



ISSN NO. 2320-5407

Journal homepage: <http://www.journalijar.com>Journal DOI: [10.21474/IJAR01](https://doi.org/10.21474/IJAR01)

**INTERNATIONAL JOURNAL
OF ADVANCED RESEARCH**

RESEARCH ARTICLE**SOME MATTERS OF IMPROVEMENT MATERIAL RIGHTS.****Nargiza Ashurova Agzamovna,**

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Manuscript Info**Manuscript History:**

Received: 14 February 2016
Final Accepted: 19 March 2016
Published Online: April 2016

Key words:

servitude, entrepreneur, material rights, improvement material rights.

Abstract

Traditional civil law is not expressed in meaning of subjective material right (expect of property right) and also, as one of the traditional central titles of civil law science was the subject where always learned material rights.

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Introduction:-

Usually property is described through two types of relation. First, connection between authorized person and object, and second, connection between authorized person and other person. On commodity circulation this connection is interpreted as direct right of person to the object; or right of requiring to person in direct connectionⁱ.

If in first case right of person is executed on connection with object, in second case exists in result of actions executed on the basis of private obligations to object connected to person. The legal consequence of such dividing is that in first case right of subjects directed against all an every person and has sense for all (erga omnes); as subject of law expressed on object, protection by claim first of all directed to restoration right to object. In second case, law is directed to definite subject giving obligation of executing activity organizing subject of law. Due to that, protection by claim will be at debtor and if obligation was not executed the speech is about levying loss.

Such unification of Bering Convention expressing two types of legal relations, in first case expressed in object as legal subject, in second case obligation will be directed to object,ⁱⁱ and gives possibility to absolute and relative division.

Material legal relations usually characterized as objective relations, that means: all third persons must refrain from violation of absolute right. Many specialists in civil law coming from signs of absolute right on the basis of this law, try to give meaning of material rightⁱⁱⁱ.

At this case it is necessary to take into account, firstly due to having conditional characteristics a legal relations which divided into absolute and relative types wasn't always used in practice^{iv}. As, in the relative legal relations, obligation of prohibiting violation of right of authorized persons, will be not on responsibility of definite contractors on private relations, but also on any third person^v. For the second, absolute rights to material rights are considered as wider measures. Also, all material rights don't mean absoluteness (for example, pledge)^{vi}.

The problem is that (if considered scheme will be simplified from absolute right to property right and from relative right to obligatory right) will the property right be accepted in obligatory requirements? For example, in the rent relations different relations on renter property: arise relative relations between lessor and lessee and absolute relations between lessor and other persons.

Traditional civil law is not expressed in meaning of subjective material right (except of property right) and also, as one of the traditional central titles of civil law science was the subject where always learned material rights. That means civil law traditionally escapes from decision of subjective material right and limits with showing disputable signs: duration of law and protection of material right (parts 2 and 3, Article 165 of Civil Code).

As a result of such indecision in law, in civil law science was paid much attention to determine meaning of material right as subjective right. For achieving this goal specialists in civil law used features of distinguishing absolute right^{vii} others – used unification of signs of material rights^{viii}. In each case prohibited necessity of rules learning comprehensively each feature. As it is very difficult to cover material rights (for example pledge) arose from meaning one property without entering rights like it. Unifying titles such as “Economic government” or “Direct influence” are not legally strengthen and not cause any consequences itself.

“Relativity” of government to the material was already found as doubtful opinion as very conditional and artificial arrangement (construction) in the absolute rights.

Abovementioned two sides of subjective material rights (spontaneity of influence to the material and ability of third persons to execute such actions) are not enough for characteristics of material rights. Limited nature of material right and obligatory right, unifies them on executing against other’s property. Due to that signs stated in the article 165 of Civil Code are not enough. Along with it, such allocation is significant in the continental law, that possibility to determine such allocation due to separating civil right institutions^{ix}. Particularly part 1 of article 2 of Civil Code showing relations regulating with civil law documents, separates material right with obligatory right and confront them to each other, items 2 and 3 of Civil Code assume such name. Due to that Yu.K.Tolstoy on interpretation the meaning material right on executing obligations of legal persons, paid attention to passive obligation as not to prohibit active actions of such persons and other persons^x. In such way, material right in the subjective sense means satisfaction of direct influence of interests of the authorized person (legal) to its material under its government and prohibiting such influence of other persons. If direct influence meaning attitude of subject to the object shows material side of material relations, deprivation of such influence other persons identifying place of property in the economic turnover, shows social system of relations of such persons.

