



THE CONCEPT AND CONTENT OF PRIVATE PROPERTY RIGHTS

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ABSTRACT

This article provides a comprehensive analysis of citizens' private property rights, focusing on the sources, forms, and essential legal elements that constitute these rights. It discusses the modern dynamics of property acquisition in a market-driven economy, where entrepreneurial activity plays a central role in the formation of private property. The article delves into the legal foundations of private property rights, particularly under the Civil Code, identifying various methods through which citizens can acquire property—such as labor activities, entrepreneurship, privatization, inheritance, and other lawful means. The legal recognition of ownership is fundamental to civil law, as it underpins the relationships within society regarding property. Furthermore, the article highlights constitutional and international recognition of the right to property, noting its status as a natural human right. Overall, this article provides an insightful examination of how citizens' private property rights are structured and exercised within a legal system, with an emphasis on the economic and legal principles that support property ownership, use, and disposal in a modern market society.

The sources and forms of citizens' private property are manifesting in a unique way, in line with the spirit of the times. In the present day, the primary sources of citizens acquiring private property are the entrepreneurial activities they carry out, with the leading and most important role in this regard expected to become their primary means of property acquisition.

The emergence of citizens' private property rights occurs as a result of the individual appropriation of material goods. The form of individual appropriation by citizens can be realized as a result of various economic relations. Professor Yu.K. Tolstoy identifies four methods by which citizens can engage in individual appropriation: first, through labor activities in enterprises based on various forms of property, in which they work as hired employees; second, through private economic activities not aimed at profit; third, through



entrepreneurial activities based on their own labor; and fourth, through entrepreneurial activities based on the involvement of hired labor. Professor Yu.K. Tolstoy's classification reveals the economic content of citizens' private property rights in the context of a free market economy¹.

In this context, Tolstoy's categorization illustrates how various forms of private property and entrepreneurial activity are structured and function within the framework of market relations. By highlighting the different methods through which citizens can acquire and utilize private property—whether through wage labor, non-profit private economic activity, entrepreneurial endeavors based on personal labor, or through the use of hired labor—Tolstoy emphasizes² the diverse ways in which individuals participate in economic life and secure their property in a market-oriented society. This classification reflects the dynamic interaction between labor, capital, and the market, which shapes the economic content of private property rights in such a system.

Based on the above, the private property rights of citizens are the rights to own, use, and dispose of property that a citizen has acquired in accordance with the law, based on their own will and in pursuit of their own interests. This definition reflects the objective meaning of citizens' private property rights. It encompasses all relations related to private property, indicating that these relations are embodied in legal norms. The definition specifies that the property acquired in accordance with the law is to be considered as private property. What are these legal grounds? According to Article 182 of the Civil Code (CC), citizens acquire property through labor activities, entrepreneurial and other economic activities in the field of property use, through creating, increasing, or acquiring property based on contracts, through privatization of state property, inheritance, and other grounds not conflicting with law that create the right of ownership.

In society, since property is the main object of civil-law relations, recognizing the right of ownership is natural³. The ownership of property based on citizens' private property rights is one of the fundamental legal capabilities envisioned in Article 18 of the Civil Code (CC) and remains inseparable from them throughout their life. In cases provided by law, children who are in the womb at the time of the decedent's death, but born alive after the inheritance, may acquire property rights through inheritance. Article 36 of the Constitution also stipulates that every person has the right to own property. The Universal Declaration of Human Rights, transformed into the internal legislation of many secular states, recognizes the right to property as one of the inherent human rights, stating that "everyone has the right, alone or in association with others, to own property. No one shall be arbitrarily deprived of his property"⁴.

In Western countries, the right to property is considered one of the natural rights of individuals, falling within the broader framework of rights such as the right to life, liberty, and personal inviolability.

¹ Гражданское право. Учебник. Под ред. А.П.Сергеева, Ю.К.Толстого. - М.: ТЕИС, 1996.-С.332.

² Гражданское право. Учебник. Под ред. А.П.Сергеева, Ю.К.Толстого. - М.: ТЕИС, 1996.-С.332.

³ Зокиров И., Баратов М. Ўзбекистон Республикасида фуқароларнинг ҳуқуқ ва муомала лаёқати. -Т.: -Адолат.: 1998. – 9 б.

⁴ Инсон ҳуқуқлари Умумжаҳон Декларациясига шарҳлар. - Т.: - Адолат.: 1999. – 40 б.



One of the key rights that constitute the content of citizens' private property rights is the right to ownership. The right of ownership is interpreted differently across various legal systems. Specifically, in Roman private law, ownership was divided into two categories: *possession* (владение) and *detention* (держание).

According to Roman private law, the following two elements were required for possession: the objective element, which refers to a person's factual control over an object (*corpus possessionis*), and the subjective element, which refers to the individual's intent to own the object for themselves (*animus possessionis*). This means that for someone to truly possess an object, they needed both physical control over it and the intention to possess it as their own.

Conversely, individuals who exercise factual control over an object on behalf of another person (i.e., those who merely *detain* the object) are considered mere custodians, not true possessors. Such individuals do not have the legal protections afforded to possessors, as they do not use the object for their own purposes but merely hold it for someone else.⁵

In the legal systems of Germany and Switzerland, which are part of the continental law tradition, possession and detention are not distinguished. Instead, they differentiate between direct and indirect possession, and have developed the institution of *dual possession* (двойное владение).⁶

In modern and former Soviet civil law, however, the distinction between possession and detention is not made, and the institution of *dual possession* is not recognized in our legal system.

