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On the problems of protecting real property rights in the Russian Federation in the light of the European Convention on Human Rights

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Abstract: The article examines five key problems in the field of real estate rights protection in the Russian Federation. The author attempts to find possible solutions, taking into account the positions of the European Court of Human Rights (ECtHR), as well as experience of foreign states and judicial practice in the Russian Federation. It was concluded that the position of the Russian Constitutional Court is not on all, but on many controversial issues in line with the position of the ECHR. Also, effective application of laws requires a more active position of Russian legislators in securing legal guarantees for holders of property rights to real estate and achieving a balance in regulation of relevant legal relations.

Introduction

The Russian Federation had traditionally been in the top five countries in terms of the number of applications to the European Court of Human Rights. According to the statistics of 2020-2021, the Russian Federation ranked first in terms of the number of complaints filed, including ones in defense of property rights.

On March 16, 2022, Russia was excluded from the Council of Europe. The day before, the Russian Federation itself filed a claim to withdraw from the Council of Europe. Russian lawyers took two opposite positions in this regard. Some say that the expulsion from the Council of Europe will have a negative impact on the level of security of the rights and freedoms of citizens (1). Others declared the absence of significant negative consequences for the Russian Federation, relying on arguments about the weak legal reasoning in the positions of the ECtHR and the failure to take into account the national peculiarities of the law of the member states of the European Convention (2).

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The truth seems to lie somewhere in between. So, indeed, the withdrawal of the Russian Federation from the Council of Europe will deprive the citizens of the possibility of ex-territorial protection of their rights. The Constitutional Court of the Russian Federation is empowered to consider, at the request of citizens, authorities and courts, issues of compliance of legislation with the Constitution of the Russian Federation. But it cannot replace the ECtHR that compares the right of the state for compliance with the European Convention. At the same time, since 2015, the Constitutional Court of the Russian Federation has already recognized the possibility of non-execution of decisions of the ECtHR in case of contradiction of such a decision of the Constitution of the Russian Federation and its interpretation by the Constitutional Court (3). However, then, seven years ago, such an instrument of influence was considered exceptional. And it hasn't been used to this day.

In this respect, the solution was proposed in the Russian Federation to form an international court of human rights within alternative unions of states based on BRICS, the CIS, and the Eurasian Economic Union. For example, Brazil and South Africa have taken this path earlier. The problems that will arise in this regard will be the lack of a single act, like the European Convention on Human Rights, and also differences between the legal systems of the countries included in these unions. Finally, the need for countries to recognize these new common standards should be connected with great global changes in law and ethics. Such changes in the adoption of the European Convention, for example, was the end of the Second World War. Another path, which China and India are taking, is ignoring international courts as institutions for the protection of human rights. Following this path is undesirable for Russia, since the possibility of extraterritorial protection of rights for citizens is an important right guaranteed by Part 3 of Article 46 of the Constitution of the Russian Federation (4).

Russian legislation has already undergone changes caused by the exclusion from the Council of Europe. Thus, a law on non-execution of decisions of the ECtHR was adopted (5-6). It declares that the decisions of the ECtHR which came into force after March 15, will not be executed. It is also separately provided that compensation under the decisions of the ECtHR will be paid in rubles and to the applicants' accounts opened in Russian banks. Finally, the positions of the ECHR were excluded from the list of grounds for unconditional review of cases within the framework of arbitration, administrative, civil and criminal proceedings.

The great German law scholar Rudolf Jhering said, "the life of law is a struggle, a struggle of nations, state power, social groups and individuals" (7). That means the result of this struggle cannot be demolished. And decades-long experience of understanding the basic values and human rights of the ECtHR for Russian law cannot be completely rejected. The understanding of the essence of individual rights in the state is always "genetic", influenced by the legal family. For example, despite the fact that the system of property rights has changed in different historical periods in Russia, in its theoretical fundamental principle it has always been based on the concepts of Roman law, which played an integrative role for all legal systems of the Romano-Germanic legal family. Now, the law of any state fits into the international context. It also means there are always differences in national legal regulation, and a single, universal or static understanding of basic values is nothing more than a utopia. The easiest way to arrive at that conclusion is to analyze the differences in approaches to property rights in different countries. Although it is also evident in the differences between the approaches of the state to other values: the right to life and voluntary departure from it, the right to personal integrity and the freedom of a woman to decide on an abortion, and so on. Thus, the issue of comparing approaches to general concepts and common values inherent in related legal systems is of great theoretical and practical importance.

