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**ON THE CONCEPT AND CHARACTERISTIC FEATURES
OF DEFECTS IN THE MECHANISM OF CIVIL REGULATION
OF PROPRIETARY RELATIONS**

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Introduction: the author examines the most common issues associated with the problem of defects in the mechanism of civil regulation of proprietary relations. The study is based on the general concept of defects in the mechanism of civil regulation, as well as on attributes of the proprietary right which are due to the specificity of the subject and method of legal regulation of these relations. **Purpose:** to analyze the issues connected with definition of the concept, nature and main features of defects in the mechanism of proprietary relations civil regulation taking into account the basic conception of defectiveness of the mechanism of civil regulation of social relations, as well as the concept of rights and duties. **Methods:** the methodological framework of the research is based on a set of methods of scientific cognition, the dialectical method being the major one. The following methods are also used: general scientific methods (analysis, synthesis, analogy, comparison) and specific scientific methods (formal-legal, technical-legal). **Results:** some problems of defectiveness of the mechanism of proprietary relations civil regulation have been considered, the objective and subjective reasons for the existence of defects in this mechanism have been identified. It has been found that the regulatory component of the mechanism under study is directly dependent on the socio-economic and political development of the state in a particular historical period of time. **Conclusions:** the defects under study have been defined, their characteristic features have been revealed. According to the author, defects in the mechanism of civil regulation of proprietary relations are a specific legal reality manifesting itself in substantial flaws in particular elements of this mechanism or in links between its elements, these flaws arising from the specificity of the subject and method of property law as a branch of civil law and entailing disruptions in the efficient functioning of the entire civil regulation mechanism.

Keywords: property law; proprietary legal relations; defects; legal regulation mechanism

Information in Russian
К ВОПРОСУ О ПОНЯТИИ И ХАРАКТЕРНЫХ ОСОБЕННОСТЯХ
ДЕФЕКТОВ МЕХАНИЗМА ГРАЖДАНСКО-ПРАВОВОГО
РЕГУЛИРОВАНИЯ ВЕЩНЫХ ОТНОШЕНИЙ

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Введение: в статье рассмотрены наиболее общие вопросы, связанные с проблемой дефектности механизма гражданско-правового регулирования вещных отношений. За основу взяты общее понятие дефектов механизма гражданско-правового регулирования, а также признаки вещного права, которые обусловлены спецификой предмета и метода правового регулирования. **Цель:** проанализировать вопросы определения понятия, сущности и основных особенностей дефектов механизма гражданско-правового регулирования вещных отношений, учитывая при этом общую концепцию дефектности механизма гражданско-правового регулирования общественных отношений, а также концепцию осуществления прав и исполнения обязанностей. **Методы:** совокупность методов научного познания, среди которых ведущее место занимает диалектический метод. Используются общенаучные методы исследования, такие как анализ, синтез, аналогия, сравнение, а также частнонаучные методы исследования: формально-юридический, технико-юридический. **Результаты:** рассмотрены отдельные проблемы дефектности механизма гражданско-правового регулирования вещных отношений, установлены объективные и субъективные причины существования дефектов механизма гражданско-правового регулирования вещных отношений. Установлена непосредственная зависимость нормативно-регулятивной составляющей данного механизма от уровня социально-экономического и политического развития государства в конкретный исторический период времени. **Выводы:** выявлены характерные особенности и определено понятие дефектов механизма гражданско-правового регулирования вещных отношений. Дефекты механизма гражданско-правового регулирования вещных отношений определены автором как специфическая правовая реальность, выражаются в существенных изъянах его отдельных элементов или связи этих элементов, обусловленных спецификой предмета и метода вещного права как подотрасли гражданского права и влекущих сбои в эффективном функционировании всего механизма гражданско-правового регулирования.

Ключевые слова: вещное право; вещное правоотношение; дефекты; механизм правового регулирования

The concept of defects of the mechanism of civil law regulation.

Before we'll reveal specific characteristics of defects MCLR of real relations, it's necessary to give in a general way the concept of categories of such defects. Let us take as a basis the general concept of defects of the mechanism of civil law regulation (hereinafter - MCLR). Defects in the most general overview can be defined as significant flaws in its individual elements or connections of these elements. This aspect of the general definition MCLR defects will be put on the basis of the study of special defects MCLR of real relations.

Specific features MCLR of real relations due to the specifics of the subject (in rem relationships) and method of regulation (a combination of man-

datory and non-mandatory principles in order to achieve the necessary balance between public and private interests). These features are elected for the isolation of specific defects MCLR of real relations in the framework of the common defects, identified from the position of the defect items of MCLR and connection of these elements.

