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Legal Criteria For Determining Real Estate

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ABSTRACT

This article critically analyses legislative acts concerning the legal regime of real estate of the Republic of Uzbekistan and reviews the improvement of the legal status of real estate. In particular, on the basis of the legal characteristic of immovable property, peculiar aspects of the stay (finding) of immovable property in civil circulation, the priority areas of development of the Civil Code of the Republic of Uzbekistan are moving forward (hereinafter referred to as the Civil Code).

KEYWORDS

Immovable property, ownership, civil law, legal regime, legislation, state register, buildings, objects.

INTRODUCTION

The division of material goods into a particular type from a legal point of view is primarily carried out according to their conformity with specific criteria and requirements. The determination of whether a material good

belongs to a property is therefore based on specific criteria. As a rule, in the current legislation, the division of property into movable or immovable property is based on the fact that the object is inextricably

connected with the land and cannot be moved from one place to another without compromising the purpose of the appointment. However, this criterion can only be considered as a formal requirement. Because, based on the type and quality of immovable property, in practice, there may be a problem of recognizing it as immovable property. In addition, it is necessary to have criteria for evaluating the existing structure or its part as a separate object as immovable property and the requirements defined for it. In addition, from a practical point of view, it is also important to have criteria for determining the place of real estate objects in a complex system of property structures and models.

It should be noted that the current legislation does not define individual requirements or rules for certain types of real estate. And the general criterion established regarding the definition of real estate (Article 83 of the Civil Code) may lead to misunderstandings in determining their types and determining, as well as regulating, in accordance with the established procedure, the legal treatment of these objects. For example, there are also problems regarding attempts to design auxiliary and economic buildings as housing or to register the status of unfinished properties under a housing regime or building. Therefore, it is necessary to form specific rules on the legal criteria for determining immovable property and to pay special attention to the review and application of law in this area. At the same time, it is also important to clarify the relationship between the terms "real estate" and "immovable property" in law and practice and their correct application in legal relations.

Some views have been expressed in the legal literature on the relationship between real estate and immovable property. According to experts, the terms "real estate" and "immovable property" have a relationship in the quality of juridical and technical concepts. If the term "real estate" is considered to be the subject of State registration of rights in respect of property and related transactions, the term "immovable property" is considered to be the subject of cadastral records, technical records and technical inventories. However, both terms cannot exist separately from each other [1].

If we look at the state of use of these terms in civil law, we can see that they are used differently. In particular, while Article 83 of the Civil Code applies the term "immovable property" in parts 1-2, 5, the term "immovable property" in parts 3-4. At the same time, another example is the disproportionate terms in article 84 of the Civil Code and the Regulation "On the Procedure for State Registration of Rights to and Transactions with Immovable Property," approved by Cabinet of Ministers Decision No. 1 of 7 January 2014. If Article 84 of the Civil Code is called "State registration of real estate," the Regulation implies State registration of rights to immovable property. That 's where the fair and fitting question arises: real estate? Or rights to her? Also, if "real estate" is registered by the State as stated in the title of Article 84 of the Civil Code, is it necessary to register rights to it rather than "immovable property"? This misapplication of legal terms, in our view, will lead to certain problems in its understanding and interpretation. Therefore, there is a need to harmonize them, which in turn will eliminate diversity in the correct application and review of legislation.

Turning to the legislation of foreign States relating to this provision, we can see attempts to generalize these terms on the basis that they have the same meaning. For example, Article 130 of the Civil Codes of the Russian Federation and the Republic of Belarus is called "Immovable and Movable Things," it lists what refers to "immovable things (immovable property, real estate)," and in this way defines the legal basis for the equivalent application of the terms "immovable property" and "immovable property." Article 117 of the Civil Code of the Republic of Kazakhstan is called "Immovable and movable property," it lists what refers to "immovable property (immovable things, real estate)" and thus provides that the terms "immovable property," immovable things, "real estate" have the same meaning.

From this point of view, it would be expedient after the word "real estate" to include in part 2 of Article 83 of the Civil code in brackets the terms "real estate, immovable things". In this case, part 2 of Article 83 of the Civil Code will be interpreted as follows:

The real estate (real estate, immovable things) treat: grounds, a subsoil, buildings, constructions, long-term plantings and other property which is strongly connected with the earth that is objects which movement without disproportionate damage to their appointment is impossible.