As we can see, some years ago the Russian Constitutional Court recognized the admissibility of discrepancies with the ECtHR in the interpretation of the basic constitutional values. However, a compromise has been reached on many issues over the course of the

Russian Federation's membership in the Council of Europe. It is impossible to deny the contribution made by the positions of the ECtHR in terms of identifying problem areas in Russian legislation. The ECtHR positions of the leading cases were taken into account by the Russian legislator when carrying out reforms in various areas: property, right to respect for private and family life, home and correspondence etc. On many positions, the opinion of the ECtHR was supported in the decisions of the Constitutional Court of the Russian Federation, too. However, the positions of the ECtHR regarding freedom of assembly, and freedom for sexual minorities do not fully agree with the position of the Constitutional Court of the Russian Federation (8-9).

The article provides an analysis of the Russian legal regulations related to such a basic value as the right to property (Art. 17 UDHR) (10). It will show those gaps in terms of legal regulation in the field of real estate turnover that were discovered by the ECtHR in the decisions made before March 15, 2022, recognized by the Russian courts and possible ways to eliminate these gaps, taking into account the peculiarities of the Russian legal system.

1. Unbalanced Good faith Purchaser protection

Vindication of immovable property from a bona fide purchaser is a measure permitted both in legal systems where the registration of a title confirms its existence (positive registration system) and where the fact of registration does not provide such a guarantee (negative registration system). The ECHR considers this measure as a restriction on the right to possession, which is necessary to correct the error of the registering authority and protect public interests.

In the Russian Federation, a good faith purchaser often bears unpredictable risks - in the terminology of the ECHR, an "excessive burden". Article 8.1 of the Civil Code of the Russian Federation determines that registration of rights to real estate is an act on behalf of the state confirming the legality of the acquisition of rights to real estate (11). In this regard, an impression may arise that it is enough for a good faith purchaser to rely only on the information from the register when making real estate deals. However, it is not true. Firstly, relating to a good faith purchaser, it is allowed to correct the registration record and vindicate the property in cases of involuntary alienation. At the same time, a good faith purchaser in the Russian Federation is not able to predict such risks, as even due diligence procedure cannot determine to the purchaser that one of the transactions was made by one of the previous owners as a result of deception, misrepresentation, or without the consent of one of the co-owners. Secondly, the expiration of the limitation period does not always help the good faith purchaser, as time limits for filing a claim are counted from the moment when the plaintiff learned or could learn about the violation of his rights by making a register entry (12). Finally, courts of all levels impose a high standard regarding the requirements for the conscientiousness of purchasers, contrary to the literal interpretation of Article 8.1 of the Civil Code of the Russian Federation (13). There is also no clarification by the Supreme or Constitutional Court about the need to differentiate the standards of good faith for commercial participants and for individuals. Thus, publicity of the register of titles to real estate becomes a declaratory rather than a promissory norm in the Russian Federation.

For fairness, it should be noted that the Federal Law "On State Registration of Real Estate", dated July 13, 2015, N 218-FZ contains the norms of Art. 66, 68.1 on the possibility of obtaining compensation from the registrar, but their application is limited. Thus, compensation under Article 66 can be obtained only in cases of negligence by the registrar. Article 68.1

provides for compensation for the loss of housing, with a limited sum not comparable to its market value (14).

The problem of *vindication* of a good faith purchaser is especially apparent in cases where real estate had previously belonged to a public entity. So, the ECHR in the case of Gladysheva in 2011 determined that the burden associated with the error and oversight by public authorities could not be transferred to a good faith purchaser (15). It is the public authority - the owner of the property, and not the good faith acquirer - who should bear the burden of an increased standard of good faith in a civil legal dispute. This position was confirmed in some other decisions by the ECHR (16-21). In 2017, the Constitutional Court of the Russian Federation in a similar case of Volkov took a position identical to the decision of the ECHR (22). Following this decision of the Constitutional Court of the Russian Federation, the Russian legislator amended Articles 223, 302 of the Civil Code of the Russian Federation, limiting the period for vindication of a dwelling by the owner, a public entity, to three years from the date of registration of the right of the defendant, a good faith purchaser.

