ruling, which actually corrects the operative part of the decision. The ownership right will eventually be registered, but the applicant will still lose his/her time.

1. Methods

The leading method of studying the problem was the deductive method, which allowed studying the legal nature and features of the acquisition of ownership rights in the civil law of Russia. The article uses the inductive method, the method of systematic scientific analysis, comparative-legal, and historical methods (Ryan, 2008).

There is trust ownership in the countries of the Anglo-American legal system. Russian legal system has Romano-Germanic roots. Therefore, trust management in Russian law differs from trust ownership in the Anglo-American legal system (Pilyugina, 2009).

2. Results

State ownership and citizens' ownership are distinguished in the Fundamentals of Civil Legislation of 1991. Since the beginning of the 90s, the current civil legislation has been created, the first part of the Civil Code of the Russian Federation has been adopted. Russia has taken the path of creating private ownership in 1992-1994. The Constitution of the Russian Federation establishes the equality of forms of ownership: private, state, municipal. Article 212 of the Civil Code of the Russian Federation identifies not the forms of ownership rights, but the forms of ownership.

According to E.A. Sukhanov, the form of ownership is more of an economic concept. From the standpoint of civil law, it is necessary to distinguish the subjects of ownership rights. This position of the legislator is reflected in Article 212 of the Civil Code of the Russian Federation, which distinguishes private, state, and municipal forms of ownership through

subjects. E.A. Sukhanov, in principle, proceeded from the fact that the form of ownership is more an economic category, rather than a legal one (Belov, 2011).

Part 1 of Article 36 of the Constitution of the Russian Federation refers to the right of associations of citizens to possess land, which can be interpreted in different ways. On the one hand, the concept of «citizens' associations» is ambiguous. On the other hand, the Constitution contains provisions about the different types of associations: on religious associations (article 14), on public associations (article 13, 46), which are created with different objectives, and the scope of rights of the Association cannot depend on the objectives of its creation.

Considering the totality of the provisions of the Constitution of the Russian Federation, the Russian Constitutional Court in its decision pointed out that parts 2 and 3 of article 35 of the Constitution apply to legal persons to the extent that this right is in its nature may apply to them. This decision is in line with the decisions already taken by the constitutional courts of other countries in cases of this kind and, creating the possibility of applying the protection of the rights of legal entities based on constitutional provisions on ownership, leaves the «door open» for refusal in a specific case if it is considered that the nature of this legal entity is not compatible with this right.

The motivation to observe good faith and reasonableness consists in negative consequences for unfair conduct and privileges for good-faith behavior. This is most fully illustrated in the Civil Code of the Russian Federation by the category of bona fide and mala fide acquirer. The owner may demand ownership, securities, money from a mala fide acquirer, demand compensation for losses, return of the received income (Articles 15, 147.1, 223, 301, 302 of the Civil Code of the Russian Federation).

It is forbidden to make such claims to a bona fide acquirer with rare exceptions (he/she purchased the ownership free of charge, the ownership was disposed of against the will of the owner). The requirement of good faith shall be observed when filling in gaps, if the analogy of the law is not applicable (paragraph 2 of Article 6 of the Civil Code). Good faith is a value in building relationships between participants in civil turnover. This is one of the moral and legal categories that allow for a fair social policy without the forced redistribution of ownership from one person to another (Alchian, Demsetz, 1972; 2004).

3. Discussion

Turning to the regime of ownership turnover, we find that on the pages devoted by English, Italian (Chianale, 1990) and German (1989) lawyers to the transfer of ownership, the most insistent phrase is that, due to the respect with which the will of the parties should be treated, the ownership will be transferred based on this latter.

This phrase should not, however, mislead: the will necessary for the transfer of ownership «between the parties» is expressed in a contract (an act that is not a gift and, therefore, supported by «consideration»). The contract alone, moreover, transfers the ownership exclusively «between the parties»; at least, according to the Sale of Good Act 1893, updated several times before 1979. The ownership right –after the contract of sale is concluded– passes at the time set by the parties «between the parties»; and it is assumed that the parties wanted to make the transfer of ownership depends on the condition that the price was paid or that the buyer was granted a loan entailing the establishment of a deadline for payment.

After the contract has been concluded and the payment has been made, for the transfer of ownership to act concerning everyone and to all purposes, it will be necessary to deliver the thing.

