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CIVILISTIC THEORY OF CIVIL CIRCULATION

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Abstract of the dissertation
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Relevance of the research topic is proved by the following aspects.

Socio-economic aspect. The modern social meta-system represented by society cannot be imagined without a balanced exchange of goods that meet the needs of society's members. The effectiveness of such an exchange, which has been terminologically defined as «civil circulation», largely depends on the quality of its norming, which is potentially expected from the legislator in a well developed legal system. In this respect, a harmoniously functioning economic circulation is an attributive and constitutive sign of a civil society, which determines the interest of the state in ensuring fairness and sustainability of such an exchange as a key area of its activity.

Socio-economic relations are becoming increasingly complex due to scientific and technological progress. It has led to the emergence of qualitatively new phenomena. Such complexity determines the need to solve new scientific problems related to the digitalization of civil circulation. Digital and virtual goods previously unknown to the current legal order have become the object of new relations that indicate new trends in economic development that need an appropriate regulatory platform. Digital transformation proclaimed by Decree No. 474 dated July 21, 2020 of the President of the Russian Federation «On the National Development Goals of the Russian Federation for the Period up to 2030»[1], as one of the five national goals of the Russian Federation, makes it objectively necessary to build a civilistic theory of civil circulation that takes into account these trends.

When the Russian civil legislation[2] was reformed, the idea to ensure the stability (sustainability) of civil circulation was proclaimed as one of the main goals. So, legal scholars were faced with the task to develop a legal mechanism for its implementation. The legal community and domestic legislators have significantly progressed in this direction; however, it is too early to speak about the formation of a stable civil circulation: despite the relevant changes and amendments to certain regulatory provisions, and the formation and implementation of relevant legal positions of the highest judicial instances,

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[1] Collection of RF Legislation. 2020. No. 30. Art. 4884.

[2] See: the provisions of paragraph 9 sec. I, clause 5.2.1. sec. II, paragraph 2.4.1, clause. 2.4 sec. VI of the Concept for the Development of Civil Legislation of the Russian Federation (approved by the Council under the President of the Russian Federation for the Codification and Improvement of Civil Legislation of October 7, 2009 // Bulletin of the Supreme Arbitration Court of the Russian Federation. 2009. No. 11).

the empirical experience shows that in the sphere of circulation of property goods there are still destructive phenomena and processes, quite often in the form of non-fulfillment or improper fulfillment by circulation participants of their assumed obligations, contested transactions and registered rights to real estate, circumvention of the law and other illegal actions of subjects, mismanagement of property, etc. All this makes it necessary to intensify further efforts to develop a mechanism and identify effective means of legal regulation of civil circulation, and, most importantly, to build such a legal model for its regulation which will nevertheless be based on such a socially significant balance of private and public interests and at the same time meet the challenges of the time and the demands of market participants. Solving these issues is impossible without understanding the essence and organization of civil circulation as a legally significant phenomenon, identifying the factors that determine its functioning, which, in turn, will enable to develop a civilistic theory of civil circulation based on the perception of the latter as a system of public relations, which is the object of civil law regulation.

Law-making aspect. Under the impact of socio-economic and other transformations and due to the accepted classification of branches, the domestic legal system tends to differentiation, which is manifested in occasionally justifying the sectoral independence of certain groups of legal norms regulating certain 'specific' social relations. In this respect, even at a closer examination, regardless of certain doctrinal approaches to its understanding, civil circulation is understood as a phenomenon, despite its definition (as «civil»), which can hardly be clearly and univocally referred to any particular branch of law, and, in particular, to civil law and, moreover, to the sphere of legal regulation (both private and public). This is supported by the mentioned general social significance of the civil circulation sphere and the presence of objects, circulation rules of which and the legal consequences of their violation are established based on the term «civil circulation», including public law norms, despite the fact that, in general, by their nature (due, first of all, to the absence of domination-subordination ties between subjects), the relations of civil circulation are regulated by private law. This feature makes it necessary to identify interrelationships and «synchronize» the norms of separate branches of law in regulating civil circulation relations (including the need to have uniform conceptual and

terminological apparatus used), choosing the stage of adoption of those norms and definitions in order to legislatively change those legal institutions that are able to have an effective and optimal impact on civil circulation, which also emphasizes the necessity to develop a civilistic theory of civil circulation.

At the same time, based on the strategic importance of civil circulation as a sphere of redistribution of property goods, which is necessary and vital for the livelihood of not only individuals, but also of the society and the state as a whole, the issues of its legal regulation go beyond «purely legal». The regulatory and legal impact on civil circulation cannot be divorced from the context of the general policy of the state: it transforms the law-making aspect of the topicality of the theory of civil circulation into a *political and legal aspect.*

Reflecting socio-economic, political and other changes in society, the system of positive law objectively needs changes and is being systematically changed. However, the justification and necessity of adopting certain fundamentally new or correcting existing legislative provisions is subject to a preliminary scientific analysis. In particular, the analysis of civil circulation operating in a digital environment or with the use of digital technologies and, as a result, facing the issue of determining the degree of specificity of such relations in terms of legal regulation, will help us understand whether existing legal means can be applied to such relations, eliminating in this case the urgent need to adjust the existing legal regulation of identical «traditional» (not «digital») relationships.

Law enforcement aspect. The total prodigious volume of relations that form a system of civil circulation is directly proportional to the number of protective (conflict) relations in this area. At the same time, the practice of Russian courts provides many examples when, while deciding whether to grant legal protection to an individual or to dismiss the claims, law enforcers directly point to the demands or needs of civil circulation itself, relying on them as a criterion for such protection. This speaks about a fairly high level of professional competence of judges who resolve economic disputes, though the existing difficulties remain: difficulties with the interpretation and application of norms concerning the course of civil circulation (which conditions of civil circulation should be considered «ordinary»), with the objects being introduced into civil circulation (determining the moment of their introduction), with the circulability and legal regime of

certain types of objects and the qualification of situations related to their circulation (in particular, of real estate, information, digital and virtual property), with the scope of application of certain presumptive provisions (in particular, concerning the extension of the good faith presumption of participants in civil law relations to vindication relations), with the competence of regional and local authorities to adopt legal acts in the sphere of civil circulation (when establishing norms of positive law to be applied to qualify and determine the legal consequences of actions of circulation participants and others. The theoretical development of the private civilistic theory of civil circulation proposed in this work will contribute to the practical solution of the above and other issues.

