предусматривает определенные санкции. Помимо прочего, за проступки ребенка могут пострадать родители и другие близкие люди.

Приоритет восстановительного подхода и мер воспитательного воздействия как один из основных принципов дружественного к ребенку правосудия закреплен в Указе Президента Российской Федерации от «О Национальной стратегии действий в интересах детей на 2012-2017 годы» и базируется на положениях Организации Объединенных Наций в сфере защиты детей и молодежи, Руководящих принципах ООН для предупреждения правонарушений среди несовершеннолетних, рекомендаций Комитета министров Совета Европы о европейских правилах для несовершеннолетних правонарушителей, подвергаемых наказанию и мерам воздействия. [4, 15-23]

Следует отметить важность гуманизации мер административной ответственности в отношении несовершеннолетних, так как молодое поколение является естественным резервом социального развития, а нарушение закона лицами юного возраста свидетельствуют о существующих пробелах правового и нравственного воспитания, о недостаточности условий для включения молодежи в жизнедеятельность общества. [6] Если государство не будет применять действенных мер к несовершеннолетним правонарушителям, то это грозит ростом подростковой уголовной преступности.

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Bogomolova N.A., Vahitova G.V.

Acquirement of ownership by acquisitive prescription: some challenges

*FSBEI of HE Bashkir State University
(Russia, Ufa)*

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Аннотация

В статье рассматривается понятие приобретательной давности, а также права собственности. При этом выявлены проблемы, возникающие в приобретении права собственности в силу приобретательной давности, и предложены способы решения изложенных проблем.

Ключевые слова: права собственности, правовой институт, приобретательная давность, собственность, срок давности.

Abstract

The article deals with the concept of acquisitive prescription, as well as property rights. At the same time, the problems arising in the acquirement of property rights due to the acquisitive prescription are identified, and the ways of solving these problems are proposed.

Keywords: the right of ownership, legal institution, the acquisitive prescription, the property, the Statute of limitations.

The principle of evolution of civil legal relations of the Russian Federation devotes considerable effort to reforming legislation on things [1, 130]. Matters of property law will always be relevant. [2, 531]. The most valid, corresponding to a true understanding of property, remains the idea of it as an absolute right (power) of the owner over his thing. The emergence of the institution of acquisitive prescription was associated with the need to eliminate uncertainty in matters of ownership of things, thereby eliminating the cases when the object of civil rights actually went out of circulation due to the absence of the subject of ownership, although it had an owner who owned and used it for a long time. [6]

A modern institution of acquisitive prescription is necessary to give stability to civil relations. Civil rights may arise as a result of the acquisition of property on the grounds permitted by law.

Clause 3 of the Art. 218 of the Civil Code of the Russian Federation, according to which, in cases and in the manner prescribed by this code, a person can acquire ownership of the property:

- not having an owner;
- on property whose owner is unknown;
- on property that the owner has refused or for which he has lost the right of ownership on other legal grounds. [1]

The acquisition of ownership by the prescription of ownership is based on a rather complicated composition.

Of great interest is the construction of acquisitive prescription on the part of the social and economic conditions for the emergence of this institution in Russian civil law, as well as on the importance of its modernization, bringing it in line with other social relations interacting with this institution.

In each situation, the acquisition of ownership by virtue of acquisitive prescription is a legal fact, the unsuitability of which leads to problems of the mechanism of civil and legal regulation of property relations. [7]

According to the Civil Code, acquisitive prescription is associated with certain circumstances. The main one is possession of a thing for a period specified by law (acquisitive prescription), namely possession and possession terms are two inextricable legal facts that are at the center of acquiring ownership by prescription.

In accordance with the Art. 234 of the Civil Code of the Russian Federation, a person - a citizen or legal entity - who is not the owner of the property, but in good faith, openly and continuously owning both his own real estate for fifteen years or other property for five years, acquires the right to own this property (acquisitive prescription). [3]

Thus, it is customary to attribute to the conditions that possession should be honesty, openness, and continuity of ownership. Violation of these conditions makes possession of a defective legal fact that does not entail recognition of ownership of such an owner.

Problematic issues associated with acquisitive prescription also exist in the resolution of court cases. Thus, the plaintiff, as a basis for recognizing the right of ownership of property by virtue of acquisitive prescription, indicated that the non-residential premises of the basement were received by him along with property that was acquired in the privatization of the property complex.

But, as the court points out, the legislation in force at that time did not provide for the appearance of the right of ownership of legal entities to state property, which was obtained on this basis.

