

---

# *The Right of Ownership in the Contemporary Civil Law of Russia*

---

**Evgueny A. Sukhanov\***

---

This article provides an overview of the current legal regime governing property rights in the Russian Federation. The fall of communism and consequent rise of a market economy in Russia created a need for reformulating of the concept of ownership, as understood in both economic and legal contexts. In this article, the author briefly traces the legislative evolution of this concept, then focuses on its current articulation in the *Civil Code of the Russian Federation* ("C.C.R.F.") as a central feature in a broader system of rights *in rem*.

In particular, the article discusses the forms in which ownership may exist, describing the associated rights and duties, as well as the types of objects that may be held in each form of ownership. Private ownership, as a recent innovation in Russian law, is carefully examined and contrasted with the reworked structures of public ownership that the C.C.R.F. also sets out. Finally, the author identifies remedies that exist in the event of a violation of either private or public rights of ownership.

Cet article présente une vue d'ensemble du régime juridique actuel gouvernant les droits de propriété dans la Fédération russe. Le déclin du communisme et l'ascension conséquente d'une économie de marché en Russie a créé la nécessité de redéfinir le concept de propriété tel qu'il est compris dans les contextes juridique et économique. Dans cet article, l'auteur trace brièvement l'évolution législative de ce concept, puis se concentre sur son articulation courante dans le *Code civil de la Fédération russe* comme étant une caractéristique centrale dans un système plus vaste de droits *in rem*.

Cet article discute en particulier des diverses formes dans lesquelles le droit de propriété peut exister. Il décrit les droits et obligations associés au droit de propriété, ainsi que les types de biens pouvant faire l'objet de chaque forme de droit. Le droit de propriété privé, innovation récente en droit russe, est attentivement examiné et comparé aux structures récemment amendées du droit de propriété public dans le Code civil. Finalement, l'auteur identifie les remèdes qui existent en cas de violation d'un droit de propriété privé ou public.

---

\* Professor, Moscow State University.

© McGill Law Journal 1999

Revue de droit de McGill 1999

To be cited as: (1999) 44 McGill L.J. 301

Mode de référence : (1999) 44 R.D. McGill 301

---

**Introduction****I. The Right of Ownership****II. Private and Public Ownership***A. Private Ownership**B. Public Ownership***III. Termination of the Right of Ownership****IV. Remedies****References**

---

## Introduction

Russia's shift from a communist regime to a market economy has resulted in a fundamental change with respect to how the concepts of property and ownership are understood within different economic systems and how they are expressed in law. To this end, the legislative formulation of the right of ownership has undergone significant changes through the adoption of laws which now govern these types of legal relations. This evolution can be traced through a series of legislative enactments. The law *On Ownership*<sup>1</sup> in the U.S.S.R. was the first law formulating new approaches to the right of ownership. Subsequently, the Federal law *On Ownership*<sup>2</sup> considerably expanded and developed the approaches of the previous law. Next was the implementation of section 2 of the *Fundamentals of Civil Legislation of the U.S.S.R. and Union Republics*<sup>3</sup> which is applicable in the territory of the Russian Federation to the extent that it does not run contrary to new Russian laws. Lastly was Division 2 of the new *Civil Code of the Russian Federation*<sup>4</sup> of 1994.

During this period of development, the political declarations and statements that were characteristic of the old approach to law-making were abandoned. Instead, new legal concepts and structures were canvassed in the new legislation. This new framework also established a diversity of property rights which were not limited to the right of ownership. In the Federal law *On Ownership* of 1990, the legislator for the first time abandoned the economic categories of the "forms of ownership"—a tendency that became more explicit in the rules enacted as the *Fundamentals*—and the right of ownership itself became an integral part of a broader concept of rights *in rem*. Thus, the contemporary civil law concept of real rights—the right of ownership being the most important right—was established in law. In essence, this concept reflects a clear distinction between the economic and legal understandings of the relations to which ownership gives rise.

Ownership is understood as an economic or factual relationship subject to legal formalization. First, ownership implies a human relationship to specific things. Such property is appropriated by one individual, the owner, to the exclusion of all others. Second, the concept of ownership also includes the attitude of the owner to the appro-

---

<sup>1</sup> *Vedomosti S"ezda Narodnykh Deputatov S.S.S.R. i Verkhovnogo Soveta S.S.S.R.* (1990) No. 11, item 164.

<sup>2</sup> *Vedomosti S"ezda Narodnykh Deputatov R.S.F.S.R. i Verkhovnogo Soveta R.S.F.S.R.* (1990) No. 30, item 416.

<sup>3</sup> *Vedomosti S"ezda Narodnykh Deputatov S.S.S.R. i Verkhovnogo Soveta S.S.S.R.* (1991) No. 26, item 733 [hereinafter *Fundamentals*]. Today in the territory of the Russian Federation, until Part 3 of the C.C.R.F. is adopted, ss. 6 and 7 of the *Fundamentals*, which deal respectively with the law of inheritance and private international law, are still in effect.

<sup>4</sup> Part 1 was enacted in 1994: *Sobranie zakonodatelstva R.F.* (1994) No. 32, item 3301; and Part 2 was enacted in 1995: *Sobranie zakonodatelstva R.F.* (1996) No. 5, item 410 [hereinafter C.C.R.F.]. For the English-language translation, see P.B. Maggs & A.N. Zhiltsov, eds., *The Civil Code of the Russian Federation*, trans. P.B. Maggs & A.N. Zhiltsov (Armonk, N.Y.: M.E. Sharpe, 1997).

priated property, since people treat their own property differently from property belonging to others. The law must therefore address these two critical aspects of the ownership equation: the relations of property owners to third parties, and the owner's power over the property itself.

At the same time, it is important to recognize that the objects of ownership are commodities which, in a free market, may include not only things, but also the fruits of work and services. Such objects include commodities of non-material value and the non-material products of creative activity, as well as other rights.<sup>5</sup> Civil law relations in these matters can involve not only real rights, but also personal rights—*i.e.*, obligations—and exclusive rights—*i.e.*, patents and trademarks. Even under the heading of real rights alone, the relations one might have to property are not limited to the right of ownership. In other words, a commodity in the economic sense does not always constitute an object of the right of ownership in the law. Only individually determined things form the objects of ownership.

Economic relationships resulting from an appropriation occur in various forms depending on whether the entity that appropriates a thing is an individual, a group or collective, the State, or society at large. Thus there are individual, group, public, and mixed forms of appropriation. These economic forms of appropriation are traditionally called "forms of ownership". A form of ownership is an economic concept, not a legal one. In proclaiming the recognition and equal protection of private, public, and other "forms of ownership", article 212(1) C.C.R.F. evokes economic categories, not legal ones. The private form of ownership, also in the terms of the *Constitution of the Russian Federation*, is a concept for the appropriation by any private non-state, non-public persons, distinguished in this sense from public or communal appropriation (state and municipal or public ownership).<sup>6</sup>

The transfer of property under a market economy requires, as a matter of principle, that commodity owners have equal rights of alienation and acquisition in relation to property. Therefore, the principle of equality among all forms of ownership, which is of an economic and not of a legal nature, becomes necessary. However, to provide for the "equality of all forms of ownership" in the legal sense is impossible. For instance, any property, including that which is withdrawn from commerce, may be held under state ownership. The State may acquire such property in ways that are not available to physical persons and legal entities, for example, by way of taxes, duties, seizure, confiscation, and nationalization. On the other hand, legal entities and public legal bodies

---

<sup>5</sup> For instance, those formalized in the form of securities or a deposit with a credit organization.

