



*Aseorías y Tutorías para la Investigación Científica en la Educación Puig-Salabarría S.C.
José María Pino Suárez 460-2 esq a Lerdo de Tejada, Toluca, Estado de México. 7223898475*

RFC: ATI120618V12

Revista Dilemas Contemporáneos: Educación, Política y Valores.

<http://www.dilemascontemporaneoseduccionpoliticayvalores.com/>

Año: VI Número:3 Artículo no.:82 Período: 1ro de mayo al 31 de agosto del 2019.

TÍTULO: La protección de los derechos de propiedad bajo la ley rusa.

AUTORES:

1. Dra. Ekaterina Gaevskaya.
2. Dra. Anna Gubareva.
3. Dra. Kseniya Kovalenko.
4. Dra. Olga Vagina.

RESUMEN: La propiedad es uno de los aspectos más importantes de carácter civil, así como los conceptos de propiedad, derechos de propiedad, y otros han sido siempre controversiales desde la época de la antigua Roma. En la actualidad, se debe prestar especial atención al problema del contenido de los derechos de propiedad. La relevancia de esta investigación está en el hecho de que en la última década el camino capitalista del desarrollo se ha hecho evidente en Rusia, y se han hecho importantes cambios en la regulación legal de las relaciones de propiedad. Las formas y tipos de propiedad, así como el contenido del derecho de propiedad están sujetos a transformación. Existe la necesidad de un mayor desarrollo de la doctrina de la propiedad.

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

TITLE: The protection of property rights under Russian law.

AUTHORS:

1. Dra. Ekaterina Gaevskaya.
2. Dra. Anna Gubareva.
3. Dra. Kseniya Kovalenko.
4. Dra. Olga Vagina.

ABSTRACT: Property is one of the most important aspects of a civil nature, as well as the concepts of property, property rights, and others have always been controversial since the time of ancient Rome. At present, special attention should be paid to the problem of the content of property rights. The relevance of this research states in the fact that in the last decade the capitalist path of development has become evident in Russia, and important changes have been made in the legal regulation of property relations. The forms and types of property, as well as the content of the property right are subject to transformation. There is a need for further development of the property doctrine.

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

INTRODUCTION.

Judicial protection of property rights should be based on the principles and norms of the Constitution of the Russian Federation and the norms of international law. Legal regulation of property appears and remains primarily as a system of norms that fix, regulate and protect these relations. Therefore, the protection of existing relations in any legal system is so great.

The legal basis for the protection of property relations is provided for by most branches of the law: constitutional law, which establishes general principles for regulating ownership and protecting property rights; criminal and administrative law providing for liability for the unlawful encroachment on another's property; labor law regulating, for example, the material liability of employees for property damage caused to the employer; land and family law, encompassing special property relations of wealth, and others, including civil law.

Protecting property rights is the use of civil law protection methods provided for by law in the face of the removal of obstacles to the exercise of property rights.

DEVELOPMENT.

Civil law protection of property rights and other real rights is presented as a set of civil law norms ensuring the normal and unhindered development of the relations in question in the interests of the owner and the society as a whole.

Civil legal protection of property rights, in turn, is seen as a narrower concept, which is a combination of civil law methods that are applied to violators of relationships (and only in cases of violations) drawn up with the help of property rights, that is, they are types of protection of civil rights.

S.S. Alekseev considers the protection of law as a state-coercive activity aimed at the implementation of "restoration" tasks - at restoring the violated right, ensuring legal obligation. S.S. Alekseev equals protection and protection of rights (Alekseev, 1981).

Legal protection is identified with the protection and some other authors. We note the common in the positions of these scientists. They believe that the protection of rights are identical concepts that exist within law enforcement relations. However, if V. A. Tarkhov admits the existence of protection of rights in the presence of a threat of violation of rights, i.e. expands the content of the concept of "protection of rights" (Tarhov, 2013).

Traditionally, civil law protection of property rights (protection in the narrow sense) in the Civil Code of the Russian Federation is devoted to an independent chapter (Shershenevich, 1911). At least, indirectly in one way or another, almost all civil law institutions provide all possible assistance in protecting the rights of the owner, but in science, there is another, oppositional, point of view, whose supporters fundamentally disagree with the above statement and believe that it leads to a confusion of various legal institutions.

Results.

