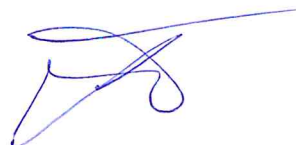


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**LEGAL REGULATION OF THE CONSEQUENCES OF UNAUTHORIZED
CONSTRUCTION OF REAL ESTATE OBJECTS**

Specialty 5.1.3. Private law (civil) sciences

Abstract of the dissertation
for the degree of Candidate of Law

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Relevance of the research topic.

The national development goals of the Russian Federation for the period up to 2030 and for the future up to 2036, the achievement of which will create conditions for ensuring sustainable economic and social development of the Russian Federation, were approved by Decree of the President of the Russian Federation No. 309 dated 05/07/2024.

One of these national goals is "Comfortable and safe living environment". Creating a comfortable and safe environment for life involves the expansion of mass and individual construction, as well as updating the existing material base. The achievement of the goal "Comfortable and safe environment for life" is conditioned by the fulfillment of tasks, in particular, to provide citizens with housing, renovate the housing stock, reduce the housing stock unsuitable for living, and overhaul buildings of educational organizations. As a result, the legal regulation of construction activities and the consequences of their implementation is of particular importance.

Violation of dynamically developing legal requirements during the initial creation or reconstruction of real estate objects is the basis for recognizing such an object as an unauthorized construction. Due to the lack of a unified approach to regulating the consequences of unauthorized construction of real estate objects, such a qualification of an object leads to significant uncertainty about its legal fate.

The pluralism of views on the definition of the legal nature and essence of unauthorized construction among legal scholars, representatives of the legislative, executive and judicial branches of government causes a number of problems that arise when creating an object of real estate in violation of legislative requirements. There are different positions on what properties an object should have in order for it to be recognized as an unauthorized construction. In particular, the possibility of extending this legal regime to an object of unfinished construction depends on the decision of whether an unauthorized construction is a real estate object.

In addition, the issue of determining the location of the unauthorized construction object in the system of civil rights objects has not been resolved. For many people, it remains unclear whether the subjects of civil relations have rights and obligations in relation to the object of unauthorized construction.

The relevance of the topic of the dissertation research is also conditioned by the completion of a significant stage in the development of civil legislation in terms of regulation of property law, which began in 2009. In the context of a break in legislative work on the development of property law, it seems necessary to determine an up-to-date approach to the legal regulation of the consequences of unauthorized construction of real estate objects.

Taking into account the fact that a construction object accumulating significant material and time resources, when recognized as an unauthorized construction, can be either demolished or legalized, the consequences of extending the legal regime of unauthorized construction to such an object require detailed disclosure. The decision on its legal fate significantly affects the interests of the person who created such a building, as well as the interests of society as a whole. In case of demolition of an unauthorized construction, the person who carried out the unauthorized construction loses a significant part of the funds spent on its creation, and the company, in turn, a potential object of commodity-money relations.

Despite the fact that recently, due to the intensive work of the Supreme Court of the Russian Federation, the attention of scientists and practitioners to the peculiarities of the legal regime of unauthorized construction has significantly increased, it can hardly be said that sufficient attention is paid by scientists to the issues of legal regulation of the consequences of unauthorized construction of real estate objects. Many relevant works focus only on explaining the approaches presented in law enforcement practice, and do not disclose issues that require the development of a theoretical framework to solve.

It seems that the legal uncertainty regarding the legal regime of the unauthorized construction object is due to the lack of a unified and internally consistent approach to the legal regulation of the consequences of unauthorized construction of real estate objects. Its absence does not allow for effective protection of both private interests and the interests of an indefinite circle of persons in legal relations related to the unauthorized creation of real estate objects, which determines the relevance and timeliness of this study.

The degree of scientific elaboration of the research topic.

In Russian civil science, issues related to unauthorized construction sites were mainly considered only indirectly, within the framework of studies of other, broader categories.

In the pre-revolutionary period, such a category was the category of "real estate", which was studied in the works of E.V. Vaskovsky, Y.S. Gambarov, L.A. Kasso, D.I. Meyer, K.P. Pobedonostsev, I.A. Pokrovsky, G.F. Shershenevich and other scientists.

