
Problems of Improving Russian Legislation on Property Rights and Other Proprietary Interests

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Abstract:

The article is dedicated to the analysis of property right which is a new category for the Russian legal system. The introduction of private property land right into the Russian legislation in the end of the last century caused revival of theoretical researches of both property rights and limited proprietary interests. The bill on change of the Civil code of the Russian Federation was prepared on this basis. The key changes will be brought to the section of property right and other proprietary interests. However there are still different approaches to interpretation of concept, indications and types of property rights in the Russian science. Therefore, this article presents the analysis of problems of the property rights doctrine, practice of application of the current legislation; the author proposes own definitions and conclusions.

The author sums up the impact of action of the proprietary interest institutes which are new for the Russian legal system: privatisation, private land and premises ownership, usucapion etc. The author concludes that certain positions of proprietary interest should be further improved, in connection with complication of economic turnover, creation of land and other real estate market.

Special attention is drawn to the legal doctrine and legislation of foreign countries which law contains proprietary interests for several centuries. The reference to the foreign analogues of proprietary interests' regulation is topical for the modern Russian legislation. The scientific article is addressed to lawyers, and first of all to the people interested in problems of the modern civil law.

Key Words: Property, Proprietary interest, Real estate, Land plot, Premises, Servitude

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1. Introduction

1.1 Introduce the Problem

The proprietary interests in the Russian law are a legal structure which regulation was suspended in the second half of the XX century in connection with political reforms in the Soviet Union. Denial of private ownership of land plots and other real estate, introduction of monopoly of the state ownership resulted in renunciation of the key private and legal category of proprietary interest. The need to revive the forgotten category of proprietary interest arose again after transition of Russia to democratic reforms, market economy, private property. It should be mentioned that proprietary interests were regulated by legislation of the Russian empire at the end of XIX and at the beginning of XX century as “patrimonial rights”. Proprietary interests were also registered in the Civil code of the Russian Soviet Federative Socialist Republic in 1922. In the second half of XX century however, these interests were excluded from the civil legislation.

The category of proprietary interests as a form of property right institute and limited proprietary right were restored in the Russian legislation only at the end of the last century. One of the most important novelties in the first part of the Civil code of the Russian Federation which came into force on January, 1st, 1995, was introduction of the section II “Property right and other proprietary interests”. Its provisions introduced a lot of other regulations inherent in market economy and freedom of entrepreneurial activity which did not exist in the Soviet civil law.

Absence of legal regulation of proprietary interest led to “oblivion” of scientific researches in this sphere. The works of the Russian scientists in the second half of the last century in the sphere of civil law were dedicated mainly to the state ownership right which has essentially weakened content and quality of researches in the category of proprietary interests.

1.2 Importance of the Problem

Russian scientists began to draw attention to researches of the proprietary interest after its revival in the Civil code of the Russian Federation. However there is still no unity of views among legal experts concerning concept and indications of proprietary interest, construction of proprietary interests' system, their origin and reasons of termination. The discussions on a set of other important aspects of the proprietary interest are also being held. Thereupon, the Russian Federation Presidential Council for Codification and Improvement of the Civil Legislation has developed and approved the Concept of development of the civil legislation of the Russian Federation (Concept, 2009) on October, 7th, 2009, which biggest part is dedicated to the doctrine of the proprietary interest and the formulation of specific proposals for amendments to the proprietary interest legislation.

The project of the federal law No. 47538-6 «About introduction of changes to the first, the second, the third and the fourth parts of the Civil code of the Russian

Federation, and to the certain legislative acts of the Russian Federation» (brought to the State Duma of the Russian Federation) which assumes considerable updating of proprietary interest norms of the Civil code (including introduction of II section “Proprietary interest” (sec.13-20) with nineteen sections instead of eight (sec. 13-20) available in II section “Property right and other proprietary interests” of the operating edition of the Civil code of the Russian Federation was developed on the basis of the Concept of development of the civil legislation of the Russian Federation. New sections about ownership, property rights for land plots and natural resources, non-residential premises, new kinds of the limited proprietary rights (usufruct, building leasehold, mortgage, right for purchase of real things, proprietary granting, servitudes, right for constant land ownership) are being introduced.

