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**TÍTULO:** El concepto de derechos de propiedad en el derecho civil de Rusia.

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**RESUMEN:** Los problemas de protección de los derechos de propiedad y otros derechos reales tienen un alto grado de relevancia. Esto se debe al importante papel de los derechos de propiedad y otros derechos reales en una economía de mercado. La propiedad es la base de todo el sistema de relaciones sociales. La estabilidad de la rotación civil y el desarrollo de toda la sociedad dependen en gran medida del mecanismo de protección de los derechos de propiedad y otros derechos de propiedad vigentes en el estado. Cualquier violación de los derechos de propiedad, que consiste en los poderes para poseer, usar y disponer de la propiedad, debe ser suprimida. El artículo examina las disposiciones generales sobre la ley y las formas de proteger la propiedad.

**PALABRAS CLAVES:** propiedad, derechos, derecho civil, protección.

**TITLE:** The concept of property rights in the civil law of Russia.

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**ABSTRACT:** Problems of protection of property rights and other real rights have a high degree of relevance. This is due to the significant role of property rights and other real rights in a market economy. Ownership is the basis of the entire system of social relations. The stability of civil turnover and the development of the whole of society largely depend on the mechanism of protection of property rights and other property rights in effect in the state. Any violation of property rights, consisting of the powers to possess, use and dispose of property, should be suppressed. The article examines the general provisions on the law and ways to protect property.

**KEY WORDS:** property, rights, civil law, protection.

**INTRODUCTION.**

It is generally recognized that the issue of property is one of the most important issues determining the generation, existence and development of human society. From an economic point of view, property can be viewed as social relations developing over time regarding the production and distribution (appropriation) of property objects between subjects who have the exclusive right to own, dispose and use these objects. The totality of things belonging to this subject (owner) constitutes the property of the respective person, therefore property relations are also called property relations.

This takes into account the actual relationship - who controls the property, has complete information about it, makes decisions about the procedure for its use, disposition and distribution of profits.

The economy involves not so much people's relations among themselves as the legal forms of these relations, that is, the economic concept of property includes the necessary legal component. In general, it is recognized that property rights are the rules of the game in society as a whole, and it is on them that purely economic relations of supply and demand are built.

### **DEVELOPMENT.**

Ownership is traditionally regarded as the most complete domination of a person over a thing. Back in the XIX century. entrenched approaches to the concept of ownership. The first approach was developed in the works of such scientists as D.I. Meyer, F.K. Savigny. So, F.K. Savigny wrote: "Property consists in the domination of a certain person over a part of the external world." (Savigny, 2004).

O.S. Ioffe criticized such an approach, noting that as a result "the right of ownership is deprived of any social content ... It turns into a fetishized image of the relationship of man to thing, human domination over thing, although in reality there are relationships between people" (Ioffe O.S., 2004). Pointed to such a flaw and G.F. Shershenevich, noting that a legal relationship is possible only between individuals (Shershenevich G.F., 1911). Where there is no society, there is no right, and, therefore, legal relations. Robinson Crusoe dominated the whole island, had the necessary items for his needs, but his attitude towards them was only factual. As the French lawyer Plyanol wittily observes, a direct relation to a thing is observed only in a thief, from whom the owner differs from the fact that his attitude to a thing is obligatory for other persons.

According to the second approach, the right of ownership is the relationship between the owner and all third parties who should not interfere with the owner in the exercise of his domination over the thing and refrain from its influence on it. So, G. Dernburg wrote: "All rights exist only between one

person and another, and not between a person and a thing. Property law knows some prohibitive norms; its content is therefore negative. It consists in the fact that everyone should refrain from influencing the thing and not interfere with such an impact on the part of authorized persons” (1906). However, this approach is being criticized. In the legal literature it is noted that the right of ownership can not have only a negative value ... The fallacy lies in the fact that law in the subjective sense is identified with the permissibility of behavior.

Ownership is the only property right recognized by all law and order. The question arises: when did the very concept of "property" appear? “In the most ancient right there was no special term for designating property.

The very ancient term dominium (from the verb domare - to tame) meant “domination” and applied to all cases when anything was in someone's power, applied to all that is in the household, in the house (domus). Emphasizing the antiquity of the respective relations, the Romans added to this term a reference to the right of one of the most ancient Roman tribes, the Quirites, and said “dominium ex iure Quiritium”.

Property relations were embraced by this term along with other relationships of domination over things. Only from the 1st c. ne lawyers began to gradually limit the meaning of the term dominium, but even then it still denoted a wider range of phenomena than property.

