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OWNER'S INTEREST THEORY IN RUSSIAN CIVIL LAW

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Abstract

Research rationale.

Civil society relations form in the course of activities aimed to meet the needs due to a person's manifested interests. Interests of a person (private interests) are constitutionally significant values¹ and are enshrined as general principles of civil law². In relation to proprietary interests, the basic principles of civil legislation are manifested in Art. 209 of the Civil Code of the Russian Federation that declares interest a particularly significant value of the owner thus doubling the provision of Art. 9 of the Civil Code of the Russian Federation about the right of persons to act at their own discretion, i. e. by their own free will and in their own interest. The normative definition of interests as constitutionally significant values and as general principles of civil law is imperative by nature and directs the enforcer to take universally into account not only subjective rights, but also legally protected interests.

Interests are a motivating component to enter any and all civil-law relations (proprietary, obligation, corporate, inheritance, etc.). Depending on the classification criteria and purposes, interests can be differentiated as property and non-property interests, interests in business and other income-generating activities, consumer interests, interests of marriage and family relations, interests of natural persons and legal entities, public-law entities, private and public interests, own and others' interests, interests secured by subjective civil rights and those not secured but following from the import (spirit) of the law, competing interests, counter interests, reasonable interests, corporate interests, interests of owners and bona fide or mala fide holders of things, etc. Interests can be temporary and permanent, misinterpreted and true, valid and invalid, imaginary and vital, legally significant or insignificant for civil law. The contents of interests, means and methods of achieving them, and the degree of civil-law enforcement of the actions of persons to bring the interests to life are different.

The category of "interest" in civil legislation is widely presented in the provisions of the Civil Code of the Russian Federation (over 200 mentions), but has no conclusive doctrinal or judicial interpretation. Civil legislation systemic reforming is caused by modern needs of civil circulation and is oriented, among others, towards improvement of the mechanism of civil-law regulation of relations involving owners. Property is an object of not only subjective proprietary rights, but also of legitimate and legal interests of owner³. Due to high variability, the owner's

1 Articles 17, 18, 36, 55, etc. of the Constitution of the Russian Federation.

2 P. 2 Art. 1 of the Civil Code of the Russian Federation.

3 "Legal interests" derive directly from the law, form within the scope of law, do not contradict its import and principles, and never go beyond its limits. Legal order supports them by establishing non-personalized obligation

interests are not always statutorily enshrined, in which case legality of their realization needs justification. Hence, they have a high research and law-enforcement potential for investigation of the mechanism to secure and support interests when entering ownership legal relations, as well as during exercise by the owner of his or her proprietary rights and protection of the same from violations.

Being a universal law category, interest, along with subjective right, is a core element of civil-law regulation. The features inherent to subjective right and interest indicate a lack of identity between them. On the one hand, subjective proprietary right consistently expresses the legally protected interests of the owner, but, as legally protected proprietary interests, they can be enforced also beyond proprietary legal authorities furnished with legally secured claim. It is possible to achieve proprietary interest when the intentions realized by the owner are within the scope of the law, do not contradict the import and spirit of the law and fundamental principles of civil law. Therefore, it is necessary to correlate interests and subjective proprietary right and show that each of the above categories has its own regulatory potential and ensures the activity of property owners in different ways. It is also necessary to determine the degree of the owner's behavioral error, which indicates the wrongful nature of the interest to be realized and makes its achievement unacceptable.

The modern domestic legal order is characterized by transition from the hierarchy of private and public interests to securing their balance, as well as by balancing of private interests of owners. The rule making and law-enforcement processes make a strong impact on finding, legitimation and legal support of interests the subjects of property right. The civil legislation of the Russian Federation is now undergoing active reformation changes, and it is highly important for the lawmaker to harmonize the normative legal system with the vital interests of owners, so that the means enshrined in the objective law reliably balance proprietary interests of an individual and civil society and ensure unhindered implementation of permissions forming them. Scientific substantiation of the need to recognize normatively the most significant interests of owners is aimed at improving civil law regulation of proprietary relations, prevention of social conflicts and ensuring the stability of civil circulation. Interests of the owner, being quite a debatable phenomenon, require a deep scientific analysis with comprehension of their essence, legal means of their implementation and methods of protection.

