

# ON THE SUBJECTS OF PROPERTY RIGHTS AND THE OWNERSHIP PATTERN PROBLEM BY THE EXAMPLE OF THE LEGISLATION IN RUSSIA AND FOREIGN COUNTRIES

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## INTRODUCTION

Simultaneously with the emergence of ideas and legal prescriptions about the ownership right, ideas about the subjects of this right began to develop. Using the example of Roman law, one can trace the gradual transition from ideas about communal property to ideas about family property, and then individual property. As it is noted by the famous Russian historian of Roman law I.A. Pokrovsky "the feeling of private, individual ownership of things (the embryo of later ownership rights) appears for the first time, without any doubt, in relation to movable things ... A wild game killed or fish caught by a person, or a labour-made weapon is naturally regarded as belonging to the person who produced it or created it. The awareness that "this thing is mine" arises here simply and psychologically inevitably ... The attitude towards real estate was different. When the idea of a common right to land for the entire people, and then of individual gentes gradually faded away; the ownership of one or another site began to be associated with the family located there, or familia (family property). The plot belongs to the family as such, represented by its head and representative - the lord of the house"

(POKROVSKIY, 1917). As another prominent Russian researcher of Roman law, I.B. Novitsky said "the lord of the house originally had the same power (manus) over his wife, children, slaves, things ... In ancient times, the power of the lord of the house was unlimited and therefore was accompanied by complete powerlessness of the subjects under his control. Gradually, however, this power began to take on more definite boundaries; at the same time, the personality of subordinate people began to gradually receive recognition in private law. The weakening of the power belonging to the lord (or ruler) of the house was the result of changes in industrial relations, the decomposition of the patriarchal family, the development of trade, which presupposed a certain independence of adult family members " (NOVITSKIY, 1996).

Scholars researching the Roman law sources of a later period usually distinguish the following types of ownership, depending on its subjects: 1) quiritarian ownership is the ownership of Roman citizens to real estate within Italy, the acquisition of which required a special mancipation rite; 2) bonitarian ownership arising in connection with the fact that the praetor granted protection to those persons who acquired the Quiritarian ownership in good faith, but without observing the mancipation rite; 3) Peregrinian ownership, which arose in connection with the development of trade and the emergence of special claims to protect the property of foreigners; 4) provincial ownership is the right of ownership of land in the Roman provinces, the subject of which was recognized as the Roman people by the right of conquest (SANFILIPPO, 2002). Note that in Roman law, developed ideas about the state as an owner were not formed, since the state was overshadowed by the personality of an emperor. At the same time, according to the testimony by N.S. Suvorov, over time, Roman lawyers in relation to the emperor began to distinguish "... threefold ownership: fiscal ownership in the sense of the state, crown ownership, and purely private ownership" (SUVOROV, 1900).

## DISCUSSION AND RESULTS

In the Middle Ages, a significant part of immovable and movable property was concentrated in the hands of the church. At the same time, a variety of theories have been put forward as to who has the ownership of church property. Often these theories were very far from legal concepts, such as the theory that church property belongs to God, the idea that church property is the property of all beggars, or the theory that church property has no subject at all, but serves to achieve a specific goal. Later, in modern times, more realistic theories arose, recognizing church communities or the state itself as the subject of church property.

From the beginning of the 19th century, legal scholars, primarily German, began to actively develop theories about the essence of a legal entity. At the same time, at first, the so-called fiction theories prevailed, which did not recognize a legal entity as a valid subject of civil rights, including ownership rights. F. Savigny is considered the main spokesman for these ideas (SAVIGNY, 1840). From the point of view of the topic under consideration, such fiction theories as the theory of target property by A. Brinz, who admitted the existence of property without a subject and recognized that the property of a legal entity does not belong to anyone, but serves to achieve a certain goal, are of interest (BRINZ, 1884); the theory of collective property by M. Planiola, who considered a legal entity as a form of collective ownership of property (PLANIOLA, 1937). It can be argued that later realistic theories based on the views of O. Gierke prevailed over the theories of fiction (GIERKE, 1885), considering a legal entity not as an imaginary one, but as a real subject of civil rights. Thus, it became possible to include legal entities as subjects of ownership rights without any reservations.