It should be mentioned that provisions of this Concept are being actively discussed and critically estimated. In particular, the concept and the indications of the proprietary interest recognized in the Concept, kinds of limited proprietary rights, parity of proprietary and obligation rights, principles of proprietary interests are being criticized. In all fairness it has to be added that the majority of the modern Russian scientists consider novelties containing in the Concept as positive.

In spite of the fact that some laws which have been allocated from this bill were already accepted, the basic law which would introduce changes into the section “Property right and other proprietary interests” has still no legitimacy.

Nowadays provisions of the bill on proprietary interest are estimated differently. Though the whole legal community admits that currently the land tenure sphere remains one of the most corruptive, norms of the second section of the civil code of the RF approved at the stage of relinquishment of the state ownership and transition to market relations lag from the modern reality.

Competent Russian civil law specialists who negatively characterize rules of the Civil code of the Russian Federation on the proprietary interest define it as “impoverished and simplified institute of the property right” (Sukhanov, 2008), and believe that they are offered to use “a poor palette of legal possibilities” (Ivanov, 2009).

Introduction of land and other real estate into the Russian civilian circulation revealed a serious lack of this right regulation, and at the same time a practical need to return to the classical land proprietary interests which were once applied in the Russian pre-revolutionary legislation and formed a basis of property relations regulation in the foreign legislations of continental right and getting currently popular in many countries due to reforming of legislation in nineties of the last century.

Therefore, the research of the proprietary interest in this article is important and timely. The research will allow to find answers to many topical questions in the Russian legal doctrine.

1.3 Background/Literature review

The concept of the proprietary interest, its indications and types were investigated by both lawyers of the XIX century (Pobedonostsev, 2002, Shershenevich, 1995, Pokrovsky, 1998), and modern scientists (Sukhanov, 2002, Shennikova, 2006, Babayev, 2006). Works of the above mentioned scientists contain quite interesting information on categories of the proprietary interest, however they do not concern the problem of construction of proprietary interests' system or are mentioned only superficially, without analysis of content of limited proprietary interests well-known in the continental legislations (for example, real obligations, preferential right for purchase of real estate, usufruct, real servitude, waiting right).

The profound analysis of the proprietary interest category (Sachenrechte) was carried out in the German legal doctrine of both last century and modern times (works of Gierke, 1905, Westermann H., 1990, Schwab, Prütting, 2006).

Research of interconnection between contractual and proprietary rights is topical in English and American legal theory as well. Recently more scientists admit unclear borders between contractual and proprietary rights, necessity to revise private and legal theory of the proprietary interests and contractual rights (Sjef van Erp (2013/14).

It should be mentioned that works of the legal experts of the last century form a classical doctrine about the proprietary interest which serves as the basis for research of the proprietary rights. The works of the modern civil law specialists have gaps which are mentioned in this article and can be supplemented with author's proposals.

2. Method

Research of the proprietary interests has a rich methodology. The key methods are analysis and synthesis, generalization, analogy, system method, formal and legal method, comparatively and legal method and other scientific methods. In this article special attention is brought to comparative and legal method, referencing to the legislation of the countries of continental Europe, since the legislation of the European countries has regulated proprietary interests for several centuries, and the legal doctrine contains many scientific works about the proprietary interest.

3. Results

3.1. The concept of the proprietary interest in the theory and in the civil legislation

The concept of the proprietary interest was formulated in the Russian law literature of the beginning of XIX century. It did not cause a serious polemic in the civil

doctrine. The definitions of the proprietary interest formulated by lawyers are based on two main provisions: direct power over a thing and opposition of this power to all third parties by acceptance of its absolute action and hence protection against any violator.

In particular, Vaskovsky supposed a double structure of the proprietary interest according to which it can be defined as “a measure of power over a thing concerning all fellow citizens or as a measure of power over fellow citizens concerning a thing”. Moreover, while noting direct domination and absolute character as the basic signs of the proprietary interest, he believed that the absoluteness of the proprietary interest was a natural consequence of its proprietary, i.e. direct connection with a thing (Vaskovsky (2003).