Doctrinal aspect. There is no legal definition of civil circulation and other expressions derived from it. The legislator is not obliged to give the definition of the legal concepts used; neither are law enforcers who rely on doctrine to determine their content; both of them expect legal scholars to offer acceptable definitions. Meanwhile, civil law science has not yet offered a uniform and consistent understanding, has not yet developed a generally accepted definition of civil circulation (and due to the private-law nature of civil circulation relations, it is civilistics, despite the indicated intersectoral significance of the category 'civil circulation', that should take on the burden of its theoretical development and offer a model of its perception to the rest of the legal community as a template).

At the same time, Russian civilistics has some sort of tradition to interpret civil circulation as a legal form of economic circulation (we propose to call this approach formal). However, we need a new approach to the perception of civil circulation exclusively in this capacity that has developed and taken root in Russian civil law. Thus, in the context of a formal approach to understanding civil circulation, such legally used terms and concepts as «participants of civil circulation», «objects of civil circulation», «introduction (of objects) into civil circulation», «needs of civil circulation» sound absurd, since it is obvious that the legal form can have no participants, no objects, no needs. The above-mentioned formal understanding of civil circulation does not reflect and does not enable to explain all modern phenomena related to the circulation of property goods, in particular, the widespread turnover of objects in the digital environment or with the use of digital technologies. Since these relations have no legal form and due to the

lack of regulation by positive law, they are not to be included in civil circulation from the viewpoint of a formal approach to understanding civil circulation. Finally, understanding civil circulation as a legal form also excludes the possibility to theoretically develop issues of its civil law regulation, since it is well known that it is the relations of subjects, but not legal forms, that are considered the object of legal regulation. As a result, possible and actually existing forms, mechanisms and the bases (factors) of civil circulation functioning that are significant in terms of civil law regulation remain unexplored in the civilistic doctrine. The same can be said about their kinds, principles, types and individual means of legal regulation of civil circulation.

At present, there is no consistent study of the essence of civil circulation; there is no adequate comprehensive understanding of it, though it is necessary for effective legal regulation of this sphere of public relations. All that is often replaced by isolated efforts to consider certain aspects of civil circulation – its subjects, objects, facts, relationships, etc. As a result, in order to form a more or less complete picture of civil circulation, it is necessary to reconsider many disparate views and theories in which the corresponding term is used.

In addition, there is a number of other controversial issues in Russian civil law related to the understanding of civil circulation, in particular: the concept of circulability and rating of objects of civil rights according to this criterion; the admissibility to include actual (not related to the transfer of rights), gratuitous, unilateral and illegal actions in civil circulation; and the «dynamic» nature of civil circulation.

All of the above clearly indicates that the Russian civilistic doctrine has a difficulty in understanding civil circulation: there is no uniform, adequate, holistic and complete understanding of the phenomenon referred to by the term «civil circulation». Such a problem leads to ambiguity and inconsistency of legislative provisions concerning the legal regulation of this sphere, and, consequently, it creates obstacles making the application of these regulations in practice less uniform.

The solution to this problem is seen through the development of a civilistic theory, which is based on methodological postulates that make it possible to fill the indicated gaps and eliminate contradictions in the system of knowledge about civil circulation. The

content of such a solution includes logically interrelated lists of concepts in the conceptual and terminological apparatus of the civilistic doctrine that define the relations of civil circulation itself as a legally significant system of social relations. Thus, there is an adequate, comprehensive and complete understanding of civil circulation being formed as the object of civil law regulation. Legal regulation of these relations seems to be theoretically and practically significant, and therefore certainly relevant.

Degree of scientific elaboration of the research topic. In Russian jurisprudence, the foundations of the theoretical development of civil circulation were laid down by pre-revolutionary legal scholars (Yu.S. Gambarov, S.A. Muromtsev, V.I. Sinaisky, E.N. Trubetskoy, G.F. Shershenevich, and others), who did not have particular works devoted to this issue, but they mentioned it in their courses of civil and commercial law, highlighting certain aspects of it in the context of the division of things into «circulable» and «non-circulable», the concept of civil relations, the history of property law, the separation of civil circulation from commercial circulation, etc.

In the Soviet period, the impetus for further development of the doctrine of civil circulation was given by S.N. Bratus, A.V. Dozortsev, O.A. Krasavchikov, and others. It was then that the first work on civil circulation was written (O.A. Krasavchikov «The Soviet Civil Circulation (its Concept and Main Elements)», Moscow, 1957), and the prevailing view of it as a legal superstructure to the economic basis, as a legal form of economic circulation, was formed.

At the present stage of the development of the civilistic doctrine, there is a significant number of scientific works related to the study of civil circulation, but almost all of them are based on a formal approach to its understanding and are focused on the theoretical development of its individual aspects, mainly, on the issue of objects of civil circulation. The dissertations of M.A. Astakhova, E.V. Agapeeva, V.V. Baybak, V.M. Baranov, E.A. Baranova, T.V. Belova, T.A. Biketova, S.N. Britvin, O.G. Vasnev, R.F. Galeeva, A.V. Goloviznin, G.E. Dobryakov, S.E. Dolgaev, E.V. Yelnikova, D.V. Zhernakov, D.A. Matveev, N.S. Mikhailova, A.A. Morozov, D.S. Nekrestyanov, R.M. Olimova, T.A. Pasikova, I.A. Poluyakhtov, R.A. Razhkov, O.A. Rutkovskaya, N.S. Filimonov, N.V. Tsuglaeva, E.V. Shapovalova, etc., are devoted to the study of certain types of

objects of civil circulation, including their circulability. The dissertations of B.B. Injieva, K.S. Mamazhanov, B.B. Ebzeev, etc., concern distinctive features of participation of certain categories of subjects in civil circulation. The dissertations of N.S. Apalikov, I.L. Grekova, T.A. Eremkina, M.R. Karimov, O.Y. Savelyeva, etc., contain the characteristics of certain types of legal facts «in civil circulation». Modern scholars have focused their attention on the issues of digital civil circulation, some aspects of which have theoretically been developed by L.Y. Vasilevskaya, V.A. Vainap, A.A. Kartskhiya, E.E. Kirsanova, E.B. Poduzova, M.A. Rozhkova, and others.

