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Improving the protecting mechanisms of general property in the Russian Federation

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Abstract

The aim of the study is to improve the protecting mechanisms of general property in the Russian Federation. The research is based on the dialectical method of cognition political, legal and socio-economic processes. As a result, information as an object of private property needs analysis and understanding of its essence, as well as determining the procedure for its consolidation, implementation and protection at the legislative level. In conclusion, development of the institution of private property and constitutional and legal mechanisms will help to strengthen the forms of private property, and change the social and economic situation in the state.

Keywords: the Russian Federation, property, private, legal, protection.

Mejora de los mecanismos de protección de la propiedad general en la Federación Rusa

Resumen

El objetivo del estudio es mejorar los mecanismos de protección de la propiedad general en la Federación Rusa. La investigación se basa en el método dialéctico de cognición, procesos políticos, legales y socioeconómicos. Como resultado, la información como objeto de propiedad privada necesita análisis y comprensión de su esencia, así como también determinar el procedimiento para su consolidación, implementación y protección a nivel legislativo. En conclusión, el desarrollo de la institución de la propiedad privada y los mecanismos constitucionales y legales ayudarán a fortalecer las formas de la propiedad privada y cambiarán la situación social y económica en el estado.

Palabras clave: Federación de Rusia, propiedad, privado, legal, protección

1. INTRODUCTION

The constitutional right of general property is a quite complicated complex education, while this is a single right. The unity of the right is ensured by the consistency nature. Security and protection of general property is the protection of this right by a state from offences against property, as well as legal errors of lawmakers. The state creates various kinds of mechanisms that are empowered to protect human and civil rights and freedoms, including their general

property rights in order to carry out the above functions. At the same time, the action of general property protection must comply with international standards admitted by the Russian Federation.

The thematic justification is that the institution of general property is developing very dynamically, and there is a need for its constant detailed study, as well as research and improvement in the protection of general property, especially at the present time. Studying the potential of constitutional regulation of general property allows finding solutions for many urgent problems, which determines the relevance of the complex research approach of several branches of law.

The relevance of this study is also conditioned by recent developments related to the demolition of "unwarranted buildings" of legal entities and individual entrepreneurs that began in Moscow in 2015. Experience shows that the existing human rights mechanisms are not effective enough, for this reason it needed a detailed study and improvement of the legal regulation of these institutions. Despite the fact that the heads of organizations applied to all possible human rights bodies for the protection of their general property, as well as the courts made decisions on the owners honest, the buildings were still "demolished". At the same time, most of the owners did not receive the appropriate compensation, which is undoubtedly a problem in the field of general property protection and is subject to an urgent decision.

Nowadays the problem of renovating residential premises is being sharply discussed in Moscow. Most of the owners do not agree with the program. Moreover, this program is implemented with violation of the current legislation of the Russian Federation. Thus, the foregoing allows us to point out the obvious relevance of the study of constitutional and legal protection mechanisms, as well as the need to improve the systems of these mechanisms for better protection of citizens' rights.

2. METHODS

The research is based on the dialectical method of cognition political, legal and socio-economic processes and phenomena that made it possible to carry out a comprehensive review, generalization, systematization and classification of the interrelated relations. In addition, we use a set of general scientific (analysis and synthesis, the ascent from the abstract to the concrete and from the concrete to the abstract, the system) and special (formal-legal, comparative-legal) methods. Their correct application allows us to characterize the existing legal mechanisms for the protection of general property in the Russian Federation in the context of the convergence of modern legal systems, and to formulate proposals aimed at improving it.

The peculiarity of general property is the dynamic nature of development, which is significantly influenced by economic, political

relations, theoretical and philosophical doctrines. In this connection, the institution of law needs to study the tendencies of its development, analyze the prospects for development, and realize the constitutional right protection of general property.

Subjects of property relations are constantly changing, its rights are changing too, and new objects of general property rights appear within the framework of the country's global economic innovation development, and, accordingly, old objects fade. Marx once said: "In every historical era, property developed differently under different social relations. Striving to define property as an abstract and eternal idea means to fall into a metaphysical or legal illusion" (Marx, 2012: 13).