However, despite the positions of the ECHR and the Constitutional Court of the Russian Federation in 2017, as well as changes in a number of articles of the Civil Code of the Russian Federation, the problem of *vindication* of property of a public entity remains relevant. That is confirmed by the decisions of the ECHR in the cases of Belova and Gavrilova, issued in 2020 and 2021 respectively (23). The changes introduced by paragraph 4 of article 302 in the Civil Code of the Russian Federation in 2019 regarding the increased standard of proving circumstances for public *vindication* formally apply only to residential premises. Accordingly, by direct indication of paragraph 4, it does not apply to land plots, other immovable property alienated from a public entity against their will, as well as in all cases of involuntary alienation from individuals.

In addition, the idea of a higher standard of good faith in the behaviour of a state body in civil law disputes has yet to be established both in law and in judicial practice in the Russian Federation in various situations. For example, the Supreme Court of the Russian Federation in disputes on invalidation of purchase deals of public land plots does not mention the unacceptability of contradictory behaviour by public authorities and, as a result, the unacceptability of challenging the transaction by a *mala fide* party. That contradicts Clause 5 of Article 166 of the Civil Code of the Russian Federation (24). At the same time, in the transaction contested in this case, both sides were dishonest, and the decision of the Supreme Court of the Russian Federation on restitution in both directions to protect public interests in accordance with Article 1 of the Civil Code of the Russian Federation can be considered as fair, but questionably reasoned.

So, what approach is required for the Russian legislator in terms of protecting the rights of a good faith purchaser of real estate? Based on the position of the ECHR, the position of the Constitutional Court of the Russian Federation in the current Civil Code of the Russian Federation, the balance of private and public interests has been violated (25). Unpredictable risks in case of *vindication*, regardless of whether the owner was a public entity or a private person, are associated with the protection of public interest, which means that the property of a good faith purchaser must nevertheless be transferred to the owner who has lost the right. However, losses resulting from *vindication* must be compensated to the good faith purchaser not by the seller, as follows from Article 461 of the Civil Code of the Russian Federation, but *de lege ferenda* at the expense of the state that registers and confirms the legality of transactions and the acquisition of rights to real estate. It is with the help of such a framework of state responsibility for errors during registration that trust in the registry is formed (legitimate expectations).

2. Insecurity of registered owners during acquisitive prescription

The ECHR considers acquisitive prescription as one of the cases of restriction of property rights in the public interest. This position was most clearly reflected in the *Pye v the United Kingdom (UK)* case (26). Thus, in that dispute, the ECHR, although not unanimously, supported the idea that such a restriction does not entail the obligation of the state to pay compensation. The judges considered that the owner, in accordance with UK law, had sufficient time to detect violations by the adverse possessor. To this, the defendant argued that the method of acquiring property rights is fraught with massive violations. In response, the ECHR indicated that countries can interpret the provisions of the European Convention on Human Rights and provide the necessary protections for registered owners, as well as determine the degree of judicial discretion in resolving disputes.

The corresponding changes were made as a result of the ECHR's consideration of the *Pye* case in the UK legislation. The legislation provided guarantees for the owner's notification and his right to challenge the position of the adverse possessor (27). In addition, regarding adverse possession of real estate with a registered owner in the UK, a longer period of adverse possessor ownership was established. This provision seems to be the fairest and most balanced (28).

The Russian regulation of acquisitive prescription of real estate is incomplete, and the positions of the courts are contradictory. For instance, the Constitutional Court of the Russian Federation allowed the possibility of acquisitive prescription relating to real estate registered for another person, as well as in the presence of an agreement with such a registered owner on alienation (29). As researchers fairly point out, in these disputes there can be no question of any conscientious ignorance on part of the possessor despite the legal requirement of his good faith (30). Thus, these disputes are about the exhaustion of other methods of protection, except for acquisitive prescription.

The Constitutional Court of the Russian Federation in the *Volkov* case in 2020 also made an attempt to substantiate the good faith of the actual owner of real estate, which already has an owner recorded in the register of real estate rights. The court, assessing the position of the plaintiff, did not see any abuse of rights in his behaviour. However, such a decision may become a threat to the owners, whose rights can be cancelled without any notice and without any guarantees by fraudsters who have provided the court with a false real estate alienation agreement. In addition, formally, the courts are not obliged to find out the reasons that prevented the plaintiff from registering his rights to real estate.

The logical way out for the Russian legislator should be the establishment of two differentiated procedures for obtaining real rights through acquisitive prescription (31). In this case, the owner, the defendant, must have adequate means of protection and the right to be duly notified of the existence of competing rights of the person, whose possession is defined by Article 234 of the Civil Code of the Russian Federation as open and obvious to all other persons.