Significant from the standpoint of scientific knowledge of civil circulation in this regard is V.A. Petrushkin's doctoral dissertation «System Analysis of the Civil Law Model of Real Estate Turnover: Issues of Theory and Practice» (Moscow, 2014). Though the work analyzes only the turnover of real estate, its author identifies a lack of the theory of civil circulation in Russian legal science. He has studied civil circulation not as a legal form of economic circulation, but as a sphere of public relations.

Legal scholars of other branches of law also develop certain aspects of civil circulation: of land, natural resource, environmental and agrarian law (V.V. Romanova), criminal law and criminology (A.V. Drannikov, M.S. Lastochkina, A.V. Pantyukhin, etc.), administrative law (P.V. Alexiy, V.N. Vasin and others).

In modern literature, only a limited number of scientific articles (M.A. Astakhova, A.V. Zakharkina, B.B. Injieva, A.V. Rudenko, S.B. Tsvetkov, K.V. Khramtsov) focuses specifically on civil circulation. B.B. Ebzeev's article «Civil Circulation: the Concept and Legal Nature» is of great interest in this respect, because it is well theoretically developed and is essentially the first work in modern Russian civilistics devoted to the problem of general understanding of civil circulation. Currently, the textbook on civil law by V.A. Belov (Civil Law. General part. Vol. II. Persons, Goods, Facts. Moscow, 2011) is the only Russian educational publication with a separate section covering the concept of civil circulation.

However, civil circulation has never been an independent subject of the monographic analysis in the science of civil law. Such a study has first been undertaken in this research.

The purpose and tasks of the research. The purpose of this research is to build a civilistic theory of civil circulation, whose content includes provisions, principles, concepts and categories that reflect the patterns of civil circulation development as an object of civilistic knowledge and provide a comprehensive, complete, adequate and consistent understanding of this phenomenon, capable of forming a scientifically sound theoretical basis for its effective and optimal civil law regulation.

To achieve this purpose, we have identified and formulated three blocks of research tasks: to determine the theoretical and methodological foundations of the study of civil circulation; to form an adequate scientific understanding of the phenomenon of civil circulation as the object of civil law regulation through a comprehensive description of the latter as a social phenomenon; to give a general description of the key aspects of civil law regulation of civil circulation.

The main tasks of the research:

1) to analyze the current cognitive situation in the field of civil circulation research;

2) to assess the understanding of civil circulation as a legal form of economic circulation that has been developed and is well-established in the Russian civilistic doctrine;

3) to identify the applied and effective means of civilistic research of civil circulation;

4) to define the subject area, conceptual foundations, principles, basic categories and patterns (lists of concepts) of the emerging scientific theory of civil circulation; and give the definition of civil circulation;

5) to identify the types and properties of subjects as an element of the civil circulation system;

6) to identify the types and properties of objects as an element of the civil circulation system;

7) to identify the types of public relations that form the structure of the civil circulation system;

8) to formulate a general idea of the civil circulation functioning;

9) to identify and characterize the elements of the mechanism of the civil circulation functioning;

10) to identify the factors that determine the functioning of civil circulation, and to determine their place among the political and legal principles and the norms of positive civil law;

11) to determine the means and the type of legal regulation of civil circulation;

12) to establish the relationship between civil circulation and the subject of the branch of civil law;

13) and to identify the types of civil law regulation of civil circulation and determine the sources of legal regulation of civil circulation, including from the viewpoint of the interrelationship of separate branches of Russian law; to establish and give a general description of possible regulatory foundations, types and legal means of individual legal regulation of civil circulation.

The object and subject of the research. The object of the research is the social relations that develop in connection with the circulation of property goods and its civil law regulation. The subject of the research has been the scientific ideas and regulations on civil circulation reflected in doctrinal sources, legal norms of domestic, foreign and international private law, and law enforcement practice.

The theoretical basis for the research. The comprehensive development of the topic has been based on the works of representatives of various fields of knowledge - the theory and history of law, civilistics, comparative studies, philosophy, history, sociology, psychology, economics, language study, methodology, systemology, etc.

The theoretical basis of the research includes:

– works of pre-revolutionary legal scholars such as: E.V. Vaskovsky, M.F. Vladimirsky-Budanov, Y.S. Gambarov, D.D. Grimm, N.L. Duvernois, D.I. Meyer, S.A. Muromtsev, S.V. Pakhman, I.A. Pokrovsky, V.I. Sinaisky, E.N. Trubetskoy, V.M. Khvostov, G.F. Shershenevich, etc.; works on the theory and methodology of law by Soviet and modern legal scholars: S.S. Alekseev, A.M. Vasiliev, T.V. Kashanina, D.A. Kerimov, V.P. Malakhov, G.V. Maltsev, M.N. Marchenko, I.A. Minnikes, V.D. Perevalov, V.N. Protasov, N.A. Pyanov, V.M. Syrykh, N.N. Tarasov,

A.F. Cherdantsev and others; on civilistic studies: N.P. Aslanyan, N.A. Barinov, V.A. Belov, V.S. Belykh, V.V. Bogdan, S.N. Bratus, L.Y. Vasilevskaya, V.V. Vitryansky, V.A. Gabov, V.G. Golubtsov, B.M. Gongalo, A.V. Dozortsev, N.D. Egorov, V.V. Zaitsev, O.S. Ioffe, A.G. Karapetov, E.G. Komissarova, O.A. Krasavchikov, E.A. Krasheninnikov, O.A. Kuznetsova, V.A. Lapach, Yu.G. Leskova, A.L. Makovsky, S.Y. Morozov, E.Ya. Motovilovker, I.B. Novitsky, V.A. Petrushkin, E.B. Poduzova, I.A. Poluyakhtov, B.I. Puginsky, V.A. Rakhmilovich, V.V. Rovny, M.A. Rozhkova, M.N. Semyakin, O.A. Serova, E.A. Sukhanov, M.Y. Chelyshev, B.B. Cherepakhin, B.B. Ebzeev, V.F. Yakovlev and others.