Turning to the current civil codes, it should be noted that in many of them the circle of subjects of ownership rights is not directly delineated. An example of this approach is the German Civil Code. Those civil codes that list the subjects of ownership rights are usually referred to as private entities (individuals and legal entities), as well as public entities (state, municipalities, etc.). So, in articles 537-542 of the French Civil Code, it was said about the property of individuals, state property and communal property (note that Articles 538, 540 of the French Civil Code became invalid in 2006, and the term "state property" disappeared from article 539 still in 2004). According to articles 338-345 of the Spanish Civil Code, property can be private property, state property, and is owned by provinces and cities.

The civil laws of some individual countries include such very abstract subjects as collectives and people among the subjects of ownership rights. Thus, in the 2007 Law of the People's Republic of China "On Real Rights", state property is equated to public property (Article 45); in addition, along with state (public) and private property, collective property is consolidated (property of collectives of the working masses, including urban and rural collectives). Let's give one more example: the Civil Code of Ukraine in Art. 318 and Art. 324 establishes the right of ownership of the Ukrainian people to land, its subsoil, atmospheric air, water and other natural resources, and on behalf of the Ukrainian people, the ownership rights are exercised by state authorities and local self-government bodies. In this regard, one should agree with the opinion of the famous Russian civil scientist E.A. Sukhanov, who believes that the abstract and vague category "the people as a whole" cannot be a real subject of property relations, moreover, referendums on each occasion of the use of a specific object of "national property" are practically impossible and inexpedient. Hence, it is necessary to recognize the state (its specific bodies) as the exponent of the will and interests of the people, and this inevitably leads to the recognition of the state as the owner of this property (SUKHANOV, 2005).

The issue about ownership rights is given attention in the civil codes of most member countries of the Commonwealth of Independent States (CIS). The subjects of ownership rights include individuals, legal entities, republic, municipalities (for example, article 153.1, the Civil Code of the Republic of Azerbaijan, article 166, the Civil Code of the Republic of Armenia). Some codes operate with the concepts of private property, the subjects of which are citizens and legal entities, and state property, which includes republican and communal property (for example, Articles 191, 192 of the Civil Code of the Republic of Kazakhstan, Articles 223-227 of the Civil Code of the Kyrgyz Republic). Finally, the civil codes of some countries, in particular Belarus, Russia, Tajikistan, Uzbekistan, contain a special concept of ownership patterns. So, according to article 212 of the Civil Code of the Russian Federation, private, state, municipal and other

ownership patterns are recognized in the country. The most detailed instructions on the ownership patterns are contained in the Civil Code of the Republic of Tajikistan. Article 236 of the named code, among other things, says that it is allowed to combine property owned by citizens, legal entities and the state, and the formation of mixed ownership patterns on this basis.

The concept of ownership patterns seems to be very interesting and deserves a separate consideration. This concept appeared in the Soviet civil legislation. For example, the state (public) and collective-farm-cooperative ownership patterns were mentioned in the preamble and in Article 94 of the Civil Code of the RSFSR 1964. The authorship of such a division, as noted in the literature, belongs to I.V. Stalin, in whose writings the thesis was substantiated that socialist property as a special type of property exists in the forms of state and collective farm property (STALIN, 1935). Subsequently, the postulate of the existence of different ownership patterns was perceived in the Soviet economic and legal literature and began to be taken for granted.