One of the most notable tendencies in the development of the institution of private property rights, including mechanisms for its protection, is the process of integrating the national legal system of the Russian Federation and various foreign legal institutions. Of course, this process also affects legal relations in the sphere of general property. There has been an active introduction of Anglo-Saxon law into the Russian legal system in recent years with the specifics of American practice. But with such a borrowing of legal models, there are often enough problems associated with its inefficiency. Inefficiency is due to the fact that Russian lawmakers did not take into account the legal traditions of the Russian Federation, a foreign legal institution was introduced into the Russian legal system without

implementing certain measures for its adaptation, as a result - it did not work. Obviously, before implementing innovations in legislation, it is necessary to analyze the relevant norms and institutions, on the basis of which to create effective mechanisms for the implementation and protection of a new law.

3. THEORY/ CALCULATION

The peculiarity of the right of private property is the dynamic nature of development, which is significantly influenced by economic, political relations and theoretical and philosophical doctrines. It is in this connection that the institution of law under study needs to study the tendencies of its development, analyze the prospects for development, and realize the protection of the constitutional right of private property.

For example, in 2010, Federal Law No. 193-FZ of July 27, 2010, " Alternative Procedure for the Settlement of Disputes with the Participation of an Intermediary (Mediation Procedure)" was adopted (Russian Federation Code, 2010), that regulates legal relations related to the implementation of the mediation procedure in respect of disputes , arising from civil legal relations: disputes related to the implementation of entrepreneurial and other economic activities, disputes over labor and family relations. That is, this law also affects

relations in the field of protection of private property. But, in 2011 at that time, the President of the Russian Federation DA. Medvedev in his annual Address to the Federal Assembly of the Russian Federation noted the fact that the above-mentioned law on mediation practically does not work, as evidenced by the very small number of agreements concluded(Russian law, 2012).

Of course, such a process of integration of legal systems is very important for the state: with proper introduction of foreign institutions, they will be very effective. At present, it is impossible to completely abandon such borrowing. However, as practice shows, one cannot borrow foreign institutions completely, without any adjustment that takes into account the specifics of the host country's respective innovations (Skuratov, 2015).

Of the latest, noteworthy, planned innovations that, when introduced, may affect the sphere of regulation of property relations, in particular the private property rights of legal entities and individual entrepreneurs, it is possible to single out a bill on the introduction of the US "one in-two out" law enforcement system. This reform was originally formulated by business communities in February 2017 and sent to Prime Minister Dmitry Anatolyevich Medvedev. The use of the "one in-two out" principle in lawmaking presupposes the introduction of a new law regulating entrepreneurial activity, the abolition of the two old ones. Private property is the basic element in the implementation of entrepreneurial activity, accordingly, in this sphere

a sufficiently large number of regulatory and legal acts is adopted, therefore, this reform will affect the property relations of legal entities and entrepreneurs. Undoubtedly, the creation of such a legal mechanism would simplify the work of individual entrepreneurs and legal entities on interaction with state bodies, and also reduce the administrative and legal burden on business. It should be noted that this initiative was supported by the Ministry of Economic Development of the Russian Federation. Also supported by the initiative is the minister responsible for organizing the work of the Governmental Commission for Coordinating the Activity of the "Open Government" of Ayzov:

The new approach will help solve the problem of redundant and overlapping requirements for business. As a result, the workload on entrepreneurs from the side of controlling bodies will noticeably decrease, and the efficiency of state administration and control will increase many-fold (2017: 19).

However, there was a rather large amount of criticism of this innovation. According to the opposite point of view, this principle will complicate and slow down the work on lawmaking, in connection with which there may be a situation of lagging the legal regulation of certain relations from modern reality.

In our opinion, each sphere of legal relations related to the implementation of entrepreneurial activity has its own characteristics and should be studied in detail for the introduction of such a principle, perhaps even detached from it. After such events, this reform is more

likely to be effective in the Russian Federation. Indeed, many countries around the world have become interested in this American system and put it into operation. However, practice shows that somewhere this innovation has taken hold, for example in the UK, and somewhere - not, for example, in Australia. Of course, we would like to see this reform take root in our country and have a positive impact on the regulation of public relations of individual entrepreneurs and legal entities in the sphere of private property rights, and also had an effective impact on the development of the economy of the whole country as a whole.

Next, consider the following trend in the development of the right of private property: the weakening of the "individual" private property of citizens of the Russian Federation. This problem, first of all, is connected with the strengthening, elevation of the social function of the property right. This function is designed to ensure the distribution of property, protecting the social, economic, cultural, environmental interests of the whole society, and to smooth social conflicts. However, there are many cases when, in the event of seizure in the public interest of the state, the owner is not paid in full the compensation provided by the current legislation, and sometimes it is not paid at all. Thus, in such cases, the rights of property owners are frequently infringed. One cannot but note the fact that the weakening of the "individual" right of private property arises in connection with the global financial and economic crisis, which generates a decrease in incomes (the amount of benefits and other social payments decreases),

while the amount of taxes increases. Proceeding from the foregoing, the issue of achieving a balance of interests of the state, the whole society and the private owner in the framework of the social function of the property right is acute. In this regard, the mechanisms that are called upon to ensure this balance are of particular importance. Thus, one of such mechanisms is the Human Rights Council under the President of the Russian Federation.