The thesis investigation rationale is conditioned, among others, by a large number of

of each and every person to respect law and interests realized within its scope. Legal interests of owner widen the opportunities of his or her subjective proprietary right.

"Legitimate interests" are not directly related to the law, but consist in direct relation to subjective proprietary right; achievement and protection of legitimate interests is secured by authorities that are a part of the content of subjective proprietary right.

judicial disputes related to conflicts in the implementation of proprietary interests. Tens of millions of Russian owners need a reliable legal security of their interests at the stage of acquisition and implementation of the proprietary right of ownership. Relations in which owners realize freely their proprietary interests are a prerequisite for normal public production, exchange and consumption, and have a large impact on the development of civil society in general. The effectiveness of legal regulation of ownership relations largely depends on the extent to which the provisions of civil law and other means of civil law regulation meet the proprietary interests of owners. In order to increase the effectiveness of civil law regulation of relations involving owners, it is necessary to harmonize the process of realization of proprietary interests legally protected in the legal order. However, to date, legislation, law-enforcement practice and legal science have not fully recognized and applied the approach to the category of interests as an independent legal phenomenon. Thus, investigation of the essence of individual proprietary interests, finding their distinctive system features, search for legal means to ensure realization of the owner's proprietary interests legally protected in the legal regime, are relevant not only in theory, but also in law-enforcement aspect.

Scientific achievements of recent years, modern economic and social conditions, pre-Perestroika and modern Russian and foreign experience show the need for doctrinal justification of legislative and law-enforcement approaches to interest as a regulatory means secured by its own legal mechanism. Despite the positions of some authors arguing that subjective interests have no place in the construction of legal relations, that legal interest is doomed to be included in the content of subjective right, and that there is no other way to determine the legality of subjective interests⁴, scientific papers devoted to theoretical problems of justification of interests as an independent civil law category began to appear in recent years in the domestic legal literature. Scientists attempt to disprove traditional views of interests as legally unguaranteed claims and permissions not secured by adequate means of civil law regulation. Interests of owners also receive civil law regulation of normative nature and increasingly become subject of self-regulation which relies on the general sense of civil legislation and its provisions designed to balance the interests of private persons (to balance private interests).

The object of the thesis is civil law relations involving owners, as well as legally protected interests manifested in connection with real property relations at the stages of their formation, implementation and protection.

The subject of research is civil doctrines and general scientific ideas about interests,

4 Serkov P.P. (a) Legal Relation (Theory and Practice of Modern Legal Regulation). Part I: Edges of the Legal Unknown. M.: Norma, 2018. 512 p.; Cherdantsev A.F., Gunin D.I. Legal, Unlawful and Illegal Interests // Russian Justice. 2013. No. 7. pp. 12-21 // Availability: ConsultantPlus.

norms of civil legislation, judicial and other law-enforcement practice formed in realization of proprietary interests of owners.

The purpose of research consists in substantiation of functional independence of the owner's proprietary interests based on the study of the essence and distinctive features of interests in comparison with subjective and objective right of ownership. Achievement of this goal will make it possible to create a holistic doctrine of interests in civil law and of proprietary interests of owners showing that legally protected interests of the owner are secured and subject to protection just as subjective proprietary right receives legal security and protection, since legally protected interests are capable of transforming into targeted requirements with opposing obligations of a particular person / particular persons.

Scientific novelty of research. The thesis research is the first monographic research in the modern domestic civil science in which the interest of the ownership right subjects is presented as an independent civil law category with a definition of the mechanism of its legal security and protection.

The thesis is a scientific qualification work, which, on the basis of the author's research, resolves the scientific problem of great economic importance and makes scientific conclusions that enrich the theory of civil law and contribute to the improvement of law enforcement in the regulation of property relations. The author's conclusions served as the basis for a number of proposals made to improve civil legislation.

The author has gained a new holistic scientific knowledge with the justification of the interests of the owner as a set of permissions and claims that can be transformed into a requirement with the emergence of an obligation corresponding to this requirement, ensuring either unimpeded realization of the interest or realization through compulsion of another person. Identification of defects of the approach to understanding the interests of owners and detection of civil law mechanism to secure and protect proprietary interests made it possible to determine the theoretical basis and practical measures to prevent violation of legally protected interests of the owner and authorize the creation of obstacles in their implementation.