<sup>6</sup> The Federal law *On Ownership* specified "the right of ownership of public organizations," along with the right of private ownership of individuals and legal entities. Today, according to art. 213(4) C.C.R.F., legal persons, including political parties, are private owners of the property belonging to them.

are liable for their debts upon all their property, whereas individuals benefit from certain exemptions established by law.<sup>7</sup>

As such, article 212 C.C.R.F. mentions only the "recognition" of different forms of property and the equal protection of the rights of all owners, but not "the equality of all forms of property" as provided for under the U.S.S.R. law *On Ownership*. The equality of private and public owners is manifested through the recognition of equal legal capacity. This equality is further demonstrated by the ability of private owners, both individuals and legal entities, to own any property except property withdrawn from commerce or limited in commerce by law. Such property is not limited either in quantity or value, unless such limitations are established by law for the public benefit.<sup>8</sup> Moreover, the advantages and protections given to public owners under the former legal regime are absent from the new C.C.R.F.

The right of ownership is the most comprehensive right, giving the broadest legal power over property. Yet ownership is not the only right *in rem*; there are other more limited real rights, all sharing characteristics with the right of ownership.<sup>9</sup> First, all real rights formalize the relationship between a person and a thing, according the person an opportunity to use the thing in his own interests without the participation of other persons. Second, real rights may be invoked to protect other types of rights. For example, in the setting of contractual obligations, the person claiming the right to performance may satisfy his interest through some type of claim over real property. Real rights are protected by the specific features they exhibit. Finally, only individually determined things may be the object of real rights. If the specific thing is destroyed or lost, all real rights associated with it are automatically terminated. This differs from the law of obligations where the object is to control the conduct of the debtor. Where the debtor dies, the obligation is not extinguished, and it may be passed on to other persons through the mechanism of legal succession.

As long as the property exists, limited real rights continue to exist even if the owner of the property changes, for example, if the thing is sold or transferred by succession. Thus, real rights encumber a thing; they follow the thing, not the owner. This "right to follow" is thus another characteristic feature of real rights. However, limited real rights are of a derivative nature, dependant on the right of ownership as the basic real right. Therefore, in the case of absence or termination of the right of ownership to a thing, it is impossible to establish or retain a limited real right over it as in the case, for example, of ownerless property. Finally, because limited real rights usually arise independently from the will of the owner, the nature and content of these rights is determined by law, not by contract. Therefore, the law itself establishes all the types of limited real rights and determines their scope and content. This results in the law fixing an

---

<sup>7</sup> Annex 1 of the *Code of Civil Procedure of the Russian Federation, Vedomosti S"ezda Narodnykh Deputatov R.F. i Verkhovnogo Soveta R.F.* (1964) No. 24, item 407, as am. by *Sobranie zakonodatel'stva R.F.* (1995) No. 49, item 4696.

<sup>8</sup> Art. 213(1), (2) C.C.R.F.

<sup>9</sup> Art. 216 C.C.R.F.

exhaustive list, or *numerus clausus*, of limited real rights. Contracting parties can neither create a new right yet unknown to the law, nor can they change the scope of any existing real right.

Under Russian civil law, the objects of all limited real rights, with the exception of the pledge and the right of retention, are immovable objects. These rights can be divided into three groups. The first group contains the real rights of certain legal entities over the economic activity of property owned by another. These are the rights of economic management<sup>10</sup> and of operative administration<sup>11</sup> which characterize the independence of property of such legal entities as unitary enterprises and institutions.

The second group confers limited real rights with respect to the use of another person's land. These rights include the right for life of inheritable possession to land belonging to individuals,<sup>12</sup> the right of permanent and unlimited use of land,<sup>13</sup> servitudes, and the right to develop another person's land parcel. This right belongs to those holding a right of inheritable possession or permanent use, and entails the power to erect buildings, structures, and other objects of real estate which become the property of the developer.

The third group contains rights of limited use over other real estate, mainly housing premises. These rights are the rights of relatives of the owner of the housing premises to a limited use of the housing premises,<sup>14</sup> and the right to use specific housing premises—*e.g.* a dwelling house or another object of real estate like a land parcel—for life. The latter right arises through either contract<sup>15</sup> or testamentary refusal.<sup>16</sup> This right allows an individual to reside in housing premises belonging to another person, or to make limited and purposeful use of another person's real estate. It is debatable whether the right to pledge a thing—where a thing is the object of a pledge instead of a real right—and the right to withhold a thing<sup>17</sup> should be categorized as real rights.

The categories of real rights just described upon which Russian concepts were modelled were originally defined in German-based legal systems seen today in Germany, Austria, and Switzerland. Somewhat different types of real rights are also found in French legislation and in other countries of continental Europe. A special section of the first *Civil Code of the Russian Soviet Federated Socialist Republic* of 1922 was devoted to real rights. When Soviet civil legislation was codified in the 1960s, this category was omitted since the State's right to land was effectively exclusive and did not

---

<sup>10</sup> Art. 294 C.C.R.F.

<sup>11</sup> Art. 296 C.C.R.F.

<sup>12</sup> Art. 265 C.C.R.F.

<sup>13</sup> Art. 268 C.C.R.F.

<sup>14</sup> Art. 292 C.C.R.F.

<sup>15</sup> Art. 602(1) C.C.R.F.

<sup>16</sup> Art. 538(2) of the *Civil Code of the Russian Soviet Federated Socialist Republic, Vedomosti S"ezda Narodnykh Deputatov R.F. i Verkhovnogo Soveta R.F.* (1964) No. 24, item 406 [hereinafter 1964 Civil Code].

<sup>17</sup> Art. 359 C.C.R.F.

allow for the existence of other real rights, including servitudes. Real rights were re-instituted in the Federal law *On Ownership*, and were described in detail and legally fixed in article 49 of the *Fundamentals*. The current C.C.R.F. explicitly treats the right of ownership as the principal type of real right.

## I. The Right of Ownership

The right of ownership is the broadest real right. It allows its holder to exclusively determine the nature and use of the property and, in the process, confers complete economic dominion over the property. In article 209(1) C.C.R.F., the legal capacity of the owner is described through the use of the “triad” of legal powers: possession, use, and disposition.

The power to possess is understood as the legal authority to have the property and keep it in one’s household or enterprise. The power to use the property is a legal permission to exploit it for economic or other purposes by utilizing the property’s useful qualities. Use is closely related to the legal power to possess because, in most cases, one cannot use property without actually possessing it. The power to dispose of property confers an authority to determine the legal life of property by changing its holder, state, or designation through alienation under a contract, transfer by inheritance, destruction, or loss.

In the aggregate, these legal powers fully cover all the possibilities of acting granted to the owner by law. Suggestions that other legal powers—*e.g.* the power of management—could be added to this triad have been unsuccessful. More detailed consideration of these legal powers shows that they are not independent possibilities provided to the owner, but only ways to exercise the legal powers inherent in ownership.

All three powers are concentrated in the owner. However, separately and sometimes simultaneously, they may not belong to the owner but be vested in another legal possessor of the property such as a lessee. A lessee not only possesses the property of the owner-lessor and uses it under the contract with the lessor, but is entitled, with the lessor’s consent, to sublease it to another person or to make considerable improvements to the property. Such actions may change the property’s original state to a considerable degree, or constitute its disposition within certain limits. Thus, it can be said that the triad of powers is not really sufficient to characterize fully the rights of the owner.<sup>18</sup>

---

<sup>18</sup> The description of legal powers of the owner as a “triad” of possibilities is typical of the Russian legal system. It was legally fixed for the first time in 1832 in vol. 10, Part 1, art. 420 of the *Code of Laws of the Russian Empire*. Following in this tradition, the “triad” passed on to the Civil Codes of 1922 and 1964, and later to the *Fundamentals* of 1961 and 1991, as well as to the current C.C.R.F. There are other definitions of this right in different foreign laws. For instance, under art. 903 of the *Civil Code of Germany*, the owner “may dispose of a thing at his own discretion and to the exclusion of all others on it.” Under art. 544 of the *Civil Code of France*, the owner “uses and disposes of things in the most absolute manner.” In Anglo-American law, scholars count up to twelve different legal powers of the owner which different persons may have in various combinations; a consequence of the

The essence of the right of ownership lies not in the number and designation of legal powers, but in the degree of real legal power which is granted and guaranteed to the owner by the legal system. For example, the 1964 Civil Code formally granted equal powers of possession, use, and disposition to all owners. However, the legal powers of the state-owner with respect to the nature and scope of rights could never be compared to the legal powers of individual owners. Practically speaking, the power of individual owners was subject to numerous limitations.

