Information for citation:
Shchennikova L. V. Ponyatie veshchnogo prava v argumentatsii rossiyskikh tsivilistov [The Notion of Right in Rem in Reasoning of Russian Civilists]. *Vestnik Permskogo Universiteta. Juridicheskie Nauki* – Perm University Herald. Juridical Sciences. 2017. Issue 37. Pp. 361–372. (In Russ.). DOI: 10.17072/1995-4190-2017-37-361-372.

UDC 347.2
DOI: 10.17072/1995-4190-2017-37-361-372

THE NOTION OF RIGHT IN REM IN REASONING OF RUSSIAN CIVILISTS

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Introduction: *the definition of right in rem as offered by the developers of the second section of the Civil Code of the Russian Federation and consequently the following expectation period of its legislative confirmation gave rise to both the possibility and practical necessity of the more detailed scientific reasoning and study.* ***Purpose:*** *to create a comprehensive image of the given legal framework comprising all the possible shades of its understanding as described in Russian civil law literature.* ***Methods:*** *both general scientific and specific scientific research methods were used, including dialectical, comparative-legal, historical, technical, and linguistic ones.* ***Results:*** *taking into consideration the generalized characteristics of the right in rem, it is concluded that the legal definition offered by the Civil Code of the Russian Federation needs further development. It should concern the nature of the purpose of the right, the proof of the set of powers inherent in any in rem right as well as the indication of the outer side hereof or the so-called negative obligation.* ***Conclusion:*** *the efficiency of application of the right in rem legal framework depends on the grade of accuracy and scientific validity of its characteristics as necessarily implemented into the final definition. It is proved that the right in rem is specific as to its object and can be characterized by the internal and external connections reflecting its content. The internal connection predominates over the internal one, letting the party to a legal relationship an immediate opportunity to satisfy his or her demands for the res. The possibilities of the party do not take the form of the specific powers. The internal connection, mediating the obligations of the third parties, shall be provided with a special civil law regulation including the system of real actions.*

Keywords: civil right; right in rem; real right; corporeal right; interest; estate; notion of right in rem; definition of right in rem; property law; civil law; civil legislation

Information in Russian

ПОНЯТИЕ ВЕЩНОГО ПРАВА В АРГУМЕНТАЦИИ РОССИЙСКИХ ЦИВИЛИСТОВ

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Введение: *предложенное разработчиками проекта второго раздела ГК РФ определение субъективного вещного права и объективно возникший период ожидания его законодательного подтверждения создали как возможность, так и практическую необходимость его более детальной научной аргументации и проработки.* ***Цель:*** *создать собирательный портрет данной правовой конструкции, воплотив в нем все возможные, из описанных в российской гражданско-правовой литературе, нюансы ее понимания.* ***Методы:*** *были использованы как общенаучные, так и частнонаучные методы исследования. Диалектический, сравнительно-правовой, исторический, формально-юридический, лингвистический.* ***Результаты:*** *с учетом выделенных обобщенных характеристик вещного права сделан вывод о том, что предложенное разработчиками проекта второго раздела ГК РФ легальное определение нуждается в доработке. В том числе это касается характеристики объекта права, доказательств объективно присущего любому вещному праву «набора правомочий», а также отражения внешней его стороны или так называемой отрицательной обязанности.* ***Выводы:*** *эффективность применения правовой конструкции вещного права зависит от того, насколько точными и научно обоснованными являются его характеристики с необходимостью воплощенные в итоговое его определение. Доказывается, что вещное право специфично своим объектом и характеризуется внутренней и внешней связями, отражающими его содержание. Внутренняя связь является главенствующей, предоставляя субъекту непосредственную возможность удовлетворения потребности в вещи. При этом возможности лица здесь не облекаются в конкретные правомочия. Внешняя связь, опосредуя обязанности третьих лиц, должна быть обеспечена специальным гражданско-правовым регулированием, в том числе системой вещно-правовых исков.*

Ключевые слова: субъективное гражданское право; вещное право; понятие субъективного вещного права; определение субъективного вещного права; цивилистика; гражданское законодательство

Cogito ergo sum
René Descartes

Introduction

There is an objective need to include the general provisions in relation to the real right (right in rem) in a codified civil legislation, in particular to establish the legal definition of the right in rem. Thus, it is necessary to summarize the scientific studies of this notion, which have been conducted by the Russian civil law over the course of its centuries-old history. Such a retrospective analysis is required to create a comprehensive image of the given legal framework. It is important that there is a significant majority of shades of understanding of the studied legal framework. Only thereupon it is possible to assess the merits and demerits of the real right definition as offered by the developers of the second division of the Civil Code of the Russian Federation.