Based on the scientific analysis of the nature of will, expression of will, goal setting and interest, methods and means of civil law regulation of ownership relations, as well as the contents and order of exercise of the subjective proprietary right by your own will and in your interest, the thesis research has identified the reasons preventing effective serving the interests of owners and protection thereof, and developed proposals and recommendations to improve the current civil legislation.

Scientific novelty of the thesis is disclosed in the statements and conclusions in the text, as well as in practical proposals.

Main conclusions and statements to be defended:

1. Owner's interest (along with his or her subjective right) is a part of the content of proprietary legal relationship and, due to absolute nature of legal relationship, the interest can influence its formation and state, the owner's behavior and each of all non-owners. The subjective proprietary right and proprietary interest are the means of permission-based way (method) of civil law regulation. The objective basis for the formation of owner's interests are the rules and principles of civil law, constitutional norms, as well as legal provisions of other branches of legislation (land, tax, administrative, etc.). Due to the fact that similarly to the right the owner may exercise his or her interest at his or her own discretion, the interest can perform its regulatory functions before emergence of the subjective ownership right, as well as along with it. Subjective right is a form interest security as it brings certainty to the means and methods of its securing. Subjective right is one of the possible means to secure and protect interest, which is the most definite, but when interest of a subject has a feature of universality (provided to each and every person), it is protected by a range of other legal means, for example, by prohibitions and general ordinances, business habits and customs.

2. The independent legal value of interest lies in the fact that interest serves as a means of legal qualification of acts of legally significant behavior of the owner and related consequences (for example, when a person's will is to act without observing the basics of morality and legal order, the law recognizes the expression of will for achieving such interest as legally void and does not protect the interest but authorizes its achievement). The interest manifestation forms are represented by acts of lawful expression of will (legally protected interest) and acts of unlawful (illegal) expression of will (legally unprotected interest). Acts of expression of will are qualified depending on the way the owner exercising his or her interest to achieve his or her welfare acts: at his or her own expense or at the expense of encroaching on the rights and legally protected interests of others. The interest form depends on the selected means and methods to achieve it and the degree of subjective error in the owner's acts.

Exercise of valid interest is allowed and protected by law, while invalid interest gets authorization depending on the degree of legal error and degree of subjective honesty of discretion of the interested person.

3. The valid nature of the owner's interest has the following features: (1) the interest carrier is normatively allowed to express private will (for example, when choosing a method to exercise the interest in relation to a fence built by the neighbor at the boundary of land plots); (2) goal setting of a person focuses on satisfaction of the need for own benefit instead of causing troubles to other persons (for example, when the noise in the apartment is due to the fact that repairs are being made, rather than being made to create unbearable living conditions for other owners and

tenants); (3) the interest is exercised within permissions of objective law subject to observance of its imperative prohibitions and compliance with ordinances (for example, the use of public roads in the spring period by the owner of the vehicle in his or her interests is allowed subject to load capacity limitations); additional qualification feature of the owner's proprietary interest is the fact that (5) it is related to the object of ownership right (material) and is achieved in the course of its lawful (not encroaching on the rights of other persons) use. The owner's interests have material and legal nature, are distinguished by content, normativity, attribution and functional purpose, as well as the property nature, and are implemented with a focus on welfare of the owner at his or her own expense.

The owner's interest is qualified as invalid when goal setting and expression of will are carried out by a person out of the scope of the law. Acting with invalid interest, a person intends to violate (goal setting stage) or is already violating (will expression stage) imperative prohibitions and ordinances, which is expressed in the attack on the rights and legally protected interests of other persons. Degree of the owner's discretion error may lead or is already leading to the area of interest of other persons, and violates the balance of interests (private and public or private only) by the fact that when exercising an invalid interest the owner focuses on his or her welfare at the expense of others.

4. The owner's legally protected proprietary interests are divided into legal and legitimate ones. Legal interests are realized by the owner in the area of permissions to act at own expense for achieving welfare that are common and identical for all owners, as well as in the area of prohibitions to benefit from unlawful and unfair conduct that are common for all subjects of civil law. Law protects legal interest secured by objective proprietary right, common principles and sense of civil legislation, requirements of honesty, reasonability and justice, unless it contradicts law, when the owner remains within the scope of the law and does not evade it.