The features of the defects MCLR of real relations.

The real relations in the subject the civil law system can be characterized as the property relations on accessories (assignment) of wealth, with the economic form of the product. Despite the fundamental importance of private interests in the the property relations it's an important place in it occu-

ped by the public interest, which is reflected in the regulation of ownership and property rights such as the right of operational management and the right of economic management, as well as limited real rights in land and real estate. That is why it is so vital to maintain a balance of public and private interests in the regulation of real relations. By providing the owner the right to act at its own discretion, which reflects the principle of the dispositive legal regulation, the legislator by means of mandatory regulations puts limits to such discretion, if it doesn't contradict the law and other legal acts, and does not violate the rights and lawful interests of other persons (Article 209 of the Civil Code). For the owner, as well as on the subjects of other real rights, subject to the limits set for all civil rights in Article 10 of the Civil Code: "It is not permitted the carrying out of civil rights solely with the intention of causing harm to another person, action in circumvention of the law with the illegal purpose, as well as other obviously unfair exercise of civil rights (abuse of rights). Therefore, you can't use private rights in order to restrict competition and abuse of dominant market position".

The underestimation of the economic component of the form of ownership as a special feature of the considered defects

The real relations are the basis of any society. In law, they are mediated primarily by real right, the nucleus of which acts ownership.

"Property in the broadest sense – as A.V. Venediktov wrote – ownership as a set of socio-productive relations in general – is legally mediated not only by right of ownership, but also by the entire system as the other property rights in rem (limited right to use someone else's thing) and an obligation nature" [2, p. 31].

The underestimation of the economic component of the form of ownership is another the characteristic feature of the considered defects and leads to defects of legal regulation of various forms of ownership and their implementation.

Inasmuch as we are talking about the mechanism of legal regulation, its defects constitute the same legal reality that the law itself. And because the characteristics of the defects of the predetermined system of property rights, which is included as part of the regulatory framework of MCLR. The system of property law involves such institutions as the Institute of ownership and limited

real rights institute. Special central place in the system of property law, as we have repeatedly pointed out, takes the institution of property rights, which also determines the hierarchy in the construction defects of property law and the close relationship of ownership defects defects of limited rights in rem. Obviously, in the real relations MCLR we need to distinguish between defects and defects of ownership of limited real rights, as well as systemic defects ratio of these two sub-property law.

The preconditions of the features of the mechanism of civil law regulation of real relationships

The Characteristic features of the defects of the mechanism of civil-legal regulation of proprietary relations due to:

- 1) the immediate dependence of the regulatory component of the regulatory mechanism of the socio-economic and political development of the state in a particular historical period;
- 2) the specifics of the individual elements of the defects of this mechanism, the presence of focal and subordinate connections of these elements;
- 3) the presence of intra and inter-relations of property law.

The non-compliance with the statutory regulations the objective needs of the development of society as a defect in the mechanism of civil law regulation of real relationships

With all the capabilities of law as a regulator of social relations, they are not limitless. And there was Marx's rights in this regard when he wrote that "right can never be higher than the economic structure and the resulting of cultural development of society" [4, p. 15].

It's necessary to agree with the S.S. Alekseev on the one hand, the right should reflect the urgent needs of social development, and on the other hand, the application of the law must comply with the general prospects for the development of state and law. But since almost all Soviet scientists in this historical period, they saw the prospect of the transition of our country to communism [2, p. 50], the very remoteness, if at all achievable this prospect in the foreseeable future, has led to the catastrophic collapse of the basic principles of legal regulation of real

relations in the Soviet Union, which happened in the 90s of the twentieth century.

In the early 90's V. P. Mozolin had already realized the communist illusion of the Soviet period of our history, he sees the main to the legal ownership structure that best meets the needs of new relations of production property, which is realized by society and which it needs [5, p. 14].

For all its objective conditionality, the right is a subjective factor in the development of society. Moreover, this factor is secondary in comparison with the political structure of society and the state, since it is the state, represented by the legislator "creates" right. Therefore, the mechanism of legal regulation cannot be affected by the legislative activity of the state, exacerbating the malfunction of this mechanism, if the legislator does not see the objective needs of society and is disoriented in the prospects of development of the state and law.

Ideally, in a modern society through democratic institutions the will of the majority of the population is transformed into the will of the legislator. The public sense of justice is the basis of the formation of the rule of law itself is developing under their influence. It should be considered a source of law, which forms the will of the legislator, and at certain stages of development of society in the absence of regulatory requirements can be a source of law enforcement agencies rendering solutions. Thus, in the first years of Soviet power, the courts were "in the absence of the corresponding decree or incompleteness of his guided socialist legal consciousness" [3, p. 115].