The first part of the given article provides an answer to the question whether science, including juridical science, needs definitions and what importance was attached to the conceptual framework by the great thinkers. The second part considers the basic philosophical ideas concerning the understanding of the constructions “notion” and “definition”. Their semantic aspects are revealed, as well as their correlation. The required characteristics of the subject under study that cover the basic wordings of the notion and definition are formulated. In the third part, the doctrinal understanding of the real right as developed by the prerevolutionary civilists is elucidated. Here, we study the arguments in understanding the real right notion as brought forward by such classics of the Russian civil law as K. N. Annenkov, D. I. Meier, K. P. Pobedonostcev, V. I. Sinaiskiy,

G. F. Shershenevich. The fourth part is devoted to the understanding of the real right as reflected in the modern civil law. Here, we analyze the views as to the real right notion formulated in works by E. A. Sukhanov, Yu. K. Tolstoy, V. F. Belov, O. N. Sadikov and other scholars specializing in the development of the real right categories. The analysis of the notions and definitions allows us to identify the common features and differences upon creating an abstract model of the real right as developed by the collective intellect of the modern civil law scholars. In conclusion, we list the revealed peculiarities of the real right framework which shall be reflected in its scientific definition.

The Great Thinkers about the Conceptual Framework

The phrase penned by the French mathematician Rene Descartes in the 17th century: "I think, therefore I am" [14, p. 315], steadily accompanies any researcher, including a civilist. Many treatises have been written about the process of cognition and its purposes. For example, the greatest thinker of antiquity, Aristotle, wrote that in the process of cognition it is necessary to comprehend the nature of the thing (phenomenon) of that which it exists for [2]. Aristotle attached importance to definitions, emphasizing that it is in them that the "essence of the thing" is reflected [3]. The Russian thinker of the 19th century V. S. Soloviev saw in definitions, revealing the inner connection of everything, the truth [23]. The German philosopher of the 19th century Ludwig Feuerbach believed that in the absence of definitions, a researcher "is not even given an object", as being unknown fails to be present [26]. S.L. Frank showed in his monograph "The Meaning of Life" that it is the definition elaboration that constitutes "the light of knowledge" and "the highest good of life" [28]. The Dutch thinker B. Spinoza in his "Theological-Political Treatise", 1676, associated the wisdom of cognizing notions with the "true happiness" and the "human's bliss" [24]. The German philosopher Georg Wilhelm Friedrich Hegel considered the strive for the development of notions to be "an ineradicable, unhappy and incomparable lust for the truth". The English philosopher F. Bacon believed that a scholar must be "greedy" in respect to the essence of notions cognition, never stop, have no rest, but break through deeper and deeper [7].

All things considered, our predecessors urged us to think, understanding the nature of things, cognizing their essence, internal connections, thereby approaching the truth. Upon the creation of scientific notions, the great thinkers considered it to be the supreme good of life, true happiness and bliss, urging their successors to be constantly "greedy" and never to stop in the chosen path.

Philosophical Science about Notions and Definitions

Any science is based on notions. The doctrine of notions is developed by the science of philosophy. It seems appropriate in this study to turn to the main ideas of philosophy concerning understanding the "notion".

According to the modern philosophical dictionary, the word "notion" [22, p. 664], comes from the root "girdle", which means "taken". In Latin, this term corresponds to "conceptus" from the verb "capere", which means "to grasp on the spot". Consequently, the origin of the word itself and its semantic aspect connect the notion with the moment of "grasping" of what is "manifested" in the language by the thought.

I. Kant argued that it is possible to cognize by contemplating or creating notions. While contemplating only creates individual ideas, notions reflect common ties. We think by means of concepts.

That is why the briefest definition of the notion is "the thought" [16, p. 395]. V. I. Lenin called notion a supreme product of brain [17, p. 149]. The things and phenomena of reality are not just imprinted as they are. First of all, it is necessary to emphasize that notions reflect their essence [22]. Secondly, the notion fixes the connections between things and phenomena of reality through distinguishing the common and specific features [27]. Thirdly, as I. Kant emphasized, there is a common idea of what is common for many of the things, which consequently may be present in many things [16, p. 395]. Fourthly, notions are called "contractions" which comprise the multitude of different sensuously perceptible things [31, p. 14]. Finally, it should be emphasized that true nature of things is revealed in the notions. It is not accidentally that Georg Wilhelm Friedrich Hegel called the notion a "synonym of real understanding of the essence of the matter" [15, p. 110]. Thus, in order for the result of a scientist's thinking as to the subject of investigation to be a notion, it must reflect its real nature,

internal essence and connections, being an intellectual contraction of the studied multitude at the same time.