Pobedonostsev adhered to the similar position and identified proprietary interest with patrimonial rights which characteristic, in his opinion, consisted in such signs as exclusiveness (advantage, preference) of the rights to a thing, direct domination of the person over a thing, protection of infringed right by means of special patrimonial claims (Pobedonostsev (2002).

Shershenevich proposed similar characteristics of the proprietary interest and noted that the absolute right was a duty of all fellow citizens to abstain from actions which have been not agreed with it. Duties of passive subjects have negative character, whereas the duty has positive character in obligations (Shershenevich (1995).

As a rule, the proprietary interests are opposed to the relative rights by this indication. Meyer focused attention on connections of the specified indications with object of the right, stating that the object of the proprietary interest is somebody else's thing, and object of obligations – somebody else's action (Meyer (1997). Gambarov considered absoluteness in connection with direct domination of the person over a thing as basic features of the proprietary interest. He wrote: “Still at abundance of all adjacent phenomena between proprietary and obligation rights following from conditions of a modern life, the absolute property of the claim and active position authorized persons remain at the majority of the proprietary interests and in most cases of their actions” (Gambarov (1909).

Pokrovsky proposed the most complex characteristic for summarizing of all above mentioned. He asserted that the proprietary interest is addressed to all and will be protected against all in case of infringement. He wrote: “Whoever takes my thing, I can demand to bring it back to me only because of the fact that this thing is mine; it is given to me by legislation. The contrast to the proprietary interest as an absolute right is an obligation right which is relative. The obligation requirement is addressed only to one person - to the debtor, and hence is not *jus in rem*, but *jus in personam*; only this person can infringe the creditor's right (without paying a debt, etc.), and protection can be required only against this certain person (*actio in personam*)” (Pokrovsky, 1998).

The modern European lawyers consider that the essence of the proprietary interest is based on its concept in pandect law. For instance, the German lawyer Wieling notices that specific quality of the proprietary interest consists in the fact that it directly "covers" a thing which belongs to the person; this domination provides the owner with power to influence the thing without participation of the third parties. On the contrary, the obligation demand does not provide such subject domination; the legally authorized person can demand the obliged person to implement a certain action. The one who has not received tenure over a bought thing yet, has still no any right of it; he can only request the seller to give him the thing (Wieling. (1997).

The modern Austrian lawyers consider the proprietary interest as a right of direct domination over a thing. They notice that domination of the authorized citizen is exclusively; it should be respected by others and can be protected from everyone (Koziol, Welser (2006). The Italian civil law specialist Mattei draws special attention to definition of the principle underlying differentiation of proprietary and personal right. He considers this principle in the idea that observance of the proprietary interest can be demanded from the whole world, while the respect of the personal right can be demanded only from a bound party (Mattei, Sukhanov (1990). This characteristic of the proprietary interest serves currently as the basic in the modern doctrine of the most European countries. It serves as a dogma of the continental civil law doctrine.

The continuity of pandect and modern West European doctrine on the proprietary interest is quite obvious. For instance, direct relation to a thing and absolute character serve in the modern doctrine as the most important indications of the proprietary interest delimiting it from the obligation rights.

The indication of the proprietary interest, "direct domination over a thing" originates from pandect right; its formation was promoted by *Gewere* construction which existed among the German people and designated full domination of the person over a thing. At that time there was no precise idea about property right and proprietary interest over a thing which contrary to obligations, was defined as *Gewere*. Therefore the old-German legislation separated obligations from *Gewere*, irrespectively from ways of protection (similar as in the Roman legislation), because there was no differentiation of protection depending on the right content before the reception, but in direct domination over a thing, without participation of other persons. In this connection, people formulated the idea that each personal right which is based on domination over a thing similar to *Gewere* could be recognized as a separate proprietary interest. The term "*ledichlike Gewere*" which was subsequently commented by Gierke as *unmittelbare Gewere* (direct domination) was created for representation of direct domination of the vassal's power versus the seigneur. Dernburg writes that "the proprietary interests provide us direct domination over corporal things: obligations do not provide us any domination over physical subjects directly; they are established only concerning one person to another in the field of property interests" (Dernburg, 1905).