– works of specialists in the field of methodology of science and systemology: I.V. Blauberg, M.S. Kagan, A.A. Malinovsky, I.V. Prangishvili, Yu.M. Reznik, G.I. Ruzavin, V.N. Sagatovsky, V.N. Sadovsky, A.I. Uemov, E.G.Yudin, etc.

The dissertation has also relied on the works of Russian and foreign sociologists and psychologists: A.G. Zdravomyslov, A.H. Maslow, T. Parsons; historians and philosophers: V.P. Alekseev, I.D. Belyaev, T. Kuhn, A.S. Maidanov, A.V. Panin, A.I. Pershits, G. Rail, V.S. Stepin, A.P. Sheptulin; economists: A.I. Katsenelinboigen, K. Menger, and others.

Normative sources and monuments of Russian law have also been used in the work to substantiate certain theoretical conclusions.

The methodological basis of the research is the system of interrelated general scientific and private scientific methods of cognition determined by the distinctive features of the object and subject of the research, the application of which has ensured the solution of the tasks set above, the achievement of the purpose of the dissertation, and the reliability of judgments and conclusions made. The research has used the following basic methods of cognition:

The dialectical method has been used in the analysis of the diversity of scientific ideas and normative provisions on civil circulation and its civil law regulation in their development, unity and interrelation, which has made it possible to identify the essence of civil circulation (§ 2 ch. 1), to establish patterns and trends of its functioning (§ 1 ch. 3) and to determine the effective legal norms and institutions, necessary and optimal directions and principles, as well as possible levels of its state regulation (§ 3 ch. 2, § 1 ch. 4, § 3 ch. 4).

The historical method has been used when considering the genesis of theoretical views on civil circulation (§§ 1–3 ch. 1), the retrospective coverage of the legal norms governing it and the normative legal acts containing the relevant provisions (§ 3 ch. 4); but mainly its application has been necessary to identify the bases (factors) of the civil circulation functioning, making it possible to substantiate the ontological (rather than derivative-legal) nature of the phenomenon of civil circulation (§ 3 ch. 3, § 1 ch. 4).

A systematic approach has been used to form a comprehensive, holistic and consistent view on civil circulation as a subject of civil law regulation. Such an approach has enabled to understand the nature (§ 2 ch. 1) and the internal organization of civil circulation as an object of civil law regulation (ch. 2) and, on this basis, to prove which norms of positive law have the most effective impact on the functioning of circulation, as well as to propose a solution to a number of controversial issues in Russian law related to the understanding of civil circulation – concerning the rating of objects of civil rights according to the criterion of circulability, the admissibility to include actual (not related to the transfer of rights), gratuitous, unilateral and illegal actions, the 'dynamic' nature of civil circulation. A systematic approach has also been used to identify patterns (when making lists of concepts) by the emerging civilistic theory of civil circulation (§ 4 ch. 1) and define the principles of legal regulation of civil circulation (§ 1 ch. 4).

The formal legal (dogmatic) method has been used throughout the entire work to essentially and conceptually interpret individual doctrinal positions, provisions of current legislation, law enforcement practice on civil circulation from the viewpoint of existing civilistic structures, theories and concepts, thus predetermining the conceptual basis and the conceptual and terminological apparatus of the proposed private scientific theory of civil circulation (§ 4, ch. 1).

The hermeneutic method has been used to interpret the specific provisions of Russian legislation concerning the legal regulation of civil circulation. Their logical, functional, linguistic, doctrinal, and systematic interpretation has made it possible to reveal the content of the legislatively used concepts of «the introduction of objects into civil circulation» (§ 2 ch. 2), «ordinary course of civil circulation» (§ 1 ch. 4), as well as to establish the interaction of norms of separate branches of law in regulating civil

circulation (§ 2 ch. 4), the sources of normative legal regulation of civil circulation and the relevant competence of state authorities and local governments (§ 3 ch. 4).

The comparative legal method has been used to analyze the legislative fixation and doctrinal interpretation of the concept of (civil) circulation and related provisions in various states to identify existing similarities and differences that potentially contribute to or hinder the development of civil circulation, (in civilistic terminology) «burdened with a foreign element», as well as for the purpose of possible reception of the most successful legal, technical or doctrinal decisions. However, the application of this method, in particular, the comparison of the provisions on the circulability of objects of civil rights and things taken away from (civil) circulation (§ 3 ch. 1), has enabled us to establish the supranational nature of the problem of understanding civil circulation, and namely, to identify the conceptual and terminological inconsistency of the characteristics of the latter, which is equally typical for the law of different states. The problem is further exacerbated by ambiguous domestic approaches to the interpretation of certain legal terms related to the understanding of civil circulation.

The statistical method has been used to study different types of relations in the civil circulation system. This method has enabled us to find additional arguments in favor of the need to include, inter alia, gratuitous relations in the system of relations forming the structure of civil circulation (§ 3 ch. 2).

