

виртуальной копии человека, в особенности те, что связаны с привлечением лица к ответственности за неправомерное создание цифрового памятника умершего, а также нарушение непосредственно прав и свобод такой виртуальной копии, наравне с живыми субъектами права.

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TO THE ISSUE OF THE CONCEPT OF REAL ESTATE (REAL ESTATE AS A FICTION)

Abstract. Abstract. Article 130 of the Civil Code of the Russian Federation is casuistic in its formulation. The attempt to define an abstract principle of identifying a thing as immovable has expectedly failed, because the physical criterion used as a basis

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is not adequate. The result is that we do not know what “immovable” is when we deal with a thing that is at least somewhat complicated in its structure. Therefore, deductive reasoning is also impossible, which leads to uncertainty about whether a thing is movable, because things other than real estate are recognized as movable property. The volume of a concept does not determine its essence. Accordingly, with the elimination of phantom attributes, we are left alone with a single volume. The author, based on the social nature of real estate, points out the need to rethink the paradigm in which real estate is recognized; he proposes to abandon the physical criterion of verification of things as immovable and to move to the understanding of real estate exclusively as fiction.

Key words: sociality, legal paradigm, legal concept, real estate, physical criterion.

“A time to throw stones and a time to gather stones”

Ecclesiastes 3:5

Russian doctrine has broken many copies in an attempt to formulate a reliable way of understanding real estate as an object of civil rights. The interest of Russian civilists in the topic of real estate has considerably diminished in recent years. It seems that everything, or almost everything, has been said. Meanwhile, our science of civil law is still not presented with an indisputable doctrine of real estate, claiming to be conventional. The flame of discussion has gone out, leaving behind the ashes of perceptions and concepts. Refracting the famous wisdom of Tsar Solomon, it should be announced: it is time to collect thoughts, time to offer a holistic view of real estate, taking into account the path passed.

Scientific knowledge is achieved through the formulation of concepts. A concept is necessary for the construction of reasoning (in particular, the reasoning of a judge). Reasoning, as a tool for describing the external world, exists exclusively in the logical space, where only validity, provability and rationality of statements are possible. The specificity of law (unlike, for example, morality) is that, being a social phenomenon (genus), it exists exclusively in the logical space (species). The irrational destroys law, making it unpredictable and depriving the legal order of its substantive purpose. The

predictability of law is achieved through logic, and predictability itself is the basis of order. In its turn, the predictability of law is achieved, in particular, by the logical perfection of legal concepts.

Legal concepts are based on both real entities and imaginary ones (legal fiction). The best situation for law is when the norm of the law (text and spirit) corresponds to the essence of the legal phenomenon (volume of reality in the general sense). The goal of law is to cognize the norm as it is, i.e. to create the contour of the law identical to the contour of the phenomenon. However, the road to such synergy is thorny, because we often deal only with some pieces of the concept, while legal regulation is required now (or even required yesterday). It turns out that if we are not convinced of the validity of the phenomenon itself or the reliability of its essential features, then we are left to outline its semantic shape in the most general form (ideologically). This is where the dynamics of scientific knowledge manifests itself: a concept formulated initially may eventually turn out to be false, empty or, on the other hand, acquire its substance and scope.

All of the above has a direct relation to the concept of real estate. Here are a few remarks from which, as it seems, it is only possible to understand the essence of real estate as an object of civil rights. Therefore, real estate is a social phenomenon, an area of logical space, more specifically, the law. This, by the way, is also proved by the very process of the origin of real estate (a unilateral deed and the act of state registration of the right). The material difference between ‘movable’ and ‘immovable’ properties is imaginary. The physical criterion laid down based on such a division does not allow us to say that the division itself takes place at all. There is no physically static property. Such classification is necessary for law for the sole purpose of outlining the range of objects, the rights to which arise in the registration procedure (all participants of civil circulation should know about these rights). This need is strictly pragmatic and lies in the field of communication of subjects, in the field of law, but not in nature. Therefore, this classification is also purely legal. There is no point in holding on to a non-existent physical criterion.

The irrepressible human desire for structuring makes us blindfold ourselves and ignore the obvious contradictions, because of which any attempt to justify a material (physical) criterion is doomed to failure. The rejection of the physical criterion does not mean the rejection of legal regimes, which we have operated with before. We only eliminate the dispute about the recognition of the quality of an immovable thing for this or that object of the material world. We should speak of the regime of immovable things rather than of the natural existences of things as movable and immovable. A practical solution would be the fiction of a land plot as an immovable thing; the recognition of the attached to the land as a constituent part of the plot. Accordingly, the normative fixation should also be placed in the form of fiction. This approach would abolish for once and for all any contradiction, and, in particular, would put an end to the question of the existence of “real estate by nature” and “by force of law”. It is possible to extend the regime of “immovable” thing to anything capable of individualization, only if it would reflect the purpose of the regulation.