As a result of this, when the disputed premises were acquired into possession by way of privatization, the plaintiff knew and should have known that there was no reason for him to have ownership of them, which indicates a lack of good faith in the plaintiff's possession of the disputed property. In this case, recognition of the right of ownership of this property is excluded by virtue of acquisitive prescription. [4]

The ownership right to immovable and other property that is subject to state registration appears in accordance with paragraph 1 of the Art. 234 of the Civil Code of the

Russian Federation from a person who acquired this property by virtue of acquisitive prescription, from the moment of this registration. [3]

As a result of this, state registration acts as the final fact, which reveals the moment of the appearance of the right of ownership by prescription. Accordingly, in this situation, there is a certain interaction of some facts: acquisitive prescription and state registration.

This in turn means that the imperfection of the latter (subject to other requirements of the law) can lead to significant “flaws” in the mechanism of legal regulation. [5]

The malfunction of the legal structure of the institution of acquisitive prescription is obvious, and it leads to contradictions and difficulties in law enforcement, and also needs to be modernized.

So, the Art. 234 of the Civil Code of the Russian Federation requires fair ownership. Based on this, acquisitive prescription applies only to a bona fide acquirer; in other situations, ownership will be unfair, since only a bona fide acquirer does not know the illegality of his possession.

With this wording, it is impossible to become the owner of the stolen item, no matter how much time has passed since its illegal possession.

This may seem to be fair. But is the stabilizing function of the institution of acquisitive prescription, designed to give certainty to civil circulation, fulfilled?

Along with this, we can say that in the Art. 234 of the Civil Code of the Russian Federation there are some contradictions and it is not clear whether acquisitive prescription applies to every situation of illegal possession or only to bona fide illegal possession. These contradictions are related to the fact in the Art. 234 of the Civil Code of the Russian Federation there is a link to the Art. 301 of the Civil Code of the Russian Federation, which relates to any illegal possession, both fair and unfair. [3]

It seems that it is this contradiction that determines that, unlike a bona fide acquirer who does not know and should not know about the illegality of his possession, a long-time owner does not require that he does not know about the illegality of his possession.

Another problem of acquisitive prescription is the following. As practice shows, protection of the rights of the owner of a thing is ineffective during the period of the period of acquisitive prescription.

This can be solved by changing the norms of paragraph 2 of the Art. 234 of the Civil Code of the Russian Federation, providing ways to protect the rights of the long-standing owner, including through state registration of the right of ownership during the period of the acquisition of prescription.

In our opinion, this change will be relevant, as it can help to overcome the defective legal regulation mechanism, which is associated with the complexity of protecting the rights of the owner.

Thus, acquisitive prescription is an exceptional way to acquire ownership. It is necessary to exclude situations when the object of civil rights simply falls out of circulation since there is no owner. Although there is an actual owner, possessor.

Ownership, which is at the center of the institution of acquisitive prescription, does not in itself give rise to rights.

The right of ownership arises on the basis of the legal composition, which includes the fact of open and continuous illegal possession and the expiration of such tenure established by law.

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Pastukhova D.A., Vakhitova G.V.

Mortgage agreement under the Russian law: some features

*FSBEI HI Bashkir State University
(Russia, Ufa)*

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Abstract

The article deals with the key features of the mortgage agreement under the Russian law, identified problematic aspects of the content of the mortgage agreement.

Keywords: mortgage lending, mortgage, mortgage agreement, real estate mortgage

Аннотация

В статье рассмотрены ключевые особенности договора ипотеки по российскому законодательству, выявлены проблемные моменты содержания договора ипотеки.

Ключевые слова: ипотечное кредитование, ипотека, договор ипотеки, залог недвижимости

The scope of civil law relations is the most extensive in terms of its variety of objects and objects of transactions, it covers the widest range of issues, both provided by the legislator and not provided. Moreover, the conclusion of any type of agreement is realized only on the basis of the principle of freedom of agreement. A mortgage agreement is a specific, but still not an independent civil law agreement, it is a type of pledge agreement. A mortgage agreement has certain characteristics.

The first sign of the mortgage agreement is that it is accessory, i.e. additional in relation to the main contract and legally dependent on it. The second feature is that not only the loan agreement issued for the purchase of housing, can be targeted. The loan for the purchase of housing is also targeted. For example, in accordance with the provision on certain conditions of the loan agreement, used in the framework of the pilot version of the Moscow mortgage program, a mandatory condition of the loan agreement is to indicate the address of the purchased housing and data on its owner. In the standard form of the mortgage loan agreement AHML also contains an indication of a specific dwelling, which is purchased at the expense of credit funds. Thus, the loan agreement in question is a target loan for the purchase of residential premises. Accordingly, it is subject to the provisions of the Art. 814 of the Civil Code on the intended use of the loan amount.

The next feature of the concluded loan agreement is connected with its association within the framework of functioning of the system of mortgage housing crediting with the loan agreement.

Despite the unlimited range of possible lenders in accordance with the general provisions of the loan agreement, the mortgage law emphasizes its targeted nature, separate legal entities as lenders, which allows you to approve the commercial orientation (retribution), not only the loan agreement, but also the loan agreement.