For distinguishing material rights following signs marked in the civil law science.

Direct orientation to individual marked material (private material); strictly specified legal meaning and methods of arising, character of perpetuity, duration right, privileged satisfaction of material – legal requirements, right to have an advantage in competition, material legal methods of protection, also other features as their absolute rights^{xi}. As a result of continual analyzing “features” of material rights by modern scientists was determined that each of them expressed urgency. If abovementioned material signs were absent in the national law, legal condition of persons possessing material right and persons not obliged obligatory signs but, having obligatory rights were expressed. Such cases stated in the literatures as mutual joining traditions of obligatory rights and material legal methods and as arising mixed material – obligatory right^{xii}.

Along with that such scientific research investigations shouldn’t break borders of material legal and obligatory legal institutions. Though the law allowed it^{xiii}.

The question is that national law will give feature of withstand against all (priority material right standing in order with property), and what is the legal consequences of admitting legal – material nature of such right. Though indisputable signs of material right exist, on using regulations about absolute rights of material rights, we should apply (closed) list strictly fixed with law which is a single base of continental right system^{xiv}.

Also, article 165 of Civil Code of the Republic of Uzbekistan strengthens approximate list of material rights and on this base using phrase “along with property right, followings are considered as material rights.....” shows that this is not closed law^{xv}. Absence of strict list of material rights has a practical result. For the first, completely denies legal sense of material rights and strict registering method of arising, also expressing in the Code material rights in

standard way, should distinguish material rights from obligatory rights concluding voluntarily by parts^{xvi}. It results in arising relativity actual condition which is hardly divided on legal base, especially if the ownership title was not indicated on giving property, this case will be expressed clearly. For the second, practical right is not divided into material and obligatory rights. As such dividing results in arising some misunderstandings on method of defense in court. For the second, enlargement list (types) of material rights is not recommended according to the followings: a) finding some material rights as material b) existence of specimen (constructions) left as heritage from soviet law.

In result infinitely arises rights “on property” written to the profit of some person (in practice widely distributed on organizing legal entities) executed to one object and results in further increasing powers. Several rights arise in the form of changed view of property right: Constant ownership and using, corporative management, independent management, termless rent and so on.

As we know, ownership right is absolute right of the property owner. But it doesn't mean that he has unlimited powers. Its borders may be fixed only when using this right^{xvii}. Restrictions and limits of ownership right will be shown on existence of other person's right to this property. On relation of property owner with other persons, their possession to his property will not to reduce to limitation. Limitations exist in own possession of property owner (article 172 of Civil Code). Western lawyers based on theory “social phase” for supporting public limitation of absolute ownership of property right^{xviii}. According to the law of Germany using property must serve to prosperity of government (like part 2, article 6 Civil Code of Kazakhstan).

Existence of property owner with other property owners in one place, requires obeying freedom of mutual possessing right and acknowledgment each other, also taking into account interests of society. For that reason, law may restrict freedom of property ownership for the prosperity of society And it, in its turn doesn't deny inviolability and freedom of property. The problem is that how, when and measure of restriction on using. At that, we must distinguish restrictions made by owner and other persons. According to the part 2 article 172 of Civil Code, one of the main conditions of executing property right is that property owner must allow other persons to use his property in the order determined by law.

It gives right to other persons to use his property without owners permission. Also it doesn't need any actions of owner, it must not only disturb to his activity.

According to part 3 article 172 of Civil Code, property owner hasn't right to use his predominant situation illegally, do actions breaking interests, rights of other persons protecting by law. For example, building walls fencing sun from neighbor's courtyard.

So, servitudes according to the structure may be positive that means that owner may give his property to other persons in limited terms. And negative type, property owner takes responsibility not to harm to persons using real estate.

The difference between material right and restrictions, though restriction of property ownership right gives third persons ownership right, but will not be their civil right nor property. Material rights give these civil rights^{xix}.

Servitude must be distinguished from general term expressed in the property rights of third persons “encumbrance” (bar, cumber). For the first, obligatory right may be encumbering, for the second, “public servitude” are not considered as encumbering material rights^{xx}.

On the basics of general rules, property owner mustn't be forced to act on the profits of other person. In such case, may arise only in comparing activity, necessary for executing by owner with the right of other owner, and possessing material rights against that property^{xxi}.