At the Soviet and modern stages of the development of civil science, the consequences of unauthorized construction were touched upon in the framework of a study of issues related to objects of civil rights, the grounds for the emergence of property rights and mechanisms for its protection, presented in the works of such authors as M.M. Agarkov, S.S. Alekseev, A.Ya. Belenkaya, M.I. Braginsky, V.V. Vitryansky, E.A. Gryzikhina, I.A. Emelkina, V.S. Zhabreev, V.V. Zaitsev, T.V. Zakupen, O.S. Ioffe, O.A. Krasavchikov, P.V. Krashennnikov, V.V. Kulakov, Y.A. Lameikin, A.N. Levushkin, Y.G. Leskova, M.M. Popovich, L.V. Pulyaevskaya, K.I. Sklovsky, E.A. Sukhanov, E.M. Tuzhilova-Ordanskaya, U.B. Filatova, D.A. Formakidov, A.M. Erdelevsky, V.F. Yakovlev, etc.

Legal relations related to the creation of unauthorized construction and their legalization were considered in studies on unauthorized constructions by the following authors: T.V. Belova, V.A. Bether, Y.A. Bobyleva, O.V. Gumilevskaya, A.V. Ivanenko, A.V. Savina, V.V. Selivanov, P.A. Shishkanov.

Despite the existence of a significant number of works devoted to unauthorized constructions, it should be noted that there is currently no comprehensive analysis of the legal regulation of the consequences of unauthorized construction of real estate objects. In these works, the legal consequences of the extension of the legal regime of unauthorized construction to the real estate object have not been adequately investigated. The above, taking into account the development of legislative provisions and approaches presented in law enforcement practice, requiring theoretical understanding and analysis, predetermined the choice of the topic of the dissertation.

The purpose and objectives of the study.

The purpose of the dissertation research is to analyze the problems of legal regulation of public relations arising in connection with the implementation of unauthorized construction; identification of the legal essence of the legal regime of unauthorized constructions; determination of methods for improving the regulation of legal relations arising from the attribution of man-made real estate to unauthorized construction, their subsequent demolition or legalization.

Achieving these purposes involves the necessity to attain the following objectives:

- to characterize the legal nature of the object of unauthorized construction and determine its place in the system of objects of civil rights;
- to reveal the features of the formation and development of legal regulation of the consequences of unauthorized construction;
- to characterize the specifics of a private law violation as grounds for recognition an object as an unauthorized construction;
- to demonstrate the features of recognizing an object as an unauthorized construction through the prism of protecting the rights and legitimate interests of an indefinite circle of persons;
- to characterize demolition as a legal consequence of recognizing an object as an unauthorized construction, and to show its significance as an extreme measure of civil liability;
- to reveal the features of the civil law mechanism for the legalization of unauthorized construction.

The object and subject of the study.

The object of the study is the social relations that develop regarding the implementation of unauthorized construction and its materialized result in the form of an illegally existing object of immovable property, regulated by the norms of civil, land, urban planning legislation and other legal norms.

The subject of the study is a set of norms regulating public relations that arise regarding the unauthorized construction of real estate objects and its legal consequences; relevant theoretical provisions and judicial practice.

Theoretical and methodological basis of the study.

The theoretical basis of the study was the works of civil scientists who, in the pre-revolutionary, Soviet and modern periods of the development of legal science, addressed the issues considered in this study, among them: V.A. Alekseev, R.S. Bevzenko, T.V. Belova, V.A. Bether, R.A. Valeev, V.V. Gruzdev, O.G. Ershov, T.V. Zakupen, O.S. Ioffe, L.A. Kasso, O.A. Krasavchikov, P.V. Krashenninikov, I.D. Kuzmina, V.V. Kulakov, V.A. Lapach, Y.G. Leskova, D.I. Meyer, K.P. Pobedonostsev, A.P. Sergeev, O.Y. Skvortsov, K.I. Sklovsky, E.A. Sukhanov, G.F. Shershenevich, P.A. Shishkanov, V.F. Yakovlev, etc.

The methodological basis of the study was the general scientific dialectical method of cognition. When writing this work, general scientific methods were applied, in particular, such formal logical methods as generalization and abstraction, analysis and synthesis, induction, deduction. Also, methods such as analogy and classification were applied from general scientific methods (an independent classification of methods for legalizing unauthorized construction objects was proposed).

Such private scientific research methods were also used as historical and legal (the genesis of the concept of "unauthorized construction" was studied), comparative legal, legal and dogmatic method (the definition of the object of unauthorized construction, fixed in Article 222 of the Civil Code of the Russian Federation, as well as legal norms regulating relations connected to the creation or construction of unauthorized buildings).

Information base of the study.