The logical method has been applied throughout the research, allowing us to make inferences, give definitions and substantiate them. In particular, a formal and logical analysis of doctrinal views on civil circulation has made it possible to identify existing discrepancies and shortcomings of the current cognitive situation in the field and to substantiate our vision of solving the problem (ch. 1). This method has been used to identify the relationship between civil circulation and other phenomena, such as economic circulation (§ 2 ch. 1), with the subject of civil law (§ 2 ch. 4), as well as when systematizing and classifying certain theoretical provisions - on the properties of subjects and objects of civil circulation (§§ 1, 2 ch. 2), on the types of objects of civil rights (§ 2 ch. 2), on the forms, elements of the mechanism and principles of the civil circulation functioning (ch. 3). This method has been used alongside with the analysis of the content

and sources of norms related to the legal regulation of civil circulation (§ 3 ch. 1, § 3 ch. 4). With the help of formal logic, other significant theses have been substantiated – on the subject area and the conceptual basis of the particular scientific theory of civil circulation (§ 4 ch. 1), on the type of legal regulation of civil circulation (§ 2 ch. 4), on the legal nature of individual regulation of civil circulation (§ 3 ch. 4).

We have also applied other techniques and methods of scientific cognition in the process of research.

While building a civilistic theory of civil circulation, the author has relied on the general theory of civil law regulation as its conceptual (methodological) basis.

The research information base. The norms research has been based on the provisions of the Constitution of the Russian Federation, Russian civil and other sectoral legislation and different bylaws, as well as on civil law acts of some foreign countries containing norms related to the circulation of property goods.

By its nature, the dissertation research is theoretical. At the same time, as its empirical basis, the research has analyzed the practice of the highest judicial instances of the Russian Federation, decisions of domestic arbitration courts and courts of general jurisdiction in cases either related to the application of norms containing the term «circulation» and its derivatives, or cases significant for protecting both the rights and interests of participants of civil circulation and the needs and stability of civil circulation as a system.

Validity and reliability of the research results. The validity of the conclusions and provisions of the dissertation research is confirmed by its theoretical, methodological, normative and empirical basis: the analysis of Russian and foreign legislation, law enforcement practice, study and critical reflection of the works of Russian and foreign scholars in various fields of knowledge (law, philosophy, economics, systemology, etc.).

The scientific novelty of the research is confirmed by the fact that for the first time a conceptually organized system of scientific inferences has been developed in civil law science – a private civilistic theory of civil circulation, the subject area of which is formed by the organization and patterns of civil circulation functioning as a system of public relations that satisfies the social need for the exchange of property goods and ensures the satisfaction of individual needs of private entities at the expense of «other people's»

objects, as well as the directions and features of civil relations determined by these patterns in legal regulation of this area.

The conceptual basis for the private civilistic theory of civil circulation is made up by the theory of civil law regulation and the provisions of the general theory of systems. By the chosen methodology, the research provides a comprehensive description of civil circulation as the object of civil law regulation. In particular, we have identified the properties of subjects and objects significant from the viewpoint of civil law regulation as elements of the civil circulation system, the types of relations forming the structure of civil circulation, as well as the forms and mechanism of civil circulation functioning. We have identified and systematized the factors determining the civil circulation functioning and their place among the political and legal principles and norms of positive civil law. We have determined the legal means by which the relations constituting civil circulation are regulated and the type of legal regulation of civil circulation; the relationship between civil circulation and the subject matter of the civil law branch; the sources of normative legal regulation of civil circulation and the corresponding competence of state authorities and local self-government. We have also given a general description of possible regulatory grounds, types and legal means of individual legal regulation of civil circulation. The logical interrelation of all the mentioned elements of the proposed theory has been substantiated.

Provisions reflecting the scientific novelty of the research submitted for protection.

1. Civil circulation is proposed to be understood as an objectively existing self-organizing system of public relations that contributes to the satisfaction of individual needs of private entities at the expense of «other people's» goods through actual and/or legal change of owners of material (including digital and virtual) objects and subjective civil rights and obligations, and acting by virtue of its social significance as the object of legal regulation, including civil law regulation.

This provision corresponds to paragraphs 1, 2, 5 of the passport of scientific specialty 5.1.3. «Private Law (Civil) Sciences».

2. The *epistemological prerequisites* for the formation of the civilistic theory of civil circulation have been established: (1) the paradigmatic status of the system of knowledge about civil circulation, which occupies an independent place in the civilistic conceptual and terminological apparatus of the macro-legal level, determines its normalizing research potential; (2) the variability of doctrinal ideas about civil circulation is embodied in such conceptual dichotomies as understanding the latter as a set of something / the process of transfer of something; totality of legal facts / totality of civil law relations; narrow (only relative relations) / broad (relative and absolute relations) approaches.

This provision corresponds to paragraph 1 of the passport of scientific specialty 5.1.3. «Private Law (Civil) Sciences».

3. The *ontological prerequisites* of the civilistic cognition of civil circulation have been substantiated: (1) the theory of legal form, which is the basis of the traditional formal concept in which civil circulation is understood as a legal form of economic circulation, unreasonably narrowing this phenomenon to its exclusively epistemological content, which should be qualified as a categorical error; (2) the ontological status of civil circulation presupposes its perception as a system of economic relations that are an integral element of the social meta-system (society); (3) the phenomenological identity of economic and civil circulation, together with their one-dimensional ontological status, determines the incorrectness of defining civil circulation as a legal form of economic circulation.

This provision corresponds to paragraphs 1 and 5 of the passport of scientific specialty 5.1.3. «Private Law (Civil) Sciences».

4. The *methodological prerequisites* for the study of civil circulation have been defined: (1) the dialectical worldview, together with general scientific and private scientific methods of cognition, makes it possible to clarify the current cognitive situation in the formation of the theory of civil circulation; (2) theoretical and cognitive possibilities of historical (including retrospectively establishing the conditions of individual legislative decisions), formal and logical (including clarification of the semantic nuances given by the legislator to the concept of «circulation») and comparative legal (including identification of a foreign equivalent that semantically and accurately conveys the meaning the Russian-language term «circulation») methods of cognition of

civil circulation which have instrumental boundaries beyond which they are eliminated; (3) the effectiveness of a systematic approach to the study of civil circulation is determined by its heuristic potential in terms of understanding the essence of civil circulation, recognizing the latter as the object of legal regulation, as well as futuristic forecasting in order to make optimal legislative decisions.