In general, civil law norms, along with other sectors, protect property rights (Sabirova & Shigabutdinova, 2018), and already, within the framework of this set of civil law norms protecting property relations, a group of special means of civil law is allocated for the direct protection of property rights and other real rights (Akhmetyanova & Gladilin, 2018).

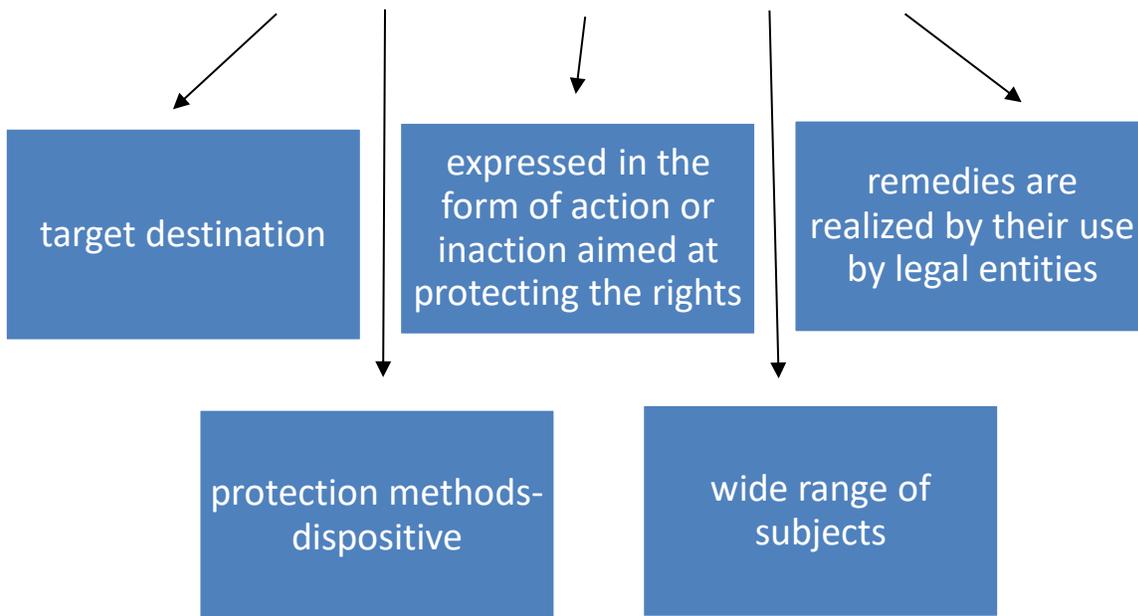
In general terms, the right to defense can be defined as the opportunity granted to an authorized person to use law enforcement measures to restore his violated or contested right. Legal qualification of this possibility causes controversy in the literature (Starzhenetsky, 2014).

The most convincing is the opinion that the right to protection is an independent subjective right. This position is based on the following arguments. As well as any other subjective right, the right to protection includes, on the one hand, the possibility for the authorized person to perform his own positive actions and, on the other hand, the possibility of demanding certain behavior from the obligated person.

The right to own actions in this case includes such measures of influence on the offender, such as self-defense, necessary defense, etc. The right to demand certain behavior from the obligated person covers mainly the measures applied to the offender by the competent state bodies, which the victim applies for the protection of violated rights.

Protection subjective civil rights and interests protected by law is carried out in accordance with the law; that is, through the use of appropriate forms, means and methods of protection. Under the form of protection in science is understood as a complex of internally coordinated organizational measures for the protection of subjective rights and interests protected by law (Table 1).

Table 1. The specificity of civil legal protection lies in the distinctive features



There are two main forms of protection - jurisdictional and non-jurisdictional. The jurisdictional form of protection is the activity of state bodies aimed at the protection of violated or disputed subjective rights.

As a general rule, the protection of civil rights (including property rights) is carried out in a judicial order. Judicial authority is exercised by courts of general competence arbitration courts.

As a means of judicial protection of civil rights, there is a lawsuit; that is, a requirement for the administration of justice, addressed to the court, on the one hand, and a substantive legal request to the defendant to fulfill his duty or to recognize the presence or absence of a legal relationship, on the other.

Judicial or lawsuit protection procedure applies in all cases, except those specifically established by law. The non-judicial form of protection is self-defense of civil rights, this way of protecting the right, enshrined in Art. 12 of the Civil Code of the Russian Federation and representing the actions of citizens and organizations for the protection of civil rights and legally protected interests, which they perform independently, without seeking help from the authorized state bodies.

