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INSTITUTION OF NEIGHBORING RIGHTS IN CIVIL LEGISLATION OF POST-SOVIET COUNTRIES

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Abstract. The authors consider in this paper the emergence and development of neighboring rights in some countries of Europe and the CIS countries. The main features of neighboring rights are singled out and grounded, ways of protecting neighboring rights are analyzed. Gaps in the legal regulation of neighboring rights were identified and a conclusion was drawn on the need to introduce this legal institution into Russian civil law.
Keywords: neighboring rights, restriction on the right of ownership, real estate, land plots, exploitation effect, limits of permissible impact, legislation of the CIS countries.

Introduction. Since the emergence of private ownership of real estate objects that are in physical contact with each other in space or are affected by the exploitation effect of a certain object, the need arose to regulate the relationship between the owners and proprietors of these objects.

The first source of legal regulation of neighboring relations was customs. In particular, the laws of the XII tables in the Roman law established the rules of law for the first time, limiting the rights of the owner to his/her the property. Roman lawyers called "neighborhood" as "vicinitas": this concept included a number of legal relations that arose between the owners of neighboring real estate, as well as the possibility to protect these legal relations by certain legal means [1]. However, there was no clear delineation between the neighboring law and easements [2].

The rules of the neighboring law are known to the legislation of many foreign states and fall under the category of restrictions on property rights by virtue of the law in favor of neighbors. According to the German Civil Code [3], neighbors can interact with each other in one of three ways: not to exert any influence on the neighboring land plot; insignificantly influence; influence significantly, but within the framework of the usual use of a land plot for a given locality. There is a legally set ban on negative impact, i.e. impact that violates the principle of reasonableness, the types and parameters of permissible and unacceptable use of the land plot, the properties of a particular land plot. Article 976 of the Civil Code of Quebec, which although refers only to land plots, expresses a general idea applicable to all neighborhood relations. In accordance with this Article, "neighbors should tolerate the usual inconveniences caused by

their neighbors, which do not exceed the proper limits of patience, based on the nature and location of their plots or on local customs" [4].

Methodology. The study used dialectical, historical, comparative-legal and formal-legal methods. An attempt was made to systematically examine the subject of research. The conclusions made are based on the method of comparative law science.

Discussion and results. Neighboring law as a legal institution is part of most civil codes (regulations) of most European and post-socialist countries. Relations between the owners of neighboring properties are an integral part of any civilized society. These relations require the search for a permanent compromise between the realization of freedom of ownership and its restriction in the interests of others. Despite the long existence of neighboring law, the search for a compromise in such relations remains still relevant for most countries.

Russia, for the entire period of the development of the state, have repeatedly attempted to include the institution of neighboring rights in civil legislation. The formal definition of private easement, which was given in the explanations of the Government Senate, could in fact be called the right of neighborhood, as restrictions on property rights were established solely in favor of neighbors. I.M. Tiutriumov defined neighboring rights as follows: "The existence of a hostel without the right of neighborhood, without the obligation of neighbors to mutually deny the unlimited possession is inconceivable. This is the basis of laws, namely, some of the decisions on the private easement" [5]. The abolition of the right to private ownership of real estate in the Soviet period led to the disappearance of the problem of the collision of competing rights of neighbors [6]. This has led to the fact that Soviet law had no rules of neighboring law, but only general restrictions established for possible cases.

According to L.V. Nefedov, "... the legal securing of such a concept as "neighboring law" in the Soviet land plot legislation did not officially exist. Doctrinal sources either do not have it at all, or mention in the context of legal relations of citizens not related to land plot legislation" [7].

Restitution of private property rights has led to the emergence of an institution for the legal regulation of neighboring rights in the post-Soviet countries.

Currently, the Civil Codes of the CIS countries, in particular the Azerbaijan Republic [8], Georgia [9], Turkmenistan [10], the Republic of Latvia [11], the Republic of Moldova [12] include whole chapters on neighboring law. It is noteworthy that the objects of neighboring rights are land plots and other real estate.

The general provisions on neighboring rights in the civil legislation of the CIS member states are as follows:

1) The codes of the above countries have a chapter devoted to neighboring rights, entitled "Right of Neighborhood", "Neighboring Law", devoted to neighboring rights. In the Civil Code of the Republic of Azerbaijan, articles on the neighboring law are located in the Chapter "Restrictions on the right of property". All the codes contain norms that require a mutual respect of neighbors (Article 170 of Azerbaijan, Article 195 of Turkmenistan, Article 377 of Moldova, etc.).