After reception of the Roman legislation, the German legislation adopted division of claims action in rem and action personarum concerning property rights with different content, i.e. to Gewere and Obligation. This division of rights depending on a way of protection had the same practical action, as in Rome: owners of real protection ways had a right against the third parties, and owners of other rights - against specific person.

Thus, the German legislation has kept the German views after reception of the Roman legislation and recognized the rights having direct connection with a thing (indication arisen in the German lands), and possibility of absolute protection against everyone (feature formed in the Roman legislation) as proprietary interests.

This characteristic served as a precondition for considerable expansion of the proprietary interest list by the German lawyers, without limiting their content to any competence following from the property right (including exclusively to the right of use of somebody else's things). The reasoning of direct domination over a thing and absolute character of pledge, proprietary charge, preemptive right to purchase a thing in certain conditions allowed to define a group of "responsibility rights" and "preemptive right to purchase" along with proprietary interests of "rights of use", which were characterized mainly as the rights of a thing property. As it will be further shown in the work, the specified differentiation of the proprietary interests is topical in the continental legislation for several centuries.

However pandect right has considerably expanded the sphere of property and legal protection in comparison with the Roman right, having extended it over the other rights - preemptive right to purchase and real burden. The classical pandect doctrine characterizes direct domination over a thing as a feature of proprietary interest quite widely - not only as possibility to use somebody else's thing, but also as influence on a thing by its compulsory selling and purchasing it according to the property rights, without participation of the third parties.

Therefore the content of the limited proprietary interests is not based exclusively on authority of the proprietor withdrawn from the property structure and transferred to the owner of proprietary interest.

On the one hand, the subject of the limited proprietary interest cannot have more rights, than the owner, and on the other hand – it should be considered that the proprietary interest can provide its subject rather serious power over somebody else's thing - in the form of possibility of compulsory selling of the thing belonging to the owner (for example, at pledge and real burden), as well as possibilities to adopt authorities of the owner in certain conditions specified by the law or the contract (at real preemptive right to purchase).

The listed properties allow to define a concept of the limited proprietary interest as the right of somebody else's thing prescribed by the legislation and providing direct domination and characterized by the absolute nature, represented in possibility of possession, use and in certain cases provided by legislation or contract - disposal of somebody else's thing, or in certain conditions - its compulsory selling or preemptive property right of it.

The presented theses on the proprietary interest of well-known Russian civil law specialists were supplemented with clear definition of its special object in the form of corporal, individually-defined thing, special ways of occurrence, seniority property and following property among its legal features.

The modern civil-law science adheres to interpretation of the proprietary interest similar to the interpretation of pre-revolutionary civil law. As a rule, scientists define the proprietary interest as the right provided by the civil legislation and prescribing direct connection between the authorized person and a thing (with material object of external world), which has an absolute protection and contains possibility to influence on a thing using authorities provided by the legislation.

The concept of the proprietary interest is proposed to be prescribed in the domestic legislation for the first time, in the Civil code of the Russian Federation. The bill's article No. 221 establishes that the proprietary interest provides a person direct domination over a thing, and is the basis of implementation of ownership authorities in total or separately, using and disposal of it within the scope established by the Civil code.

The majority of the Russian researchers consider the following indications as the basic ones for the proprietary interests: absolute character; special object (material thing); direct relation of the person to a thing without participation of other persons; protection by means of special, proprietary and legal claims; ways and reasons for origin of the proprietary interests, their kinds and content are specified by the legislation; at conflict of the proprietary interest with obligation right, the latter yields to the first one; following a thing.

The modern Russian civil law features quite wide representation of the limited proprietary interests which include: their limited content in comparison with the property right (as a rule, absence of disposal authority); presence of a special object - real estate (except of a pledge); derivation from the property right; feature of "compression" of the property right, upon their termination, the latter is restored in full scope (principle of so-called "elasticity" of the property right).