3. The ineffectiveness of civil law remedies against the lawful actions of public authorities

As has been shown above, the ECHR broadly interprets the concept of restrictions on rights, without limiting interpretation to the norms of the laws of individual countries. The court defines two types of restrictions on real estate: restrictions on use (control of use) and expropriation. In accordance with the general dispute resolution formula and the provisions of Article 1 of the ECHR Protocol 1, national courts should be guided by a shift of the burden of proof from a private person to a public authority. The actions of the authorities should be assessed through three criteria: legality and predictability (legitimacy), validity (lawfulness), proportionality, and fair compensation for damages to a private person (proportionality).

How does this happen in the Russian Federation in practice? As for compensation for damages from lawful actions of the state when public law restrictions are imposed, the legislation of the Russian Federation does not contain detailed regulations that would determine the guarantees for the owners of real estate.

First, the legal regulation in Russia does not define a clear list of restrictions subject to compensation. Article 57 of the Land Code directly defines the following cases when right holders have the right to demand compensation due to the establishment of regulatory restrictions: establishment of zones with special conditions for the use of the territory, a change in the designated purpose of a land plot, and reservation (32). Thus, from the literal interpretation of Article 57 of the Land Code, it is not clear whether it is possible in all these cases to receive compensation for damages from the imposition of restrictions on the rights of owners of land plots. Also, according to the text of the Article, it is impossible to determine whether other cases of compensation for restrictions on rights to real estate are possible, for which the article does not establish a person's right to compensation. As a consequence of such a gap, the person who had the right to a share in the ownership of an agricultural land plot cannot receive compensation from the public authorities for the expropriation carried out. It is also impossible to determine whether the damages are subject to compensation as a result of a forced change in the type of permitted use of the land plot.

Secondly, owners of real estate rights have an increased burden of proving their own good faith and ignorance about the presence of restrictions not reflected in registers and public documents. As a result, even with a formal guarantee, they cannot always defend their right to compensation in Russian courts.

Thirdly, the legislation regarding the imposition of public restrictions on property rights to real estate for socially significant purposes (regulatory takings) does not allow persons who are engaged in economic activities with real estate to predict their risks in advance.

What risks in terms of regulatory restrictions are meant here? Let us give an example of such restrictions as zones with special conditions for the use of the territory. The problem has arisen due to the lack of uniform regulation of such zones before the reform of 2018. As a consequence, to this day some such zones may be non-public, but recognized by force of law. If such zones are improperly established, there is no confirmation of the existence of restrictions in public registers, but if the existence of such zones is explained by the need of protecting people's lives, then the building within the boundaries of such a zone will be subject to demolition, regardless of the good faith of its owner and the presence of previously issued building permits (33-34). However, such a building, depending on the good faith of the developer and the purchaser, will be demolished either as an unauthorized construction without compensation for losses, or because of Art. 107 of the Land Code and Law No. 342 dated 03.08.2018 (35). There are also such restrictions when the regulatory boundaries of zones of special use are not determined by law, and their boundaries on the ground have not been established with sufficient accuracy. The lack of a proper justification for the boundaries of such a zone also does not prevent the recognition of invisible restrictions of landowners. In addition, it relates to the right holders within the boundaries of the latter zones, although construction is

allowed based on previously issued permits (clause 33 of article 26 of the Federal Law No. 342), after 2025, a ban on construction or the obligation to demolish the erected real estate objects is not excluded (36). A distinctive feature of regulation in the Russian Federation is the ability to impose the obligation to reimburse losses on the developer who has not fulfilled the obligation to timely submit the information about the zone with special conditions for the use to the Land Register.

The ECHR, in disputes related to lawful restrictions on the use of property and expropriation in the public interest, leaves the decisions on the following issues to the level of national legislation: what interests are considered public, what restrictions should be established, what the size of and the time limit for the compensation should be. Also, the ECHR leaves to the discretion of the courts the issue of estimating the factual circumstances in determining the size of such compensation (37-38). Therefore, the measure for the demolition of objects that threaten the safety and life of people in Russian law must itself be considered necessary to protect public interests and be in line with the position of the ECHR.