This provision corresponds to paragraph 1 of the passport of scientific specialty 5.1.3. «Private Law (Civil) Sciences».

5. The *theoretical prerequisites* for the formation of a civilistic theory of civil circulation have been clarified: (1) a high social importance of public relations in the exchange (circulation) of property goods necessitates the formation of a civilistic theory of civil circulation to improve the effectiveness of private law regulation of relevant relations; (2) when solving this scientific problem based on methodological regulations, it is necessary to take into account its scientific status (private civilistic theory), conceptual basis (theory of civil law regulation and general scientific theory of systems), as well as its fundamental character (capable of covering all areas of civil law); (3) a systematic approach to the perception and formation of the theory of civil circulation, whose system-forming feature is recognized as the purpose of civil circulation (to contribute to the satisfaction of the needs of subjects at the expense of «other people's» goods), predetermines the possibility of building such a theory through the prism of three subsystems: the civilistic architectonics of the civil circulation system (including subjects, objects and structure), the civilistic model of the civil circulation functioning (including its forms, mechanism and bases of its functioning), as well as the civilistic formalization of civil circulation (including the principles, kinds, means and types of legal regulation of civil circulation).

This provision corresponds to paragraph 1 of the passport of scientific specialty 5.1.3. «Private Law (Civil) Sciences».

6. It is argued that the subjects of civil circulation, represented by individuals, legal entities and governmental units, differ in specific properties that characterize them as participants of civil circulation, such as their needs and individualizing features. At the same time, it is proposed to classify the properties of individuals into *anthropological* (their

needs; reasonableness, expressing the ability of volition and volitional action) and *social* (social consciousness with axiological significance and individualizing features) ones with the recognition of the possibility of legal impact only on the latter. The properties of individual entrepreneurs, legal entities and governmental units, which are artificially created entities, are proposed to be seen in legitimacy, which is proposed to be understood as a consequence of legitimatizing the socio-legal property of an artificially created entity, confirming its existence (presence) as an independent subject of civil circulation, as a result of which it recognizes the possibility of volition and expression of will in the sphere of circulation of property goods, as well as determining its legal personality in this sphere. Additionally, it has been proved that the multidirectional needs of subjects of civil circulation are harmonized when co-subordinated to the needs of civil circulation.

This provision corresponds to paragraphs 5 and 6 of the passport of scientific specialty 5.1.3. «Private Law (Civil) Sciences».

7. Substantial, normative and axiological prerequisites for the qualification of both subjective rights and legal obligations as objects of civil circulation, as well as property goods possessing the properties necessary for participation in civil circulation, have been established. At the same time, the *substantive prerequisite* refers to both the ability of an object to sensory perception (of a material, virtual, or digital object) and lack of it (subjective rights and legal obligations); the *normative prerequisite* refers to both the legitimate and conditionally legitimate nature of introducing an object in civil circulation, while the *axiological prerequisite* concerns value proposition and the circulability of an object.

The legal significance of the differentiation of objects of civil rights according to the criterion of circulability (circulable and non-circulable) seen in the form of legal relations that may arise in connection with certain objects, as well as the identification of their legal regime, has been clarified.

This provision corresponds to paragraph 5 of the passport of scientific specialty 5.1.3. «Private Law (Civil) Sciences».

8. It has been proved that the structure of the civil circulation system should include all types of relations connected with the indirect satisfaction of their needs by private entities: 1) in terms of dynamics / statics – as relations concerning the transfer of objects

and as relations concerning their affiliation; 2) in terms of the nature of communication between subjects – both gratuitous and non-gratuitous relations, as well as relations arising from unilateral actions; 3) in terms of legal regulation – both relations regulated by law (legal) and relations not regulated by law (actual), including those not based on property rights; 4) in terms of legality – both as relations conforming to the norms of law (regulatory relations) and relations non-conforming to the norms of law (protective relations).

It has been argued that, in accordance with the composition and structure of civil circulation as a system, apart from the provisions of the law of obligations, the norms of positive law influencing the functioning of civil circulation should also include the norms of property law and the rules defining the legal status of subjects and establishing the legal regime of objects.

This provision corresponds to paragraph 5 of the passport of scientific specialty 5.1.3. «Private Law (Civil) Sciences».

9. Two main forms of civil circulation functioning have been identified. They are determined by the forms of objects of civil circulation – actual and legal, with subsequent division of the actual form of civil circulation functioning into materialized and digital forms. Civil circulation, which operates in its actual form, is characterized by the fact that both the introduction of objects into circulation and the actions of subjects to change owners of objects are actual, and the circulation itself can take place in the absence of legal regulation or even contrary to certain legal norms; the objects of civil circulation, functioning in a legal form, are subjective rights and obligations that cannot exist without legal regulation, therefore, the actions of subjects directed at changing their owners can only be legal; however, the introduction of such objects into circulation may also be a result of actual actions.

The form of civil circulation functioning determines a possible procedure to protect violated rights and legally protected interests of its participants, as well as the necessary (required) areas of regulatory impact on civil circulation.

This provision corresponds to paragraphs 5 and 10 of the passport of scientific specialty 5.1.3. «Private Law (Civil) Sciences».

10. It has been proved that the mechanism of civil circulation functioning – the system of means through which the owners of objects circulation are changed – is generally identical in any of the distinguished forms. The main means of the mechanism of civil circulation functioning are: 1) the introduction of a certain object into circulation (the essence, the establishment of an individually specified connection-affiliation «object–subject»); 2) the actions of subjects to change the owners of objects (aimed at obtaining «other people's» goods). If an artificial entity (an individual entrepreneur, a legal entity, a governmental unit) is a participant of circulation, the mechanism of civil circulation functioning additionally includes 3) legitimacy: the creation of such artificial entities (through their registration), which acquire the quality to become independent participants of circulation, including acquiring a certain legal personality in this area. If the civil circulation functioning is carried out with the use of information technologies, one more means is needed – 4) initial identification: registration of a specific entity in a specific information system.

This provision corresponds to paragraphs 5 and 7 of the passport of scientific specialty 5.1.3. «Private Law (Civil) Sciences».

