

SUMMARY

Key Words: objects of property rights, quasi-movable objects, capital fence, human tissues and organs

Subject matter: Atypical objects of property rights

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The relevance of the research topic. The objects of real rights are still of the greatest importance for civil turnover, since, while ensuring the statics of property relations, real rights to certain objects are both the goal and the means of their civil turnover as a whole.

The lack of clear legislative definitions and the theoretical lack of development of a number of key legal categories create significant difficulties associated with the practical application of the relevant legal norms, and also introduces significant uncertainty in the question of the possibility of extending the property law regime to certain goods. Incorrect understanding and application of these fundamental categories leads to attempts to regulate the relevant relations by inadequate legal means. In the modern Russian legal order, attempts are common to confuse property and obligation relations, to justify the existence of so-called "property-obligation" relations, to declare objects of property rights not things, etc.

The purpose of the work: determine the possibility of extending the real-legal regime to individual objects of civil rights and the legal regime of individual atypical objects of real rights.

Objective: 1) to form the theoretical basis of the study, to characterize property rights in modern Russian law;

2) analyze the provisions of Russian and foreign legislation and the practice of their application, as well as the dominant approaches of Russian, foreign and international legal doctrine in relation to the classification of objects of property rights;

3) characterize quasi-movable items (capital fences, asphalt pavement, etc.) as objects of real rights;

4) evaluate the possibility and necessity of qualifying human tissues, organs and other biomaterials as objects of property rights;

5) conduct a legal analysis of energy as an object of law and draw a conclusion about the possibility or impossibility of considering the latter as objects of real rights;

6) make proposals and recommendations for improving civil legislation and law enforcement practice.

The theoretical and practical significance of the research it consists in the fact that the obtained results can be used for conducting the most effective scientific research in the designated direction, as well as used in teaching such disciplines as civil law, property law, energy law.

Results of the study:

1. The modern Russian legal order has lost some of the classic features of real rights (although it has largely retained the rest), which makes it difficult to distinguish between real and binding rights and gives certain grounds for their "mixing" and even denying the practical significance of distinguishing the category of real rights itself. In this regard, the ongoing reform of civil legislation provides for the restoration of a number of traditional approaches and solutions, including the principle of the advantage of real rights and the features of their real-legal protection, which is supposed to be fundamentally inaccessible to the holders of binding and other non-real property titles.

2. The indicated trend of changes in Russian legislation does not meet the challenges posed by the participation of Russian persons in the global turnover and the need to ensure the protection of the property rights of Russian persons abroad.

So, both for the national legislation of a number of countries (for example, the United Kingdom, Australia), and for the practice of international courts, the proprietary (from lat. proprietas - property) the concept of interpretation of objects of property rights. In accordance with this approach, intangible objects of intellectual property are also objects of real law.

The ECtHR is characterized by a value-based approach to the concept of property rights. At various times, this judicial body referred to property not only material objects(things), but also such objects as: the right to receive fruits(usufruct), trusts, leased property, customer base, the right to a domain name, claims from contracts and causing harm, legitimate expectations, etc ..

Obviously, this approach cannot be directly implemented in Russian law. Nevertheless, the extension of the real-law regime to property (in the meaning given to this term by international practice in the context of its protection) could strengthen the protection of the rights to foreign assets of Russian persons.

3. The physical separation of human tissues and organs from the body is an independent initial way of creating the right of ownership of biomaterials.

The initial basis of ownership depends on the specific type of biomaterials and the circumstances of their separation. In particular, it matters whether the biomaterial is natural or derived, separated during life or posthumously; during medical intervention or unintentionally.

The ownership of natural biomaterials separated during the originator's lifetime belongs to the originator from the moment of physical separation.

4. Energy is a good that has a turnover capacity. At the same time, energy is technologically inextricably linked to other objects (for example, electricity - with generators and power grids) that perform mediating functions. Such distinctive features of energy as its marketable nature and commercial value, as well as its indissoluble technological connection with other objects that perform mediating functions, are the basis for distinguishing an object of civil rights into a special type that has a special treatment regime.

5. As a result of the study, it is established that energy is inherent in a dynamic nature, which is essential in determining the type of legal relations that arise about the circulation of this object. If real-legal institutions are aimed at regulating static objects of legal relations, then they are not applicable for dynamic objects, which include energy. The principal feature of the obligations for energy supply is the absence of the real effect of purchase and sale in them: the relationship on the transfer of ownership of the goods simply does not arise.

Recommendations:

1. Based on the analyzed provisions of judicial practice, the answer to the question of whether an object, including a fence, asphalt pavement, etc., is an immovable thing or not, is carried out by the following two-step test:

1) it should be determined whether there is an indissoluble connection between the object and the land plot on which it is located. It is expressed in the fact that it is impossible to move an object without causing it disproportionate damage (the impossibility can also be expressed in the extreme high cost of moving; technologically, you can move anything - buildings, bridges, etc. - this is only a question of the cost of using such technologies). If the answer to this question is no, then the object is a movable thing;

2) if the object is in close connection with the earth, then you should determine:

- for owners of land plots who have purchased or built an object: whether

it is located exclusively within the boundaries of the land plot owned by the person using the object, and whether it is intended to meet the needs of only the user of this land plot and whether the object has its own purpose in circulation, different from the purpose of the land plot.

- for persons who have a land plot on some other right, who erected a building on it, only the presence of the object of its own purpose in circulation will be crucial (for example, a fence erected by a tenant on a leased plot will not be real estate, regardless of who built it-the owner or the tenant).

If the answers to all these questions are positive, then the object should not be recognized as an independent immovable thing, but as an integral part of the land plot.

If the answer to at least one of these three questions is negative, then we have an immovable thing in front of us.

2. To fix at the legislative level the independent concept of "embryo in vitro", which can be defined as "an embryo created outside the body as a result of the division of an egg from the moment of fertilization until the 14th day".