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ON THE PSYCHOLOGICAL AND ECONOMIC FOUNDATIONS OF FORMING PRIVATE PROPERTY RELATIONS IN THE ECONOMY FOR THE PURPOSE OF THEIR LEGAL REGULATION

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Abstract. The paper considers the psychological and economic foundations of the formation of private property relations, which are based on the “sense of ownership” – the attitude to property as to one’s own, in the presence of an additional feature of a “sense of benefit”. The authors give a definition of property relations, which is based on psychological and economic foundations. The paper substantiates that private property under Russian law is a too generalized category – a single legal regime has been established for it, which does not correspond to the optimal legal regulation of property relations. The article substantiates the need to identify the subvarieties of private property, which have significant differences in psychological and economic motivation: classical, financial, social, collective and state-owned. Each subvariety of private property depends on the presence (absence) of a sense of ownership and a sense of benefit, as well as the presence (absence) of a certain level of property. Accordingly, civil legislation requires the legal consolidation of the subvarieties of private property, designating for each of them its own legal regime.

Key words: private property, “sense of ownership”, “sense of benefit”, legal regime of private property, subvarieties of private property, classical private property, financial private property, social private property, collective private property, state-owned private property.

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О ПСИХОЛОГО-ЭКОНОМИЧЕСКИХ ОСНОВАХ ФОРМИРОВАНИЯ ОТНОШЕНИЙ СОБСТВЕННОСТИ В ЭКОНОМИКЕ В ЦЕЛЯХ ИХ ПРАВОВОГО РЕГУЛИРОВАНИЯ

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Аннотация. Авторы статьи рассматривают психолого-экономические основы формирования отношений собственности, в основе которых «чувство собственности» — отношение к имуществу как к своему при наличии дополнительного признака «чувство выгоды». Авторы дают определение отношениям собственности, которое опирается на психолого-экономические основы. В работе обосновывается, что частная собственность по российскому законодательству является слишком обобщенной категорией — для нее установлен единый правовой режим, что не соответствует оптимальному правовому регулированию отношений собственности. Обосновывается также необходимость выделения подвидов частной собственности, которые имеют существенные различия в психолого-экономической мотивации: классическая, финансовая, социальная, коллективная и огосударствленная. Каждый подвид частной собственности зависит от наличия (отсутствия) чувства собственности и чувства выгоды, а также наличия (отсутствия) определенного уровня имущества. Соответственно, гражданское законодательство требует правового закрепления подвидов частной собственности, обозначив для каждого из них свой правовой режим.

Ключевые слова: частная собственность, «чувство собственности», «чувство выгоды», правовой режим частной собственности, подвиды частной собственности, классическая частная собственность, финансовая частная собственность, социальная частная собственность, коллективная частная собственность, огосударствленная частная собственность.

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Introduction

In modern Russian law, “property right” is reduced to the formula enshrined in clause 2 of Art. 209 of the Civil Code of the Russian Federation¹, according to which: “The owner has the right to perform any actions in relation to his property at his discretion that do not contradict the law and other legal acts and do not violate the rights and legally protected interests of others”.

Attention is drawn to the fact that in civil law theory the most important link falls out, which answers the question: “How does property affect the formation of the owner’s behavior?” Such a link is the *psychological and economic basis for the formation of the owner’s behavior*, which creates property relations. In other words, it is reasonable to talk about the *laws governing the formation of the owner’s behavior* under the influence of the psychological and economic basis of the “sense of ownership” and an additional feature — “sense of benefit” (property interest). The latter at a certain moment becomes a more powerful factor than the “sense of ownership” itself, when, for example, property becomes useless for the owner, and even burdensome. At the same time, one cannot but say that in the classical theory of Civil Law, the “sense of ownership” is not mentioned at all, however, such a mention is not of fundamental importance, since only “power over a thing” is taken as a basis, without giving proper attention to the psychological and economic features of the formation behavior in property relations².

At the same time, it was precisely on the “sense of ownership” that the organizers of privatization relied on in Russia, when it was believed that the owners would be more active and diligent about their property.

As a result, the Civil Code establishes a single legal regime for all property, and, accordingly, a single legislation that regulates all relations, regardless of the psychological and

economic foundations, which entails errors of legal impact. As a consequence, the property right in many cases does not have the required efficiency, even to the extent of its absence at all.

1. “Sense of ownership” as a formative link in private property relations

Let us consider the approach to the problem of legal regulation of private property relations from the perspective of the “Theory of Economic Law”³: *the sense of ownership* (like the sense of benefit) acts as the basis for the formation of property relations, *which is characteristic only of individuals*. For legal entities, it is necessary to consider the behavior of the individuals behind these organizations.