11. It has been argued that the civil circulation functioning is carried out under the impact of various bases (factors) that should be divided: 1) on a substantial basis a) into ontological (existential), which are the actual circumstances of society that have led to the emergence of civil circulation and which objectively determine its existence and development, and b) epistemological (ideological), which are the fundamental ideas (principles, views, ideas) that subjectively affect the civil circulation functioning (action); 2) by the nature of their origin and impact on the circulation system a) into endogenous, i.e. those that are formed within a specific system and determine its internal natural (evolutionary, natural) development, and b) exogenous, i.e. those that are formed outside the civil circulation system and have an external impact on it. The expediency of using both proposed classifications has been explained by their complementary nature: the ontological principles of civil circulation functioning are endogenous; the epistemological principles of civil circulation functioning can be both endogenous and

exogenous. The optimal (best under the existing conditions) is the legal regulation of civil circulation based on endogenous factors.

Positive civil law refers to the epistemological principles of civil circulation functioning. It can have the quality of an endogenous factor if the legislator perceives socially useful rules and structures that naturally take shape in actual civil circulation; otherwise its impact on civil circulation will be exogenous.

This provision corresponds to paragraph 3 of the passport of scientific specialty 5.1.3. «Private Law (Civil) Sciences».

12. It has been substantiated that the principles of legal regulation of civil circulation shall not be reduced to the principles of civil law. They should also include the principle of consistency and the principle of self-organization.

The principle of consistency is related to the legal regulation of civil circulation and it means that such an impact of law on civil circulation should be conceptual (i.e., not a fragmentary amendment of separate regulations, but «from-the-beginning-to-the-end»), it should be carried out from the position of the legal system as a whole (and not of its individual branches) and should be socio-teleological, i.e. to be undertaken considering the interests and needs of the society.

The principle of self-organization is related to the individual legal regulation of civil circulation and means the state-sanctioned elaboration of rules for the organization and functioning of relations in the civil circulation system by this system itself and by its participants.

This provision corresponds to paragraph 3 of the passport of scientific specialty 5.1.3. «Private Law (Civil) Sciences».

13. The lack of identity between civil circulation and the subject matter of the civil law branch has been substantiated due to the discrepancy of: 1) the nature of their formation and existence: civil circulation is a natural self-organizing social system that has emerged and exists objectively, while the subject matter of civil law as a branch of law is the result of people's mental activity – a set of social relations distinguished by legal scholars; 2) the range of public relations forming comparable phenomena: a) the subject matter of civil law includes relations on the ownership of objects that are non-

circulable in their nature (in particular, moral rights, intangible goods), while only circulable objects can be objects of circulation; b) the structure of civil circulation, alongside with the relations regulated exclusively by the norms of civil law, includes relations simultaneously regulated by the norms of various branches of law.

In the context of intersectoral interaction, it has been argued that the legal regulation of civil circulation is carried out not through a combination of two types of legal regulation (public law and private law), but according to one: a generally permissible type.

This provision corresponds to paragraph 2 of the passport of scientific specialty 5.1.3. «Private Law (Civil) Sciences».

14. The sources of normative legal regulation of civil circulation should include: 1) sources of civil law norms, regulating the circulation of a civil law norm, despite the provisions of Article 71 of the Constitution of the Russian Federation and Article 3 of the Civil Code of the Russian Federation (with civil legislation being the exclusive jurisdiction of the Russian Federation, but not the adoption of civil law norms), which may also be adopted by the subjects of the Russian Federation and its municipalities; 2) sources of norms of other branches of law, specifying the legal regime, rules of circulation of certain types of objects and liability for their violation.

Legal regulation of civil circulation can be carried out at the hierarchy of international, federal, regional and local levels. Different types of subjects and types of objects of civil circulation can be established only at the federal level; the regional and local levels have only restrictions or the procedure for civil circulation of certain types of objects.

This provision corresponds to paragraph 4 of the passport of scientific specialty 5.1.3. «Private Law (Civil) Sciences».

15. It has been proposed to recognize self-organization (understanding it as the organization of the relations among subjects by the participants of circulation themselves, rather than as a comprehensive legal institution related to the activities of self-regulating organizations) and law enforcement (i.e., the activities of competent authorities to adopt individual legal acts regulating the behavior of subjects of civil circulation, being of a regulatory or protective nature) as the main types of individual legal regulation of civil circulation.

Autonomous and coordinating individual legal regulation, in their turn, should be recognized as subtypes of self-organization, which differ in the way of interrelation between subjects, while law enforcement according to this criterion is of a subordinate nature.

A systematization of possible normative grounds (the essence, the means of state authorization) of individual legal regulation of civil circulation has been undertaken, among which there are: relatively definite legal norms providing for the specification of the rules established in them; dispositive legal norms allowing for different regulation, different from the normatively established regulation of relations by the subjects of circulation themselves; imperative rules of law that directly prescribe or condition the emergence of certain legally significant opportunities for subjects of civil circulation by adopting an individual legal act; gaps in positive law that presuppose «supplementary» law-making by the judiciary.

This provision corresponds to paragraphs 4, 15 and 17 of the passport of scientific specialty 5.1.3. «Private Law (Civil) Sciences».

Theoretical and practical significance of the research. The theoretical significance of the research results lies in the construction of a private scientific theory that offers a new paradigm of civil circulation, leading to a transition from its exclusively formal perception to a phenomenological one, and thereby providing a «knowledge-based approach to reality» (by words of N.N. Tarasov[3]). The author's theory expands the system of knowledge about civil circulation and, by setting a new direction of the scientific research, can form the basis for further elaboration of issues of legal regulation of the latter, including in the intersectoral context. In particular, the theses and postulates of the proposed theory can be detailed and used as starting points for scientifically researching kinds and types of relationships that form a system of civil circulation and are subject to civil law regulation; possible civil law forms of civil circulation, including in relation to the interaction of subjects in the digital environment; civil law means of self-organization and self-regulation of civil circulation.

