

Genetic information under the civil law of the Russian Federation

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This article assesses genetic information in the system of civil rights under civil law of the Russian Federation.

In the past few decades, both at international and domestic level, issues related to the legal regulation of genetic research and the legal regime of genetic information have become particularly relevant. In Russia, the emphasis has been on public law aspects, and not civil law. A legitimate question arises as to whether genetic information is an object of civil law relations. The answer to this question is of fundamental importance, since it will allow, inter alia, to solve the problem of the turnover of genetic information (the possibility of its alienation in civil transactions or transfer in another way). In order to answer this, it is necessary to decide

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whether, in principle, information is the object of civil legal relations.

Based on an analysis of the norms of civil law and scientific literature, we can conclude that information can be an independent object of civil rights, including, in relation to trade secrets and production secrets (know-how)². Therefore, such information issues would fall under civil law relations named in article 128 of the Civil Code of the Russian Federation³.

It follows that the same would apply to genetic information as well. However, with the exception of the possibility of recognizing it as an independent object of civil rights for the following reasons.

In legal science, some scholars propose that only information with commercial value should be considered as an object of civil rights⁴. Notwithstanding, these researchers seem to lose sight of information that is an element of other objects of civil rights, such as, for instance, privacy. It is unlikely that the actual or potential commercial value of the information contained in it should be considered as a defining feature of this secret because such information is not known to third parties. It would be more correct in this case to speak not about the commercial value of information, but about its social and (or) individual value⁵.

² See details: Prospects for the development of civil law in Russia: plans and modern realities: Interview with EA Sukhanov // ATP "Consultant Plus"; Bogdanov E.V. Information as an object of civil legal relations // Civil Law. 2018.No. 5. P. 29-33.

³ See, for example: O. Kirichenko. Information as an Object of Civil Relations // Modern Law. 2014. No. 9. P. 77 - 81; Inyushkin A. A. Information in the system of civil rights and its relationship with intellectual property as an example of databases // Information Law. 2016. No. 4. P. 4 - 7.

⁴ See, for example: Rozhkova M.A. Information as an object of civil rights, or What needs to be changed in civil law [Electronic resource] // Zakon.ru. 2018 November 6th. (0.4 pp) URL: https://zakon.ru/blog/2018/11/06/informaciya_kak_obekt_grazhdanskih_prav_ili_chno_nado_menyat_v_grazhdanskom_prave (accessed 30.12.2019).

⁵ See more details: Maleina M.N. Concept and types of intangible goods as objects of personal non-property rights // State and Law. 2014. No. 7. P. 41.

Genetic information has both social and individual value, and commercial value (e.g., for third parties such as employers, insurance organizations, sports clubs, coaches, managers and doctors of sports teams, etc.). Despite this, the commercial value of genetic information in no case can prevail over its social and individual value. In this regard, it seems appropriate to establish a legislative ban on the recognition of genetic information as an independent object of civil rights.

Genetic information should be included in such intangible benefits as personal and family secrets. The need to assign genetic information to this particular kind of intangible good is due to the specifics of the information itself: firstly, it can accurately predict the future state of health of a person who was healthy at the time of the examination; secondly, for several generations it can have a significant impact on the family, including the descendants of the individual, and in some cases on the whole group to which the person belongs; thirdly, it may contain information about the value which may not be known during the collection of biological samples⁶.

Genetic information may be an object of civil rights in the form of a database. Specifically, a federal database of genomic information is currently operating, the creation of which was envisaged by the Federal Law “On State Genomic Registration in the Russian Federation”. By law, all genetic information in this database comes from compulsory genomic registration. The basis of its conduct is a court verdict that has entered into legal force, based on when individual has been found guilty of a grave or especially grave crime, or a crime against sexual inviolability and sexual freedom of the person, and has been sentenced to serve in an institution executing criminal sentences. The main purpose of such registration is to

⁶ International Declaration on Human Genetic Data (adopted by the 32nd session of the UNESCO General Conference in Paris on October 17, 2003) [Electronic resource]. URL: <http://cbio.ru/page/50/id/1038> (accessed date: 30.12.2019).

identify a person's identity and use this information in order to prevent, disclose and investigate crimes, as well as to identify the persons who committed them. For this reason, the accounting of genetic information is carried out in accordance with the requirements for automated processing of personal data.

The legislation of the Russian Federation does not contain a direct ban on the creation of other databases – for example, the so-called biobanks, which collect and store DNA samples, tissues, tumor cells or blood. Due to the absence of special legal regulation in relation to such biobanks, the following legal and ethical issues need to be resolved: what rights do the creators (manufacturers) of biobanks have in relation to the biomaterials contained in them and the genetic information obtained on their basis; what rights should be granted to persons who have provided their biological material, respectively, genetic information about themselves; whether third parties have the right to access biomaterials and information; prospects for industrial or commercial use of biomaterials and information; the nature of relations with other (national and international) biobanks.

Of all these questions, an unambiguous answer so far can only be given to one of them, namely, about the rights of persons who submitted their biological material, respectively, genetic information about themselves in a biobank, and about the prospects for the commercial use of relevant materials and information. The genetic regime of privacy secrets should be applied to the genetic information contained in biobanks, and therefore, the collection, storage, use and dissemination of such information should not be allowed without the consent of the person, as required by the Constitution of the Russian Federation. Answers to other questions should be reflected in the federal law specially developed for these purposes. Moreover, the regulation of these issues, it seems, will go beyond the limits of civil law.

Genetic information falls under the right to a private life (right to privacy). There are no doctrinal or legislative grounds for recognis-

ing genetic information as an independent object of civil rights. Genetic data is collected and stored a database as a result of intellectual activity. Additional legislative regulation is needed in relation to the activity of biobanks carrying out storage of biomaterials and genetic data. The genetic information contained in such biobanks should be subject to the legal regime of privacy secrets.

References

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