At present, the problem of renovating housing in Moscow is quite urgent. This program involves the demolition of emergency, in the opinion of government agencies and experts, residential five-story houses. A large number of owners do not agree with this program, as evidenced by numerous rallies against the upcoming demolition. The Human Rights Council under the President of the Russian Federation made a recommendation on this issue: this body proposes postponing the adoption of the renovation program for six months. According to human rights activists, this reform can lead to urban planning, transport and infrastructure collapse. In general, the Human Rights Council under the President of the Russian Federation supports the renovation program, but I am sure that at the present time it will lead to social tension. Human rights activists believe that this program should be financed exclusively from extrabudgetary funds and will be extended to other constituent entities of the Russian Federation. Also they correctly note that for such a renovation there is enough existing legislation. Moreover, the conclusion about the accident rate of a residential building must be individual for each house. And we cannot

disagree with this, because, indeed, all houses are in different condition, not all require demolition, some are sufficient to carry out major repair work. Also, it is noted that in the actions of the Moscow authorities "social irresponsibility" can be traced. At the moment, the relevant regional government bodies have outstanding obligations to the waiting list of dilapidated houses for residential areas. According to the statistics of the Human Rights Council under the President of the Russian Federation, about 80,000 people stand in line (The official website of the General Newspaper, 2017).

Human rights activists also pay attention to the illegality of the vote on the demolition of houses. Indeed, in the Multifunctional centers of Moscow, the owners of living quarters who entered the renovation program issued voting forms with the already completed "for renovation" column. Moreover, it was considered that if the owner of the housing did not vote "for" or "against" the corresponding program, then he was automatically considered a proponent of renovation. Obviously, such actions of state bodies are illegal, as they contradict constitutional and legal provisions, namely, Article 29 of the Constitution of the Russian Federation is violated, which guarantees everyone freedom of thought and speech, including opinions. As practice shows, the recommendations of such human rights bodies remain unnoticed. In our opinion, the renovation program should be revised, and implemented a little later with the necessary adjustments made.

In order to achieve a balance of interests of the state, the whole society and private owners, it is necessary to conduct the following activities:

- 1) Stimulating the development of the institution of private property rights;
- 2) Protection and support of the rights and legitimate interests of private owners;
- 3) Differentiated and targeted social security in the sphere of private property;
- 4) Increase in the cost of measures to improve the housing conditions of private owners of this housing;
- 5) Stimulation of able-bodied citizens to work, improve skills and entrepreneurship;
- 6) Creation and implementation of social programs (Alebastrova, 2008).

Another trend in the development of private property rights is the growing interest in collective, corporate private property. The owners of such property exert a significant influence on the economic and political development of the state, as property acquires a

transboundary character. Quite often, the entrepreneurial activity of large corporations, based on the personal interests of owners, undermines the economic, spiritual, cultural foundations of the whole society. The report of the Secretary-General of the United Nations indicates that the process of globalization in the world economy has led to the restructuring of large corporations on a global scale, giving them unprecedented power and power, since "the promise to allocate foreign direct investment and the threat of such investments do not have a significant impact on government in terms of their choice of a policy option"(The impact of globalization on social development: the report of the UN Secretary-General, 2017: 6).

In connection with such an active development of corporate property, it becomes necessary to solve the following constitutional and legal problems:

- 1) The definition of the concept of "corporate property", its study and on the basis of research determine whether it will relate to "other" forms of ownership in accordance with part 2 of Article 8 of the Constitution of the Russian Federation, or it will be a kind of private property of a legal entity;
 - 2) The regulation of relations arising in the process of lobbying, at the legislative level, that is, the development of regulatory and legal acts regulating the specifics of such interaction among
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corporations of public authorities, thus giving a "civilized" character to lobbying(Ivanov, 2014);

3) It is also possible to develop a legal institution of social responsibility of business(Nurtdinova, 2013).

Thus, it can be concluded that in the future, scientific research will be actively developing in the sphere of corporate property(Pahomova, 2005), as well as the peculiarities of its influence on the state, the social responsibility of the heads of large corporations in case of making decisions that entail any harm to the state(Tarkhov, 2017). All this allows us to make a forecast that this idea will find its consolidation at the legislative level.