From this perspective, the main feature of the owner's rights in Russian civil law is the power to exercise these rights "at [the owner's] discretion."<sup>19</sup> The owner can make an independent decision about what to do with his property and may be guided exclusively by his own interests, provided that the decision does not conflict with any statute or other legal act, and that it does not violate the rights and legal interests of other persons. This is the essence of the legal power of the owner over property.

An important feature of the owner's legal rights is that they allow the owner to exclude all other persons from any action affecting the owner's property. In contrast, the powers of any other legal possessor—even those powers having the same designation as the legal powers of the owner—are insufficient to exclude the rights of the property owner. Instead, the possessor's powers usually arise through the will of the owner and operate within the limits provided for by the owner, as with, for example, a contract of lease.

On the other hand, the right of ownership is not absolute; the law establishes certain limitations to the content of the right. According to article 209(2) C.C.R.F., the owner has the right with respect to his property to take "any actions not contrary to a statute or other legal acts and not violating the rights or interests protected by a statute of other persons." Thus, since under legislation housing premises are intended only for dwelling by citizens, their use for other purposes such as offices or warehouses—even by the will or with the consent of their owner—is allowed only if the classification of these premises is transferred from that of housing to non-housing in accordance with the procedure defined by legislation.<sup>20</sup> The owner also has no right to use his property with the intention of causing harm to another person.<sup>21</sup> Thus, the legal rights of the owner are restricted by certain legal limitations of purpose.

A law or statute may also provide for restrictions on the exercise of ownership. For example, the pledgor, while remaining the owner of a pledged thing, does not have the authority to dispose of the thing without the consent of the pledgee.<sup>22</sup> Moreover, the rights of the owner of immovable property acquired under a contract of lifetime sup-

---

nature of the common law that does not lend itself to a legally-fixed definition of the right of ownership.

<sup>19</sup> Art. 209(2) C.C.R.F.

<sup>20</sup> Art. 288(2), (3) C.C.R.F.

<sup>21</sup> Art. 10(1) C.C.R.F.

<sup>22</sup> Art. 346(2) C.C.R.F.

port with maintenance do not include the power to alienate or dispose of the property without the consent of the recipient of the rent.<sup>23</sup>

The right of ownership over land and other natural resources is subject to the greatest number of restrictions.<sup>24</sup> First, the very possibility of private ownership of such objects, recognized by article 9(2) of the *Constitution of the Russian Federation*, is considerably limited with respect to land parcels and is completely excluded for a number of natural resources. Second, the possibility that these objects become the subject of civil law transactions, including alienation, is also limited,<sup>25</sup> which restricts the owner's power to dispose of them. Third, even those rights permitted by statute to owners of land and other natural resources are subject to environmental prescriptions and prohibitions and, in a number of cases, by the designated purpose of the property.

Furthermore, the "benefit" of holding property and receiving income from its use must be considered along with the "burden" of bearing expenses, costs, and risks related thereto. Article 210 C.C.R.F. specifically points out the owner's responsibility for the maintenance of property, unless a statute or contract places this burden or part of it on another person. For example, the protection of leased property may be transferred to the lessee, or the management of a bankrupt's assets may be assumed by a bankruptcy manager.

The owner also bears the risk of damage to or destruction of his property which occurs in the absence of fault.<sup>26</sup> In fact, this risk is part of the burden of the owner. However, this risk can be transferred to other persons under contract as well as by force of statute. For instance, such risk may be borne by a guardian who becomes administrator of the property of an owner who is under guardianship.

The owner is entitled to transfer his rights of possession, use, and disposition while remaining the owner of the property.<sup>27</sup> This occurs, for example, when an owner leases his property. Article 209(4) C.C.R.F. specifically addresses this situation and empowers the owner to transfer property to another person without transferring the right of ownership to the property.<sup>28</sup> This device, called "entrusted administration", is a way for the owner to exercise legal powers of disposition without establishing a new right of ownership to the property.

The concept of entrusted administration provided for by the C.C.R.F. has nothing in common with the concept of the "trust". There were attempts to introduce this concept into Russian civil legislation under the influence of absolutely alien Anglo-

---

<sup>23</sup> In conformity with arts. 601, 604, 605 C.C.R.F.

<sup>24</sup> Art. 209(3) C.C.R.F.

<sup>25</sup> Art. 129(3) C.C.R.F.

<sup>26</sup> Art. 211 C.C.R.F.

<sup>27</sup> Art. 209(2) C.C.R.F.

<sup>28</sup> Art. 1012(1) C.C.R.F.

American approaches.<sup>29</sup> With entrusted administration, the administrator—*e.g.* the guardian of the ward's property or the testamentary executor who holds the property of the succession—uses another person's property without becoming its owner. The administrator does not act for his own benefit, but in the interests of the owner, ward, beneficiary, or heir. This situation may arise either through the prescription of a statute or under a contract between the owner and the entrusted administrator. For example, the owner may, for compensation, entrust the administrator to use his securities to receive income.<sup>30</sup> The entrusted administrator has the power to possess, use, and even dispose of the property. He may also perform operations with this property in his own name, but not for his own benefit.

In the case of a trust, the settlor transfers his rights or a certain part thereof to the trustee who acts in the interests of the beneficiary. It is also possible for the settlor and the beneficiary to be the same person. Each of the participants in the trust relationship has the legal powers of the owner to some degree, *i.e.*, each of them is vested with a right of ownership.

Under the approach used in continental European legal systems, the trust allows the right of ownership to be split among several subjects, and for that reason it is impossible to say who is really the owner of the property placed under trust management. Under Anglo-American systems, such a situation does not purport any contradictions since the right of ownership is by definition constituted by multiple and independent rights of ownership. Such an approach is alien to continental European legal systems where a key postulate is the impossibility of establishing two equal rights of ownership in the same property. Therefore, the transfer by the owner of part or even all his legal powers to another person, including to a manager, does not lead to the loss of the right of ownership because the transfer is not limited to these legal powers, *i.e.*, by their "triad".

From a practical perspective, borrowing the trust concept in the absence of the common law's system of Equity leads to a lack of control over the trustee's relations with the settlor who, among other things, acts as a beneficiary. It is clear, then, that negative consequences could result from a broad application of the trust concept, which was designed for the more efficient management of state and municipal property through the transfer thereof to private managers.

---

<sup>29</sup> See para. 1, Presidential Decree No. 2296 "On Trust Ownership (Trust)" (24 December 1993) *Sobranie aktov Prezidenta i Pravitelstva R.F.* (1994) No. 1, item 1. In connection with the adoption of Parts 1 and 2 of the C.C.R.F. which directly regulate the relationships of property trust management, Presidential Decree No. 2296 has now lost its legal force.

<sup>30</sup> Arts. 1012-26 C.C.R.F.

## II. Private and Public Ownership

### A. Private Ownership

Citizens may be private owners of any property,<sup>31</sup> including various types of immovable property. Under article 36(1) of the Constitution, private citizens have the right to own land parcels. The legislation authorizes private ownership by citizens who acquire the property for individual housing or any other construction, gardening or individual smallholding or summerhouse smallholding, or engagement in peasant or farm enterprise.<sup>32</sup> Moreover, citizens who acquire ownership of buildings, structures, or other immovables in rural residential centers, and lands of agricultural designation through purchase or inheritance also have the right to acquire ownership of the land parcels on which such objects stand.<sup>33</sup> Legal acts of privatization allow citizens to acquire ownership of land on which privatized enterprises stand, as well as immovables which have passed into their ownership.