Legitimate interests are secured by subjective proprietary right of the owner when the right holder remains within the measure of subjective right and does not abuse it. The essence of the owner's legitimate interests is that they manifest as permissions supplementing and extending proprietary subjective authorities. Means of achieving the legitimate interests are legal claims of the owner and obligations of persons legally bound by the proprietary right of the interest holder.

5. "Legal interest", "legitimate interest" and "legally protected interest" are not identical or interchangeable legal categories. "Legally protected interest" of the owner is a common generic term, since "protectability" is a feature of both legal and legitimate interests. "Legally protected interests of the owner" is not a type of interests, but it is their permanent or temporary state; it is inherent in both legitimate and legal interests. The interest's ability to be legally protected is

inherent only in a validly realized interest. Invalid interests are neither legal nor legitimate, due to which they are not protected by law.

“Legally unprotected interests of the owner” are also of two types: (1) interests formed in excess of the measure of subjective proprietary right or by abuse of right, and (2) interests formed outside the scope of law and realized in contradiction to the meaning and purpose of right and legal principles, as well as bypassing the law.

6. Proprietary interest of the owner is a legal means of securing, at the cost of appropriated property, welfare of the owner acting in the area of general permissions and prohibitions without seeking the assistance from other persons and without encroaching on their rights and interests. As a legal means, the protected interests include legally protected permissions to secure own welfare acting on the principle that “all things are permitted that are not expressly forbidden”. Permissions representing the interest extend legal opportunities deriving from the law since the law is not the only source of interest. The structure of proprietary interest integrates legally protected permissions of person and legal opportunities to realize them through own efforts, without encroaching on the rights and interests of others. Permissions constituting legal interest of the owner are general and equally provided to all holders of proprietary rights. As part of separate legal relationship of ownership, general permissions are specified with regard to legal status of the subject and legal regime of the order, and are realized in the sphere of action of the public will of the legislator in the form of general prohibitions identical for everybody. Holders of other proprietary rights (not owners) have to subordinate their interests to the public will of the legislator in the form of general prohibitions, as well as to the will of private persons (owners) in the form of specific prohibitions and statements. Legal opportunities of permissions of proprietary interest owners are put into life by the owner’s initiative and personal activity, and, if through actions of other persons, at the cost of and by agreement with the owner. Holders of proprietary interests are legally bound with all other persons by general obligation of such persons not to raise difficulties to making profit (benefit) from the property appropriated by another person.

7. Subjective civil law is a normative and will phenomenon combining will of the legislator (norm) and will of the right holder (discretion). Normativity of the right serves as a means to determine legal measure of the permissions the owner puts into action in exercise of subjective right and realization of proprietary interest within separate legal relationship of ownership with regard to legal regime of the ownership right object. The will component of subjective right secures that within the measure a person (1) expresses his or her interests with focus on welfare, (2) evaluates behavior of obliged persons and, in the event of any obstacles to

realization of interest or encroaching on the object of interest, (3) resorts to security and coercive assistance of judicial and executive authorities.

The nature of subjective proprietary right is revealed not through the opposition of the owner's will to the will of all other persons, but through comprehension of permissions constituting proprietary interests of the owner and realized within civil relationship of ownership by the named right holder in relation to specific object of proprietary right. The actions aimed to realize proprietary interests are able to ensure welfare of the owner. Relation of the owner with all other persons on the obliged side of civil legal relationship of ownership is expressed in the fact that proprietary right completely denies the will of all other persons and prevents its intrusion into solely will-based formation of proprietary interests.

8. Proprietary interests are not a part of the content of ownership right represented by classical components: (1) measure (legal possibility) of own behavior of authorized person; (2) possibility to claim proper behavior of all other persons as bound by absolute right of the owner; (3) possibility to handle compulsion claims seeking protection of violated (challenged) rights and proprietary interests.

