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A. V. Lebed,
Russian Academy of Justice, Moscow, Russia

CATEGORY OF PROPERTY RIGHTS IN RUSSIAN CIVIL LAW

Rising of the problem. The category of the real rights always was extensively discussed by civilists of many countries. Scientific ideas about the real rights have passed a long evolutionary way from legal naturalism (the relation of the person to a thing) to modern understanding of the nature of any legal relationship as human relations.

Despite considerable number of researches, the problems of a category of the real right continue to remain. Till now on the basis of modern ideas about legal relationship as the relation between persons theoretically the classification groups of the real rights from the rights obligations are not proved up to the end. There is no logically exact definition of concept of the subjective real right and as consequence of it there is an uncertainty of an establishment of the list of kinds of the subjective real rights. As a result it causes collisions not only at explanation of the nature of the concrete subjective civil rights, but also at the analysis of ways of their protection.

The analysis of the problem mentioned above is lighted up in works of foreign and national scientists like S. Alekseev, A. Babaev, V. Bezbah, J. Baron, N. Varadinov, U. Drobnig, M. Braginskiy, U. Mattey, E. Suhanov, K. Sklovskiy.

The main purpose of scientific research is to analyze the regulation of property rights and other real rights by the Civil Code of the Russian Federation. Also it is necessary to explore the critical issue of market regulation of property relations that is relevant in light of the requirements of the Decree of the President of the Russian Federation (2008) about the need to improve the Civil Code.

Exposition of main material of research. Probably, any other problem isn't as important for understanding of the right as a whole, as a problem of dualism of civil law, i.e. its divisions on real both liability laws and institutes. The real rights make out and fix an accessory of things (material, corporal objects of a property turn) to subjects of civil legal relationship, in other words, statics of the property relations regulated by civil law. It makes difference from the liability laws which are making out transition of things and other objects of civil legal relationship from one participants (subjects) to another (dynamics of property relations, i.e. actually civil turn), and also from the exclusive rights, having object non-material results of creative activity, or means of an individualization of the goods ("intellectual" and "the industrial property"). Such approach to the characteristic of the real rights is typical to the Russian right as parts of the European continental legal system which has traditionally developed under strong influence of its German branch [1, p. 384].

From this point of view legal specificity of the real rights is made, first, by their absolute character distinguishing them from relative, of liability laws. As to authorized person here resist (as potential infringers of its rights and interests) all other participants of a property turn ("all third parties"), it receives absolute means of civil-law protection against their any possible encroachments. In respect of obligation in the role of the offender in relation to the person authorized person (lender) may only responsible person (debtor), in connection with which the civil-legal protection of creditors is limited to their relationship.

Secondly, all real rights make out the direct relation of the person to a thing, giving the chance to it to exploit a corresponding thing without participation of others persons. In obligations relations authorized person can satisfy the interest only by means of certain actions of the obliged person (on assignation, manufacture of works, rendering of services etc.). Therefore, the specificity of property rights traditionally is seen in the fact that their target may be just the thing and besides — some individually, and therefore the loss of items will automatically be terminated and the property rights to it. Object of a liability law is the behavior of the obliged person, and the duty of the last can pass to other persons as assignment. Thus, the real rights receive the, special legal regime which is distinct from a mode of liability laws.

Thirdly, the real rights possess before obligations such advantage, as definiteness of their status as it is established only by the law. Not casually at definition of the legal person in the Civil code of the Russian Federation it is underlined that their founders have the right of the property to property of legal bodies or other limited real right (the right of economic conducting or an operational administration). For the subject of a property turn extremely important presence of the status, known to all creditors. And in this sense the design of the real right is exclusively convenient.

On objects, and also under the maintenance and ways of protection the real rights differ as well from

exclusive rights (absolute by the legal nature), making out intellectual property relations. Here it is a question of a legal regime of non-material objects by the nature: ideas, artistic images, decisions of scientific and technical problems, symbols, etc., at least and expressed in the certain material form (in manuscripts, pictures, drawings, on a magnetic tape or a diskette etc.) . Such objects can be used simultaneously by several (many) a person, including their founders and alienation of their material carriers at all always means simultaneous alienation and the given objects. Therefore their use usually occurs to the help of special contracts (license type), and for protection of the rights of their founders or owners special civil-law ways are used. It all tells about convention of concept "intellectual" (and "industrial") to the property. Though its objects, certainly, are the goods in economic sense, their assignment and a turn (alienation) are legally made out differently, than assignment and a turn of usual things.

However, these signs do not always allow a clear distinction between in rem and rights of obligation. Thus, the rights of a lessee of another's property, at first glance, are responsible for most of the above signs of real rights. They, in particular, have continued due to the change of the owner and lessor are protected from any person's rights title holder. However, the rights of tenants are, of course, Obligations, and not in rem in nature (although the debate about the legal nature were still in pre-revolutionary Russian literature). The fact that they always arise in contract with the owner of the leased property and its contents, including various options orders leased property until its disposal are determined by the terms of a specific lease (under which the amount of rights every time a tenant can be different). For property rights that situation is impossible.