From these positions, the capabilities of business entities are determined not only by “property relations” in the narrow (civil) sense, but also by economic personality, without which property cannot be embodied in real life. In addition, it is important to take into account the legal regime of the object of property relations and the economic activity carried out.

A business entity, acting as the main link of economic turnover, is characterized by its *economic capabilities*, which form *absolute economic relations*, and the central link of these are *property relations* characterizing the capabilities of a business entity to use (in the language of civil law: possess, use and dispose) its property, including land plots, buildings, constructions, equipment, implements, raw materials, products.

Similar relations arise with regard to the property rights of a business entity, including money and securities on its balance sheet, income from production activities, etc. In this sense, property relations in economic law are considered somewhat broader than exclusively in “right in rem” understanding, since they go beyond the boundaries of ordinary property. In particular, “the right of ownership of uncertified securities” is established by judicial practice⁴.

¹ See: Civil Code of the Russian Federation (Part first) dated 30.11.1994 No. 51-FZ // SZ RF. 1994. No. 32. Art. 3301; 2021. No. 27 (part I), art. 5053.

² See: Russian Civil Law: in 2 vols. General part. Right in rem. Inheritance Law. Intellectual rights. Personal moral rights: textbook / ed. by E.A. Sukhanov. 2nd ed., stereotyped / ed. by E.A. Sukhanov. M., 2011. Vol. 1. Par. 1, clause 1; par. 13.

³ Eliseev V.S., Velento I.I. The theory of Economic Law: the theory of branches of law that provide economic relations: textbook. M., 2019. Pp. 156–189.

⁴ See: Resolution of the Presidium of the Supreme Arbitration Court of the Russian Federation dated 01.06.1999 No. 6759/98 on case No. A60-483 / 98-C2 // SPS “ConsultantPlus”.

The above allows us to consider *property relations as economic relations based on the psychological and economic sense of ownership of an individual, which forms in the owner (or another possessor) an attitude towards property (property rights) as something of his own, and this occurs under the influence of his property interest (sense of benefit).*

In addition, these relationships consider the relationship of the owner (or other possessor) with *third parties*.

At the same time, the presence of a sense of ownership is the main and obligatory sign of the formation of property relations, when the sense of benefit is just an additional (optional) sign.

For a business entity property relations are formed primarily under the influence of the psychological and economic foundations (a sense of ownership, a sense of benefit and other motivators) of individuals included in its structure.

In turn, property relations, formed under the influence of the processes of economic self-regulation, are subject to legal support, thereby forming the right of ownership.

The importance of property for the economy is paramount; the efficiency of the economy as a whole largely depends on the solution of this issue. But slants in the balance of the subvarieties of private property negatively affect the efficiency of the economy as a whole.

2. The views on property relations prevailing in legal science

2.1. First of all, let us highlight the differences between continental (European) and Anglo-Saxon legal systems: in the Anglo-Saxon legal system, *the broadest approach* to property relations is used, considering them as a synonym for economic relations. This refers to economists as well, because they are mostly focused on the American, primarily, liberal economic model: by “property right” is meant “the right to control the use of certain resources and to distribute the costs and benefits arising from this”. At the same time, the “state” is considered as “a set of individuals interacting with each other in accordance with existing property rights”⁵.

In the Anglo-Saxon system, all ownership rights are equated with property rights⁶, and right in rem and right in personam are traditionally considered as a kind of property rights⁷. For this reason, in this legal system there is no legal definition of property rights⁸, it is considered sufficient economic understanding of property as such.

Currently, under the influence of the American school of economics, this approach has become widespread in the countries of the continental system of law (Germany, France, Italy, etc.)⁹. In Russia economists often adhere to this position, but in Russian domestic legal science this approach has not been enshrined.

In Russian legal science, “property relations” (as well as “property rights”) are considered only in a *static sense*, where the rights and obligations of business entities are considered in relation to an indefinite circle of persons. At the same time, a *broad approach* is often used, when “property” is understood as *all material relations in the aggregate*.

Finally, a *narrow approach* taken as a basis in Russian law (considers “property relations” as a kind of “*right in rem relations*”¹⁰) has been consolidated in civil legislation: Section II of the Civil Code of the Russian Federation is referred to as “Property right and other rights in rem”.

Moreover, considering property relations in a narrow sense, it is difficult to grasp complex connections, since, firstly, the subject of relations is limited (we are talking only about individually defined property (things)); secondly, the representative of the owner who disposes not by his property, is shot out (these relations are actually preceded by property relations); thirdly, there is no connection with protective behavior, which directly protects property relations from the negative behavior of the participants in these relations.