Possibilities of proprietary interest are realized in the form of legal claims acting as a connecting link between possibility and reality, between rules of material (civil) right and permissions of subjective right, and between goal setting and expression of will. A claim is characterized by a state of legal uncertainty, which is eliminated when the owner's claim to his or her own welfare is recognized as protectable. Claims for welfare in the form of proprietary interest realization become protectable when they are qualified as acts of lawful conduct corresponding to the measure of subjective right and/or norms of objective proprietary law. Otherwise, proprietary interest of the owner becomes formally (legally) defined and the owner may coerce the subjects of the obliged party to the actions or inaction he or she claims.

Nobody is obliged to secure proprietary interests of the owner directly, but everybody has to reckon with them and may not raise obstacles to their honest realization. The essential property of the owner's interests is that they activate the owner's behavioral capacities and exclude influence of all third parties on the object of his or her proprietary right disadvantageous to the owner.

9. Legally protected interests of the owner denote a range of prohibitions for third parties, thus securing their realization. The mechanism of legal provision of the owner's interests is complex and includes several legal mechanisms: 1) mechanism of civil law regulation, 2) mechanism of realization of subjective rights and performance of obligations, 3) mechanism of civil law protection, responsibility and judicial enforcement.

The structural elements of the mechanism of legal provision of the owner's interest are:

normative regulation, right vesting, regulatory and protection stage of legal relationship, acts of realization of rights and obligations, and use of civil law protection methods and civil law responsibility measures in the framework of law enforcement.

The mechanism of legal provision of the owner's interest is directly related to the measure of subjective error of the owner's actions and the method of breaking the limits of objective permissions. The subjective error of the owner's behavior is expressed in the fact that the owner intrudes into the sphere of interests of another person without violating imperative norms of objective law.

Any objective permission, including in the legal form of proprietary interest, has the limits, which can be narrowed in a separate legal situation due to differences in the legal status of the subjects and the legal regime of the object by the norms containing prohibition and the norms prescribing specific conduct. If the norm introduces prohibition and contains no alternative rule providing another variant of realization of proprietary interest, violation of the prohibition deprives the proprietary interest of civil law protection. If the owner aiming at his or her welfare realizes proprietary interest contrary to the prescription of the norm, but there are legal means capable of taking the owner back to the prescribed conduct, the owner's interest is realized as legally protected one.

10. Interests of the owner are secured not only by objective law and subjective right but also by burdening the owner with maintaining the property preventing it from ownerless state and obligation to respect rights and interests of other persons, and, in separate cases, obligation to handle the property properly according to its economic and functional purpose.

If other persons have a legally significant interest in the performance by the owner of his or her duties and bearing the burden of property maintenance, they are vested a right to use such protection method against the owner as compulsion to perform the duty in kind. It serves as a means of limitation of the owner's discretion when he or she acts by own will. Compulsion to perform the specified duties shall be viewed not as a measure of civil law responsibility of the owner, but as a means to secure his or her welfare and interest to use his or her property as long and effective as possible acting in the sphere of law and legislation. For the owner, the specified method is a means of the mechanism of civil law provision of proprietary interests and own welfare.

11. The terms "limitations" and "encumbrances" of the owner's proprietary interests differ in legal nature, content, purpose, legal grounds for their occurrence, object and means of legal action, and legal consequences of such action. Limitations are the narrowing of the common (identical) scope of the interest for a certain group of persons as compared to all other owners and act to secure rights and interests of a wide range of private and public persons and the state.

Encumbrances on the owner are the imposition of the obligation, common to all owners, to bear the burden of maintaining the property, taking into account the rights and legally protected interests of all other persons. Realization of the owner's proprietary interests is always encumbered in favor of the named person or a specific group of persons.

Prohibitions balancing the private interests of owners and third parties serve as a means to secure free realization of interests and welfare of the owner especially when property interest of the person goes beyond the boundaries of the thing serving as the object of his or her proprietary right (for example, in the neighbor's right). However, prohibitions-limitations must have an appropriate degree of proportionality and generality and exclude intrusion into the determination of the rules of use of another person's (even the neighbor's or boundary) property.

12. In judicial protection, the right of ownership is protected by a court decision and the protection of subjective right symbolizes protection of property interest. When the property interest of the owner acts as an independent subject of judicial protection, it is protected when the court decision is enforced and the owner's welfare is restored at the expense of the infringer of the proprietary interest.