Property owned by citizens may include obligations as well as real rights. A citizen's property may also include such rights of claim as bank deposits or rights of use in the property of another or corporate rights—*i.e.*, the right to participate in joint stock and other economic societies—and certain other legal powers categorized as exclusive rights. These do not fall under the regime of real rights, but comprise the property belonging to a citizen as a single complex. This complex is the object of claims by the citizen's creditors, and in the event of his death, it will form part of the mass of the succession.

Today, the quantitative limitations placed on citizens' rights of ownership under the former legal regime have been repealed. These limitations stipulated the permissible

---

<sup>31</sup> Art. 213 C.C.R.F.

<sup>32</sup> Federal law *On the Right of Citizens of the Russian Federation to Receive in Private Ownership and for Sale Land Parcels for Engagement in Individual Subsidiary Small Holding, Cottage Smallholding, Gardening and Individual Housing Construction, Vedomosti S"ezda Narodnykh Deputatov R.F. i Verkhovnogo Soveta R.F.* (1993) No. 1, item 26; Federal law *On Peasant (Farm) Enterprise, Vedomosti S"ezda Narodnykh Deputatov R.F. i Verkhovnogo Soveta R.F.* (1991) No. 1, item 10; Presidential Decree No. 323 "On Urgent Measures to Implement Land Reform in the R.S.F.S.R." (27 December 1991) *Vedomosti S"ezda Narodnykh Deputatov i Verkhovnogo Soveta R.F.* (1992) No. 1, item 53; Presidential Decree No. 1767 "On Regulation of Land Relations and Development of the Agrarian Reform in Russia" (27 October 1993) *Sobranie aktov Prezidenta i Pravitelstva R.F.* (1993) No. 44, item 4191; Presidential Decree No. 2287 "On Bringing the Land Legislation of the Russian Federation in Line With the Constitution of the Russian Federation" (24 December 1993) *Sobranie aktov Prezidenta i Pravitelstva R.F.* (1993) No. 52, item 5085; and Presidential Decree No. 1263 "On the Sale to Citizens and Legal Entities of Land Parcels Designated to Development Which are Located in the Territories of Urban and Rural Settlement, or the Right to Lease Them" (26 November 1997) *Sobranie zakonodatelstva R.F.* (1997) No. 48, item 5546.

<sup>33</sup> See para 1, Presidential Decree No. 198 "On the Right of Ownership of Citizens and Legal Persons to Land Parcels under Immovables in Rural Areas" (14 February 1996) *Sobranie Zakonodatelstva R.F.* (1996) No. 8, item 740.

number or size of living premises, including the number of apartments, cottages and summer houses, motor vehicles, and "means of production".<sup>34</sup> Now under article 213(2) C.C.R.F., the quantity and value of property owned by citizens is not limited, unless limitations are necessary to defend the bases of the constitutional order and the morals, health, rights, and legal interests of other persons or to ensure the national security of the State. Thus, the law provides broad, though not unlimited, possibilities for the development of private ownership by citizens and accordingly creates the necessary legal guarantees therein.

Only property excluded from commerce<sup>35</sup> cannot be owned by citizens, since such property is owned exclusively by the federal State or subjects of the federation. In particular, the current legislation does not permit citizens to privately own parts of the subsoil or forests. Specific types of property that cannot be owned by citizens must be directly stated in a statute and cannot be established by regulatory acts. A similar rule also applies to property that can only be owned by citizens with special permission, which is therefore limited in commerce.<sup>36</sup>

Legal persons are the individual and sole owners of their property,<sup>37</sup> including property transferred to them as contributions or fees from participants or members, unless this property is directly transferred to them for temporary use. No participatory share, "collective" or any other ownership on the part of the founders emerges with respect to the property of legal persons. The property of unitary enterprises and institutions is an exception because this property remains an object of the right of ownership of the founders and, therefore, belongs to these legal persons by the limited right in things. Legal persons, with the exception of unitary enterprises and institutions, are private owners of all their property.

Property owned by legal entities may be either immovable or movable property not withdrawn from commerce. No limitations as to quantity or value of such property may be established by the State, except in instances provided by a federal law when such limitations are necessary to defend the bases of constitutional order and the morals, health, rights and legal interests of other persons, or to ensure the national security of the State.<sup>38</sup>

Joint stock and other economic societies and partnerships which participate as buyers in the process of privatization of state and municipal property may be owners of land parcels susceptible of privatization.<sup>39</sup> The category of private land owners may also

---

<sup>34</sup> Which, incidentally, was declared for the first time in statutes on ownership.

<sup>35</sup> Art. 129(2) C.C.R.F.

<sup>36</sup> Art. 129(2)(ii) C.C.R.F.

<sup>37</sup> Art. 213(3), (4) C.C.R.F.

<sup>38</sup> Art. 213(2) C.C.R.F.

<sup>39</sup> See Presidential Edict No. 301 (25 March 1992) *Vedomosti S"ezda Narodnykh Deputatov R.F. i Verkhovnogo Soveta R.F.* (1992) No. 14, item 761; and Presidential Edict No. 631 (14 June 1992) *Vedomosti S"ezda Narodnykh Deputatov R.F. i Verkhovnogo Soveta R.F.* (1992) No. 25, item 1427. See also paras. 4.2, 4.6, 4.10 of Presidential Edict No. 485 (16 May 1997) *Sobranie zakonodatelstva R.F.*

include agricultural production cooperatives created in the form of agricultural or fishery cartels (collective farms) that have acquired land parcels from their members as part of their participatory share.<sup>40</sup> Legal persons that have become owners of buildings, structures or other immovables in rural residential areas and lands classified as agricultural are entitled to acquire ownership of land parcels on which these immovables are located. Under Presidential Decree No. 1263,<sup>41</sup> all legal entities have the right to purchase at auction land parcels designated for development and located in the territories of urban and agricultural residential centers. However, some general limitations still apply, as established by statute with respect to private land owners. These restrictions are concerned primarily with the purpose-oriented use and alienation of land, and the necessity to observe environmental prescriptions and prohibitions.<sup>42</sup>

The property of legal persons may also include various rights of claim and obligations like non-cash money funds and "paperless securities", corporate rights, and certain exclusive, industrial rights like trade names, trademarks, and service marks. Such rights, together with real rights, can form a single property complex that comprises the total property of a legal entity. This complex can be the object of a legal succession, under the reorganization of a legal person, or of creditors' claims. The latter possibility arises because legal persons are liable for their obligations upon all property which belongs to them without any exemptions.<sup>43</sup>

Non-commercial organizations—which include public and religious organizations, charitable and other foundations, associations and unions of legal persons, institutions and non-commercial partnerships<sup>44</sup>—participate in property commerce to the extent provided for by their charters. Therefore, these organizations have the right to use property belonging to them only for the achievement of those purposes which are specifically identified in their founding documents.<sup>45</sup> Thus, although they are indeed private owners, they have more limited powers than most private owners. Most non-commercial organizations, including societal amalgamations and trade unions, may be owners of land parcels.<sup>46</sup> However, no non-commercial organizations have the right to distribute profits received from entrepreneurial activity among their participating members.

---

(1997) No. 20, item 2240; Presidential Decree No. 1535 "Basic Provisions of the State Program of Privatization of State and Municipal Enterprises in the Russian Federation after July 1, 1994" (22 July 1994) *Sobranie zakonodatelstva R.F.* (1994) No. 13, item 1478.

<sup>40</sup> Art. 3(3), Federal law *On Agricultural Cooperatives*, *Sobranie zakonodatelstva R.F.* (1995) No. 50, item 4870.

<sup>41</sup> *Supra* note 32.