Next, we consider the following trend in the development of legal relationships: the expansion of the list of objects of private property rights. First of all, we are talking about "disembodied" property. Such property is fixed at the constitutional and legal level in a number of countries. For example, article 9 of the 1992 Constitution of Turkmenistan regulates the existence of the right of private ownership of the means of production, land, other material and intellectual values. That is, for today it is possible to allocate as objects of a private property material and non-material things. At the same time in Turkmenistan, both types of objects are recognized only as the constitutional law of the country, while in civil law only material things are recognized.

A similar situation exists in Germany. On this occasion Rumyantsev (2010) wrote: "The object of ownership in German civil law is formalized: such can only be so-called "bodily objects", including real estate. "Non-corporeal" items cannot be objects of ownership. This applies, above all, to non-cash funds, the results of intellectual activity, energy, rights of claims, and so on. Unlike civil law, Article 14 of the German Basic Law uses an expanded concept of property right, which, in principle, can be extended to any objects, including those that are not "physical" items, such as non-cash funds". As for the Russian Federation, both tangible and intangible objects of private property rights are recognized as constitutional law and civil law.

The last tendency of general property takes place in the sphere of information as an object of private property rights. Obviously, the information is an intangible object of the relations under consideration and it could logically be considered in the previous paragraph devoted to "corporeal" and "non-solid" things, but this particular object of private property right deserves special attention. This urgency is due to the growth of information and communication technologies, the formation of a global virtual economic space. In these conditions there are such concepts as "virtual money", "virtual theft" and even "virtual property". And it should be noted that at present legal relations in the field of information and communication networks are not regulated at the legislative level in full. Accordingly, the creation of new mechanisms for protecting the right of private property in virtual space

is required. In our opinion, it would be advisable to create a specialized institute that dealt specifically with the protection of rights and legitimate interests directly only in this direction, since it is now developing particularly rapidly and requires special attention and study.

In turn, economists note that at the present time there is a transformation of property relations due to the influence of globalization, the development of technology and other changes taking place with society and the state. A virtual economic space is developing, namely, economic relations are developing with the use of the Internet. This leads to the fact that the objects of private property rights are redistributed, new objects appear, the transfer of rights to them occurs at the “mega-level” (Tsorgaeva, 2015).

The problem is widely studied by lawyers now. One of the numerous examples is the study of Arhipov legal problems in the development of the computer games industry. The essence of this problem is that in a virtual world, players use virtual items, for example, coins that have a real price. These moments are respectively transferred from one player to another. And, as is known, games are conducted far not within the framework of one state. And due to the fact that all countries have different currencies, certain problems of legal regulation arise. Arhipov in his work gives an example of the

role-playing online game Everquest. The virtual GDP¹ of this game is equal to the real GDP of Bulgaria, and the game currency rate to the US dollar rate is 0.0107, that is, more than many real currencies (Arhipov, 2014).

It is impossible not to agree with Saveliev, who notes that "the legal regime of this kind of facilities in Russia and a number of other countries is, rather, uncertain" (Saveliev, 2014: 18).

Saveliev in his work suggests the following approaches to the legal regulation of such relations:

- 1) Virtual property should extend the rules of corporeal law in general and the rule of property in particular;
- 2) The application of intellectual property to virtual property;
- 3) Attributing virtual property to the category of "other" property.

As we see, Saveliev does not propose to develop at the legislative level relations regarding virtual property as a separate stand-alone institution. In part, we can agree with him, but in our opinion, we cannot do without the inclusion of virtual property in the list of things in common and "other" property. From the foregoing it is obvious that

¹Gross domestic product

information as an object of private property needs analysis and understanding of its essence, as well as determining the procedure for its consolidation, implementation and protection at the legislative level.

4. CONCLUSION

Summing up the conducted research, it is necessary to note the following:

1. The protection of human rights and citizenship means the form of realization of the human and civil rights to legal protection, which is provided by legal means and coercive measures in order to remove obstacles to the implementation of the relevant rights, as well as for the restoration of violated rights. The system of the constitutional legal mechanism for the protection of the right of private property is multilevel, while the structural elements of this system fulfill their duties within their competence, regulated by law, without interfering with each other's tasks

2. The protection of the right of private property is regulated not only by the norms of national law, but also by international norms. International legal provisions on private property and mechanisms for its protection are basic for the constitutional law

of states, including for the Russian Federation: on their basis public relations in the field of property are built. The decisions of the European Court of Human Rights are of great importance, since they are used in the practical activities of the Supreme Court of the Russian Federation.