As emphasized in philosophic literature, the creation of notions is the unity of the whole chain of consequent mental actions, including abstraction, idealization, generalization and comparison [27]. Working out of a definition can be considered to be the climax of reflection as to the studied subject. Consequently, notions and definitions are interrelated, but not identical phenomena.

Definition is a logical technique (operation), as a result of which the basic content of the notion is presented in a concise and explicit form. Definitions form an essential part of any scientific theory. In definitions, the results of a long scientific search process are captured, complex scientific descriptions are simplified. Democritus as far back as he was, began to create the doctrine of definitions in his work "The Canons" [22, p. 664]. The rules of creating definitions, though, were formulated by Aristotle. They are important to be remembered and always guided with. The first rule: definitions should not be the same in extent and be interchangeable. The second rule: a definition should not contain incomprehensible terms or be ambiguous. The third rule: a definition should not be tautological, i. e. contain a "vicious circle". The fourth rule: a definition should not include negation [22, p. 664].

In conclusion, it is necessary to infer that to create a notion means to think and to grasp the general, essential and deep. To formulate a definition means to capture the cognized in a concise and explicit form. Guided by the described ideas of the philosophical science, let us pass onto the consideration of the civil notion of real right and its definitions as created by the Russian civil law science.

The Doctrinal Understanding of the Real Right as Created by Prerevolutionary Civilists

During the prerevolutionary period of the civil science development, scientists paid much attention to working out the arguments for understanding the real right. Signs of the notion were formed in civil law science, and in some concepts a final definition was proposed. Let us dwell on the conceptual provisions of the real right understanding as created by the classics of Russian civil law: E. V. Vaskovskiy, V. I. Sinaiskiy, G. F. Shershenevich, K. P. Pobedonostsev, K. N. Annenkov.

E. V. Vaskovskiy, a Russian and Polish civilist, the author of numerous works in the field of civil law, distinguished five special features of real rights. First, according to this scholar's concept, the real right creates a direct and immediate connection between the party and the thing. E. V. Vaskovskiy put additional emphasis on the fact that the real right "covers" a thing, whereas in the law of obligations the subject has to "get over the legal sphere of another person" [8]. Secondly, according to E. V. Vaskovskiy, the real right must be recognized by everyone and anybody. Therefore, the peculiarity of the real right is in its being compulsory for everybody. E. V. Vaskovskiy considered such "absoluteness" to be "a natural consequence of the real right feature". However, there may be exceptions set in the law itself that limit the absolute nature of real rights. An illustration of such restrictions during that period of the legislation development was the non-extension of the absolute power over the loan treasury ownership. The sign of absoluteness does not mean the possibility to equate the entity and absoluteness, stipulated the scholar. Vaskovskiy stated that "old writers", upon coming to a different conclusion, failed to take into account other civil rights of the absolute nature. The third sign under Vaskovskiy is the possibility of violation of real rights by everyone. Going deeper into this feature, he emphasized that the real right, while being mandatory for everybody, on the one hand, can still be infringed by everybody, on the other hand. The fourth conceptual characteristic deals with the provision of an absolute protection. Claims that protect these rights from violations are called real actions and can be brought against each infringer. Finally, the last fifth sign of being in rem under E. V. Vaskovskiy is the focus on the object, but not on the circle of the obligated parties. Such an approach, according to the scholar, is simpler and more understandable. Its advantage is in its general availability for understanding and, accordingly, prevalence. As a result of his reflections, E. V. Vaskovskiy formulated the following definition of the real right: it is "a certain measure of power given to a person by objective legal norms directly over a thing".