And the most important thing is as follows: if in civil law an object is taken as a basis (an individually defined thing, property), then *for the theory of Economic Law*¹¹, *economic behavior takes the first place*, the psychological and economic basis of its formation, which is the “*sense of ownership*” or its absence, when it comes to public types of property, when the principles of the formation of relations inherent for the state and the state sector of the economy should enter into regulation. From these positions, *the subject base of property relations is significantly expanded*, since it covers all economic relations that are formed *under the influence of the “sense of ownership”* or principles of the state property formation. From these positions we consider as property relations not only property relations as such (in the narrow sense), but also, firstly, rights in rem relations in general; secondly, relations arising from property rights of a static nature (for example, for owners of securities); thirdly, static rights in personam (in which, to different extents, there are relations between the representative and the person being represented), as well as relations among the defendants of the business entity (including a legal entity), derived from the property belonging to him, including corporate relations. Patterns of formation of these relations are the same.

According to paragraph 2 of Art. 8 of the Constitution of the Russian Federation, “In the Russian Federation, private, state, municipal and other forms of property are recognized and protected in an equal manner”. A similar norm is contained in paragraph 1 of Art. 212 of the Civil Code of the Russian Federation.

2.2. Meanwhile, in Russian legal science there is no unity of views on the existence of *various forms (types) of property*, and here two opposing points of view can be distinguished: for example, supporters of the *formal legal approach* (and it dominates in legal science) believe that an indication of other forms of property “should be considered erroneous”, “there is not and cannot be any “other forms of ownership” except private and public”¹². At the same time, *the right to private property is a general, collective concept* for the property right of private owners of property, pursuing their own private, and not state or municipal (public) interest when using it, and “the subjects of property rights can be any subjects of Civil Law: citizens, legal entities (except for unitary enterprises and owner-financed institutions), state and municipal (public) education. However, entities that do not have civil legal personality, in particular labor and other “groups”, various “communities” and similar associations of citizens

⁵ Heine P. Economic way of thinking / transl. from English. M., 1994. Pp. 325, 445.

⁶ See, for example: Lask G. US Civil Law. M., 1961. Pp. 461–522.

⁷ See: Lazar J. Property in bourgeois legal theory. M., 1985. P. 37.

⁸ See: Commentary on the First part of the Civil Code of the Russian Federation for entrepreneurs / ed. by M.I. Braginsky. M., 1995. Commentary to Ch. 13.

⁹ See: Lazar J. Op. cit. P. 37.

¹⁰ Sukhanov E.A. General provisions on ownership and other property rights // Economy and law. 1995. No. 6. P. 29.

¹¹ See: Eliseev V.S., Velento I.I. Op. cit.

¹² Sukhanov E.A. The concept of property rights in Russian legislation and in the model Civil Code of the CIS countries // Constitutional Law: East European Review. 2001. No. 1. P. 85.

(individuals) that do not have any property of their own, separate from the property of their participants, cannot, however, act in this capacity. If such property needs to be created and isolated, then it will be possible to do this only in the manner prescribed by law, namely, by creating one of the types of legal entities, and then the property of this legal entity will be at stake”¹³.

The opposite position, pointing out the need for the legal consolidation of “other forms of ownership”, is adhered to by **supporters of the psychological and economic approach**, who, as a different one, single out, in particular, collective property¹⁴. From these positions, “appropriation” of property means “making it your own”¹⁵. The main feature by which it is necessary to distinguish other forms of ownership is the absence of a sense of ownership. But the main conclusion is that “through the forms of ownership, the type of property acquires a legal character”¹⁶.

2.3. The position of the theory of economic law to relations and property rights is as follows: *the presence or absence of a “sense of ownership” affects the behavior of the owner (individual), creates various property relations that presuppose their own initial legal regime, i.e. acts as a formative basis for property rights.*

For the formation of full-fledged economic relations of private property, only a sense of ownership is not enough, since, as already noted, it is also necessary to have a “*sense of benefit*”. So, in the scientific literature it is noted that “two sides are closely intertwined in property relations: the “*good*” of owning property and receiving income from its use and the “*burden*” of bearing the associated costs, losses and risks... The owner also bears *the risk of accidental death* or damage of his property, that is, its loss or damage in the absence of anyone’s fault in this. In fact, this risk also forms part of the above “owner’s burden”¹⁷.