Protection of civil rights and legally protected interests is ensured by the use of methods of protection provided by law. The non-judicial form of protection covers the actions of citizens and legal entities to protect civil rights and legally protected interests performed by them independently, without resorting to state and other competent authorities.

Article 12 of the Civil Code of the Russian Federation lists the following methods for the protection of civil rights: recognition of the right, invalidation of an act of a state body or local self-government, award for execution of a duty in kind, compensation for damages, penalty recovery, etc.

Most of the individual methods of protecting civil rights to be applied in a particular legal relationship are special cases of methods.

In this case, in the second case, the losses are subject to compensation in full, including lost profits. This list of ways to protect the right should be supplemented with the right to appeal against illegal actions of officials of the state executive body and local self-government. This method can effectively protect the violated rights and legitimate interests in the sphere of application of land legislation, as evidenced by the court-arbitration practice of resolving land disputes (Dozortsev, 2012). So, for

example, the requirement of a participant in common ownership relations to transfer the rights and obligations of the buyer to him in the event of a violation of the preemptive right of purchase (clause 3 of article 250 of the Civil Code of the Russian Federation) acts as a way of protecting civil rights as a change in the legal relationship.

In the event of non-fulfillment of the obligation to transfer an individually-defined thing to the property, economic management, operational management or paid use to the creditor, the latter shall have the right to demand that the debtor be taken away and transferred to the creditor under the conditions stipulated by the obligation (Article 398 of the Civil Code of the Russian Federation).

The measures of civil liability are imposed on the person who violated the right in order to restore the property status of the victim or compensate for the moral damage caused to him, and therefore have adverse consequences for the offender.

CONCLUSIONS.

Civil law provides for the possibility of protecting the violated property rights: through proprietary lawsuits, with the help of legally binding claims.

Property law claims are aimed directly at protecting the right of ownership, as an absolute subjective right, are not associated with any specific obligations and are intended either to restore ownership, use and disposal of the owner of the thing belonging to him, or to remove obstacles or doubts in the exercise of the above powers. On the one hand, the protection of property rights is an integral part of the broader concept of the protection of property rights, and on the other hand, it is part of the protection of all civil rights, which is carried out by the general methods of protection of civil rights specified in Art. 12 of the Civil Code of the Russian Federation, including special methods.

At the same time, the peculiarities of the rights protected have a direct impact on the structures of protective relations, in connection with which practically every institution of civil law, has special rules on the protection of the corresponding rights.

The right to property and other property rights are protected by general methods of protecting civil rights, but the meaning of special measures is determined by the enormous significance and role of such phenomena as property and the right to it, as well as by a number of features that characterize and distinguish this right from the array of all other civil rights.

Thus, the most significant in the system of existing civil rights is the right to property. The current Civil Code of the Russian Federation is designed in such a way that property rights issues occupy a central and most significant position in it.

Accordingly, those methods of protection, by means of which the violated right of property is protected and restored, dominate law enforcement practice.

Civil law protection of the right to property is a combination of the means provided for by civil law in connection with the actions of other persons against those rights.

There are two directly related subjective civil rights that belong to the owner: the right of ownership; right to protection of property rights. Each of them as a subjective right is a measure of the possible behavior of the authorized person.

The Institute for the Protection of Property Rights was and remains one of the most important and necessary institutions of civil law.

BIBLIOGRAPHIC REFERENCES.