<sup>42</sup> Art. 129(3) C.C.R.F.

<sup>43</sup> Art. 56(1) C.C.R.F.

<sup>44</sup> Art. 50(3) C.C.R.F.

<sup>45</sup> Art. 213(4) C.C.R.F.

<sup>46</sup> Art. 25(1), Federal law No. 10-F2 of 12 January 1996 *On the Trade Unions, Their Rights and Guarantees for Their Activity*.

## B. Public Ownership

Public ownership under Russian legislation is of two types: state and municipal. State ownership is characterized by a multitude of owners, represented by the Russian Federation as a whole and its subjects which include its republics, *krais* or provinces, and *oblasts* or regions. These subjects act not in their governing capacity, but in the name of the respective state formation<sup>47</sup> and they exercise certain legal powers of public owners within the limits of their competence.<sup>48</sup>

Municipal ownership is not a type of state ownership, but an independent kind of public ownership. The holders of the right of municipal ownership are, as proclaimed by article 215(1) C.C.R.F., urban and rural settlements and other municipal formations as a whole. Certain municipal agencies<sup>49</sup> may, within the limits of their competence, exercise property rights of a particular municipal formation in the name of that formation. This exercise does not, however, make the agency the owner of the affected property.

Various kinds of immovables—including land parcels, enterprises and other property complexes, housing funds and non-residential premises, buildings and installations of production and non-production designation—and machinery and equipment may be objects of both state and municipal ownership. Publicly owned property also includes securities belonging to public law formations including shares of privatized enterprises which became joint stock companies, deposits in banks and other credit institutions, foreign currency and currency values, as well as various historical and cultural monuments.

Objects of public ownership are distributed throughout the Russian Federation, its subjects, and municipal formations. The procedure for classifying state property into federal ownership or ownership of the subjects of the Federation must be established by statute.<sup>50</sup> In the absence of such a statute, reference may be made to Decree No. 3020-1 of the Supreme Soviet of the Russian Federation.<sup>51</sup>

All state property, with the exception of that directly classified as municipal,<sup>52</sup> is deemed to be under federal ownership. The latter is classified as being either exclu-

---

<sup>47</sup> Art. 214(3) C.C.R.F.

<sup>48</sup> Art. 125 C.C.R.F.

<sup>49</sup> Art. 215(2) C.C.R.F.

<sup>50</sup> Art. 214(5) C.C.R.F.

<sup>51</sup> "On Distinguishing State-owned Property in the Russian Federation as Federally-owned, State-owned Property of Republics within the Russian Federation, Provinces, Regions, Autonomous Regions, Autonomous Areas, Cities of Moscow and St. Petersburg and Municipally-owned Property" (27 December 1991) *Vedomosti S"ezda Narodnykh Deputatov R.S.F.S.R. i Verkhovnogo Soveta R.S.F.S.R.* (1992) No. 3, item 89 [hereinafter Decree No. 3020-1]. See also Presidential Order "Provisions On Determining Object by Object Federally-owned, State-owned and Municipally-owned Property and the Procedure for Formalization of Rights of Ownership" (18 March 1992) *Vedomosti S"ezda Narodnykh Deputatov R.F. i Verkhovnogo Soveta R.F.* (1992) No. 13, item 697.

<sup>52</sup> Decree No. 3020-1, *ibid.*, Annex 3.

sively federal property<sup>53</sup> or property which may be transferred to the ownership of the subjects of Federation.<sup>54</sup> In the event that objects of state ownership are not listed in any of the Annexes to Decree No. 3020-1, they are transferred into ownership of the respective subjects of the Federation after a special application by their supreme bodies. Prior to such time, the property is considered to be under federal ownership. Subjects of the Federation also have the right to transfer objects under their ownership to municipal ownership.

Property under state or municipal ownership is subdivided into two types.<sup>55</sup> One is held by the state or municipal enterprise as a limited real right of economic management or operative administration. This “distributed” public property forms the basis for the participation in commerce of these organizations as independent legal persons, and therefore cannot serve as security for possible debts of a public owner. The property which is not held by enterprises and institutions, or “undistributed” state and municipal property—including funds from the budget—form the *fisc* or treasury of a public entity. Such property may be an object for levying execution by creditors of a public owner against its independent obligations.<sup>56</sup>

In the list of objects constituting the *fisc* of a public entity, the most important object is budgetary funds.<sup>57</sup> The general rule is that fiscal bodies like the Ministry of Finance, Departments of Finance, and sub-Departments of Finance that directly dispose of budgetary funds act in the name of the *fisc* and in the capacity of defendant in claims against public entities.<sup>58</sup> In addition to the budget, the *fisc* of a public entity includes extra-budgetary funds like pensions, social insurance, and some other types of property like the funds of the gold reserve, diamond and currency funds, and the property of the Central Bank of the Russian Federation. The law specifically provides that land and other natural resources under public ownership may only become objects for levying execution by creditors of the respective public entity in instances expressly provided for by statute.<sup>59</sup> If no such statute exists, these objects are unavailable to creditors with the result of preserving public ownership of land.

Any type of property can be state owned, including things excluded from commerce or limited in commerce.<sup>60</sup> This rule does not apply to municipal ownership, where property limited in commerce can only be owned if the power is specifically defined by statute, and property excluded from commerce may not be owned at all. For instance, certain types of immovables, primarily natural resources, may be held in either federal or state ownership, but not in municipal or private ownership. Such im-

---

<sup>53</sup> *Ibid.*, Annex 1.

<sup>54</sup> *Ibid.*, Annex 2.

<sup>55</sup> Arts. 214(4), 215(3) C.C.R.F.

<sup>56</sup> Art. 126(1) C.C.R.F.

<sup>57</sup> Arts. 214(4)(ii), 215(3)(ii) C.C.R.F.

<sup>58</sup> Art. 1071 C.C.R.F.

<sup>59</sup> Art. 126(1)(ii) C.C.R.F.

<sup>60</sup> Art. 129(2) C.C.R.F.

movables include parts of the subsoil and mineral waters. Under article 214(2) C.C.R.F., land and other natural resources which are not owned by citizens, legal persons, or municipal entities are state-owned property. Thus, these natural objects cannot be masterless, since the legal presumption establishes that they are owned by the State.

### III. Termination of the Right of Ownership

The right of ownership is not only the most comprehensive, but also the most stable real right. It is the key legal prerequisite for property transactions. Therefore, the law strictly regulates the grounds for termination of ownership with a view to preserving and supporting the integrity of the right, in conformity with the principle of the inviolability of ownership proclaimed by article I(1) C.C.R.F. This principle primarily refers to the power to force termination of the right of ownership against the will of the owner.

The right of ownership may also be terminated by the will of the owner and can occur through alienation of property to other persons by the owner and voluntary renunciation of ownership by the owner. The first situation refers to all transactions in which the owner exercises his right to dispose of property. The procedure for terminating the right of ownership held by the alienator and creating a right of ownership in the subsequent acquiror is principally regulated by the rules on transactions and contracts.

Formal renunciation of the right of ownership<sup>61</sup> is new in Russian legislation, although, in essence, it was previously available in property relations. Article 236 C.C.R.F. permits voluntary renunciation by the owner of his ownership rights either through a public declaration, or by performing actions which demonstrate an intention to renounce, for example, by throwing away the property. Renunciation is available to the owner of both movable and immovable property. In the latter instance, however, renunciation is subject to state registration.

Until the right of ownership over property which its previous possessor has renounced is obtained by another person, the rights and obligations of the original owner are not terminated.<sup>62</sup> This means not only that the "return" of the property to its former owner is possible since the owner has not lost his right to the thing, but that legal responsibility for the property may also be imposed. Thus, an owner who has renounced ownership of an object may nonetheless be responsible for damage caused by it.