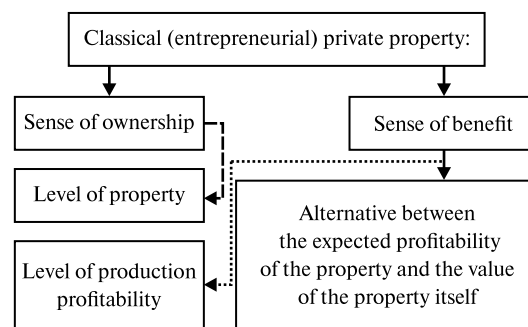
These economic matters have found legal confirmation: in particular, the “good” of the owner is reflected in paragraphs 1 and 2 of Art. 209 of the Civil Code of the Russian Federation (“Content of property rights”), according to which “the owner possesses the rights to own, use and dispose of his property” and “the owner has the right, at his discretion, to perform any actions with respect to the property belonging to him, ... including alienate his property into ownership to other persons, to transfer to them, while remaining the owner, the rights of possession, use and disposal of property, to pledge the property and burden it in other ways, to dispose of it in a different way”. The “burden” of the owner was enshrined in the corresponding Art. 210 of the Civil Code of the Russian Federation, according to which “the owner bears the burden of maintaining his property,” and the risks, according to Art. 211 of the Civil Code of the Russian Federation “bears its owner”.

“Good” and “burden” are integral parts of economic domination, and their ratio affects the formation of a sense of benefit from the possession of this or that property. And if the burden for the owner becomes excessive, suppressing the feeling of ownership, then the owner tries to get rid of such property, since

it becomes burdensome. Such a ratio is no longer subject to legal influence.

3. Subvarieties of private property relations: features of formation

3.1. In addition, for classical private property, the sense of benefit presupposes the presence of a number of *psychological and economic factors-elements* that influence the formation of economic relations (*scheme 1*).



Scheme 1. Classical private property

First, for the formation of full-fledged entrepreneurial relations, two conditions are necessary: a certain *level of property* (property rights) and the *level of production profitability*.

Secondly, another psychological and economic sign is the existence of an *alternative* between the profitability from the operation (production capabilities) of the property and the market value of the property itself. To be more precise, “property rights shape *expectations*” of profitability, respectively, “expectations shape actions”¹⁸, and expectations should be real and tangible.

As one can see, *the formation of full-fledged relations of private property, hereinafter classical (entrepreneurial) private property, presupposes*, in addition to the presence of a sense of ownership, *the existence of benefits, consisting of*: firstly, the presence of the required *level of property*; secondly, in the *presence of the level of production profitability of the property*; thirdly, in the presence of an *alternative* between the expected profitability of the property and the value of the property itself.

In the general case, classical private property presupposes the use for the purposes of legal regulation of the principle “*what is not prohibited by law is permitted*” due to the presence of a sense of ownership, which performs a protective function in the absence of protective norms of law, since the owner’s negative behavior in relation to his property is minimized by him, and this does not require to prohibit something to him. From this point of view, chapters 13–15 of the Civil Code of the Russian Federation (“General Provisions” on the right of ownership, “Acquisition of the right of ownership” and “Termination of the right of ownership”) fully comply with this principle. At the same time, neither the emergence of a “sense of ownership” as the main psychological and economic factor, nor the emergence of a “sense of benefit” as an additional factor, is not subject to legal regulation: the law only assumes that with the emergence or termination of property rights, a sense of ownership appears or disappears.

¹³ Commentary on the First part of the Civil Code of the Russian Federation for entrepreneurs / ed. by M.I. Braginsky. Commentary to Ch. 13.

¹⁴ See, for example: *Nosova S.S.* Economic theory: textbook for universities. M., 1999. P. 398.

¹⁵ *Tarkhov V.A., Rybakov V.A.* Ownership and property right. Ufa, 2001. Pp. 15, 16.

¹⁶ *Rykhentov A. Ya., Chernomoretz A.E.* The theory of property rights (Historical and analytical essay). Elista, 2009. P. 602.

¹⁷ Commentary on the First part of the Civil Code of the Russian Federation for entrepreneurs / ed. by M.I. Braginsky. Commentary to Ch. 13.

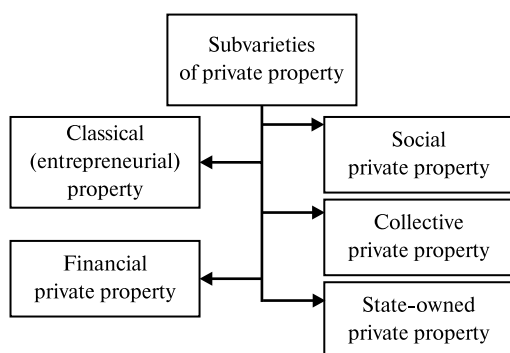
¹⁸ Ibid. P. 325.

Another principle works with persons who do not have such a feeling for various reasons (third parties, representatives of the owner) – their legal regime already has a dependent character: **“what is not permitted by the owner or the law is prohibited”**. In this case, the will of the owner is a priority, otherwise, conflicts of interest and violation of the priority position of the owner are possible, which, in particular, is reflected in Ch. 10 “Representation and power of attorney” of the Civil Code of the Russian Federation.