However, it is necessary to note numerous doubts in the legal literature, concerning indications of the proprietary interest, criteria for differentiation of proprietary and obligation rights and, as consequence, the reasoning of the new bases for their division. The basis of this conclusion is the fact that indications of the proprietary

interests are typical for some obligation rights as well (Konovalov, 2002). Particularly, the some legal literature contains the idea that properties of following and proprietary and legal protection are inherent in rent, trust management, uncompensated use (loan), hence they cannot be applied for explanation of independence of the proprietary interest. We think that lawyers who adhere to such point of view do not consider the fact that both the foreign and the Russian pre-revolutionary doctrines considered and consider only absolute nature and direct domination of the person over a thing as features (signs) of the proprietary interests distinguishing them from obligation rights (instead of separately taken properties of following or proprietary and legal protection).

The basic indications of the proprietary interest which represent its essence - absolute nature and direct domination - usually not called in question by modern lawyers. The domestic legal literature describes the absolute nature of the proprietary interest through the structure when the authorized person is opposed to the unlimited number of passively obliged subjects (Civil law, 2004).

3.2 Principles of the proprietary interest in the civil legislation

In connection with the conceptual importance of principles of the proprietary interest at regulation of real legal relationship, their cover of all elements of proprietary interest from the order to purchasing including implementation, transfer, termination, we believe in objective conformity in their legislative fixation. The system of proprietary interest principles should contain the following fundamentals.

The principle of consolidation of proprietary interests, their content and origins by the Civil code of the Russian Federation. According to this provision, the comprehensive list of the limited proprietary interests should be secured in the Civil code of the Russian Federation with interdiction of considering the other rights as proprietary interests. This conclusion is formulated for construction of the uniform system of the proprietary interests with legislative consolidation of their content.

The comprehensive list of the proprietary interests is required in connection with special absolute nature of proprietary interests which assumes that all third parties know about proprietary interests and do not infringe them. Besides, proceeding from provision that any proprietary interest is a charge of the property rights, the content of the proprietary interest should be available for the citizens. This right should be provided by the principle of consolidation of kinds and content of the right in legislation. The content of this principle should include the provision that the proprietary interests arise and terminate according to the bases established by the legislation.

Principle of absolute nature of the proprietary interests. This principle originates from the essential characteristic of the proprietary interest and leads to specific legal consequences. The absolute nature of the proprietary interest and absolute protection are considered in the modern educational literature as two indications. And when the Roman legislation connected the absolute nature of proprietary interest with absolute protection by providing the subject with possibility to use proprietary and legal

claims, nowadays these properties are considered as independent. We think that protection of the proprietary interests by means of proprietary and legal claims is covered by the absoluteness property; hence the definition of independent indication is not necessary.

First of all, proceeding from legislative consolidation of absoluteness of the proprietary interest, i.e. the legal possibility of the authorized person to put a claim to everyone who has infringed proprietary interest leads to the special proprietary and legal protection in comparison with obligation rights. The domestic legislation contains two types of this protection by means of traditional claims - vindicatory and negatory claims. The absoluteness principle covers the feature of following a thing everywhere (i.e. irrespective of change of the owner).

Principle of publicity of the proprietary interests. According to the specified principle, origin, termination, restriction and transfer of the proprietary interests is subject to the state registration in the Uniform state register of real estate rights. This rule follows from the article 131 of the Civil code of the Russian Federation and the Federal law dated July, 21st, 2007 "About the state registration of real estate rights and transactions with real estate". Besides the provision that the state registration has right-proving and right-generating character should be consolidated in the legislation. The first of the specified functions involves a rule about public reliability of the proprietary interest according to which the registered right is definitive and cannot be declared invalid. However, the Russian doctrine contains the principle of division which can be found in the German doctrine as well. According to this principle, invalidity of the obligational transaction does not lead to invalidity of the proprietary contract, and the proprietary interest arisen on its basis. In the domestic legislation, invalidity of the contract results in restoration of initial position of the parties (except of the cases provided by legislation), and hence, concerning the arisen proprietary interest - removal of the right record from the register. Certainly, this situation undermines the civil circulation, because the buyer cannot always be sure that the registered proprietary interest will not be questioned in the future, which results in loss of trust to the state registration.