In 2020, the Constitutional Court of the Russian Federation in the Butrimova case recognized Article 57 of the Land Code as inconsistent with the Constitution (39). In the adopted resolution, the Constitutional Court made an attempt to eliminate that gap. Following the logic of the Constitutional Court of the Russian Federation, it can be assumed that not any establishment by federal law of regulatory takings on real estate are subject to compensation. The conditions for satisfying the claim would be as follows: the restrictions must cause significant damage, the real property cannot be used for its intended purpose, and the applicant could not foresee the restrictions. In addition, both actual damage and investment losses must be compensated. The Constitutional Court of the Russian Federation defines investment losses the same as what the ECHR calls legitimate expectations. The ECHR defines legitimate expectations as the property value that can be assessed and which is legitimized by law and the authority relates to the plaintiff's rights (planning permission) (40-43).

In European countries, three approaches to regulatory takings can be noted. The first one provides minimal opportunities for compensation - in particular, with a refusal to compensate for damage from land use regulations (UK). The second one implies discretionary regulation (Austria), and the third gives maximum opportunities for compensation for regulatory takings. In the latter case, applicants are entitled to claim compensation for restrictions that have a minimal or indirect effect on real rights to real estate (Netherlands, Germany) (44).

If we assess the tendency that is now emerging in Russian law, there will be a finding a middle ground approach with the possibilities of judicial discretion and explanations of the supreme courts. For instance, in November 2021 The Constitutional Court of the Russian Federation expressed its opinion on the Tikhonov case on construction regulations within boundaries of security zones of gas pipelines (45). In that decision the Constitutional Court confirmed that only good faith developers will receive reimbursement for damages related to demolition of buildings. This position of the Constitutional Court considering the good faith of developers is also fully consistent with the position of the ECHR in the cases of Gorbatov, Kastorov and Vdovin, Kosenko and Tikhonova, the Zhidov case, and the Kvyatkovsky case (46).

Based on the position of the Constitutional Court on the requirement for the legislator to detail legislation, Federal Law No. 467 of December 30 2021, was adopted. This act, however, did not introduce anything fundamentally new in comparison with the previously existing regulation, it retained the existing gaps and problems of legal regulation (47). The key emphasis of the law was that the list of restrictions of the rights of owners of land plots which may have to be compensated for are open, but not detailed.

Also, this law does not introduce any standards or guarantees that restrictions are clearly foreseeable for individuals involved in civil transactions even before they make economic decisions. However, it seems that this aspect of the problem of regulatory takings is also key in terms of balanced legal regulation and considering the interests of all participants in such transactions. Thus, developers in the Russian Federation bear a risk at all stages of activity, starting with the possibility of refusal to issue a construction permit after receiving a development plan for a land plot (48). Also, there is a risk of cancellation of the construction permit due to invisible restrictions. Finally, after the completion of construction, there is a risk of demolition of the object or invalidation of rights to the land plot.

From this, we can conclude that it is clearly not enough for the Russian Federation to just write into the law that regulatory restrictions should be compensated by a public authority on the condition of the prudence and good faith of the applicant. The legislator needs to add to the Land Code a closed list of all kinds of restrictions on the rights of owners of real estate, which could potentially entail the possibility of compensation, which would be determined by the courts through judicial discretion, but in accordance with the criteria specified in the law. In addition, the very adoption of the law without amending the bylaws that determine the procedure for calculating damage and, in particular, the Decree of the Government of the Russian Federation No. 262, does not allow the norms to work effectively and is not declarative (49). The above problem of a fair amount of compensation for damages can be confirmed by the examples of disputes between citizens and the Russian Federation in the ECHR over obtaining compensation for the seizure and destruction of real estate (50-53). Also, the legislator should consider the position of researchers of both public and private law about the need to minimize the risks of business entities in terms of changes in legal regulation, for example, by establishing a moratorium on changing the rules of land use and development.

4. Lack of judicial control in the case of an administrative decision to demolish an unlawful construction

According to Article 222 of the Civil Code of the Russian Federation, unlawful construction is not recognized as an object of real rights. Relating to it, the administrative order of demolition is allowed. To what extent is this procedure in line with the provisions of the Constitution of the Russian Federation and the ECHR?