Variations of these conditions form certain deviations from classical private property, which, in our opinion, require additions in the legal regulation of the legal status of a private owner, i.e. should be taken into account at the level of economic legislation governing property relations.

3.2. The problem of the forms of ownership is the problem of the remoteness of the owner (direct and indirect) from the subsequent direct or indirect possession, use and disposal of the property. In this sense, attention is drawn to the situation in which private property is formally retained, but its main attribute, “sense of ownership”, is absent, which radically changes the behavior of the owner.

Depending on the presence (absence) of a sense of ownership, significant differences are formed in the economic behavior of the owner (mediated owner), which allows, **in addition to the classical private property** considered above, to distinguish such subvarieties (levels) of private property as **financial private property, social private property, collective private property and state-owned private property** (scheme 2).



Scheme 2. Subvarieties of Private Property

Let us dwell on each of these economic phenomena (except for the first one considered above).

3.3. A special variety is the psychology of private financial property, which forms the psychology of financial workers, first of all, “bankers”. The priority of the financial component suppresses the sense of ownership, translating the relationship into a relationship of “benefit”. This explains the phenomenon that a “banker” begins to perceive property exclusively from the standpoint of its financial assessment.

This psychology is also characteristic of the so-called “raiders”, seizing enterprises, after which, production is completely destroyed, and everything possible, especially real estate, is sold out in parts.

Unfortunately, it is this psychology that is taken as the basis in economic theory, which directly affects the training of specialists in economics.

3.4. The behavior of the owner changes if the level of his property (property rights), including income, decreases, reaches a certain social level, followed by moral and, subsequently, physical discomfort and suffering. Having crossed this line, an individual can no longer fully satisfy his needs due to a lack of property and funds, and a corresponding owner tries to fill the shortage of property by any available means.

A further decline in social property reaches the level of survival, beyond which the natural vital needs for food, housing, clothing, basic medical care, education, etc. are not satisfied. The subsistence minimum is the indicator of the smallest limit followed by physical and mental suffering. At the economic level, the indicator of the population’s lack of property of a social level entails an increase in the purchase of essential products in retail chains, the so-called Giffen group¹⁹.

It is the psychology of the owner of the social level that explains, in particular, the behavior of labor groups, small shareholders involved in the management and distribution of profits. Experience shows that they do not seek to allocate funds for expanded reproduction²⁰, and are interested not in the long-term production, but in “momentary dividends”²¹ as such property is of a consumer nature.

From these positions, “personal subsidiary farming while maintaining the auxiliary (subsidiary) nature, personal nature of labor, close connection with social production, the absence of relations of expanded reproduction and a relatively low level of marketability, as well as the achievement of social, and not only economy economic goals scientists consider as “an additional economic source of formation of citizens’ personal property”²².

Social motivation explains the failure of the attempt to raise agriculture by attracting urban residents for farming with the issuance of uncontrolled loans to them in the period from 1992 to 1994 – low overall profitability of agricultural production led to the fact that these farms, obeying all the canons of the classical market, cease to exist, and do not continue to work in the absence of profit, which is typical for the “Chayanov’s peasant”. It is no coincidence that, on average, in Russia for this period, 94 out of 100 percent of farms fell apart²³.

For different people, the concept of discomfort, sufficiency of property is different: for some, discomfort is formed by the inability to eat oysters and crabs, for others – by the lack of annual rest in the Maldives. But the state has the right to support only persons who do not have the necessary property based on certain criteria of social policy, especially since paragraph 1 of Article 7 of the Constitution of the Russian Federation defines Russia as a “social state, the policy of which is aimed at creating conditions that ensure a decent life and free human development”. For this purpose, clause 2 of this norm establishes “a guaranteed minimum wage, state support for family, motherhood, fatherhood and childhood, disabled people and elderly citizens is provided, a system of social services is developed, state pensions, benefits and other guarantees of social protection are established”.

¹⁹ See: Lvov Yu. A. Fundamentals of Economics and Business Organization. SPb., 1992. P. 57.

²⁰ See: Mikhailovich K. Economic reality of Yugoslavia / transl. from Serbian-Croat. M., 1986.

²¹ Luchenok A.I. Entrepreneurship in the system of property relations // Belarusian economy journal. 1998. No. 3. P. 21.

²² Sukhanov E.A. Lectures on property rights. M., 1991. Pp. 150–152.

²³ See: On the problems of transformation of forms of ownership in agriculture: Proceedings of the “Round Table” // State and Law. 1999. No. 3. P. 105.