2) Another obligation of owners of neighboring land plots or other real estate is the requirement to tolerate the neighbors' influence (Article 171 of Azerbaijan, Article 196 of Turkmenistan, Article 378 of Moldova, etc.).

3) If the usual use of a land plot or other immovable property approved for a given territory or economically acceptable limits is exceeded, it is possible to demand compensation in cash (Article 171 of Azerbaijan, Article 196 of Turkmenistan, Article 378 of Moldova, etc.).

4) The possibility of prohibiting the construction or exploitation of buildings and structures in case of their indisputable danger for unacceptable impact on the land plot (Article 172 of Azerbaijan, Article 197 of Turkmenistan, Article 379 of Moldova, etc.).

The rules of neighboring law, in the case a neighbor goes beyond the permissible impact, are intended to contribute to the achievement of two goals: to resolve the conflict by means of concluding an agreement on monetary compensation or providing an opportunity to apply to the court for the protection of their rights.

Commenting on the rules of the neighboring law of the Civil Codes of the CIS member states, we can note the following:

1) the legislative provisions of the above-mentioned Civil Codes have been significantly affected by the German civil code. Significant similarity can bee seen in the construction of rules of neighboring relations, as well as in the content of the principles of neighboring law. Analysis of the norms contained in the legislation of the post-Soviet countries allows us to speak about the existence of a common doctrine, by which the impact on a neighboring land plot can be tangible (liquids and solids) and intangible (smoke, smell, soot, etc.).

2) the participants of neighboring relations may be owners and other title holders. We believe that there are no grounds for limiting the subject composition of neighboring relations, since the norms of neighboring law are applied in the process of exploitation of property not only by owners, but also by other title holders (tenants, employers, trustees, etc.). However, the law may provide for cases where the subjects of neighboring relations are owners only.

3) neighboring land plots and other real estate may be objects of neighboring relations. In this case, the term "neighboring" does not mean "physical contact with each other". Neighboring law can apply if there is an effect of exploitation of one site on another (smoke, smell, etc.). In case of apartments, the same rule applies i.e. the effect of the exploitation of one apartment on another.

4) the main forms of impact on the neighboring land plot or other real property are the penetration of the so-called "weightless matter" (gas, steam, smell, soot, smoke, noise, heat), as well as other objects of the material world (water, tree branches, etc.).

5) the main points of collision of interests of neighbors are the following:

- disputes about the boundaries and construction of a neighboring land plot;
- the possibility of causing harm by new construction, which may result in physical damage to the neighboring site or buildings on this land plot;
- the right of passage through the neighboring land plot;
- the need to participate in construction (construction costs) and exploitation (maintenance costs) of the common wall between adjacent sites, as well as in exploitation (operating costs) of natural objects that separate adjacent areas;
- penetration (entry) of branches, roots (fruits) of arboreal and shrubby vegetation into the neighbor's plot;
- limitation of the freedom of the owner in terms of the arrangement of windows and other light openings that face the neighbor's plot;
- drainage of water to the neighbor's plot.

In case of conflict of interests of neighbors in and lack of agreement between them on the use of neighboring properties, the law provides for various remedies. Despite the variety of violations of the rights and legitimate interests of neighbors, from the legal point of view, all possible claims of neighbors can be stated and implemented within the framework of several lawsuits.

A universal method of protection is to bring a negatory action, because most of the negatory actions result from neighboring relationships. The content of this action includes the requirement to eliminate all violations of the right of ownership, even if these violations are not connected with the deprivation of possession. Within the framework of this action, various demands on the actual composition can be claimed: demolition of a building that is beyond the borders of a neighboring plot; cutting off of roots, branches of trees, shrubs; prohibition to a neighbor on playing the piano, etc. All these actions prevent the owner from using the property, although they do not deprive him/her of ownership of such an object.

This action serves as a means of normalizing neighboring relations, since Russian law does not provide for the restriction of ownership of land plots resulting from the so-called neighboring law.

Quite positive is the provision that claims made in the framework of a negatory action are not subject to limitation of actions. Given that the neighbors are in close and constant contact, the expiry of the statute of limitations leads to uncertainty in the relationship and the impossibility of coexistence, which is legally unacceptable.