The information base of the research includes various sources, in particular articles, monographs, dissertations, books, journals. The studied range of normative legal acts includes the Constitution of the Russian Federation, the Civil Code of the Russian Federation, the Town-planning Code of the Russian Federation, the Land Code of the Russian Federation, and other normative legal acts of the Russian Federation. The acts of the Constitutional Court of the Russian Federation, materials of judicial practice of the Supreme Court of the Russian Federation, the Supreme Arbitration Court of the Russian Federation, judicial acts of arbitration courts and courts of general jurisdiction were analyzed.

The scientific novelty of the dissertation research.

The scientific novelty of the study lies in the fact that it reveals previously insufficiently researched features of the legal regulation of the consequences of the unauthorized construction of real estate objects. The author has formed an idea of unauthorized construction as a special object of civil rights, and justified the theoretical provisions that reveal the place of the object of unauthorized construction in the system of objects of civil rights.

Based on the analysis of the properties that an object recognized as an unauthorized construction should correspond to, the author defines the time period for the possible extension of the legal regime of unauthorized construction to a real estate object. The properties of the private legal basis for recognizing a construction as unauthorized are characterized, which makes it possible to distinguish the requirements for the consent of private and public right holders of land plots to create a real estate object by a third party.

Taking into account the significant spread of an expansive approach to imposing the obligation to demolish a construction recognized as unauthorized, the author substantiates the necessity to narrow the subject composition of persons who may be burdened with the demolition of an unauthorized construction in order to comply with the goal-setting of such a sanction for unauthorized construction as demolition.

Validity and reliability of the research results.

The validity and reliability of the research results is based on the application of generally recognized scientific methods of cognition, including the study of a significant range of legal sources in the course of work: from legislative material to law enforcement practice and doctrinal provisions of modern civil law. The presented conclusions are confirmed by references to the materials analyzed in the course of the study.

Provisions submitted for protection and having scientific novelty.

1. It is proved that unauthorized construction is a special object of civil rights belonging to the legal category of "property".

According to the study, an unauthorized construction, being a material object isolated in spatial boundaries, available for possession, due to the fact that the use or disposal of an unauthorized construction is legally prohibited and the rights to it cannot

participate in civil turnover, is not capable of satisfying the needs of subjects of civil relations. As a result, subjects of civil law relations who have rights and obligations in relation to unauthorized construction (the person who carried out the unauthorized construction, and in some cases the actual owner of the unauthorized construction, who simultaneously has rights to the land plot within which such construction was carried out), cannot alienate them to third parties in an order other than universal succession.

The first provision corresponds to paragraphs 5, 6, 9, 14 of the passport of the scientific specialty 5.1.3 Private law (civil) sciences.

2. The time period for the possible extension of the legal regime of unauthorized construction to a real estate object has been determined. Its beginning is due to the completion of work on the construction of the foundation of a newly created building, or the moment of the emergence of a previously non-existent real estate object as a result of unauthorized reconstruction. Termination of the legal regime of unauthorized construction occurs due to its loss due to the demolition of a real estate object, or due to its transformation into the legal regime of a legally existing thing in the case of acquisition of ownership of an unauthorized construction.

The second provision corresponds to paragraphs 5, 12 of the passport of the scientific specialty 5.1.3 Private law (civil) sciences.

3. It is concluded that a real estate object has been created or erected on a land plot provided to the developer in accordance with the established procedure, if the consent of the right holder of the land plot to its creation is expressed through the commission of implicative actions contributing to the construction, preservation of this object or is fixed in the contract. At the same time, such consent of a public legal entity as a private right holder of a land plot can be properly expressed only in a contract with the developer, provided that the procedure established by the legislator for the provision of public land plots for construction purposes is followed. The absence of such consent is the basis for recognizing an object of real estate created on a land plot that does not belong to the developer as an unauthorized construction.

The third provision corresponds to paragraphs 7, 8, 9 of the passport of the scientific specialty 5.1.3 Private law (civil) sciences.

4. The inexpediency of imposing the burden of demolition on a person who did not carry out unauthorized construction, but is the actual holder of an unauthorized construction facility located on a third party's land plot is justified. The transaction made between him and the unauthorized constructor is void in terms of the disposal of the unauthorized construction.

It is concluded that the proper subject to whom the burden of demolition is imposed is the person who committed such a culpable commission as carrying out an unauthorized construction, and in the absence of information about him, the owner of the land on which such a construction was erected or created, since he bears the burden of maintaining the property belonging to him.