1. Alekseev, S.S. (1981) The general theory of law.

2. Akhmetyanova, Zamira A., Gladilin, Kirill V. (2018) To the question of the protection of Real Rights. Dilemas contemporáneos: Educación, Política y Valores. Año: VI, Número: Edición Especial, Artículo no.:14, Período: Diciembre 2018.
https://dilemascontemporaneoseduccionpoliticayvalores.com/_files/200004126-5c1fe5d153/EE%2018.12.14%20A%20la%20cuesti%C3%B3n%20de%20la%20protecci%C3%B3n%20de%20los%20derechos%20reales..pdf
3. Bliznets, I. A., Kartskhiya, A. A., Smirnov, M. G. (2018) Technology Transfer in Digital Era: Legal Environment. Dilemas contemporáneos: Educación, Política y Valores. Año: V, Número: 3, Artículo no.: 34, Período: 1ro de mayo al 31 de agosto del 2018.
https://dilemascontemporaneoseduccionpoliticayvalores.com/_files/200003822-64c4d65c28/18.5.34%20La%20transferencia%20de%20tecnolog%C3%ADa%20en%20la%20era%20digital.....pdf
4. Civil Code of the Russian Federation: Federal Law of the Russian Federation of November 30, 1994 No. 51-FL. Meeting of the legislation of the Russian Federation. 1994. No. 32 (Part 1). Art. 3301.
5. Dozortsev, V.A. (2012) Principles of ownership in the Civil Code. Civil Code of Russia. Problems. Theory Practice: Sat. In memory of S.A. Khokhlova. M.
6. Gazizov, I. F., Kovryzhnykh, O. E., Akhmadeeva, O. A. (2018) Problems in determining the fair value of intellectual property in accounting practice. Dilemas contemporáneos: Educación, Política y Valores. Año: VI, Número: Edición Especial, Artículo no.:87, Período: Diciembre 2018.
https://dilemascontemporaneoseduccionpoliticayvalores.com/_files/200004199-c0f78c1ea7/EE%2018.12.87%20Problemas%20para%20determinar%20el%20valor%20razonable%20de.....pdf

7. Moharreri A., Masjedsaraie H., Abouata M., Zolfaghari M. (2018) The Commercial Representative in Jurisprudence and Law. Dilemas contemporáneos: Educación, Política y Valores. Año: VI, Número: Publication no.2, Artículo no.:60, Período: (January 1st to April 30th, 2019).
- <https://dilemascontemporaneoseduccionpoliticayvalores.com/files/200004273-3168a325df/19.01.60%20El%20representante%20comercial%20en%20jurisprudencia%20y%20derecho..pdf>
8. Sabirova, L. L., Shigabutdinova, A. L. (2018) The historical and legal analysis of the development of Municipal Property Right Institute in Russia. Dilemas contemporáneos: Educación, Política y Valores. Año: VI, Número: Edición Especial, Artículo no.:36, Período: Diciembre 2018.
- <https://dilemascontemporaneoseduccionpoliticayvalores.com/files/200004148-0c5f90d5a4/EE%2018.12.36%20An%C3%A1lisis%20hist%C3%B3rico%20y%20legal%20del%20desarrollo%20del%20Instituto%20de%20derechos%20de.....pdf>
9. Shershenevich, G.F. (1911) Textbook of Russian civil law. M.
10. Starzhenetsky, V.V. (2014) Russia and the Council of Europe: ownership. M.
11. Tarhov, V.A. (2013) Property and ownership. M.

BIBLIOGRAPHY.

1. Kamyshansky, V.P. (2013) On restrictions of property rights and modernization of real rights in the Civil Code of the Russian Federation. Civil Law. 2013. No. 5. Pp. 11-16.
2. Sinitsyn, S.A. (2014) Property Law: Traditions of the Novel of the Development Trend. Journal of Russian Law. № 9. P. 22-26.
3. Sklovsky, K.I. (2011) Property in the civil law. M.
4. Skvortsov, O. Yu. (2012) Vindication claims in arbitration practice. St. Petersburg.

5. Tarhov, V.A. (2013) Ownership and ownership. M.
6. Venediktov, A.V. (1948) State socialist. M.

DATA OF THE AUTHORS.

- 1. Ekaterina Gaevskaya.** Associate Professor in the Department of Land and Environmental Law, Ural State Law University, Ekaterinburg, Russian Federation. She got her Candidate (PhD) Degree in Law in Ural State Law University. E-mail: ekaterinagaevskay@yandex.ru
- 2. Anna Gubareva.** Associate Professor in the Department of Business Law, Ural State Law University, Ekaterinburg, Russian Federation. She got her Candidate (PhD) Degree in Law in Ural State Law University. E-mail: ashipova@mail.ru
- 3. Kseniya Kovalenko.** Associate Professor in the Department of Labor, Environmental Rights and Civil Procedure, Altai State University. Russian Federation. She got her Candidate (PhD) Degree in Law in Ural State Law University. Email: kovalenko1288@mail.ru
- 4. Olga V. Vagina.** Associate Professor in the Department of Land and Environmental Law, Ural State Law University, Ekaterinburg, Russian Federation. She got her Candidate (PhD) Degree in Law in Ural State Law University. E-mail: bmpmag@mail.ru

RECIBIDO: 28 de marzo del 2019.

APROBADO: 11 de abril del 2019.