1. In modern Russian civil law science, the allocation of the ownership patterns concept has both supporters and opponents. The latter usually indicate that this concept is purely economic in nature and has no place in legislation. Agreeing with this opinion, we note that we are not talking about ownership patterns rights (as a legal category), but about ownership patterns (as an economic category). Many other civil rights (liability, corporate, intellectual) may have different subjects (individuals, state, municipalities), but there is no talk about any forms in relation to these rights. Thus, the allocation of the ownership patterns concept in civil legislation looks superfluous. You should also agree with the statement by E.A. Sukhanov, who believes that the presence of different ownership patterns inevitably entails the emergence of different ownership rights. However, there is only one ownership right with a single set of powers (content) that is the same for all.

2. Therefore, we need to talk not about different ownership patterns, but about different subjects of ownership rights (SUKHANOV, 2011). The allocation of different ownership patterns was justified in the Soviet period, when the right to socialist and the right to personal (private) property were different rights that presented different legal opportunities to their subjects, including those related to protection. In modern conditions, the concept of ownership patterns looks like an anachronism, which must be got rid of. In this regard, it is worth noting that a large-scale reform of Section II ("Ownership and other ownership rights") of the Civil Code of the Russian Federation has been under preparation for a long time, and the concept of ownership patterns is no longer used in the published draft law (RUSSIA, 2019).

## CONCLUSIONS

Modern views about the subjects of ownership rights are the result of centuries-long development performed by ideas about ownership rights and about subjects of civil rights in general. The current civil codes, as a rule, include private entities (individuals and legal entities) as well as public entities (state, municipalities) as subjects of ownership rights. The civil laws of some countries contain rules on ownership rights and such very abstract subjects as collectives and people in general.

The issue about ownership rights is regulated in detail in the civil codes of the member states of the Commonwealth of Independent States. At the same time, along with the concept of subjects of ownership rights, there is a similar ownership patterns concept in the legislation of Russia and a number of other countries in the post-Soviet space. In modern conditions, this concept looks outdated and redundant. Following the well-known philosophical principle that requires not multiplying essences without special need, the use of the ownership patterns concept in civil legislation should be abandoned.

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#### On the subjects of property rights and the ownership pattern problem by the example of the legislation in Russia and foreign countries

Sobre os direitos de propriedade e o problema do padrão de propriedade pelo exemplo da legislação na Rússia e países estrangeiros

Sobre los temas de los derechos de propiedad y el problema del patrón de propiedad por el ejemplo de la legislación en Rusia y países extranjeros

#### Resumo

O artigo examina os pontos de vista científicos e o desenvolvimento de ideias sobre a gama de assuntos de direito de propriedade, desde os tempos do direito romano e terminando com as codificações da legislação civil moderna. Expressam-se considerações quanto à possibilidade de reconhecer o povo como um todo como sujeito dos direitos de propriedade. É analisado o conceito de padrões de propriedade existentes na legislação da Rússia e de vários outros países do espaço pós-soviético.

**Palavras-chave:** Propriedade. Direito de propriedade. Assuntos de direitos de propriedade. Padrões de propriedade.

#### Abstract

The paper examines the scientific views and ideas development regarding the range of ownership right subjects, starting from the Roman law times and ending with modern civil legislation codifications. Considerations are expressed regarding the possibility of recognizing the people as a whole as a subject of the ownership rights. The concept of ownership patterns existing in the legislation of Russia and a number of other countries in the post-Soviet space is analysed.

**Keywords:** Property. Ownership right. Subjects of ownership rights. Ownership patterns.

#### Resumen

El artículo examina los puntos de vista científicos y el desarrollo de ideas con respecto a la gama de temas de derechos de propiedad, comenzando desde la época del derecho romano y terminando con las codificaciones de la legislación civil moderna. Se expresan consideraciones sobre la posibilidad de reconocer al pueblo en su conjunto como sujeto de los derechos de propiedad. Se analiza el concepto de patrones de propiedad existentes en la legislación de Rusia y de otros países del espacio postsoviético.

**Palabras-clave:** Propiedad. Derecho de propiedad. Sujetos de derechos de propiedad. Patrones de propiedad.