Privatization of state and municipal property is a special instance of termination of the right of ownership.<sup>63</sup> Only property in state and municipal ownership may be privatized; in other words, this type of termination is possible only for public, and not private, owners. At the same time, it will always result in the emergence of a right of pri-

---

<sup>61</sup> Art. 236 C.C.R.F.

<sup>62</sup> Art. 236(ii) C.C.R.F.

<sup>63</sup> Arts. 217, 235(2)(ii) C.C.R.F.

vate ownership. Privatization is initiated by the decision of the public owner and presupposes that payment was received in some form for the privatized property. The objects of privatization are immovables directly specified in the statute, as well as shares of open joint stock companies created by, and belonging to, public owners in the process of privatization. Finally, privatization must be carried out in accordance with the procedure provided for by statutes on privatization rather than by the civil law.

The right of ownership is also terminated through loss or destruction of the property,<sup>64</sup> since in this instance the very object of the right disappears. Reasons for the disappearance or destruction are quite another matter. If a thing is lost, it is assumed that the loss happened without any person's fault, and due merely to accidental causes or superior force. As a general rule, no one is liable for such loss and the risk of loss of the property is borne by the owner.<sup>65</sup> If a thing is destroyed through the fault of a third person, that person incurs liability either for causing harm<sup>66</sup> or for a violation of contractual obligations.<sup>67</sup>

Forced withdrawal of property from the owner is permitted only in cases specified in article 235(2) C.C.R.F. The cases enumerated in this provision represent an exhaustive list which cannot be expanded, even by statute. This is an important guarantee of the right of the owner. Compulsory taking from the owner in the listed cases is generally compensated, which is to say that the value of the thing taken is paid to the owner. It is allowed in the following cases:

- (1) Alienation of property that by force of statute may not belong to the given person because it is limited or excluded from commerce (article 238 C.C.R.F).
- (2) Alienation of immovable property such as a building in connection with the taking of a land parcel (article 239 C.C.R.F).
- (3) Compulsory purchase of improperly maintained cultural valuables (article 240 C.C.R.F).
- (4) Compulsory purchase of domestic animals if they are improperly treated by the owner (article 241 C.C.R.F).
- (5) Requisition of property (article 242 C.C.R.F).
- (6) Payment of compensation to a participant in shared property for the part of common property due him in the event of disproportionate compensation for a share separated in kind (article 252(4) C.C.R.F).

---

<sup>64</sup> Art. 235(1) C.C.R.F.

<sup>65</sup> Art. 211 C.C.R.F.

<sup>66</sup> Art. 1064 C.C.R.F.

<sup>67</sup> Art. 393 C.C.R.F.

- (7) Acquisition of the right of ownership in immovable property by decision of the court, if it is impossible to remove a building or structure located on another person's land parcel (article 272(2) C.C.R.F.).
- (8) Purchase of a land parcel for state or municipal needs in conformity with a decision of a court (article 282 C.C.R.F.).
- (9) Withdrawal of a land parcel from an owner if the use of the land parcel is in gross violation of legislative provisions (article 285 C.C.R.F.).
- (10) Sale at a public auction of improperly maintained housing premises by the decision of a court (article 293 C.C.R.F.).
- (11) Nationalization of property of owners by force of statute (articles 235(2)(iii) and 306 C.C.R.F.).

Termination of ownership in property which cannot belong to the owner by virtue of statute<sup>68</sup> primarily ensures the protection of the public interest. The types of property affected are those which may be exclusively in state ownership or limited in commerce; in general, property that can be acquired only with special permission of state agencies.<sup>69</sup> If such property—*i.e.*, weapons, poisonous substances and illicit drugs, or currency—appeared in the hands of its possessor illegally, then this confiscation does not generate any serious consequences for the right of ownership. However, even if the property was acquired by a private owner through legal means—*e.g.* a situation in which weapons or currency were transferred from one citizen to another by legal inheritance, or from one legal person to another in the process of reorganization—this person will be deprived nonetheless, by virtue of statute, of the right of ownership in this property.

The owner of such property has the right to alienate it in any manner allowed by law to a person legally authorized to obtain such property within one year, unless a statute provides a different and usually shorter term for the alienation.<sup>70</sup> If this does not happen, a court may order either the forced sale of the property, or transfer it to state or municipal ownership. The decision is determined with the nature and classification of the property as a primary consideration. It is obviously not expedient to sell weapons or poisonous or illicit substances at public auctions when their possessor has no special permission for their safekeeping or use. Such objects would therefore be transferred into public ownership. Regardless of how expropriation occurs, compensation to the former owner for the lost property can be in the amount of money received from the sale of the thing less the necessary costs of sale, or an amount determined by the court.<sup>71</sup>

---

<sup>68</sup> Art. 238 C.C.R.F.

<sup>69</sup> Art. 129(2) C.C.R.F.

<sup>70</sup> Art. 238(1) C.C.R.F.

<sup>71</sup> Art. 238(2) C.C.R.F.

Article 239 C.C.R.F. provides for a special case of termination of ownership of immovable property. The situations described in this provision occur when a land parcel or a part of the subsoil, water areas, or similar natural objects, are expropriated from a private owner for a public purpose. If there are buildings, structures or other immovables on the expropriated land, the owner of these objects, who may or may not be the owner of the land, has the right to receive compensation.

The law provides the following guarantees to an owner in this type of situation. First, the purchase of such immovable property or the sale of the property at a public auction can only be ordered by a decision of the court, and not through an administrative procedure.<sup>72</sup> Second, a mandatory condition for the expropriation is that proof be offered in court that it is impossible to use the land parcel in question without terminating the owner's rights over immovables located on the land.<sup>73</sup> Third, land legislation and other statutes may provide for an alternative withdrawal in the form of moving the buildings or structures to a new land parcel at the expense of the person in whose interest the withdrawal is being executed, or construction at his expense of similar structures in a new location.<sup>74</sup>

Compulsory purchase from a private owner of improperly maintained cultural valuables is allowed subject to the following conditions.<sup>75</sup> First, the provision does not protect all such objects, but only those specifically identified by the State.<sup>76</sup> Second, a court procedure must establish not only that these objects were improperly maintained, but also that there exists a real threat of loss through the actions or omissions of their owner. This applies only to private owners since improper maintenance of cultural objects protected by the State cannot become grounds for their withdrawal from a public owner and transfer to a private owner. Such a course of action would constitute privatization, which is not provided for in the law. The owner of the cultural objects which are being withdrawn receives compensation for them in the amount obtained from the sale of the objects, or some other form of compensation established by agreement with the purchasing state agency or by a court judgment.<sup>77</sup>

---

<sup>72</sup> Until c. 17 of the C.C.R.F. comes into force—along with the rules of arts. 279-82, 284-86 providing for the procedure of compulsory purchase or sale at an auction of immovables located on the expropriated land parcel—one should be guided by the general rules of art. 239 C.C.R.F. and the norms of effective land and natural resources legislation. See also art. 282 C.C.R.F.

<sup>73</sup> Art. 239(1)(ii) C.C.R.F.

<sup>74</sup> As, for instance, is provided for by art. 55 of the *Land Code of the Russian Federation, Vedomosti S"ezda Narodnykh Deputatov R.S.F.S.R. i Verkhovnogo Soveta R.S.F.S.R.* (1991) No. 22, item 768.

<sup>75</sup> Art. 240 C.C.R.F.

<sup>76</sup> Today their legal regime is determined by Presidential Decree No. 1487 "Provisions on Particularly Valuable Objects of Cultural Heritage of the Nations of the Russian Federation" (30 November 1992) *Sobranie aktov Prezidenta i Pravitelstva R.F.* (1992) No. 23, item 1961; and Resolution of the Russian Federation No. 1143 "Provisions on the State Register of Particularly Valuable Objects of Cultural Heritage of the Nations of the Russian Federation" (6 October 1994) *Sobranie zakonodatel'sva R.F.* (1994) No. 25, item 2710. See also art. 240 C.C.R.F.