We think that there is no reason for introduction of division principle which assumes independence of the registered proprietary interest from the invalidity of the obligational contract from which it was generated, due to absence of division of transactions to obligational and order ones in our legislation. However, we need another consolidating measures of validity of the registered right, and reduction of quantity of cases of records removal from the Uniform state right register in connection with invalidity of transaction. This problem goes beyond the legal regulation of only proprietary interests, since we need principal complex measures for modification of the content of other institutes of civil law concerning protection of the rights of acquirers of the proprietary interest according to transactions (for example, solving of the problem of "big transactions" and "transactions with interest"). However, we think that the content of the proprietary interest institute

should include the rule directed for solving of this problem, for example, by means of recognition of public reliability principle along with publicity principle, according to which registration of the rights in the register is the main proof of existence of the proprietary interest. The record can be declared as invalid only after satisfaction of a replevin.

This offer requires the reference to more important aspect connected with process of the right registration, - necessity to revise requirements placed on the domestic institute of the state registering clerks. The present situation in the state registration system, when the registering clerk does not bear any property responsibility for trespass caused by the void transaction is inadequate. Therefore, it is necessary to toughen requirements to process of settlement of transaction. One of possible solutions could be the return to the obligatory notarial certification of transactions the real estate, with imposing property responsibility for illegal transaction on notaries. This would promote orderliness in the sphere of transactions with land plots, and would make the state registration (record in the register) a right-proving and right-generating fact.

Principle of seniority of the proprietary interests. The “seniority of the proprietary interests” is not so important in the modern Russian civil legislation, as in legislations of the developed countries. As it has been shown above, the concept of seniority of the proprietary interest is widely used in foreign legislations, since according to this concept the proprietary interest prevails not only over obligational rights, but also at competition of the proprietary interests. For example, in case of registration of several mortgaging rights, land and rent debt, servitudes, etc. at the same land plot. We think that introduction of the mechanism of legal regulation of the proprietary interests based on classical provisions (including establishment of several proprietary interests over one land plot at the same time) into domestic legislation system could result in conflict between proprietary interests with uniform content. For instance, at registration of several pledge rights or several preemptive rights to purchase or real issues at the same land plot. It appears that the German experience of definition of seniority of the proprietary interest proceeding from date of registration of the interest (rule of the "first" registration) can serve as an example for settlement of a dispute in such situations.

Thus, the principle of a seniority of the real rights should be applicable both in relation to obligations, and in relation to conflict of several proprietary interests over one land plot.

Principle of specialty (definiteness). According to this principle, only the individually-defined things with material embodiment can serve as an object of the proprietary interest. Similar provision originates from the proprietary interest's essence, and is considered as a rule as distinction for differentiation between the proprietary interest and obligational right. The modern meaning of this principle should be reduced to the idea that the proprietary interest covers only individually-

defined things, not a set of things. Therefore, the enterprise and other property complexes cannot be declared as an object of the proprietary interest, though they can participate in circulation as an obligation object.

Thus, we can state that the foreign experience of legal regulation of the proprietary interests, and both domestic pre-revolutionary and modern legal traditions, requirements of the modern real estate circulation prove the existence of preconditions for differentiation of the major categories connected with an essence and specific legal regime of the proprietary interests, having designated the first ones as indications of the proprietary interest showing its essence, the second ones - as principles of its legal regulation.