If the rule of cumulation (proclaimed by ABGB in Austria) was strictly applied, the rules on improper enrichment should always allow the one who transferred the thing unreasonably, without a valid title, to destroy it, as well as to vindicate it (since the ownership could not pass by virtue of the traditio alone). The ABGB rules on the reverse reclamation of an improper payment (§ 1432) exclude (Chianale, 1990).

The doctrine considers it indisputable that the exclusion of a claim for enrichment keeps pace with the exclusion of vindication; this means that a payment (traditio) made by sine causa and without error transfers ownership.

The Austrian doctrine did not fail to note this aspect of the phenomenon, and therefore Savigny's theories were popular in Austria at one time: the sufficiency of the modus, despite the absence of the titulus, sanctioned in special legislative rules (such as the rule relating to the reverse reclamation of the unduly paid), annuls the principle of the equal necessity of two elements, as it is proclaimed in the norm of general significance (Grudtsina, Galushkin, 2013).

There is one difference compared to the BGB mode in Austria: the abstraction is perfect in BGB, Ubergabe (transmission) has a translational effect in any case, even if solvens is deluded about the validity of titulus at the time of execution.

The statement of this difference in the regime led the Austrian doctrine to depart from Savigny's thesis in the analysis of ABGB and to the vision of a transfer performed without an error and a previous obligation, rather a gift. Today, finally, the direction prevails, indicating as a causa Ubergabe, along to fulfil the obligation preceding the transfer, any permissible intention. Thus, it is recognized that the modus must be accompanied by a causa, interpreted, however, in the sense of a permissible goal. The Austrian system, therefore, can be placed in an intermediate position between the system of simple modus and the system of cumulation titulus plus modus.

Recently, the objectivist interpretation has regained some followers. The transfer of ownership of movable property in the light of comparative law, the Code by means of art. 931 subordinates the validity of the gift to the notarial form. The interpreter has always recognized the validity of the manual gift, no matter what its cost. The doctrine of the manual gift reinforces the doctrine of the «state of error», which is meant to subordinate the demand for payment of the improper: for one who pays what should not be paid, knowing that he/she owes nothing, can be regarded as a giver.

In France, as in other countries, a person who pays in fulfillment of a natural obligation cannot demand back what he/she paid.

Almost any transfer of ownership, made without an error regarding the causa to transfer ownership, is carried out either out of a sense of duty (and falls under the payment of an in-kind obligation), or out of generosity (and falls under manual donations). In both cases, the ownership will be transferred as a result of the transfer. The error of solvens opens the way to the means provided for in his/her favor, namely, a claim for reverse reclamation. We can say that the transfer has the same degree of abstraction that we find in Austria. We can also say that in France, anyone who wants to alienate has a choice between a system of causal contract and a system of transfer, accompanied by an unmixed will to alienate (Andreev, 2005).

The actual applicable law and the legislative law also differ in Germany. The legislative rule in Germany is based on modus. The following are distributed in business practice: the establishment of ownership, which takes over the place of transfer, and the commission of the transfer under the condition (even tacit), according to which such a transfer does not have an effect if the main contract preceding it is invalid.

In Holland, Switzerland, and Turkey, there is a system of double props, as in Austria; and, as in Austria, in Switzerland, payment of an improper, made without error, is considered to be transferring ownership; in Holland and Turkey, on the other hand, the interpretation rejects this decision as it considers it to be in conflict with the rule giving title to alienation.

In Italy, legal sources voice French decisions, but the interpreter refuses to deviate from the props of the title, except for very modest concessions made in the field of manual donation and natural obligations.

The wording of the English definitions does not take into account the rules inherent in the law applied. In systems that require titulus and modus for the transfer of ownership, the relationship that exists between one and another element is the subject of variable definitions. The Austrians could have believed at one time that the transfer of ownership is caused – at the same level – by an alienation contract and a transfer, but now they prefer to think that the transfer of ownership is caused by an alienation contract (i.e., an agreement between the alienator and the acquirer concluded at the time of the transfer) and that the contract that generates the obligation is the causa of the alienation contract.

The Swiss prefer to bring the transfer of ownership under the agreement that the parties concluded at the time of the commitment agreement. As for the transfer, in their opinion, it is not a contract, but a material act.