<sup>77</sup> Art. 240(ii) C.C.R.F.

Article 241 C.C.R.F. creates a new rule which authorizes the compulsory purchase of domestic animals from the owner if the owner perpetrates or permits improper treatment of the animals. The law speaks of conduct "in clear contradiction" with the rules and norms of humane treatment of animals as constituting grounds for their compulsory purchase. Such purchase is allowed only with a court judgment determining the amount of compensation due to the owner of the animal in case of a dispute.

Requisition, or compulsory expropriation of property from a private owner for urgent public interest reasons,<sup>78</sup> is also grounds for termination of private ownership of citizens and legal persons. This method of withdrawal is common to most legal systems and, as expected, allows for compensation to the owner. Requisition is only allowed under circumstances of an extraordinary nature as would be the case in, for example, a natural disaster, and may only be executed in the interests of society. Such expropriation is allowed by a decision of the State, but not by municipal agencies, and does not require a court judgment.

The procedure and conditions for withdrawal of property through requisition must be established by statute. Additional guarantees to protect the interests of the owner of the requisitioned property are set out in article 242 C.C.R.F. These provisions allow the owner to (i) contest the amount of compensation being paid for the requisitioned property, and (ii) demand and obtain the remaining requisitioned property upon termination of the extraordinary circumstances. In the latter case, settlement of accounts is possible between the old and the new owner and this process is executed according to the rules on unjust enrichment.<sup>79</sup>

The current law does not preclude termination of ownership through nationalization, or the transfer of privately-owned property to state-owned property.<sup>80</sup> Nationalization may, however, only be ordered on the grounds of a special Federal law which has not yet been adopted, and with compensation not only of the value of the property to the owner, but also for all damages inflicted in the process of state acquisition. Moreover, the law directly establishes a possibility to contest the amount of compensation paid to the owner.<sup>81</sup>

There are only two instances where the law allows property to be expropriated from an owner against his will without compensation. The first instance is in levying execution against the owner's property to satisfy the owner's obligations.<sup>82</sup> The second circumstance is the confiscation of an owner's property under article 243 C.C.R.F.

Levying execution to satisfy debts is only generally allowed on the basis of a court decision. However, a statute may provide for execution in an extra-judicial procedure,

---

<sup>78</sup> Art. 242(1) C.C.R.F.

<sup>79</sup> Art. 1102 C.C.R.F.

<sup>80</sup> Arts. 235(2), 306 C.C.R.F.

<sup>81</sup> Art. 306 C.C.R.F.

<sup>82</sup> Since arts. 24, 56, 126 C.C.R.F. allow creditors to levy execution against the property of owner-debtors.

for example, when execution is levied against property by tax agencies. Authority for levying execution may also originate under a contract, for instance, when a pledgee levies execution against the pledged property on the grounds of a notarized agreement with the pledgor.<sup>83</sup> The former owner's right of ownership to such property terminates the moment the acquirer's right of ownership arises. Prior to that moment, the owner-debtor bears both the risk and the burden of liability.

Another basis for compulsory withdrawal of property without compensation is violation of the law by the owner.<sup>84</sup> This sanction, termed "confiscation", may be applied in conformity with the provisions of the *Criminal Code of the Russian Federation*<sup>85</sup> to a private owner who commits a crime or otherwise violates the law, where such a penalty is provided for by law. The only instance of confiscation for a civil law violation is provided for in article 169 C.C.R.F., which authorizes the expropriation of property without compensation when a transaction contrary to legal and moral order is done with intent.

As a general rule, confiscation must be authorized by court procedure. However, an administrative procedure may be sufficient in cases provided for by statute. For example, smuggled objects may be withdrawn by customs, or illegal tools for hunting and trapping may be withdrawn by nature conservation agencies without a court order. In these cases, however, withdrawal may be appealed in court, even if it is done on the grounds of administrative and not civil legislation.<sup>86</sup>

#### IV. Remedies

The new civil legislation of Russia places particular emphasis on the protection of ownership and other real rights. In conformity with the fundamental principle of inviolability of the right of ownership, the new C.C.R.F. creates a special system aimed at protecting the rights and interests of private owners from various encroachments on their property.

In the event of direct violation of the right of ownership through, for example, theft or illegal expropriation, Russian legislation provides real remedies in the form of absolute claims or claims filed against any third person having violated a right *in rem*. The C.C.R.F. traditionally provides two real actions which protect the right of ownership and certain rights in things. The first is true recovery action (*actio rei vindicatio*), a claim for demanding and obtaining property from another person's unlawful possession. The second is negatory action (*actio negatoria*), an action for elimination of obstacles to the use of property where no deprivation of possession exists.<sup>87</sup> Both means

---

<sup>83</sup> Art. 349(1)(ii) C.C.R.F.

<sup>84</sup> Art. 243(1) C.C.R.F.

<sup>85</sup> *Sobranie zakonodatelstva R.F.* (1996) No. 25, item 2954.

<sup>86</sup> Art. 243(2) C.C.R.F. Since here the right of ownership is affected, the content of this rule is governed by civil law.

<sup>87</sup> Art. 304 C.C.R.F.

of protection are aimed at protecting the owner's right to the object itself. If the object is lost or cannot be returned to the owner, it is possible to speak only about compensation for inflicted losses, which is categorized as a personal action and not an action in protection of real rights. Therefore, real rights protection of property interests only have as their object individually determined things, not substituted property.

A right of ownership may also be violated indirectly as a consequence of a violation of another, often personal right. For example, a person to whom the owner transferred property under a contract might refuse to return the property to its owner or might return it damaged. This is a case for the application of real rights protection under the law of obligations. These rules are specially designed for instances when the owner is bound to the violator by relations *in personam*, most often contractual relations. These methods of protection are usually applied to the defaulting party under the contract, taking account of the specific nature of the parties' relationship. Remedies in the law of obligations are, therefore, of a relative nature and may have as their object any property, including both things and rights.

Since both of these types of remedies may apply at the same time, a question arises as to which of the two kinds of civil law protection—that of real rights protection or that of the law of obligations—is the appropriate remedy. Russian legislation does not allow the claimant to choose an action and does not allow the so-called “competition of suits” typical of Anglo-American law. In the event of breached contractual relations or other relations *in personam*, the law of obligations and not real rights should be used to obtain a remedy, since the legal relations existing between the parties are of a relative nature and not an absolute one.<sup>88</sup> A real action cannot be filed when an individually determined thing is absent as a subject of dispute.

Suits against state agencies or local self-governing bodies are a new and independent group of civil law remedies which serve to protect the right of ownership. The powers which these agencies enjoy preclude the possibility of filing traditional real actions or personal actions against them in instances when they do not act as equal participants in commerce. Thus, public authorities may violate real rights of private persons or infringe upon them through lawful and unlawful actions, both of which require special means of protection for private owners.

Two types of actions are used to provide the necessary protection. First, the law allows claims for full compensation of damages inflicted upon private persons as the result of unlawful acts or omissions by state agencies, local self-government bodies, or their officials. The remedy also applies where damage is inflicted through the issuance of a regulatory or non-regulatory act which runs contrary to a statute or other legal act.<sup>89</sup>

---

<sup>88</sup> This reasoning can be extended to instances when limited real rights arise due to a contract with the owner of a thing; the parties are protected by absolute real rights and not by the law of obligations, for the relation is of an absolute and not a relative nature. The owner of a thing in this instance is bound to the subject of a limited real right by contract and, therefore, in its relationship with the latter cannot resort to the law of obligations to protect his interests.

<sup>89</sup> Art. 16 C.C.R.F.