The study revealed that the Constitution of the Russian Federation as a whole is consistent with international standards in the field of protection of private property rights.

3. The Institute of Private Property Law is interdisciplinary. Property relations are regulated by the norms of constitutional, civil, land, criminal and other branches of law. Most widely this institution is regulated in civil law, but constitutional legal norms are of fundamental importance in regulating the right of private property. The Institute of Private Property Law in Civil Law is formed on the basis of constitutional and legal regulation of property.

4. Article 35 of the Russian Constitution stipulates that the owner may be deprived of his property solely by a court decision. The study revealed a discrepancy between the provisions of the Civil Code of the Russian Federation to constitutional norms, namely article 235 of the Civil Code of the Russian Federation stipulates that the nationalization of property may be effected on the basis of a special law, while part 3 of

Article 35 of the Constitution of the Russian Federation regulates the deprivation of property exclusively By the tribunal's decision. That is, the aforementioned civil law rule does not comply with the Constitution of the Russian Federation. As a consequence, it is advisable to amend Article 235 of the Civil Code of the Russian Federation with regard to the seizure of property from owners for state needs.

5. At present, the practice of protecting the right of private property has already been established in the Russian Federation through regulated human rights mechanisms. One of the most effective ones is the judicial protection, the institution of the Commissioner for Human Rights, the bodies of the Prosecutor's Office of the Russian Federation, self-defense, as well as international mechanisms such as the European Court of Human Rights, the Commission on Human Rights of the United Nations. However, the study found that the system of such human rights mechanisms needed to improve its effectiveness.

6. The European Court of Human Rights is an effective international institution for the protection of private property rights. His legal positions play an important role in Russian judicial practice, acting as a kind of "international standards".

7. The problems of protecting the right of private property through the judiciary are due to the non-use by citizens of this

human rights instrument in full due to the mistrust caused by the lengthy consideration of the claims, as well as by the corruption of these state bodies. One way to improve efficiency can be to improve the selection of personnel, as well as increase the attention of the supervisory bodies to this process.

8. In order to increase the effectiveness of the institution of the Human Rights Ombudsman, it is proposed to give the ombudsman a legislative initiative, as well as the right to appeal to the Constitutional Court of the Russian Federation regarding the verification of the compliance of normative and legal acts, including the implementation and protection of private property rights. As a consequence, it is proposed to introduce in Chapter 3 of the Federal Constitutional Law of the Russian Federation "On the Commissioner for Human Rights in the Russian Federation" an article that would regulate such an ombudsman's right. A corresponding change will also need to be made to Article 105 of the Federal Constitutional Law of the Russian Federation "On the Constitutional Court of the Russian Federation".

9. The problem of non-payment or payment of inadequate compensation for the property seized from property owners in order to ensure state needs is topical. This problem can be solved through the adoption of a federal law on the basis of part 3 of Article 35 of the Constitution of the Russian Federation

regulating the procedure for the payment of appropriate compensation, including provisions on this payment before the actual seizure of property, as well as equivalent compensation. Also, in connection with the adoption of such a law, it is advisable to state article 305 of the Civil Code of the Russian Federation in the following edition: "In the event that the Russian Federation adopts a law that terminates the right of ownership, the losses caused to the owner as a result of the adoption of this act, including the value of the property, the moment of actual seizure of property"(Ivanov, 2014: 11).

10. Among the main promising trends in the development of private property rights and mechanisms for its protection can be identified the process of integration of the Russian national legal system and various foreign legal institutions; increasing interest in the collective, corporate private; expansion of the list of objects of private property rights; study, legal fixation of "information" as an object of private property rights. These perspectives of the development of the institution of private property and constitutional and legal mechanisms for its protection will help to strengthen the forms of private property, as well as significantly change the socio-economic situation in the state.

At present, there are certain tendencies in the development of the institution of private property and mechanisms for its protection in

the Russian Federation. Among them we can distinguish: the process of integration of the Russian national legal system and various foreign legal institutions; increasing interest in collective, corporate private property (regulation at the legislative level of relations arising in the process of lobbying, it is also possible to develop a legal institution of social responsibility of business); expansion of the list of objects of private property rights; study, legal fixation of "information" as an object of private property rights. It is obvious that such prospects for the development of the institution of private property and constitutional and legal mechanisms for its protection will help to strengthen the forms of private property, and also significantly change the social and economic situation in the state.

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