Additionally, the legislation establishes such social categories as “subsistence minimum”, “minimum level of material retirement benefits”²⁴, “consumer basket”²⁵, “minimum set of food products”²⁶, “minimum consumer budget (satisfaction of minimum physiological needs)”²⁷, etc. — all these are socio-economic categories that have received legal confirmation.

But for the expanded possibility of protecting the social level of property, it is necessary to consolidate it in Civil Law in order to limit the civil regulation of this property in the part in which it contradicts the norms and essence of social legislation.

Besides, the state should consolidate the basis for the acquisition by citizens permanently residing in the territory of the Russian Federation, possessing private *property of a decent level of existence* and a guarantee of the availability of property of a level of survival, fixing the appropriate terminology in the legislation. For example, the term “level of survival”, as an integral part of a level of dignified existence, may include the minimum necessary provision of food, clothing, housing and other vital indicators, including houses with adjoining land plots for the construction and maintenance of a residential building; apartments and other living space in the amount of at least a certain (respectively, living and usable space) per family member; wages not less than the subsistence minimum, as well as other objectively determined expenses (for example, for the purchase of drugs in accordance with medical indications). It should be pointed out that, if private property is not secured at the specified level, the state contributes to its self-replenishment, such as exemption from taxation until the corresponding level is reached.

Accordingly, a kind of terminology development is the concept of “level of dignified existence”, which, for example, should be understood as the categories indicated in the property of the level of dignified existence, as well as economically and socially justified additional social guarantees in the amounts necessary for the normal existence of a member of civil society.

Thus, in private property, it is necessary to highlight the level of *private property of the social level (social private property)*, which, in contrast to classical private property, presupposes: first, the creation of conditions for citizens in order to independently replenish the social level of property when it is insufficient; secondly, guarantees of state support of citizens through social policy in case of impossibility to provide oneself with property of this level; thirdly, special protection of this level of property, including by limiting the civil turnover of a part of such property, special supervision and control over its availability.

3.5. Let us consider the distancing of the “sense of ownership” from the owner (mediated owner) using the example

²⁴ See: Ruling of the Constitutional Court of the Russian Federation of 15.02.2005 No. 17-O “On the complaint of the citizen Enborisova Praskovya Fedorovna about the violation of her constitutional rights, clause 8 of Art. 14 of the Federal Law “On Labor Pensions in the Russian Federation” // SZ RF. 2005. No. 16, art. 1479.

²⁵ See: Federal Law of 03.12.2012 No. 227-FZ “On the consumer basket as a whole in the Russian Federation” // SZ RF. 2012. No. 50 (part 4), art. 6950.

²⁶ See: Decree of the Government of the Russian Federation of January 28, 2013 No. 54 “On the approval of guidelines for determining the consumer basket for the main socio-demographic groups of the population in the constituent entities of the Russian Federation” // SZ RF. 2013. No. 5, art. 395; 2014. No. 34, art. 4684.

²⁷ See: Decree of the President of the Russian Federation of 03/02/1992 No. 210 “On the system of minimum consumer budgets of the population of the Russian Federation” // Bulletin of the SND and the Armed Forces of the Russian Federation. 1992. No. 11, art. 558.

of the transformation of the sense of ownership in a production cooperative (collective farm): in the usual version of a cooperative as a commercial organization, its member-cooperative (collective farmer) retains the rights of a participant that forms private property — this is the right to manage, the right to dividends, the right to a liquidation quota and the right to secede from collective farmers along with their shares, which in particular follows from Articles 13–18 of the Federal Law of December 8, 1995 No. 193-FZ “On Agricultural Cooperation”²⁸.

For a production cooperative, in accordance with paragraph 1 of Art. 106.3 of the Civil Code of the Russian Federation “the charter of the cooperative may establish that a certain part of the property belonging to the cooperative constitutes indivisible funds used for the purposes determined by the charter”. Of course, it was said rather modestly about the indivisible fund, since its presence is one of the principles of cooperation that allows the collective farm to survive during the period of “economic upheavals”²⁹, therefore, this feature was mandatory in the Soviet Union legislation³⁰.

Accordingly, if one organizes an indivisible fund in a cooperative and extend it to all the property of a commercial organization, then the indirect owner in the person of the collective farmer, in addition to the right to manage, loses such rights of a legal entity participant as the right to dividends, the right to withdraw from the collective farm members with his part of the property³¹. This circumstance leads to the loss of a sense of ownership of the collective farmer, who, in terms of his property status, actually approaches the employee. It is no coincidence that this form of ownership in the USSR was called “collective farm-cooperative property”³².

This psychological and economic motivation allows us to talk about a separate type of economic behavior within the framework of private property relations, in which the participants in these organizations do not have a sense of ownership, and this implies a special array of legislation. In order not to deviate from the established understanding of private property, such a subvariety of it should be called a *collective subvariety of private property (collective private property)*, where the term “collective” indicates the loss of a sense of ownership in indirect owners.