The fourth provision corresponds to paragraphs 7, 8, 9, 12 of the passport of the scientific specialty 5.1.3 Private law (civil) sciences.

5. The author's classification of ways to legitimize the object of unauthorized construction has been developed, depending on the characteristics of their legal and subject composition. It is proposed to distinguish between constitutive legalization, in which unauthorizeding is eliminated by issuing a judicial or administrative decision, and executive legalization, in which unauthorized access is lost by bringing the characteristics of the object in accordance with the requirements of current legislation as a result of reconstruction.

It is argued that the right to legalize unauthorized construction should be possessed by a constructor legally endowed with the proper title to a land plot provided to him in order to create an appropriate real estate object.

The fifth provision corresponds to paragraphs 5, 7 of the passport of the scientific specialty 5.1.3 Private law (civil) sciences.

6. The limitation of the methods of legalizing an unauthorized construction from such a method of acquiring property rights as the acquisition prescription is justified, taking into account the difference in the tasks they provide. The norms on unauthorized construction are aimed at eliminating the identified offense, the material effect of which is the existence of a disputed real estate object, the characteristics of which do not conform the established requirements. In turn, the rules on the acquisitive prescription, on the

contrary, are aimed at returning to civil circulation a thing that had previously been eliminated from it not because of its defects, but because of the loss of the actual connection between the thing and its owner.

The sixth provision corresponds to paragraphs 5, 7 of the passport of the scientific specialty 5.1.3 Private law (civil) sciences.

Theoretical and practical significance of the study.

The theoretical and practical significance of the study lies in the fact that it is a comprehensive study of the legal consequences of the unauthorized construction of real estate objects, which made it possible to formulate conclusions and proposals that can be used in further study of the legal regime of unauthorized constructions, further improvement of current legislation and practice of its application, as well as updating curricula for the civil law course and specialized training courses

Approbation of the results of the dissertation research.

The main ideas and theoretical provisions of the research were published by the author in 6 scientific publications, of which 4 articles are contained in peer-reviewed scientific journals, in which the main scientific results for the degree of candidate of Sciences, for the degree of Doctor of Sciences, including 2 articles in the journal included in the list recommended by the Scientific Council of the RANEP, should be published to publish articles on jurisprudence.

The most significant conclusions were presented to the scientific community at international scientific and practical conferences: The International Conference in Memory of V.F. Yakovlev "Features of an interdisciplinary approach in legal science: Economics. Right. The Court" (Moscow, 02.12.2021); II International Conference in memory of V.F. Yakovlev "Intersectoral approach in legal science: Economics. Right. The Court" (Moscow, 02.12.2022).

List of the author's publications:

1. Kuznetsov A.A. Actual problems of recognition of ownership of unauthorized construction // Economy. Right. Society. – 2020. – No. 1. – P. 109-116.

2. Kuznetsov A.A. Features of the legal regulation of the administrative procedure for the demolition of unauthorized construction facilities // *Economy. Right. Society.* – 2020. – No. 4. – P. 97-103.

3. Kuznetsov A.A. On the issue of the legal nature of unauthorized construction facilities // *Economy and law.* – 2022. – No. 1. – P. 3-10.

4. Kuznetsov A.A. Unauthorized construction as a real estate object: some problems // *Economy and law.* – 2022. – No. 9. – P. 15-22.

5. Kuznetsov A.A. An arbitrarily erected real estate object as a special object of civil rights // *Features of an intersectoral approach in legal science: Economics. Right. Court: collection of materials of the I International Scientific and Practical Postgraduate Conference in memory of V.F. Yakovlev (Moscow, December 2, 2021) / edited by O.V. Zaitsev, D.S. Farafontova; RANEPa, Institute of Public Administration and Management, High School of Law.* – M.: Statute, 2022. – P. 68-72.

6. Kuznetsov A.A. On the issue of self-protection of rights violated by the unauthorized creation of an object of immovable property // *Intersectoral approach in Legal Science: Economics. Right. The Court: a collection of materials of the II International Scientific and Practical Postgraduate Conference in memory of V.F. Yakovlev (Moscow, December 2, 2022) / edited by O.V. Zaitsev, A.I. Surdina; RANEPa, Institute of Public Administration and Management, High School of Law.* – M.: Statute, 2023. – P. 155-158.

The structure of the study is predetermined by the purpose and objectives of the dissertation research and consists of an introduction, the main content of the study (three chapters divided into six paragraphs), conclusions and recommendations, a list of used sources and literature.