[3] Tarasov N.N. Method and Methodological Approach in Jurisprudence (an Attempt of the Problem Analysis) // Proceedings of Higher Educational Institutions. Jurisprudence. 2001. No. 1 (234). P.32.

The practical significance of the research is proved by the possibility to use the drawn conclusions in law implementation, including in law enforcement activities, in particular, while determining the norms of positive law that establish the rights, obligations and liability of participants of civil circulation, and which are to be applied to qualify the actions of subjects of a specific legal relationship; when interpreting the norms of positive law that contain the concept of civil circulation and other related expressions, such as «ordinary course of civil circulation», «introduction of an object in (civil) circulation», etc.; when applying certain legal principles (the principle of good faith) and presumptions (the presumption of good faith, the presumption of consent).

The proposed theory resolves both a number of controversial and previously unexplored issues in the civilistic doctrine, the author's vision of which can be used in law-making activities. In particular, the provisions of the proposed theory on the composition and structure (types of relations) of civil circulation are significant for determining the legal norms and institutions, the adoption or correction of which from the viewpoint of state regulation of civil circulation is the most effective. Conclusions on the exogenous nature of political and legal principles as criteria (condition) for optimal legal regulation of civil circulation, as well as theses on consistency and self-organization as necessary principles of such regulation can be used as the basis for strategic political and legal decisions aimed at developing an effective mechanism for legal regulation of civil circulation and ensuring its stability.

The conclusions formulated by the author in the research can also be used in developing and teaching civilistic disciplines in educational and teaching activities.

Approbation of the research results. The dissertation research has been completed at the Department of Civil Law and Procedure of Baikal State University, where it was reviewed and discussed. The results of scientific research have been tested by the author through participation in scientific, scientific and practical conferences of various levels, which is confirmed by the abstracts of the author's speeches published. In particular, the theoretical conclusions and scientific and practical proposals of the author were the subject of discussion at: the VIII Annual Scientific Readings in memory of Professor S.N. Bratus on the topic «Legal Responsibility: Modern Challenges and Solutions»

(Moscow, October 23, 2013); the international scientific and practical conference «Good Faith in Civil Law» (Almaty, Kazakhstan, May 22–23, 2014); the international scientific and practical conference «Legal Science and Education in the 21st Century (to the 210th anniversary of Kazan University)» (Kazan, September 25–26, 2014); the Perm Congress of Legal Scholars (Perm, 2013–2022); the international scientific and practical conference «Development of Russian-Chinese Relations: a New International Reality» (Irkutsk, September 21–22, 2015); the XVI International scientific and practical conference «National Development Strategy and Tasks of Russian Legal Science»; the IX International scientific and practical conference «Kutafinsky Readings» (Moscow, November 24 – December 3, 2015); the annual international scientific and practical conference «Protection of Private Rights: Problems of Theory and Practice» (Irkutsk, 2013–2024); the annual international scientific and practical conference «Problems of Modern Russian Legislation» (Irkutsk, 2012–2022); the Baikal Legal Forum (Irkutsk, September 21–22, 2017, 23–25 September 2021, October 4–6, 2023); the scientific and practical conference «Problems of State Registration of Real Estate» (Irkutsk, December 8, 2017); the All-Russian scientific and practical conference «The Civil Code of the Russian Federation: 25 Years of Action» (Yekaterinburg, June 4–5, 2019); the international scientific and practical conference «Intersectoral Relations in Private and Public Law» (Kazan, November 19–20, 2021); the Kazan International Law Forum (Kazan, September 29 – October 1, 2022, September 28–29, 2023); the VII Pacific Law Forum (Vladivostok, October 13–15, 2023); the All-Russian scientific and practical conference «I Venedikt Readings» (Ufa, December 1, 2023); the All-Russian round table «Perm Readings on Methodological Problems of Civil Research» (Perm, May 25–26, 2018, May 28–29, 2021, May 27–28, 2022, May 26–27, 2023, May 17–18, 2024); etc.

The results of the scientific research have been used by the author while holding seminars and lecture-type classes in such academic disciplines as «Civil Law (General part)», «Topical Issues of Civilistics», «History and Methodology of Legal Science», «Scientific Research Seminar» with students of Baikal State University, as well as when preparing expert opinions as a member of the Scientific Advisory Council at the Arbitration Court of the East Siberian District. The results of the study have also been

tested during lectures at the courses of additional professional education at advanced training courses for federal government employees.

List of the author's publications. The main conclusions of the dissertation have been published by the author in monographs and scientific articles. The total list of published works on the topic of the dissertation includes 86 sources, including 3 articles in journals indexed by the international databases of scientific citation «Scopus», «Web of Science», 27 articles in publications included in the List of publications recommended by the Higher Attestation Commission of Russia for the publication of the main scientific results of the dissertation for the degree of Doctor of Sciences, and 3 monographs.

Articles in publications indexed by international databases:

1. Vinichenko Yu.V. Ownerlessness of Things: de jure vs. de facto / Yu.V. Vinichenko // Perm University Herald. Juridical Sciences. – 2018. – Issue 40. – P. 225–239.

2. Vinichenko Yu.V. The Category «Civil Circulation» in Private Law of Russia and Other Post-Soviet States / Yu.V. Vinichenko // Perm University Herald. Juridical Sciences. – 2015. – Issue 4 (30). – P. 34–46.

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4. Vinichenko Yu.V. Legitimacy as an Attribute of Artificially Created Subjects of Civil Circulation / Yu.V. Vinichenko // Law and State: the Theory and Practice. – 2025. – No. 1. – P. 313–316.

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The results of scientific research published in personal and collective monographs:

31. Vinichenko Yu.V. Civil Circulation: Experience of Systemic Research / Yu.V. Vinichenko. – Irkutsk: BSU Publishing House, 2019. – 374 p.

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The structure of the dissertation is determined by the subject, purpose and objectives of the research and reflects its logic. The dissertation consists of an introduction, four chapters combining thirteen paragraphs, a conclusion and a list of sources used.