It is easy to see that the collective subvariety of private property on the basis of the psychological and economic approach is close to public forms of ownership (state and municipal): in fact, public property can be considered as collective property on an administrative-territorial basis. Consequently, for this subtype of private property, it is necessary to strengthen the legal regime in terms of restraining and suppressing negative behavior, since the protective function of the “sense of ownership” is absent.

Features of the formation of economic behavior for a collective subvariety of private property indicates the need to take these circumstances into account in the process of legal regulation, when

²⁸ See: SZ RF. 1995. No. 50, art. 4870; 2015. No. 17 (part IV), art. 2474.

²⁹ Lonchakova E.G., Shcherbakov V.A. Commentary to the Federal Law of 08.12.1995 No. 193-FZ “On Agricultural Cooperation” (itemized) // SPS “ConsultantPlus”, 2012. Comm. to Art. 34.

³⁰ See: Approximate charter of the collective farm. Adopted by the Third All-Union Congress of Collective Farmers and approved by the Resolution of the Central Committee of the CPSU and the Council of Ministers of the USSR, November 28. 1969, No. 910 // Collection of resolutions of the Government of the USSR. 1969. No. 26, art. 150.

³¹ See: *ibid*.

³² Constitution of the USSR (as amended on December 26, 1990) // Bulletin of the Congress of Peoples’ deputies of the USSR and the Supreme Council of the USSR. 1991. No. 1, art. 3.

establishing the appropriate legal regime in an independent array of legislation, in particular in the Federal Laws “On Agricultural Cooperation”, “On Freedom of Conscience and on Religious Associations”, other legislation. But the value will be seen only when the features of the collective subvariety of private property are taken into account, first of all, in terms of protecting the participants in these relations from various types of abuses, which, in particular, have become widespread in religious sects of a destructive nature, depriving their parishioners’ property³³. To give complete control over such relations to self-regulation will continue to violate the rights of citizens.

3.6. Finally, the last situation is when, in order to organize a private form of ownership, a full (partial) block of shares is transferred to a public entity — state. In this case, the sense of ownership for public education is absent, since the state becomes the mediated owner, as well as the sense of benefit can be suppressed by the social burden. This allows us to speak of an independent *state-owned subvariety of private property (state-owned private property)*, which is regulated on the basis of state and public interests and is close to state ownership.

Conclusion

It is not difficult to notice that private property, depending on various psychological and economic motivations (a subvariety of property relations), cannot be effectively regulated according to the same rules. They need different legal regimes: enshrined in Art. 209 of the Civil Code of the Russian Federation, the behavior formula is effective only for classic private property relations. In the absence of a sense of ownership (financial private property, collective private property, state-owned private property), the corresponding norms of the code become ineffective to those that contradict the logic of legal regulation of the relevant relations.

These circumstances allow us to talk about the need to consolidate the subvarieties of private property in the Civil Code of the Russian Federation with the consolidation of the foundations of their legal regulation.

REFERENCES

- Commentary on the First part of the Civil Code of the Russian Federation for entrepreneurs / ed. by M.I. Braginsky. M., 1995. Commentary to Ch. 13. P. 325 (in Russ.).
- Dvorkin A. A person is in a sect as long as he can give her something // <http://apologet.in.ua/apologetika/totalitarnye-sekty/sekta-boga-kuzi-ayu-popov/novosti-o-sekte-boga-kuzi/7012> (in Russ.).
- Eliseev V.S., Velento I.I. The theory of Economic Law: the theory of branches of law that provide economic relations: textbook. M., 2019. Pp. 156–189 (in Russ.).
- Heine P. Economic way of thinking / transl. from English. M., 1994. Pp. 325, 445 (in Russ.).
- Lask G. US Civil Law. M., 1961. Pp. 461–522 (in Russ.).
- Lazar J. Property in bourgeois legal theory. M., 1985. P. 37 (in Russ.).
- Lonchakova E.G., Shcherbakov V.A. Commentary to the Federal Law of 08.12.1995 No. 193-FZ “On Agricultural Cooperation” (itemized) // SPS “ConsultantPlus”, 2012. Comm. to Art. 34 (in Russ.).
- Luchenok A.I. Entrepreneurship in the system of property relations // Belarusian economy journal. 1998. No. 3. P. 21 (in Russ.).
- Lvov Yu. A. Fundamentals of Economics and Business Organization. SPb., 1992. P. 57 (in Russ.).
- Mikhailovich K. Economic reality of Yugoslavia / transl. from Serbian-Croat. M., 1986 (in Russ.).
- Nosova S.S. Economic theory: textbook for universities. M., 1999. P. 398 (in Russ.).
- On the problems of transformation of forms of ownership in agriculture: Proceedings of the “Round Table” // State and Law. 1999. No. 3. P. 105 (in Russ.).
- Russian Civil Law: in 2 vols. General part. Right in rem. Inheritance Law. Intellectual rights. Personal moral rights: textbook / ed. by E.A. Sukhanov. 2nd ed., stereotyped. M., 2011. Vol. 1. Par. 1, clause 1; par. 13 (in Russ.).
- Rykhentkov A. Ya., Chernomorets A.E. The theory of property rights (Historical and analytical essay). Elista, 2009. P. 602 (in Russ.).
- Sleep of mind — “Aum Shinrikyo” and “White Brotherhood” are back in Russia // <http://www.ltv.ru/news/social/244355> (in Russ.).
- Sukhanov E.A. General provisions on ownership and other property rights // Economy and law. 1995. No. 6. P. 29 (in Russ.).
- Sukhanov E.A. Lectures on property rights. M., 1991. Pp. 150–152 (in Russ.).
- Sukhanov E.A. The concept of property rights in Russian legislation and in the model Civil Code of the CIS countries // Constitutional Law: East European Review. 2001. No. 1. P. 85 (in Russ.).
- Tarkhov V.A., Rybakov V.A. Ownership and property right. Ufa, 2001. Pp. 15, 16 (in Russ.).