V. I. Sinaiskiy, a Russian and Latvian lawyer, who received a personal nobility for his merits to the Russian science proposed his own consideration of the real right understanding. The accent in the definition of this scholar was made on the relationship developing between the empowered person and all the third parties. The scholar considered the essence of the developing relations in recognizing the predomination of the authorized person over a thing within

the limits established by law. Predomination over a thing, according to V. I. Sinaiskiy, is in the ability to directly and exclusively make impact on the thing with the elimination of any influence from the third parties. The definition of the real right through the category of relations Sinaiskiy justified the following way: "any law presupposes a legal relationship, and a legal relationship is only possible amid parties and not between a party and a thing" [21, p. 135]. This approach to the definition in the literature of that period was considered "negative", since the essence of the relationship here is reduced to the elimination of all the third parties who recognize the dominance over the thing and do not interfere with its implementation. However, in the next paragraph, V. I. Sinaiskiy contradicts himself arguing that "it is more accurate to determine the real right positively, that is, as a predomination of a person over the thing" [21, p. 135]. The limits of such predomination, according to V. I. Sinaiskiy can be different, and therefore, there are different types of real rights. By the way, the professor explained the title of the corresponding section of the tenth volume of the Code of Laws of the Russian Empire ("On the essence and scope of different real rights") due to the task of the law to establish the limits of real rights.

K. P. Pobedonostsev created his own concept of real rights. According to his reasoning, real rights have several distinctive features. The first characterizes the connection of the subject with the thing. The real right, according to the civilist, is inextricably connected with the thing and "fails to fall behind it, passes along with it in whosever hands it is, in whatever position the thing is, and attached to it until either the thing is destroyed, or the owner himself decides to break ties with it, abandon it, or turn it into value, or exchange it".

K. P. Pobedonostsev considered the object to be another important quality of real rights. Property in this case, has a status of a thing, that is, outside the party, existent being, objective meaning. Finally, K. P. Pobedonostsev considered three of the real rights features, namely: exclusivity, advantage and preference. In K. P. Pobedonostsev's concept, the definition of the real right looks as follows: "The right to a thing gives rise to a general immediate negative obligation before the owner of the thing to do nothing that could violate his right" [19]. Thus, the scholar differentiated between the "owners", i. e. the subjects of real rights, and all the others, who are obliged not to violate the "master's" rights. Therefore, in total, K. P. Pobedonostsev formulated six distinctive features of property law – the continuity of the relationship, domination over the thing, materiality of the object as united with such features as exclusivity, advantage and preference.

G. F. Shershenevich, while working on his concept of real rights, emphasized the characteristics of the real right as of an absolute right. It was the division of civil rights into absolute and relative rights that he considered "basic and extremely important". There are six features of the absolute right under G. F. Shershenevich. Firstly, it is a passive obligation of all the parties to refrain from infringing this right. Secondly, the coercion of everyone and anybody to refrain from using the things, as well as from committing actions that are permitted only to certain parties. Thirdly, the possibility of violation of absolute rights by any person. Fourthly, the protection of the absolute right with a help of an action against anyone who violates the right. Fifthly, the independence of the absolute rights establishment from the will of passive subjects. Finally, according to G. F. Shershenevich, the sixth sign of absoluteness is the advantage of absolute rights over relative ones, which are always inferior to them. All the formulated signs of absolute rights are inherent in real rights. According to G. F. Shershenevich, the real right differs from all the other absolute rights by the object, which is the "thing in the material meaning of the word" [29, p. 128]. The real right, as argued further by the scholar, establishes a direct relationship with the thing. The essence of the relation to an object in real right is not the "contact with the thing", but that in order to exercise its right, the party in this case does not need the actual mediation of other parties. That is why G. F. Shershenevich considered the essence of the real right not in what the subject of the right is capable of doing with the thing (that is, in the possibilities of predomination), but in what the subjects of obligation may not do with this thing.

K. N. Annenkov created his own theory of civil rights in the system of Russian civil law. He characterized every right (or competence) as predominance of a particular person over a certain subject on the basis of the law. Real rights, as K. N. Annenkov emphasized, are designated to satisfy the various needs that serve self-preservation.

Starting with the Roman private law, invariably, property rights have been prevailing in the system of real rights. The scientist regretted that the term "real right" was not used in the code of laws of our country. As confessed by the composer of the Code of Laws, M. M. Speranskiy, he did not use the expression "real right" in the text since it was unknown to the practice of that period. This kind of "motive" was considered by K. N. Annenkov to be clearly insufficient to "expel" from the law "such a precise" term denoting a very important set of civil rights. The absence of the generic category, though, did not prevent the legislator from including into the Code of Laws a system of specific varieties of real rights, such as the property right in its various limitations, the right to ownership and accommodation right, separate from proprietorship, and various rights to participate in other people's property. K. N. Annenkov distinguished two characteristics of real rights: direct predomination over the object and obligation of everyone to respect this right of its subject. The definition of the real right in the concept of K. N. Annenkov looks like this: "It is actually a right to such a thing or object which cannot be a subject of right" [1, p. 118].