Conclusion

The above allows concluding that the modern civil law regulation of ownership directly or indirectly bears the imprint of the historical path passed, in several countries it includes the regulation of different layers of ownership relations by origin.

The understanding of ownership rights in the Constitution has evolved significantly with the strengthening of legal control. The bodies of constitutional control argue their decisions based not on one constitutional norm, but the diversity of its relations with other constitutional norms, through the prism of constitutional principles and values, giving preference to one or the other of them, and taking into account supranational norms (international law). Thus, in contrast to the relatively recent past, the interpretation of national constitutional norms is multidimensional. Judicial argumentation has taken an important place in the modern scientific interpretation of civil law norms on ownership rights. Both the modern legal state and the constitution were created by the interpretation and argumentation, including the norms of the institute of ownership right.

Socialist lawyers (Soviet, Hungarian, German from the GDR) presented the contract as a genuine causa of the transfer of ownership and reduced the transfer to specifying the moment of this transition.

It is not easy to say whether these different concepts correspond to the specifics of different positive systems or simply depend on the systematics preferred by theorists of different countries (which would be equivalent to a useless multiplication of qualifications). If a delivery that does not rely on an obligation that has existed before it transfers ownership, this phrase does not yet seem to be a sufficient explanation to theorists. They see it rather

as a kind of empirical judgment that needs appropriate qualifications to be explained from a dogmatic point of view. The search for such a qualification can leads to numerous results.

Sometimes the problem of qualifications is solved by the idea of abstraction: the transfer is an act sufficient for itself since it is abstract. We have seen that a noble doctrine, such as the Savigny doctrine, linked this decision with German law.

The second explanation is based on gift: if the alienator transferred the thing without being obliged to do it and not considering himself/herself mistakenly obligated, he/she wanted to gift it. In English law, this explanation has an official character; it had followers in Austria; to the extent that the French system allows it, it is not disputed in France; finally, it is used (but alternatively with other explanations) in Switzerland.

The third explanation is based on the nullity of the acts and on the possibility of invalidating them: if someone transfers a thing without being obliged to do so, it means that the transferring party had the intention to convalidate the act; this explanation prevails in Argentina. Again, three different doctrinal explanations correspond to the phenomenon alone. It can be stated that the legal doctrine has missed an opportunity here.

So far, we have spoken as if the concept of «transfer of ownership» had an exact meaning: the most that we have noted is that the English statutory norm distinguishes the transfer of ownership «between the parties» and the transfer of ownership «to all purposes». We have not questioned that the transfer of ownership has a single content.

This position would be perfect only if all the elements of the legal position of the owner were transferred from the alienator to the acquirer at the same time.

We will mention the following among the elements of the legal status of the owner:

- the right to demand the transfer of possession of a thing or its holding from the opposite party
- and from third parties holding it without a title.
- the right to dispose of the thing in favor of third parties.
- the acquisition of fruits.
- the risk of the item loss.
- the purpose of the thing to serve as a general guarantee for the debts of the owner.
- liability for damage caused by the thing to third parties.

In England and the United States, what we call the transfer of ownership concerns only the assignment provided for by common law, which (at least in the real estate sector) can be opposed by equitable interest» (especially by virtue of trust), considered by common lawyers as a form of proprietary assignment and transferred (in the equity system) based on completely different procedures.

The right of the buyer to seek the delivery of a thing from a third party does not always, therefore, depend on the quality of the owner. In many legal systems, the delivery transfers the ownership, even if there is no titulus. This creates a contrast with legal systems in which the transfer of ownership presupposes (in addition to the transfer or without the need for it) a valid causal contract. Now, however, the moment has come to remember that ownership acquired without titulus can keep pace with a restorative obligation (based on the rules on claiming payment of an improper or unjustified enrichment) and that the construction of ownership accompanied by a restorative obligation can be very different from the construction of normal ownership.

Since the obligation to return an individually defined thing may lead to certain protection against third parties, in the sense that a third person who receives ownership of a thing free of charge from the owner who is obliged to return this thing may be obliged (in relation to the creditor who has the right to return) by virtue of the principles of enrichment; and the same third person, if he/she maliciously acquires ownership of a thing from the owner who is obliged to return it, may be subject to non-contractual liability (to the creditor).

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