Second, a claim for invalidation of an unlawful act of a state or municipal agency which contradicts a statute or other legal act may also be made.<sup>90</sup> Such actions are brought against tax and customs agencies, for example, in the event of an unjustified levy of execution against an individual's property.<sup>91</sup>

Lawful actions by public authorities which infringe upon the interests of private owners require special means of protection. For example, termination of a private person's right of ownership through nationalization of his property conforms with federal law,<sup>92</sup> and is therefore a lawful action. In this situation, the owner's rights are subordinated to the law and the owner has no right to claim the return of withdrawn property. However, full compensation may be claimed, including unreceived income and the value of the property lost by the owner.<sup>93</sup> An owner of land expropriated for state or municipal needs through a decision of executive agencies is granted the same right.<sup>94</sup>

Thus, the new civil legislation of Russia provides for thorough legal formalization of ownership relations, including comprehensive protection of the rights and interests of private owners.

---

<sup>90</sup> Art. 13 C.C.R.F.

<sup>91</sup> Naturally, tax and customs relations, or relations with respect to state property management are of a civil law nature. At the same time, unjustified interference of public power into the property sphere leads in many instances to the violation of real rights, and therefore requires special means of protection. It is no accident that rules on suits against public power appeared for the first time in laws on ownership.

<sup>92</sup> Art. 235(2)(iii) C.C.R.F.

<sup>93</sup> Art. 306 C.C.R.F.

<sup>94</sup> Arts. 279-82 C.C.R.F.

## References

### Legislation

*Civil Code of the Russian Federation*, Part 1: *Sobranie zakonodatelstva R.F.* (1994) No. 32, item 3301; Part 2: *Sobranie zakonodatelstva R.F.* (1996) No. 5, item 410.

*Civil Code of the Russian Soviet Federated Socialist Republic*, *Vedomosti S"ezda Narodnykh Deputatov R.F. i Verkhovnogo Soveta R.F.* (1964) No. 24, item 406.

*Code of Civil Procedure of the Russian Federation*, *Vedomosti S"ezda Narodnykh Deputatov R.F. i Verkhovnogo Soveta R.F.* (1964) No. 24, item 407, as am. by *Sobranie zakonodatelstva R.F.* (1995) No. 49, item 4696.

*Constitution of the Russian Federation*, as approved by popular referendum on 12 December 1993. Effective date: 25 December 1993.

*Criminal Code of the Russian Federation*, *Sobranie zakonodatelstva R.F.* (1996) No. 25, item 2954.

Decree No. 3020-1 of the Supreme Soviet of the Russian Federation "On Distinguishing State-owned Property in the Russian Federation as Federally-owned, State-owned Property of Republics within the Russian Federation, Provinces, Regions, Autonomous Regions, Autonomous Areas, Cities of Moscow and St-Petersburg and Municipally-owned Property" (27 December 1991) *Vedomosti S"ezda Narodnykh Deputatov R.S.F.S.R. i Verkhovnogo Soveta R.S.F.S.R.* (1992) No. 3, item 89.

Federal law No. 10-F2 of 12 January 1996 *On the Trade Unions, Their Rights and Guarantees for Their Activity*.

Federal law *On Agricultural Cooperatives*, *Sobranie zakonodatelstva R.F.* (1995) No. 50, item 4870.

Federal law *On Ownership*, *Vedomosti S"ezda Narodnykh Deputatov R.S.F.S.R. i Verkhovnogo Soveta R.S.F.S.R.* (1990) No. 30, item 416.

Federal law *On Peasant (Farm) Enterprise*, *Vedomosti S"ezda narodnykh deputatov R.F. i verkhovnogo Soveta R.F.* (1991) No. 1, item 10.

Federal law *On the Right of Citizens of the Russian Federation to Receive in Private Ownership and for Sale Land Parcels for Engagement in Individual Subsidiary Small Holding, Cottage Smallholding, Gardening and Individual Housing Construction*, *Vedomosti S"ezda Narodnykh Deputatov R.F. i Verkhovnogo Soveta R.F.* (1993) No. 1, item 26.

*Fundamentals of Civil Legislation of the U.S.S.R. and Union Republics*, *Vedomosti S"ezda Narodnykh Deputatov S.S.S.R. i Verkhovnogo Soveta S.S.S.R.* (1991) No. 26, item 733.

*Land Code of the Russian Federation*, *Vedomosti S"ezda Narodnykh Deputatov R.S.F.S.R. i Verkhovnogo Soveta R.S.F.S.R.* (1991) No. 22, item 768.

Presidential Decree No. 198 "On the Right of Ownership of Citizens and Legal Persons to Land Parcels under Immovables in Rural Areas" (14 February 1996) *Sobranie zakonodatelstva R.F.* (1996) No. 8, item 740.

Presidential Decree No. 323 "On Urgent Measures to Implement Land Reform in the RSFSR" (27 December 1991) *Vedomosti S"ezda Narodnykh Deputatov R.F. i Verkhovnogo Soveta R.F.* (1992) No. 1, item 53.

Presidential Decree No. 1263 "On the Sale to Citizens and Legal Entities of Land Parcels Designated to Development Which are Located in the Territories of Urban and Rural Settlement, or the Right to Lease Them" (26 November 1997) *Sobranie zakonodatelstva R.F.* (1997) No. 48, item 5546.

Presidential Decree No. 1487 "Provisions on Particularly Valuable Objects of Cultural Heritage of the Nations of the Russian Federation" (30 November 1992) *Sobranie aktov Prezidenta i Pravitelstva R.F.* (1992) No. 23, item 1961.

Presidential Decree No. 1535 "Basic Provisions of the State Program of Privatization of State and Municipal Enterprises in the Russian Federation after July 1, 1994" (22 July 1994) *Sobranie zakonodatelstva R.F.* (1994) No. 13, item 1478.

Presidential Decree No. 1767 "On Regulation of Land Relations and Development of the Agrarian Reform in Russia" (27 October 1993) *Sobranie aktov Prezidenta i Pravitelstva R.F.* (1993) No. 44, item 4191.

Presidential Decree No. 2287 "On Bringing the Land Legislation of the Russian Federation in Line With the Constitution of the Russian Federation" (24 December 1993) *Sobranie aktov Prezidenta i Pravitelstva R.F.* (1993) No. 52, item 5085.

Presidential Decree No. 2296 "On Trust Ownership (Trust)" (24 December 1993) *Sobranie aktov Prezidenta i Pravitelstva R.F.* (1994) No. 1, item 1.

Presidential Edict No. 301 (25 March 1992) *Vedomosti S"ezda Narodnykh Deputatov R.F. i Verkhovnogo Soveta R.F.* (1992) No. 14, item 761.

Presidential Edict No. 485 (16 May 1997) *Sobranie zakonodatelstva R.F.* (1997) No. 20, item 2240.

Presidential Edict No. 631 (14 June 1992) *Vedomosti S"ezda Narodnykh Deputatov R.F. i Verkhovnogo Soveta R.F.* (1992) No. 25, item 1427.

Presidential Order "Provisions on Determining Object by Object Federally-owned, State-owned and Municipally-owned Property and the Procedure for Formalization of Rights of Ownership" (18 March 1992) *Vedomosti S"ezda Narodnykh Deputatov R.F. i Verkhovnogo Soveta R.F.* (1992) No. 13, item 697.

Resolution of the Russian Federation No. 1143 "Provisions on the State Register of Particularly Valuable Objects of Cultural Heritage of the Nations of the Russian Federation" (6 October 1994) *Sobranie zakonodatelstva R.F.* (1994) No. 25, item 2710.

U.S.S.R. law *On Ownership, Vedomosti S"ezda Narodnykh Deputatov S.S.S.R. i Verkhovnogo Soveta S.S.S.R.* (1990) No. 11, item 164.

**Books**

Maggs, P.B. & Zhiltsov, A.N., eds, *The Civil Code of the Russian Federation*, trans. P.B. Maggs & A.N. Zhiltsov (Armonk, N.Y.: M.E. Sharpe, 1997).

---