Nature and content of the limited real rights is directly determined by the law, not contract, and their occurrence often happens against the will of the owner. Defining the scope and content of property rights by virtue of their absolute cannot be granted "tyranny of individuals — it is the exclusive prerogative of the state. Therefore, the law itself should set all their varieties and to identify components of their specific powers (the content). As is known, the relationship of obligation, in most cases arising under the contract, the participants largely free to determine their content and conditions, including the establishment of conditions of transactions, though not by law but not contradicting it, that excludes private (exhaustive) list types of contracts. In the proprietary relations arising not only by the will of the participants, the latter are not free to determine their content. Therefore, the law defines a comprehensive list (numerus clausus) limited real rights.

Some modern works are returned to the submission of Property Act as the person to the thing. Others, because of the presence of signs of real rights and obligations come to the conclusion that perhaps the most civil matters are mixed — the proprietary Obligations "and that there is a trend towards convergence of proprietary and Obligations Act. Still others expand the list of limited real rights almost to the limits of landlords' obligations by referring to the real right of many of the rights (pledge, retention), united under a common doctrinal and conventional term "title of ownership".

The modern Civil code of the Russian Federation names the section devoted to absolute property rights "the Property right and other real rights". In the legal literature it was noticed that at existing level of scientific workings out the category of the real right is in the same vulnerable position, as "an intellectual property" category, being faster in the literary image, rather than the exact legal term.

The concept "the real rights" is the base which covers the property right, servitudes and other concepts. From the analysis of art. 209 — 306 of the Civil Code of the Russian Federation should conclude that the act does not include a definition of "property rights" and thereby depletes the conceptual system of civil law [2, p. 67].

V.K.Rajher in the work "the Absolute and relative rights (To a problem of division of the economic rights)" (1928) criticizes understanding of the real right as "direct domination over the corporal things, legally invisible communication between a thing and the subject" [3, p. 101]. Also refers to a remark L. Petrazhitsky, who considered this view "naive realism" — a consequence of "fetish objects", and quits the conclusion that "the concept of property law cannot claim scientific value." Later, J.K Tolstoy notes that the position of V.K. Rajher negatively assess the possibility of inclusion in the Soviet civil law property rights, had an influence on the legislator with the codification of the 60-ies [4, p. 52].

During the Soviet period in connection with the nationalization of land and most other properties, as well as the establishment of "campaign organized by the" property turnover need in the category of property rights anymore. Already in the Civil Code in 1922 was named only three of these rights, and during the codification of civil law in the early 60"s. XX century, this category has been completely eliminated, and property law even formally been reduced to a right of ownership.

The exception was artificially created for the needs of nationalized planned economy, "the right of operational management," symbolizing the relative autonomy of the estate of state legal persons (Article 21 of the Principles of Civil Legislation of the USSR and Union Republics in 1961 and Art. 93.1 Code of the RSFSR, 1964, entered

into it in 1987). However, in the contemporary literature it is not seen as a real right, because after the law, lawyers avoided this terminology.

As a result, not only the special research of this problem, but also the terminology of property law for a long time disappeared from the national civil law. With the revival of the named category in the laws on the property in 1990 and then in the new Civil Code of the Russian Federation found that in the theory of Russian civil law there is no uniform treatment of property rights, the need for the existence of which is to date no doubt.

It is proposed property law to determine how law whose subject is the thing in the material sense of the word that further strengthens the ownership of this thing and the attitude of a person to it, i.e., direct rule over this thing through a set of specific powers, and enjoys absolute protection.

In order to improve the legislative framework of market economy, legal security of international economic and humanitarian ties Russian President issued a decree on July 18, 2008 № 1108 "On improvement of the Civil Code of the Russian Federation" [5].

Conclusion. Everyone knows that property rights are central to the system of property rights and civil law in general. In order to ensure the stability of the civil legislation of the Russian Federation and the further development of its core principles of the new level of development of market relations, it is necessary to conduct a deep study of the teachings of ownership and other rights on the basis of which should give a clear definition of property rights in the law.

Since the legal right of ownership serves as the most comprehensive property law, it is proposed section II of the Civil Code of the Russian Federation "Ownership and other real rights" entitle "Property Law", which will provide a clearer understanding of this category and will improve the practical application of civil law.

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Lebed A. V. Category of Property Rights in Russian Civil Law

In the article the author investigates regulation of the property right and other real rights by the Civil Code of the Russian Federation. As the Civil Code does not contain a definition of the real right, the author offers a variant of definition of this category. Article has a practical orientation, offers on improvement of the Civil Code of the Russian Federation.

Key words: the real right, the property right, the civil legislation of the Russian Federation.

Лєбєдь А. В. Категорія речових прав у російському цивільному праві

У статті автор досліджує регулювання права власності та інших речових прав Цивільним кодексом Російської Федерації. Оскільки Цивільний кодекс не містить дефініції речового права, автор пропонує варіант визначення цієї категорії. Стаття має практичну спрямованість, зокрема внесено пропозиції щодо вдосконалення Цивільного кодексу Російської Федерації.

Ключові слова: речове право, право власності, цивільне законодавство Російської Федерації.

Лебедь А. В. Категория вещных прав в российском гражданском праве

В статье автор исследует регулирование права собственности и других вещных прав Гражданским кодексом Российской Федерации. Поскольку Гражданский кодекс не содержит дефиниции вещного права, автор предлагает вариант определения данной категории. Статья носит практическую направленность, в частности вносятся предложения по усовершенствованию Гражданского кодекса Российской Федерации.

Ключевые слова: вещное право, право собственности, гражданское законодательство Российской Федерации.

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