A similar regulation was established in § 924 of the German civil code, which allows for extensive exceptions from the validity of claims arising from neighboring relations.

A special group of disputes are those about the boundaries between land plots. If no consent is achieved, disputes can be resolved through a legal action by filing a lawsuit to establish boundaries between land plots or the construction of landmarks. These claims are aimed at making certainty within the spatial limits of law.

If there is a risk of harm as a result of the construction of a building or structure on a neighboring land plot, a neighbor may bring an action for the prohibition of activity that poses a danger (tort action).

A special remedy for neighbors, ensuring the safety of residential premises is provided in Art. 293 of the Civil Code of the Russian Federation, which allows for the possibility of selling ownerless stuff from the residential premise at public auction on the suit of a local government body. Despite the fact that such a suit cannot be declared by neighbors, in our opinion, this remedy can be attributed to the sphere of neighboring law, especially in cases where the owners of such premises systematically violate the rights and interests of neighbors by their unacceptable behavior.

All the above claims allow including in their content a claim for compensation.

Summary. The institution of neighboring law is a highly-relevant legal mechanism that includes the features of national relations in the territory where the objects of neighboring real estate are located. It serves to regulate relations arising from the daily demands and needs of neighbors. With rising number of individual houses and other real estate, the need for an institute of neighboring rights in Russian civil law has matured. The Russian legislator took into account this need and included articles 293 and 294 in the draft of the Civil Code of the Russian Federation [13], containing general provisions on neighboring rights, which should constitute an independent institution of civil law.

The development of the institution of neighboring rights in the CIS member states should proceed along the path of improving the criteria for unacceptable impact, considering the new needs of life, the development of science and technology.

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REGULATIONS OF THE CONSTITUTIONAL PROCEEDINGS IN FOREIGN COUNTRIES

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Abstract. The authors, subject to the importance of constitutional control in the system of separation of powers in most countries, proposed in this paper a comparative legal analysis of the regulatory legal acts governing constitutional proceedings in European and CIS countries. They concluded on the basis of the study of the legal consolidation of constitutional legal proceedings, the nature of the organizational autonomy of constitutional courts, and the possibility of establishing rules for own constitutional proceedings as one of the guarantees of the independence of the body of constitutional justice that, regardless of how the issue of legal regulation of constitutional proceedings is resolved, this type of process plays an important role in ensuring and protecting fundamental human and civil rights and freedoms and constitutions considered in this paper.

Keywords: constitution, constitutional proceedings, constitutional justice, constitutional trial.

Introduction. Constitutional proceedings are understood as a formalized order of proceeding referred to the competence of the relevant body (in Russia - the Constitutional Court of the Russian Federation). The formal nature of constitutional proceedings lies in that it is carried out in accordance with the procedure established by procedural laws. Thus, the procedure for the constitutional proceedings in the Constitutional Court of Russia is established by the Federal Constitutional Law No. 1-FKZ of July 21, 1994 and the Regulations of the Constitutional Court of the Russian Federation [1, 3]. Constitutional proceedings is one of the types of legal proceedings, which is provided for by Part 2 of Art. 118 of the Constitution of the Russian Federation along with civil, administrative and criminal proceedings [2]. Art. 1 of the Federal Constitutional Law of July 21, 1994 "On the Constitutional Court of the Russian Federation" states that the Constitutional Court is a judicial body for constitutional control, which independently exercises judicial power through constitutional proceedings [3]. The regulation of constitutional proceedings and the legal nature of the bodies for constitutional control in the countries of Europe and the CIS is in turn of scientific interest and allows for a better understanding of the content of the constitutions of these countries.

Methodology. The study used various methods: systematic method, analysis and synthesis, logical and other general scientific methods, as well as a number of private scientific methods. Thus, the use of comparative legal research made it possible to reflect the foreign experience of the legal regulation of constitutional proceedings.

Discussion and results. In foreign practice, the regulation of the order of constitutional proceedings, as well as of classical proceedings, is referred to the competence of the legislator, in most cases organic. For example, Part 2 of Art. 94 of the Basic Law of Germany reads that “the Federal Law determines the structure of the Federal Constitutional Court and the order of proceedings ..." [4]. Similarly, Art. 165 of the Constitution of Spain stipulates that “the Organic Law establishes the functioning of the Constitutional Tribunal, the status of its members, the procedure and conditions