An interesting concept of rights was created by D. I. Meyer. He divided all the rights into object-free and objective. In their turn, objective rights were grouped into three types: rights of power, property rights and obligations. D. I. Meyer stated that the right is called real when a thing as an object hereof fails to be a subject of right. According to the scholar, the real right "does not presuppose the will of the object" [18]. There is a close relationship among the possible types of civil rights, and the shades that delimit them depend on "the grade of legal life development". D. I. Meyer predicted that the obligatory right would often replace the real thing in the advanced legal life. For example, instead of acquiring a thing in property, a person will confine himself to entering into a contract of hiring in respect to the thing. Apparently, the modern conditions of life in Russia cannot be considered an "advanced legal way of life" in the sense that was given by Meyer, since people's desire to acquire real rights, especially to real property, is much greater than to acquire obligatory rights. However, let me remind you that D. I. Meyer finished his prediction with the following sentence: "Real rights will still exist forever". And this phrase is significant in the context of this study.

In addition, it seems important to pay attention to the aspect of freedom that was considered by D. I. Meyer to take the first place in the understanding of the civil right. The essence of such a right, according to the scholar, is a measure of freedom of a person living in a society. It is the measure of freedom that constitutes the human's right. Consequently, the task of civil law is to determine the limits that cannot be transgressed by a person's freedom. Any right can be "split to infinity", therefore, the law is able to determine only the limits of free (lawful) activity of citizens. Otherwise, it would be necessary to indicate that the proprietor has the right to "throw his thing into the air, turn it, carefully study it, etc."

Having considered the views of a whole pleiad of prerevolutionary civilists on the notion of real right, it is possible to formulate the following final conclusions. First, the real right, according to the concepts created at that time, represents a unity of the positive possibility and negative obligation. And these two components are objectively inherent in this notion. Accordingly, there is no need to resolve the dispute as to which of them is prevalent. Second, the positive component of the real right is in the possibilities (domination, power) that are given to the person (subject) in relation to the material thing regarding the satisfaction of his needs in it. However, the norms of civil law should not exhaustively enlist the permissions, as their true purpose is to establish the boundaries and limits of freedom in the exercise of a right. Thirdly, proprietary rights give rise simultaneously to the negative obligation of everyone and anyone to recognize the arising proprietary connection, not to infringe it, otherwise, establishing the methods of its civil protection against any infringer.

The Notion of Real Right in Modern Russian Civil Law

The almost century-long period of the subsequent development of the Russian state has proved the survivability of the construction of the real right. It proved to be indestructible neither by revolutionary explosions, nor by the changes during Perestroika. Real rights in Russia has always remained in civil law either in a variety of property rights, or in the form of limited property rights, for example, the right to operational control. However, domestic civil science again returned to the active

development of this concept only at the beginning of the 21st century. E. A. Sukhanov, Yu. K. Tolstoy, O. N. Sadikov, V. A. Belov and many other young representatives of civil law science, who managed to defend their theses were working on their reasoning of understanding the categories under study. What features have the modern authors used to compose the real right definition? E. A. Sukhanov singled out five signs of the real right. The first is that these rights form a direct relationship of the person to the thing, giving him the opportunity to use this thing in his own interests without the participation of other persons. The second is the absolute nature of real rights, which determines the relationship between the entitled person and all the other (third) parties. The third is a civil law protection with the use of special real actions, which can be brought against any third parties. The fourth is the only possible object in the form of an individually specified thing. Accordingly, if there is no thing, then there is no real right. Finally, the fifth feature, which was called by E. A. Sukhanov "an important feature", is that all the third parties should be clearly aware of the content and types of real rights. The definition of the real right formulated by Prof. Sukhanov looks as follows: "It is an absolute civil right of a person, giving him the opportunity to directly predominate over a particular thing and to remove any other persons from it, as protected by special civil lawsuits" [10, p. 7].