It is known that objects of property law should represent a set of the following three characteristics:

- a) Physical character - is a sign of acquiring a thing, that is, taking possession. Here of course, only the acquisition or interest itself is not enough. For example, items

that can be purchased, have an interest in them: land fertility, animal productivity, atmospheric air and other failures are attributed to things or defined as the object of the transaction;

- b) Economic character - is cost, the otsustviye of cost leads to loss of sense and value of possession concerning a thing. Stopping that the availability of value is one of the most important properties for objects of civil turnover, H.R. Rakhmonkulov notes: the properties of material goods consist not in the fact that they are natural, but on the contrary social. From an economic point of view, the material good has the property of the goods, that is, consumer value and value. Such material goods are considered to be the object of civil relations [2]. In fact, the lack of value of material goods, things exclude its quality to be the object of civil law. In this connection, any material good, in order to be real estate, together with general requirements (Article 83 of the Civil Code), must have a certain economic value, and thereafter social relations concerning it may arise;
- c) Legal character - ownership of legal status is considered. For example, a self-built building cannot be an object of property and the person who built it has no right to dispose of it and is considered obliged to demolish it at his own expense.

It should be noted that these characteristics are universal and apply to all luck, including real estate. Therefore, the legal criteria for determining real estate means that the requirements defined in the law: to inseparable the object from the land and the inability to change its place without causing disproportionate damage to the assigned

purpose, are not sufficient to recognize it as real estate. Anyway the real estate has to be recognized in accordance with the established procedure and on the basis of requirements of the law, and for this purpose, first of all, all stages of legal registration for its construction and reduction in a certain form have to be carried out in due time. In this case, the object meeting the requirements of part 2 of Article 83 of the Civil Code may be declared illegal and rights against the subject may not arise. For example, if a citizen with rights in respect of a land plot builds a building without performing certain formalities, such a building is considered to be self-built and the building can be demolished at the expense of the person who built the building.

Together with common properties and characteristics characteristic of all property objects, real estate also has its own individual special characteristics. At the same time, immovable property can be divided by origin (natural origin or occurrence as a result of human work), peculiar features (simple or complex), value (main and belonging), stay in circulation.

Analyzing the issues of properties and definition of real estate, A.Alekseev says: the category of immovable property is divided to determine peculiar features of legal relations of civil law arising in relation to this object. However, on the basis of the relations arising from the result of this object, the criterion for assigning an object to real estate will be logically incorrect. A real estate object, regardless of the relationships resulting from the object, exists from a physical and legal point of view. At the same time, the main sign of a thing that can be real estate - the possibility to be the object of civil relations in

certain conditions is considered. Immovable thing differs from other things only in its objective features, that is, these features are related to legal relations carried out in relation to this thing [3].

In H.R. Rakhmonkulov opinion, all material and other values capable of meeting the material needs of subjects of law are introduced as an object in the relations regulated by civil law. For example, the sun and its rays are unquestionably regarded as an invaluable good for humanity. Despite this, they are not included in a number of material goods as objects of civil law relations. Not all objects of nature, but only the object of human activity and natural resources, values necessary to meet its needs are recognized by law as material goods and, if so, they are considered objects of civil law relations [4].

That is why, in order to recognize a certain material object as a real estate, it is necessary to proceed from the social nature of this object. Consequently, it is inappropriate for any object of nature to be recognized as real estate. After all, in order to develop a social attitude towards an object of nature, first of all, it is necessary to pay attention to the influence of man and the ability to exercise their rights against him. Consequently, with respect to sunlight, rain drops or moonlight light, no subject can establish ownership or possession and cannot give them social nature. Including, although the shell and layers of land are also generally protected by law, they cannot be subject to civil relations.

K.M. Sadikova expresses the following opinions on this issue: at the same time, the information often disseminated in the press today about the sale of a site on the moon and the fact that some famous personalities buy

sites on the moon demand that in the future this relationship should not be ignored. In such cases, the question of the extent to which the characteristics of real estate defined by the current legislation are linked in real estate on the moon has become a task facing the discipline of law. Of course, these circumstances today are merely assumptions and the result of human imagination, but if, after time, the purchase of real estate not only on planet Earth, but even on other planets from imagination, should not forget the possibility of its legal regulation [5].

In our opinion, the main criterion for determining real estate is the general and somewhat abstract rule in part 3 of Article 83 of the Civil Code in the analysis of the status of real estate, as the current legislation provides for an organic connection with land and the risk of disproportionate damage to the intended use of the property. Therefore, it is necessary to determine the peculiar criteria in the assessment of real estate as a specific (specific) object and provide for specific laws in the legislation regarding it. In this case, when recognizing real estate, together with the requirements defined in part 2 of Article 83 of the Civil Code, it will be advisable to introduce a requirement of ownership to the state of the relevant registration.

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