3.3 Types of proprietary interests

One of the classic proprietary interest systems of the Roman and German countries is consolidated in the German Civil regulation (*Deutsches Bürgerliches Gezetzbuch*) (BGB) 1896 which was introduced in the territory of Germany on January, 1st, 1900. The third book of it, "Sachenrecht" is dedicated to the proprietary interests and listed their full circle. After coming of BGB into force, the analytical work on improvement of the proprietary interest had insignificant scope. The further researches of the German scientists were connected basically with the adaptation of proprietary and legal categories to changing social and economic relations, achievements of scientific and technical progress, financial changes in economic. Today the proprietary interests have already get rid of archaic elements for a long time and are widely applied in modern conditions. We can note a new tendency in practical application of the limited proprietary interests in the modern life in the form of their wide application as a legal tool for financial relations regulation. For example, the function of support of money obligations fulfilment as guarantee mean of business in the future became topical along with the function of the proprietary interest which was successfully implemented in the last century as a mean for "using" of somebody else's land plot for satisfaction of basically consumer's requirements. The first feature is often implemented at establishment of real burden (Reallast), pledge and its versions (Grundschild and Rentenschuld), usufruct (Niessbrauch) (in case of consolidation as inheritance treaty provision (Vorweggenommene Erbfolge), "waiting right" (Anwartschaftsrecht) (at its establishment before fulfilment of financial obligations of the buyer). Moreover, the relation with use of real burdens at restriction of competition, use of land plots for alternative sources of power supply, servitude as financial regulator of contracts and competition support, rights of priority - in relations to communities at building, super fiction for building of residential and industrial objects have become very popular.

The most important argument of recognition of high level of pandect doctrine is the fact of its penetration into other countries of continental Europe. For example, pandect right was adopted at formation of the Civil code of Switzerland 1907 (*Schweizerisches Zivilgesetzbuch* (ZGB), though it has reserved many traditional

national elements. In particular, along with tree-level division of the proprietary interests which was typical for the German legislation, the Swiss legislation implemented two-level system (proprietary interests of use and selling), thus the preemptive right to purchase is not the proprietary interest, but restriction of the property right; building was considered as a kind of servitude, instead of independent proprietary interest. Real obligational rights (pledge and its types) are also very original.

Absence of any profound analytical works in the civil law at development of the Austrian General civil regulations 1811 (Österreich Allgemeines Bürgerliches Gezezbuch (ABGB) affected the regulation of proprietary relations of ABGB. The method of regulation of the proprietary interests by ABGB is criticized in the modern Austrian civil law. However it should be mentioned that the modern Austrian civil and legal doctrine and the civil legislation develop under the influence of pandect doctrine and legislation which caused similarity of many today's institutes to the German legislation.

The Civil code of France (Code civil) accepted in 1804 and being basically an example of the Roman jurisprudence is also being criticized from this point of view. Nowadays the Civil code of France operates with numerous amendments.

The opposite structure of the property right concerning land plots was developed in the countries of English and American legislation which contain no category of the proprietary interest. Plurality of titles concerning the land plot is widely used there. However, similar to the European legislations, the English and American legislation separate a legal regime of real property from the regime of personal property. The full ownership can be established concerning personal property, real estate right represents limited titles (according to right of justice or to the general law) which different persons can have concerning the same land plot. The specified system originates from the feudal legislation, but unlike the continental legislations which transformed this “split property” thanks to reception of the Roman legislation and its further transformation by pandect doctrine into the institute of limited proprietary interests, the system of the general law not only reserved, but also developed this structure in numerous precedents. One of important consequences of action of the feudal divided property was the institute of trust property which splits the property right, since one object has several property titles - settler of the trust, trustee and beneficiary of trust.

Certainly, this “property right” of the persons who have property connection with the land plot (founder of the trust, entrusted administrator, beneficiary etc.) essentially differs from the continental proprietary interest (providing on the contrary only limited proprietary interest derived from the property right) on which example the domestic legislation is being currently developed.

4. Discussion

When addressing to proprietary interest system of the Russian legislation, we have to admit the fact that it has many signs of the Soviet legislation of XX century.

The article 216 of the Civil code of the Russian Federation contains secured norms on economic management, operational administration, permanent (termless) use and lifelong inherited ownership (action of the last two norms were essentially limited by the Land code of the Russian Federation), as well as norms on servitudes.

The modern Russian legal literature contains systematizations of the object (Sukhanov, 2008), content of the right (Shennikova, 2006). Thereupon, it is proposed to classify the proprietary interests as: 1) rights of legal bodies of managing with property of the proprietor; 2) rights of servitude type covering the limited use of the proprietor's property; 3) rights of land plots use; 4) authorities of pledgee in the contract on property pledge.