Julian (II century AD) uses the term dominium for naming rights to a thing in general - in rem; the thing for which the right existed was called proprietas, and the private owner himself was dominus proprietatis. At the end of the classical period (3rd century AD), the development of the private-law concept of ownership was completed, and the term proprietas is the usual designation for property from now on. This term designated property as a particularly characteristic attitude of domination over things, the highest among others.

The Constitution of the Russian Federation has defined Russia as a democratic legal state in which human rights and freedoms are the highest value, and the observance and protection of human rights and freedoms are the responsibility of the state (Articles 1, 2).

The rule of law, the inviolability of fundamental human rights and freedoms are ensured in a legal state, and their protection and defense is carried out. Recognition by the state of the value of the human person means the need to create effective mechanisms that provide every person and citizen with the opportunity to seek protection and restoration of his rights and freedoms from any illegal restrictions and violations.

One of the priorities in the activities of the state and its bodies after the adoption of the 1993 Constitution was the protection of human rights and freedoms, among which the protection of property rights (Article 35 of the Constitution of the Russian Federation) occupies an important place, which undoubtedly confirms the proclamation of Russia as a law-based state. Property, as an element of the economic system in the Constitution of the Russian Federation, is devoted to part 2 of article 8.

The right of private property is included in the basic rights and freedoms of man and citizen. Article 35 of the Constitution of the Russian Federation emphasizes the right to own property in private property as a subjective human right, which develops the provisions of art. 17 of the Universal Declaration of Human Rights.

The term “property” in scientific literature, journalism, legislative and regulatory texts, including in the Constitution of the Russian Federation, is filled with various contents. In clause 2 of article 8 of the Constitution of the Russian Federation, property and its various forms are understood as different forms of management carried out by various subjects. V.V. Starzhenetsky (2014) indicates that two understandings of property rights have been formed: “narrowly civilistic” (or “traditional”) and

“broad” (“constitutional”). Supporters of the “civilistic”, traditional approach, believe that only tangible objects can be objects of property rights.

Classical domestic civil law understands by the right of ownership the absolute property right to material objects. Only such objects can be lost, destroyed, transferred, etc. G.F. Shershenevich argued that “... the right to property may have as its object only material objects, but not actions or rights, which in their essence cannot be subject to exactly the same legal rules that are established for the former” (Shershenevich G.F., 1911).

V.A. Dozortsev also insisted that the institution of property rights applies only to material things due to the specificity of the object and pointed out that “only material things limited in space can be objects of property rights” (Dozortsev V.A., 2012).

This position is based on the tradition and analysis of the norms of positive law devoted to the concept of property rights. Since the right of ownership is the fullest of property rights, its content covers all the legal powers permissible from the point of view of this legal system with respect to the object of rights.

V.V. Starzhenetsky calls for an active search for new theoretical structures of property rights, arguing that “this legal institution should cover any private rights that have a property character, including property rights, obligations, membership rights, which will allow combining all objects of civil rights into one institute. and extend to them the fundamental guarantees of the law ... This would contribute to stability in the relevant social relations” (Starzhenetsky V.V., 2014).

They criticize G.F. Shershenevich and V.A. Dozortsev, believing that the nature of the object does not at all determine “the existence of property relations”. In their opinion, “something (tangible or intangible object, and a virtual, digital space) is owned when there is dominance of the right holder, minimally (from a concrete historical point of view) limited by the state, and protection from the encroachment of all third parties” (Shershenevich G.F., 1911).

**Results.**

It seems that in modern conditions the legal regime of material and non-material objects differs only in terms of their physical nature. Where the physical nature of the object does not play a significant role for legal regulation, the difference between material and non-material objects is also ignored.

All subjects of property rights are legally equal before the law (Section 8, Art. 8). At the same time, important guarantees of the rights of the owner are enshrined in parts 2 and 3 of Art. 35 of the Constitution of the Russian Federation. Part 2 of Art. 35 of the Constitution of the Russian Federation discloses the content of the right of private property of individuals and legal entities.

When interpreting and applying Part 3 of Art. 35 of the Constitution of the Russian Federation it is necessary to remember that depriving a person of his property by a court decision can take place only in cases provided for by law (clause 2 of Art. 235 of the Civil Code of the Russian Federation), and that the right of private property is protected by a number of federal laws - from the Civil Code to the Criminal Code of the Russian Federation and the Code of Criminal Procedure of the Russian Federation. The right of private property is inalienable and belongs to everyone from birth. This right should be understood more as an opportunity to own property, and not its presence. Detailed regulation of the right of ownership is contained in the Civil Code of the Russian Federation (section II), in which the content of the right of ownership is traditionally disclosed through the triad of powers: possession, use and disposal (Article 209 of the Civil Code of the Russian Federation).