СПИСОК ЛИТЕРАТУРЫ

- Дворкин А. Человек находится в секте до тех пор, пока он может ей что-нибудь дать // <http://apologet.in.ua/apologetika/totalitarnye-sekty/sekta-boga-kuzi-ayu-popov/novosti-o-sekte-boga-kuzi/7012>
- Елисеев В.С., Веленто И.И. Теория экономического права: теория отраслей права, обеспечивающих экономические отношения: учеб. пособие. М., 2019. С. 156–189.
- Комментарий к части первой Гражданского кодекса Российской Федерации для предпринимателей / под рук. М.И. Брагинского. М., 1995. Комм. к гл. 13. С. 325.
- Лазар Я. Собственность в буржуазной правовой теории. М., 1985. С. 37.
- Ласк Г. Гражданское право США. М., 1961. С. 461–522.
- Лончакова Е.Г., Щербаков В.А. Комментарий к Федеральному закону от 8 декабря 1995 г. № 193-ФЗ «О сельскохозяйственной кооперации» (постатейный) // СПС «КонсультантПлюс», 2012. Комм. к ст. 34.
- Лученко А.И. Предпринимательство в системе отношений собственности // Белорусский экономический журнал. 1998. № 3. С. 21.
- Львов Ю.А. Основы экономики и организации бизнеса. СПб., 1992. С. 57.
- Михайлович К. Экономическая действительность Югославии / пер. с серб.-хорват. М., 1986.
- Носова С.С. Экономическая теория: учеб. для вузов. М., 1999. С. 398.
- О проблемах трансформации форм собственности в сельском хозяйстве: материалы «круглого стола» // Государство и право. 1999. № 3. С. 105.

³³ See: Dvorkin A. A person is in a sect as long as he can give her something // <http://apologet.in.ua/apologetika/totalitarnye-sekty/sekta-boga-kuzi-ayu-popov/novosti-o-sekte-boga-kuzi/7012>; Sleep of mind — “Aum Shinrikyo” and “White Brotherhood” are back in Russia // <http://www.ltv.ru/news/social/244355>

12. Российское гражданское право: в 2 т. Общая часть. Вещное право. Наследственное право. Интеллектуальные права. Личные неимущественные права: учеб. / отв. ред. Е.А. Суханов. 2-е изд., стереотип. М., 2011. Т. 1. § 1, п. 1; § 13.
13. Рыженков А.Я., Черноморец А.Е. Теория права собственности (Историко-аналитический очерк). Элиста, 2009. С. 602.
14. Сон разума — «Аум Синрикё» и «Белое братство» снова в России // <http://www.ltv.ru/news/social/244355>
15. Суханов Е.А. Лекции о праве собственности. М., 1991. С. 150–152.
16. Суханов Е.А. Общие положения о праве собственности и других вещных правах // *Хозяйство и право*. 1995. № 6. С. 29.
17. Суханов Е.А. Понятие права собственности в российском законодательстве и в модельном Гражданском кодексе стран СНГ // *Конституционное право: восточноевропейское обозрение*. 2001. № 1. С. 85.
18. Тархов В.А., Рыбаков В.А. Собственность и право собственности. Уфа, 2001. С. 15, 16.
19. Хейне П. Экономический образ мышления / пер. с англ. 2-е изд., стереотип. М., 1994. С. 325, 445.

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