In other case it is proposed to consider the content of the corresponding right and its subject (as consequence - occurrence moment) as the basis of proprietary interests' classification (Babayev). On the basis of the specified criteria, the limited proprietary interests are divided into: 1) ownership rights (rights of pledgee, keeper, carrier); 2) rights of use (servitude, rights of a member of family-proprietor of a premises and the tenant, as well as persons living together with the tenant according to the commercial rent contract); 3) rights of ownership and use (ownership and use of the personal property of the tenant, loan recipient, pledgee (open list) and ownership and use of the real estate of tenant and loan recipient (closed list).

Obviously these ideas do not consider the provision that the content of the limited proprietary interests is not limited to three authorities (ownership, use and management); it is much wider. Hence, this systematization does not include a group of right of purchase of somebody else's thing, as well as rights of selling of somebody else's thing - pledge, mortgage, real burden (real issues).

After perception of the classical doctrine on the proprietary interest in the Russian civil law which is confirmed by provisions of the Development concept of the civil legislation of the Russian Federation, and accordingly a recognition of the proprietary nature of rights which have been considered as such for a long time in developed foreign legislations and were recognized as proprietary in the pre-revolutionary Russian legislation, the system fully considering the specified tendencies should be developed.

The project of the federal law No. 47538-6 "About introduction of changes to the first, second, third and fourth parts of the Civil code of the Russian Federation, and to specific acts of the Russian Federation" offers to consolidate nine limited proprietary interests.

It should be mentioned that the developed system of the proprietary interests is a legal possibility of legal relationship subjects to choose the land tenure. For comparison: the obligational right assumes various kinds of transactions and suppose free choosing of transaction type; the corporate right provides freedom of choice of organizational and legal form of commercial and non-commercial organizations while carrying out entrepreneurial or other activity.

In spite of the fact that traditionally proprietary interest is based on “*Numerus klausus*” principle, i.e. closed list, the scope of the list proposed by the law assumes that right subject should have freedom in choosing (of course with observance of purposes of the future land use and content of proposed right). Article 223 of the Civil code of the Russian Federation (in bill edition) secures the following kinds of the limited proprietary interests: right of permanent land use (chapter 20); right of building (chapter 20.1); servitude (chapter 20.2); right of personal usufruct (chapter 20.3); mortgage (chapter 20.4); right of purchase of somebody else's personal thing (chapter 20.5); right of real issue (chapter 20.6); right of operational administration (chapter 20.7); right of limited ownership over the land plot (article 297.1) (Emelkina (2013).

When characterising the proposed proprietary interests, it should be mentioned that basically they are formulated as social and economic institutes serving for satisfaction of various interests of all subjects of the right. Citizens can purchase land plots for the right of permanent land ownership (for the term up to hundred years) for managing a personal farm, gardening, truck farming. Residential and non-residential premises of members of the proprietor's family and other persons who have the right of residing in the proprietor's premise can be the subject of personal usufruct right (for a lifetime or for a certain term). For building purposes the land plot can be transferred to the building right. Legal bodies can also get the rights of building and permanent land ownership. The bill provides a number of other proprietary interests serving for support of obligations - proprietary interest of the pledge, preemptive right to purchase somebody else's thing, real issues.

5. Conclusion

Thus, we can conclude that the listed new institutes of the proprietary interest will be in demand among the subjects of civil legal relationship, each of them will "take" a certain sphere of land tenure.

The proprietary interests provided in the list above have been applied in the developed foreign legislations for a long time and were in demand in Russian legislation of XIX century. They are inevitable elements of a private land property, a market circulation of land plots. Since the domestic legislation introduced private land property, relations of land users will need a creation of a structure of limited proprietary interests providing one person who does not have a possibility to purchase a land plot as a property to use the land plot which belongs to the other

person according to the property right which features wide content and absolute nature. The international experience proves that land tenure on the limited proprietary interest is very effective in practice since land use assumes long terms, stability, guarantees of protection against the third parties.

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