Yu. K. Tolstoy has also formulated his own concept of real rights. His reasoning on this topic is of a considerable scientific interest. The author himself calls the category of real right "enduring", "vulnerable" and "criticized" in the civil literature [11, p. 331]. According to Tolstoy's opinion, the real right should not be reduced to the relation between parties and things. Nevertheless, the actions of subjects are crucial in meeting the interests of the empowered person. Third parties passively refrain from infringing the right, however this "passive detention" [11, p. 331] does not become less significant. Let someone of those who are obliged invade the sphere of economic domination, and in the right itself there will be a "congestion" with all the ensuing consequences. As for the features of real rights, based on the current legislation, the professor has identified two of them. The first is the right of following, meaning that cession of the right of property to another person is not the ground for the termination of other proprietary rights in respect of this property. The second is the absolute nature of protection, consisting in the fact that the real right is protected from infringement by any person. Having elicited these features from the norms of the Civil Code of the Russian Federation, Yu. K. Tolstoy immediately noted that this kind of legislative position is "unstable", since both features can be applied in respect of other rights, which do not necessarily relate to real rights. By the way, Yu. K. Tolstoy did not consider the feature of object as specifically characterizing the notion of the real right. He stressed that objects of real rights are not always reduced to a thing.

V. A. Belov provides his own detailed and well-reasoned understanding of real rights [6, pp. 38–39]. According to him, there are eight characteristics inherent in real rights. Firstly, they form the state of things (material welfare) belonging or the statics of property relations. Secondly, they are absolute. Thirdly, they provide the possessor with the opportunity of direct predomination over things and performance of active actions in their respect, as well as the possibility to remove of all the other parties from such predomination. Fourthly, these rights provide the powers of the authorized subject with passive obligations of the indefinite range of (all the other) persons. Fifthly, they enjoy absolute protection. Sixthly, their objects have individually defined features. Seventhly, they are defined in the law in terms of their content in an imperative way. Finally, they must be directly named real rights. V. A. Belov notes quite correctly that there is no need to include all of these features into the final definition. For example, the first feature, according to the author, "fails to be within the legal sphere". The last three features are derived from the absolute nature of real rights. Without any harm to the definition, one can also exclude the fifth feature, as is believed by V. A. Belov. As a result of the sequestration according to the rules of formal logic, V. A. Belov has formulated a brief version of the definition of real rights: "These are civil absolute rights to things" [6, pp. 38–39].

An original view on understanding real rights was also expressed by O. N. Sadikov. He stressed that this term unites a large and practically important group of property rights that have existed for a long time. The term itself reflects the subject of such rights, including "various material values, starting with land and natural resources, production

facilities, buildings, and ending with everyday life items and monetary signs". Thus, according to O. N. Sadikov, the material object, predetermining both the practical significance of these rights and important legal features, determines the basis and is considered the first sign for the distinguishing of real rights. According to this author, the second sign of the real right is the possibility of its subject to directly affect the object. The third sign under O. N. Sadikov is the perpetuity of the action of real rights. Finally, real rights are characterized by the author as having legal protection against all the third parties, which means they are included in the system of absolute real rights. The result of reasoning in the framework of this concept was the conclusion that "real rights are sufficiently wide in terms of their legal content and give their owners great opportunities for the realization of their own powers and interests" [13, p. 236].

A system of specific distinctive features of real rights is developed by A. B. Babaev in his monograph "The system of real rights" [5, pp. 196–201]. The first distinction, according to the author, are the interests comprised in real rights. Here, he detects two of them: the interest in performing actions in respect of the thing, in extracting useful properties from it, and apart from that the interest in retaining such an opportunity for the longest time possible. The second difference are the obligated subjects (parties), who oppose the empowered owner of the real right. Those obligated, as is emphasized in the concept, have an obligation to refrain from certain actions, which is the same in content and scope for all of them. The third difference is considered in the method of individualization, which includes the form of the right, the authorized subject and the object. Fourth, the real right should be public, consequently, all the third parties should be able to learn about its existence and their passive obligations. The fifth difference in A. B. Babaev's concept is the nature of the protection. Here, any third party can be an infringer, while a real action is filed against a strictly defined party. The author summarizes that real rights have the properties of absoluteness, exclusivity and publicity, exist in connection with individually-defined things and are equipped with the means of legal protection of property [5, pp. 196–201].