Servitude (lat.servitas- service of stuff) means limited material right, right to limited use other's property (positive servitude) or prevention profit from own property with harming to others (negative servitude) (clause 5. 1 item, article 165 of civil code).

Article 173 of Civil Code “in spite of the name of right of limited using other's land area (servitude) in fact servitude is denoted according to the real estate and person” (part 1, article 173).

Person who has right to require stated servitude may not be even owner of real estate, but may be a person with right of life tenure or permanent owning and use. Requiring servitude may not only to neighbor's land but also to any land area (part 1, article 173).

Servitude is used for passing through other's land area, conducting electricity, setting water networks, that means in cases, when property owner can't provide his requirements without identification of servitude. At that property charged with servitude called serving and property provided with servitude is called possessing.

Agreement on appointing servitude between persons, should be registered according to the order of registering real estate. In case if there will not be agreement, it will be solved in the court, by the claim of person, required appointing servitude (part 4, article 173 of Civil Code). But on appointing servitude owner of the "serving" land area has right to require payment for using from person to whom was appointed servitude, if other wasn't stated in law (part 6, article 173 of Civil Code).

Applying servitude against land area, will not deprive owner of the land area from the right of owning, using and possessing. (part 3, article 173 of Civil Code). Servitude has feature to pass on, that means it preserves from passing ownership right to server and owner, if other was not stated in the law (part 2, article 165 of Civil Code).

In contrast to other material rights, servitude hasn't economic value, because it is not alienated with owner land area. At that we can see an accessory and successive character of servitude^{xxii}.

Servitude serves only for providing "necessity" of real estate. So servitude may be annulled when such "necessity" is absent. Civil Code of Uzbekistan in contrast to Civil Code of Russia, didn't search any base for annulling servitude. Besides, Civil Code acknowledges legally registered servitude or obligatorily appointed servitude (part 4, article 173 of Civil Code).

In the countries were acting general law (servitude, easement), servitude trusts to old experiences (easements unplied from prior existing use) significance (necessity) actual permission (prescriptive easements) or other sides of equal rights (esfoppel).

Right and servitude on neighborhood. This branch of law is not developed well in our country^{xxiii}. Right on neighborhood directed to regulate following cases: deliberate harm-doing (intentional nuisance), changing land area (jus additancy) or (development right), superficies, breaking building borders, designedly building the wall (spiteful fencing), illegal using rights (abuse of rights), competition (aemulatio), breaking neighborhood relations (troubles de voisinage), estoppel and others^{xxiv}.

For example, D.Lock connected origin of absolute ownership right "by contract agreement" or by necessity of marking borders of his land area with his neighbors^{xxv}. Such cases caused to arise institute of neighborhood right^{xxvi}.

The feature of real estate is that its belonging to nature world. In case of harming land area because of earthquake the responsibility will be at owner. If such harm will be made by neighbors, responsibility will be at them.

Neighborhoods right presents 4 variants of solving this matter: 1) property owner should stand negative influence of neighbors (part 1 article 172); 2) property owner should permit to his neighbor to use his property in limited way. (part 2 article 172); 3) hasn't right to break other's right by illegal using own advantage (part 3 article 172); 4) owner has right to remove breaking of own rights by claim (article 231, (part 3 article 165).

Ownership right to the land area covers air are above it and interior of the Earth under it "ab inferis usque da sidera" that means from the hell to the stars. Due to that owner of one property can't give orders to others, and others can't shed with buildings sun and air. In other side property owner uses his property at own discretion by eliminating any breakings of law.

The vacuum between such cases is covered with negative and positive servitude. The main problem is that, as far as the owner can freely use his property, without receiving protest of neighbors, when breaking borders, this will be considered as illegal using authorities. According to the neighborhood right, firstly, property owner should stand negative influences of neighbors if they have land area. According to the law of Germany, on normal, common

activities, the permission of neighbors is not required. For example sound of music. But if it exceeds the borders it will be considered as breach of the law. (Code of administrative responsibility article 192 dated on April 1, 1995).

For the second, on executing normal activity, property damage is forbidden. Influence to other's property (imissio) can't be estimated, as it hasn't any significance, and will not damage. Such influences are invaluable (906 GGU).

The solving matter is preserving owner of immovable property from real loss caused by law. Part 4 of article 172 obliges to protect health of people and environment, remove losses made to property owner.

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