The main defect in the mechanism of legal regulation of social relations in Russia in the late twentieth century was due to (for all other, intervening causes, including the important role played by the lack of political will and the collapse of the state machinery) inconsistency of legal regulations to the objective requirements of social development. That is why in the mechanism of civil – legal regulation, undergone regulatory requirements have been undergone to a radical change in the first place in the field of property relations, because the property it is the economic foundation of every society.

New Russia inherited defects in the regulatory requirements of the Regulation of the Soviet period

of ownership. These rules of law no longer meet the development needs of society.

By defects the normative framework of civil-legal regulation of civil relations should be attributed primarily inconsistency of its norms to economic relations, the development needs of civil transactions, interests of citizens and legal persons in the preservation and protection of their rights, gaps in the law, lack of coordination, and in some cases contradictory certain legal norms and institutions, systematic violation of rights. In conjunction with other causes they generate seems to malfunction in the mechanism of civil-legal regulation of social relations. All these defects in one way or another relate to and property law.

The disturbance of the balance of interests of the owner and the holders of other real rights on the same property as a systemic defect in the mechanism of legal regulation.

In the civil law science many authors emphasize the role of property as "systemically important element in social and industrial relations" [6, p. 3]. The property defines the system of property relations. This in turn determines the value of the defects detected in the intra and inter-relationships of the property law.

The disturbance of the balance of interests of the owner and the holders of other real rights on the same property should be attributed to systemic defects in the mechanism of legal regulation violating coordination (land owner and the legal owner of the land easement) and subordination connection (the state as the owner of the state property - state legal face as the franchisor the right of operational management).

The methodological positions of researching MCLR of the real relationships.

The property law has a central place in the civil law system, mediates the statics of civil turnover and is the basis for its dynamic development. Moreover, in the science of civil law property right is defined as a sub-branch of civil law.

The absence in the Russian law until particular time, a set of interrelated institutions of property law, the combined expanded system of general rules of property law confronts science of civil law problems of further development of the theory of property rights, and to further improve the standards legislator property law. With discussed

methodological position, in our mind, and it is necessary to research the defects of the mechanism of legal regulation of real relations.

In order to eliminate this defect many aspects work: jurisprudence, legislators, law enforcement bodies and the entire legal community. In other words, the defects of the law eliminated with law-making mechanism. As part of this work we adhere to the thesis on the division of the process of creating norms of civil law and the mechanism of civil-legal regulation. At the same time, it is impossible not to note the profound connection between these processes. The defects of the law, which is the determining element in the mechanism of legal regulation reflected in the content of regulations already entail undesired effect of the mechanism of legal regulation and do not give him the opportunity to act effectively.

Property Law prepares and adjusts the static property relations, while liability law mediates the dynamics of property relations. However, as has been said, the defects in the mechanism of legal regulation of proprietary relations, in particular the regulatory framework may lead to defects in the regulation of obligations relations.

Thus, the characteristics of defects MCLR of the real relations determined by a number of objective and subjective criteria (factors). These features are such that some of them act primarily determinants of defects and simultaneously characterize their particular characteristics.

The summary.

Summing all, we can conclude that to the characteristic features of defects MCLR of real relations are the following:

1) The direct dependence of normative-regulatory component of the mechanism of socio-economic and political development of the state in a particular historical period. This dependence, above all, the most striking effect on the existence and content of the rules and institutions sub-sector of real right that at this stage affects the availability and content of the structural elements of the mechanism of the proprietary-legal regulation of civil relations, namely the lack of a set of interrelated institutions of property law, the United deployed a system of common rules of this sub-sector.

2) The special defects MCLR of real relations due to the specificity of the subject and method of property rights as a subsector of the civil law.

3) The lack of coincidence between public and private interests served by different forms of ownership and limited real rights, gives rise to defects in

the balance of interests, which is the basis of the instability of society.

4) The underestimation of the economic component of the form of ownership is one of the characteristics of defects MCLR various forms of ownership.

5) Of the many features of the subjective defects of MCLR of real relations should first be noted disadvantages of scientific research on the problems of property rights and the absence of research on the mechanism of defectology civil regulation studies.

Given all the above, you can give a general concept of defects MCLR of real relations.

Defects in the mechanism of civil-legal regulation of real relations are legal reality and expressed in significant flaws of the individual elements or connection of these elements due to the subject characteristics and method of property rights as a subsector of civil law, and involving disruptions in the efficient functioning of the entire mechanism of civil-legal regulation.

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