An example is the recent ECHR judgment in the case of *Kooperativ Neptun Servis v. Russia* where the ECHR denied the applicant compensation for the lost property, but ordered compensation for non-pecuniary damage (54). The decision of the ECHR confirmed that the owner of the demolished object should be guaranteed judicial control. It is the court that must assess the risks of the danger of unlawful construction, including posing a threat to human life and health or the environment. In this case, the ECHR stressed that the provisions of the Civil Code did not comply with the requirements of the ECHR. Considering also that the order to demolish the building constituted an interference with the applicant's right to unhindered use of her property and that the applicant was unable to refer her case to the domestic courts, the ECHR found a violation of the right to inviolability of property (Article 1 of the ECHR Protocol 1) and the right to access to court (Clause 1 of Article 6 of the ECHR). The ECHR rejected the claim for pecuniary damage, considering that it was not within the purview of the Court to rule

in favour of a party in relation to a judgment on alleged pecuniary damage. This decision must be made by the court of the Russian Federation.

It is noteworthy that in 2016 the Constitutional Court of the Russian Federation also considered Article 222 of the Civil Code of the Russian Federation on constitutionality - and found no violations (55). The Constitutional Court determined that the demolition of an unauthorized building in accordance is a sanction and that its owner is endowed in accordance with the Civil Code of the Russian Federation with all methods of protecting his rights. However, the case of Neptune Service, considered by the ECHR, demonstrates that the issue of legality and illegality of the construction of real estate objects should be preemptively resolved specifically by courts in order to prevent abuse by law enforcement authorities.

What is the possible outcome in this regard for the application of law in Russia? Considering the position of the Constitutional Court of the Russian Federation, which found no violations of the Constitution in Article 222 of the Civil Code of the Russian Federation, it is possible to disregard the position of the ECHR. So, it can be stated with regret that changes in this area of law in the Russian Federation are hardly possible in the near future.

5. Lack of ways to protect the actual and quiet possession

Improvement of mechanisms for the protection of real rights to real estate is an important part of the reform of real rights in the Russian Federation. The need to protect actual and quiet possession follows from a literal reading of the rule of Article 1 of the ECHR Protocol 1. In this regard, the developers of the Draft for changing the section of the Civil Code on property rights proposed to introduce a section on protection of actual possession in the Civil Code of the Russian Federation (56).

Two points should be noted concerning the protection of actual possession. The first is that the provision proposed in the Civil Code draft on real rights, which would grant protection of actual possession that lasted for one year before its loss without analyzing ownership rights, will definitely lead to unbalanced decisions. First, it will harm owners and good faith *de facto* owners, to whom the ownership of the property was transferred to, on invalid grounds. In modern conditions of public reliability of registers of titles to real estate, legal logic requires that the court give priority in protection to that interest which is confirmed with the help of various pieces of evidence. Thus, actual possession of real estate, according to Article 8.1 of the Civil Code of the Russian Federation cannot be the only fact subject to proof.

If we turn to the practice of the ECHR, the court also proceeds to protect those persons who have a legitimate interest in real estate (57). However, in fact, it only presumes such interest for occupiers. In general, the ECHR refuses to address this issue of the means by which actual possession should be protected, leaving it to the discretion of the national legislator. The only condition that can be noted in the decisions of the ECHR on the issue of actual occupation of real estate, is that a balance must be observed in law and its application between protecting housing rights and protecting property rights.

The problem of finding a balance in disputes involving the occupation of real estate is typical for European countries. As the experience of countries that recognize protection of actual possession testifies, a party in a dispute is still provided with opportunities to protect their possession as a legitimate interest (Italy, Switzerland). In those countries where additional procedures are provided for the protection of the occupier of real estate and his eviction, special

anti-squatter legislation is also provided (Germany, UK). Currently, there is a tendency towards its tightening and criminalization of unauthorized occupation of someone else's real estate (58). Finally, the views of Russian researchers about more efficient protection of possession as a fact in foreign jurisdictions must be questioned (56).

In what way should the problem of protecting actual possession be solved in the Russian Federation? In Russian law, the legal regulation of this issue is unsystematic and contains gaps. For instance, in the Civil Code of the Russian Federation, there is no presumption of the legality of ownership for actual possession. However, such protection should be provided to the possessor, since possession in a developed economy is not just an appearance of a property, it has inherent value. However, provisions on the unacceptability of forcible eviction of property and separate provisions belonging to the squatter are contained in the articles establishing criminal and administrative liability (59-60).