The powers of the owner are not strictly separate, but are closely interconnected and only collectively constitute the generalized expression of the many actions that the owners of the property are entitled to perform.

Possession as a fact and as a right are various phenomena that are separate from each other. "Possession as an economic category is the economic domination of a person over a thing", and "the power of ownership is a legally secured possibility of economic domination of a person over a thing".

If the violator takes possession of a material thing, the right holder loses the ability to extract useful properties from the thing. “Competence of ownership is, perhaps, basic in the construction of the right of ownership ... The loss of ownership of property by the owner deprives him of the possibility of exercising the powers of use and disposition”. At the same time, the properties of a material object sometimes allow the violator to use a thing not only without the right to it, but even without any assertion about such a right. The rules protecting the absolute rights of the owner should deprive the violator of the opportunity to independently use the object of another's right.

### **The value of forms of ownership.**

The practical significance of the form and types of property rights are acquired in determining the legal status of the property that constitutes the object of law. Also of practical importance is a list of opportunities available to owners in relation to this property.

If we consider the Constitution of the Russian Federation, then in it the forms and types of property are protected equally. By analogy to the Constitution of the Russian Federation, Article 212 of the Civil Code likewise classifies the forms and types of property rights. At the same time, the Civil Code subdivides property into smaller categories.

### **Forms of ownership.**

The Civil Code divides the following forms of ownership:

- Municipal property of the city, town and other municipalities.
- Private property owned by individuals or legal entities.
- State property is divided into federal property, which belongs to the Russian Federation as a whole, and property that belongs to the republic, region, region, cities of federal importance, etc.

At the same time, property that belongs to state or municipal property, that is not assigned to state or municipal organizations, is the property of the treasury. In accordance with who owns this property, it is in the composition of the state treasury, the treasury of the subject of the Federation or the municipal treasury.

### **Types of ownership.**

Forms of ownership can be divided into several types. Forms and types of property rights, the right to private property consists of the right of ownership of a citizen and the right of ownership of legal entities. The property right belonging to legal entities consists of the following types: the property of the production and consumer cooperative, religious, public and other organizations of a non-commercial nature, etc.

State property consists of several types of property rights: the right of federal property, subjects of the Russian Federation, republics and national districts. Municipal property, as a form, includes types of property: property of the city and other municipalities.

According to the number of owners, the ownership right can be divided into the ownership right, which belongs to one person, the ownership right, which belongs to two persons or a group of persons. These types of property include shared and joint ownership. The ownership of a common share and joint ownership can be determined by several persons, regardless of what form of ownership represents the common joint ownership. In accordance with the type of property ownership is classified by property on movable and immovable property (Table 1).

**Table 1. The forms of ownership in Russian Federation.**

Forms of ownership				
Private property		Common property		State property
Personal property		Share ownership	Joint ownership	Federal property
Individual property				Property of subjects of the Russian Federation
Group property		Municipal property		
		Regional property		
		Public property		

In civil literature, use is referred to as the use of things to achieve certain goals, in particular to meet the needs, as well as to derive income. There is no doubt that the right of disposal is the central element of the right of ownership, since it is precisely this that distinguishes the owner of the property from another of its owner and user. Usually, the right of disposition is defined as the right of the owner "to establish this or that legal relationship with other persons about things belonging to him" through his volitional act.

The disposition and use of property are closely interconnected; therefore, it should be agreed that when the owner himself uses and disposes, the question of what belongs to the use and what to the order is abstract and has no practical significance. However, this does not mean that in some cases it is possible that the disposition and use coincide, since these are still independent powers, in spite of the fact that they are elements of one subjective right.

The second proposed basis is based on the Marxist theory, in particular on the Marxist understanding of property as appropriation, and the fact that the definition of property rights “must itself be obliged to disclose the specific class features of individual forms of ownership in each formation”, which is not achieved in the classical understanding its content. Currently, the second reason is largely debatable and necessary to rethink, taking into account historical features. Ownership in a broad sense can be understood as a combination of social-production relations.

## **CONCLUSIONS.**

Thus, it can be argued that the right of ownership is a comprehensive higher, most complete, absolute or exclusive domination over a thing.

Ownership is a real right that gives complete domination over a thing by owning, using and disposing, as well as performing any actions in relation to it that are not prohibited by law and do not violate the rights and interests of others protected by law. The right not only legally establishes and regulates property relations, but also guarantees their stability, provides protection in case of violation of the powers of owners. However, unlike the pre-revolutionary civil law, which defined the powers of possession, use and disposal, all subsequent Russian legislation was limited to listing the powers of the owner.

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