Z. A. Ahmetyanova gives her own version of understanding the real right. There are six attributes of real rights in it. First, the author emphasizes that the real right ensures the connection of the subject with the thing and his predomination over it. Second, it accrues in respect of the individually-defined things. Third, the subject of real right has the opportunity to satisfy his interest without the mediation of others. Fourth, these rights are characterized by the obligation of other parties not to impede the subject in exercising the powers that are held. Fifth, they are characterized by an absolute nature of protection. Sixth, they possess the following property. Z. A. Akhmetyanova defines real rights as a kind and measure of the subject's possible behavior with respect to a certain thing provided for by law [4, p. 16].

The description of scientific sources containing author's approaches to understanding of the real right can be continued long enough. When working on the problem, we counted at least twenty-five different definitions of the notion under study. Some authors emphasize that the real right is an opportunity to use an individually-defined thing [12, p. 602]. Others describe it as "a known measure of the domination of a person over a thing" [30, p. 14]. Still others emphasize that real rights form and fix the belonging of a thing [9, p. 87]. There is an understanding that the real right gives the possibility of personal domination over a thing [20, p. 178]. It appears that there are not many examples of scientific analysis of the notion of real right, whereas there are dozens of "working" definitions contained in civil law literature. The developers of the draft of the second section of the RF Civil Code tried to sum up the development of the theory of real rights by proposing the following wording as a definition: "The real rights gives a person a direct control over a thing and is the basis for exercising, together or separately, the powers of ownership, accommodation and disposal within the limits established by the Civil Code".

What conclusions can be made based on the above review of the various approaches to understanding the real right? First, modern civilists, although they do not offer completely new approaches to the characteristics of real rights, but also do not coincide in their views on the concept under study. Second, there is a different number of essential features of the real right in civil literature. Some scientists limit themselves to two distinctive differences; others identify up to ten ones. Third, different authors highlight different key points in understanding the category. The significance of

one or another feature is evaluated by different scholars ambiguously. Fourth, the discrepancy in views may concern any of the identified features, including even the understanding of the object of the right. Fifth, there is active scientific criticism of each other by scholars, even within one and the same school of thought (for example, the MSU school of thought, if we bear in mind the views on the problem of E. A. Sukhanov and V. A. Belov). Finally, the fact that the approaches to the final definitions do not coincide is well worth mentioning. There are different variants of them – from voluminous (wide) to extremely short.

Nevertheless, it is possible to create a comprehensive portrait upon the analysis of many points of view on the understanding of real rights, having embodied all the "shades" of its understanding described in the literature. Thus, firstly, the legal right is specific due to its object, which is always a thing that is material and concrete (individually-defined). Indeed, if there is no thing, then there is no right. Secondly, the real right secures the belonging of a thing and the possibilities of a person in relation to it. This belonging can be characterized as some kind of internal connection in the construction. It provides the subject with an opportunity to exercise the accommodation right over the thing directly, performing his own actions, without resorting to the help of others. At the same time, the person's capabilities in relation to a thing are not in the form of specific powers, since each real right is characterized by its own "degree of domination" described in the law. Thirdly, the importance of the internal connection between the person and the thing is proved by the possibility of extracting useful properties to satisfy the needs. As it is well-known, civil law is the law of needs, satisfied needs, that is. That is why the person's capabilities in relation to the things here can be characterized as predominant. Fourthly, the real right is characterized by the external connection which mediates the obligations of the third parties. For this connection to be "established", all the third parties a) should be aware of the content and types of the existing real rights, b) should passively refrain from interference into the sphere of economic dominance of subjects of real rights c) should stay away from the interference in case of violation of the established limits and boundaries of the existing real rights. The potential possibility of the invasion of everyone and anyone into the sphere of economic dominance of the subject of real rights emphasizes the obvious importance of this external connection in the structure of the real right. Fifthly, the real right is protected by a system of special property lawsuits (real actions). In addition, the real right possesses a combination of properties, such as exclusivity and the right of following. The list of these properties can be specified as civil regulation of the law of property relations develops.