As for civil legal methods of protection, firstly, clarification is required in terms of determining the proper implementation of the already existing method for individuals to defend their real rights. Secondly, a more justified alternative to protection of possession as a fact in the Russian Federation may be an expansion of the legal possibilities of protecting property rights using court orders. However, there is a possibility of presenting evidence of the legality of the protected right and determining the priority of interests between the two disputing parties. Thus, the compulsory method of protection, compared to *vindication*, will allow the applicant to receive a court order and fulfill it in a short time. In addition, the norms of the Civil Code of the Russian Federation regarding, for example, the procedure for evicting a tenant of residential and commercial real estate, needs to be detailed. In this regard, in the Civil Code of the Russian Federation, there is a significant legislative gap in comparison with the legislation of some EU countries.

As for protection of quiet ownership, there is an insufficient specification of the conditions for presentation and satisfaction of *actio negatoria*. For instance, in the Russian Federation, *vindication* and *actio negatoria* differ according to the criterion of retention or loss of ownership by the plaintiff. At the same time, if, regarding *vindication*, the Civil Code of the Russian Federation indicates the body of the violation, then the matter of violations in *actio negatoria* are defined as others and not related to the loss of possession. In practice, claims made by plaintiffs in *actio negatoria* are related to both restoration of partially lost ownership and elimination of other interference. Formally, it also turns out that loss of ownership by the owner will not give him an opportunity to submit a negatory claim. This gap was filled by clarifications from the highest courts in the Russian Federation (61). In addition, in practice, *actio negatoria* in the Russian Federation does not allow the plaintiff to demand a ban on the implementation of actions, but a more effective claim for both plaintiffs - for example, receiving compensation while retaining the possibility to interfere the plaintiff's property. Based on the wording of the Civil Code of the Russian Federation, it is also unclear what impact on property rights, legitimate or unlawful, can be the subject of consideration in a negative claim (62-64). Meanwhile, courts often refuse to satisfy a tort claim due to the failure to prove the guilt of the owner of a neighboring plot (65-66). As a result, in order to obtain protection, the owner in negative claims must refer to the violation of public norms by the defendant, since the Civil Code of the Russian Federation does not contain provisions on law of neighboring tenements.

To solve this problem, the Russian legislator can turn to foreign legal orders, where nuisance claims in disputes between neighbors are much more developed, and a doctrine of neighborhood has been established. For example, in the UK practice of nuisance disputes, a main criterion has been developed - loss of amenity value and a number of additional ones (67). They can be effectively used by Russian courts, provided that they are legally confirmed or clarified by higher courts. Of interest is also the English doctrine in substantiating the relations of neighborhood - give and take, which is based on the idea of a balance of interests of property

owners. Its application allows the parties to independently resolve the conflict. For example, the parties may enter into an agreement to establish restrictive covenants for real estate. In Russian law, there are yet no analogues of this right that binds a future owner. Also, for Russian real estate owners, it may be relevant to accelerate protection of rights to quiet possession *de lege ferenda* through administrative means, by contacting the municipality or an owners' association. All of the above means that the regulation of relations between neighboring property owners in the Civil Code of the Russian Federation is based on different principles, and therefore it should also be included in a separate section of the code.

Conclusion

The principle of balance of interests is key in the legal consolidation of the real rights framework in any legal system, although it is not always formulated on the level of national legislation.

In the Russian Federation, other civil law principles are also derived from this principle: equality of participants in civil relations, justice, unacceptability of arbitrary restriction of rights, effective and timely protection of rights and legitimate interests. Although the principle of balance is not enshrined in Article 1 of the Civil Code of the Russian Federation, as well as in the specific norms on property rights of the Civil Code of the Russian Federation, it is also referred to by the higher courts when considering gaps in legal regulation.

Consistent implementation of this principle in the norms of the Civil Code of the Russian Federation *de lege ferenda* is extremely important in resolving disputes involving various participants in real relations. Ensuring that such a balance is possible, first of all, through the establishment of guarantees of rights to individuals. The sphere of protection of property rights and, in particular, rights to real estate also needs reforming and detailing.

Thus, it is necessary to implement in Russian legislation the declared principle of public reliability in terms of more effective protection of good faith and prescription possessors. Judicial control guarantees should be provided concerning the rights of individuals in disputes with authorities within the framework of the procedure of state-mandated demolition of an unauthorized building, and in situations of public law restrictions being imposed on real estate. Finally, more opportunities for protection of property rights should be provided in the civil legislation of the Russian Federation due to the clarified regulation of *actio negatoria* claims and the establishment of simplified protection for owners, as well as the consolidation of a separate institution of neighboring tenements' law in the Civil Code of the Russian Federation.

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