Any violation of proprietary right is connected with the property interest of the owner, and the purpose of the right protection (restoring the situation that existed before the violation) is achievable if the legally protected proprietary interest also receives protection. Methods of civil law protection of proprietary interests differ depending on whether the protection is caused by violation of the owner's interest itself or violation of the interest coincides with violation of the subjective right of ownership. In the first case, it is a matter of restoration of the sphere of proprietary interests (property welfare), while in the second case, it is about protection of the person's right by restoring his or her legal state. Protecting his or her subjective rights, the owner also protects his or her interests, or he or she protects them by means of immediate protection of the proprietary interest itself (for example, when the owner is paid the price of destroyed property, which means that proprietary interest becomes protected under the conditions of terminated right of ownership due to loss of the object).

Theoretical meaning of the work is that the results of the thesis research constitute a conceptually new approach to interests of owners in the Russian civil law. New theoretical provisions developed in the thesis helped to revise the existing ideas about interests of owners and form a scientific concept of the interests of participants of civil law relations justifying the ability of permission forming the owner's interest to transform into a requirement with the emergence of an obligation corresponding to this requirement, ensuring realization of the legally protected interest. The developed ideas of basic concepts of the topic under investigation contribute to the terminological clarity and consistency of the nomenclature of civil science.

The thesis research is a logically consistent concept forming the basis for further study of the civil law category of interest. Theoretical conclusion of the thesis contribute to the development of civil law as regards scholarly understanding of interest as a civil law category, and as regards the study of mechanisms of civil law regulation of relations involving owners, and generally facilitate resolution of systemic civil law regulation problems.

Practical significance of the study lies in the fact that its conceptual provisions are focused on improving the efficiency of identification, legitimation in “legally protected” regime, legal security and protection of the interests of owners, and establishment of reasonable balance of private interests and reasonable balance of private and public interests. Scientific results and recommendations of the thesis can form the basis for the practical implementation of domestic civil legislation reform.

The conclusions, suggestions and recommendations of this thesis can be used by legislative and executive authorities in the development and implementation of normative legal acts aimed to ensure consistency, intra- and inter-sectoral concurrence and other improvement of civil law regulation of relations involving owners, which generally determines the conceptual direction of development of Russian civil law and law-enforcement practice in this area corresponding to a new development level of social and economic relations.

The study results can be used in expert activities in examination of legal acts, as well as in the activities of courts, law practice, and the work of legal services in civil circulation.

Theoretical and applied aspects of civil law regulation of relations involving owners identified during the study can be used in educational activities both in the formation of basic educational programs, additional education programs and skills upgrading and in the educational process in the study of civil law cycle disciplines.

Degree of reliability and evaluation of results of the study.

Theoretical provisions, conclusions and recommendations developed and formulated in the thesis are reflected in 75 scientific publications of the author, including 5 monographs, 41 articles published in peer-reviewed journals included into the List of Russian Peer-Reviewed Journals of the Higher Attestation Commission of the Ministry of Education and Science of the Russian Federation, 7 articles in scientific publications included into international databases Scopus, Web of Science, as well as in reports and presentations at international, Russian and regional scientific and scientific-practical conferences, scientific seminars and round tables held by higher education institutions of Russia and foreign countries: Belarusian State Agricultural Academy, Vitebsk State University named after P.M. Masherov, Moscow City University, Russian State Social University, Pokrov Branch of the Sholokhov Moscow State University for Humanities.

Materials of the thesis research are used by the author in the educational process when reading lectures and holding seminars in Civil Law, Roman Private Law, Basics of Intellectual Property Management at Business and Law Faculty of the Belarusian State Agricultural Academy and the Vitebsk State University named after P.M. Masherov. Main conclusions of the thesis can be used to improve the current civil legislation and its enforcement practice in protection of interests of owners.

The provisions of the thesis are integrated in the educational process of the Belarusian State Agricultural Academy and the Vitebsk State University named after P.M. Masherov, and are used by legislative and judicial authorities of the Republic of Belarus.

The total size of publications on the topic of the thesis research is more than 75 printed sheets.

The structure of the thesis is based on its purpose, formulated tasks and the logic of civil studies that helps to resolve scientific tasks and fully explore the topic. The thesis consists of an introduction, five chapters containing fifteen sections, conclusion and references.