A.L. Mexin wrote that history knows examples when by depositing a sum of money certain property was declared ‘immovable’¹. The author also expressed the idea that the purpose of the classification ‘movable and immovable property’ is reduced to the realisation by the legal order of the ‘principle of notoriety’, i.e. postulating that ‘there are only objects, the circulation of which requires special forms...and objects, for the circulation of which there is no such requirement’². The only thing I suggest to take into account is that A.L. Mexin's argumentation is aimed at affirmation of the idea of “real estate” as *res extra commercium*, which, of course, corresponds to the early Soviet legal ideology, but at the present stage is unacceptable, which, however, does not detract from the remark about the mobility of the legal regime of real estate.

In favor of the social nature of real estate are also the insoluble conflicts that form the basis of the physical criterion. Russian civilists, when discussing the verification of things as immovable, appeals to the ‘strong connection with the land’ from time

¹ Мексин А.Л. Об упразднении разделения имуществ на недвижимые и движимые / А. Мексин // Советское право. – М.; Петроград, 1923. – № 3. – С. 104

² Мексин А.Л. Об упразднении разделения имуществ на недвижимые и движимые / А. Мексин // Советское право. – М.; Петроград, 1923. – № 3. – С. 106

to time, talks about the proportionality of harm when things are relocated, searches for the mythical criterion of functional purpose, but does not even notice that the category of ‘disproportionate damage’, for example, is strictly social, because it is connected with property valuation, and ‘strong connection with the land’ is simply an unreliable criterion, because in essence it says nothing. All that the legislator offers us is probability, and any probability is used for lack of credibility and integrity - ‘our knowledge is not in any way complete, but we know something about this form [logical structure]’¹. It seems unproductive to study the depth of the piles into the ground to answer a question that lies on an entirely different plane.

Lawyers will always debate which the property and economic value of a thing depends on its contact with the land and the quality of its connection to it. ‘I know nothing about the weather when I know that it is raining or not raining’, wrote L. Wittgenstein².

Perhaps the idea of classifying things as “immovable” is derived from property value, which leads to the utilitarian need for public proof of property rights. After all, the very need to divide things into ‘movable’ and ‘immovable’ arises with the growth of cities, when the concentration of people and things in one place provokes the emergence of a chaotic multiplicity of social ties that threaten civil circulation. The city catalyzes the value of things. Since a thing is created by humans and belongs to the world and not to nature, the amount of effort expended to produce a thing allows us to speak of its higher value compared to other things. The dichotomy of ‘movable’ and ‘immovable’ is an attempt to intuitively describe an empirical fact (the existence of a specific value), textualise it and put it in the form of law.

The above allows us to conclude that the paradigm in which the cognition of real estate as an object of civil rights takes place needs rethinking. In order to continue the way to a reliable knowledge of real estate, it is necessary to put the train on new tracks. To see the fiction of real estate as an object of civil rights.

¹ Людвиг Витгенштейн. Логико-философский трактат [пер. с нем. Л. Добросельского]. – Москва: Издательство АСТ, 2020. – С. 73.

² Людвиг Витгенштейн. Логико-философский трактат [пер. с нем. Л. Добросельского]. – Москва: Издательство АСТ, 2020. – С. 61.

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К ВОПРОСУ О НЕОБХОДИМОСТИ ВВЕДЕНИЯ СМЕРТНОЙ КАЗНИ ЗА ПРЕСТУПЛЕНИЯ ТЕРРОРИСТИЧЕСКОГО ХАРАКТЕРА

Аннотация. Смертная казнь является высшей мерой наказания за уголовные преступления в виде лишения свободы. В Российской Федерации наложен мораторий на смертную казнь, тем не менее законодательство все еще предполагает ее применение. Многие эксперты считают мораторий нелегитимным и требуют более корректного запрета, другие – что его нужно снять за такие преступления как ведение террористической деятельности и ее финансирование. Данная статья ищет ответ на вопрос: допустима ли смертная казнь для террористов. Результатами работы стало заключение о низкой эффективности смертной казни как высшей меры наказания за террористическую деятельность, так как она не воспитывает ни общество, ни террористов, ни их единомышленников. Мораторий на смертную казнь следует сохранять даже в вопросах террористической деятельности.

Ключевые слова: террористическая деятельность, мораторий, смертная казнь, конституция РФ, право за гранью.

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