Taking into account the outlined generalized features of real rights, it is possible to evaluate the legal definition proposed by the developers of the draft of the second section of the Civil Code of the Russian Federation. First, the internal connection here is represented by the powers of possession, accommodation and disposal, which can be exercised depending on the type of rights together or separately. Argumentation of this approach is not represented in the domestic science of civil law. In order to include this definition in the legislation, it was necessary first to prove beforehand that the real right always consists of the powers of possession, accommodation and disposal, although the specific "set" of powers is always different and depends on the specific type of right. Such reasoning is contained in works of foreign civilists, for example, M. K. Suleimenov [25, pp. 16–22], but it is not universally recognized in the domestic science of civil law. Second, the definition of real right proposed for inclusion in the Civil Code of the Russian Federation does not reflect the external and essential relationship between the real right holder and all the third parties. It turned out to be outside the concept, although Yu. K. Tolstoy stressed that this "passive abstinence" does not become less significant here, meaning the possibility of each and every one to invade the sphere of economic predomination and to violate it until it is completely denied. Third, the proposed definition does not contain an indication of the object of right, whereas it is generally accepted in science that it can only be a material individually-specified thing. Finally, the definition does not include an indication of the absolute nature of the protection of the system of property lawsuits, whereas it is in this characteristic that the Russian science of civil law achieved almost complete unanimity.

Thus, having taken into account the variety of features and definitions of real rights, both in modern and pre-revolutionary science of civil law, we can claim the creation of a comprehensive image of this concept. This image was formed, and it was important to create it in all the shades of the variety of approaches proposed by civil law science, which is the purpose of this paper.

Conclusions

Since time immemorial the great thinkers have assigned high priority to the development of a conceptual framework. It was in it that they saw the essence of the phenomena studied, the internal connections subject to being revealed with the help of science. They urged us to think, comprehending the nature of things, learning their essence, thereby approaching the truth.

Philosophic science has created a whole doctrine of notions and definitions, on which any science, including, civil science, shall be based. From the philosophic perspective, for the result of a scientist's reflection on a subject matter to be called "notion", it has to reflect its real nature, inner essence and connections, and has to be an intellectual contraction of the studied multitude. The climax of a scientist's work on a notion is the development of a definition. To formulate a scientific definition is to fix the cognized in a condensed and explicit form. Consequently, the notion and the definition are interrelated but not identical phenomena.

Prerevolutionary civil law science developed conceptual provisions for understanding the real right. It is possible to formulate three final conclusions based on the concepts created at that time. First, the real right is a unity of the positive opportunity and negative obligation. These two components are objectively inherent in this notion and, accordingly, there is no need to resolve the dispute which one is the main one. Second, the positive component of the real right are the possibilities (predominance, power) that are given to the party (subject) in relation to the material thing to satisfy his need for it. However, the civil law provisions should not exhaustively list the permissions, for their true purpose is to establish the limits of the freedom to exercise the right. Third, real rights give rise to the negative obligation of each and every one to recognize the arising property legal connection, not to violate it, otherwise the possibility of its civil protection against any violator is established.

A certain contribution to the development of the concept of real right and the development of its definition has been made by modern civil science. The analysis of scientific developments of modern authors made it possible to conclude that, first, even without offering completely new approaches to the characteristics of the real right, scientists do not coincide in their views on the term under investigation. Second, in civil literature there are given different numbers of essential features of the real right. Some scientists limit themselves to two distinctive differences; others identify up to ten ones. Third, different authors highlight different key points in understanding the category. The significance of one or another feature is evaluated by different scholars ambiguously. Fourth, there is an active scientific criticism of scientists by each other, even including within one and the same school of thought. It should be pointed out that the approaches to the final definition do not coincide. There are different variants of them – from voluminous (wide) to extremely short.

Based on the analysis of many points of view on the understanding of the real right, the author presents a comprehensive portrait of this construction, which embodies the unity of its five essential and indispensable features. The first one is the specific object, which is always a thing, material and individually-defined. The second characterizes the internal connection of the concept, ensuring the direct use of the thing through performing one's own actions, without resorting to the help of others. The third emphasizes the fundamental role of the internal connection between the person and the thing, providing the possibility of extracting the useful properties from it to satisfy the needs. The fourth feature is given to designate the external connection, which also individualizes the real right and mediates the obligations of the third parties. As the author concludes, civil law regulation upon providing this external connection creates opportunities and prerequisites for the awareness of the third parties about the content and types of real rights with a view to passive abstention from intrusion into the sphere of economic predominance of subjects of the real right, and also proposes a mechanism for removing from interference in the event of infringement of the established limits and boundaries of the existing real rights. Finally, the feature inherent in the real right is its effective protection by a system of special property lawsuits. Taking into account the highlighted generalized characteristics of real rights, the article provides an assessment of the legal definition from the second section of the Civil Code of the Russian Federation, proposed by the draft developers. The revealed shortcomings of the definition show that the development of the national civil science ideas concerning this issue urgently demands some consolidation, with all the achievements of this development being embodied in the legal concept.

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