Many civil codes in countries based on the principles of Roman private law have historically led to the development of property rights through the concept of possession as a factual relationship to an object.⁷ For example, in the French Civil Code (Articles 2228-2235) and the German Civil Code (Sections 854-872), possession is considered an independent institution of property law.

The right to possession is considered one of the primary rights of property owners. It is closely tied to the other rights of the owner and serves as a necessary means for the exercise of those rights. Without possession, it is impossible to use property, and a person can only dispose of an item when it is at their disposal.

In most cases, the owner of the property exercises the right to possession. However, in certain situations, as stipulated by a contract or by law, this right can be granted to other participants in civil transactions. In such cases, possession is not viewed as an independent right but as part of the property rights of a person who is not the owner. For example, the right of possession is included in the rights of a lessee under a lease agreement or the rights of a pledgee under a pledge agreement.

Possession by a non-owner can be either lawful or unlawful, depending on the basis for its existence. If the possession is based on a legal title (a legal basis or *titulus*), it is considered

⁵ Венедиктов А.А. Государственная социалистическая собственность. – М.-Л.: Изд. АН СССР, 1948. –С.565, Новицкий И.Б. Основы римского гражданского права. – М.: Госюриздат, 1970. –С. 91-93.

⁶ Дорнберг Г., Клейн Г., Клиггер Г., Пош М. Гражданское право ГДР. Вещное право. – М.: Инлит, 1959. – С. 105-115.

⁷ Французский Гражданский Кодекс 1804 года. – М.: Изд. НКЮ СССР, 1941. – С. 226., Эннекцерус Л. Курс германского гражданского права. Т. 2. – М.: Инлит, 1950. –С. 248.



lawful possession. For this reason, lawful possession is often referred to as *title-based possession*. A person with title-based possession acquires this right as a result of ownership rights. Therefore, for the right of possession to pass from the owner to a non-owner, a legal basis is required. For example, a lessee, a pledgee, or a trustee who manages property under a fiduciary arrangement are considered title-based possessors, and their right to possess the property is based on the respective contracts.

Possession without any legal basis is considered unlawful possession. In pre-revolutionary Russian legal literature, possession that did not arise from property rights was viewed as a legal fact that could lead to certain legal consequences.⁸ In our legislation, the right to possession is not only one of the property owner's rights but is also interpreted as a legal fact. Specifically, according to Article 187 of the Civil Code (CC), the duration of the right to possession is considered one of the grounds for the establishment of property rights.

Another right that forms the content of citizens' private property rights is the right to *use* the property. In an economic sense, *use* refers to deriving the useful characteristics of an item for the purpose of satisfying material and spiritual needs.⁹

The income and yields obtained from the use of property are also considered as part of the right to *use*. The right to use property is closely linked to the right of ownership, and it is impossible to exercise the right of use without possession. In most cases, the right to use property, like the right to possess, belongs to the owner. However, the right to use may also be transferred by the owner to other individuals based on a contract.

To study the right of use as one of the elements that form the content of citizens' private property rights, it is necessary first to clarify its essence.

The right to *use* is the legally guaranteed opportunity for the owner to derive the useful characteristics of an item in order to satisfy material and spiritual needs. This definition, provided by A.A. Eroshenko, is based on the essence of *personal property* and the right to use property.¹⁰ However, it does not fully encompass the modern concept of the right to use and fails to account for the productive nature of citizens' property in contemporary times.

The right to *use* is the legally secured possibility of deriving useful characteristics from an item during the processes of production or personal consumption, that is, the opportunity to obtain yields, products, or income from the property.¹¹

As is known, according to the previous legislation (Article 136 of the 1964 Civil Code), the merging of property between citizens and the state, or cooperative and other public organizations, was generally prohibited, and property could only be transferred through the methods prescribed by law. The norms that restricted citizens from using their property have been abolished, and under the new legislation, property can be held between citizens, the state, and other entities of property rights. In this way, the expansion of citizens' rights to use property serves to increase the productive nature of their property's formation.

⁸ Мейер Д.И. Русское гражданское право. Изданная по запискам слушателей. Под ред. Вицина А.И. – Спб.: 1902. –С 251., Шершеневич Г.Ф. Учебник русского гражданского права. – Спб.: 1909. –С. 216.

⁹ Советское гражданское право. Учебник. Часть I. - М.: Юрлит., 1986. -С 278.

¹⁰ Ерошенко А.А. Личная собственность в гражданском праве. - М.: Юрлит., 1973. -С 130.

¹¹ В.Ё.Эргашев. Фуқаролар хусусий мулк ҳуқуқи вужудга келиши ва бекор бўлишининг илмий-назарий жиҳатлари: Ю.ф.н.дисс. Автореф.... Тошкент: 2005. 37-б.



The right to use property is not without limitations; the law also sets conditions for exercising this right. When exercising their rights, property owners must respect the rights of other individuals, avoid violating legally protected interests, prevent environmental damage, and comply with other legal requirements. Otherwise, restrictions may be imposed on the property owner's actions. Citizens engaged in entrepreneurial activities must refrain from abusing their dominant position in the market, violating antitrust and competition laws, or engaging in other forms of legal abuse.

The right to dispose of property is one of the most important elements that constitute the content of private property rights. Property rights cannot be fully realized without the right to dispose of property, as this right allows the owner to fully exercise their subjective property rights. The right to dispose of property represents the full expression of ownership.

The right to dispose of property belongs entirely to the owner. However, in certain cases specified by law, this right can be transferred to other participants in civil transactions (e.g., to an agent). In such cases, the right to dispose of property is not fully transferred to the non-owner, but the owner grants them the ability to perform specific actions regarding the property; for example, an agent may only be allowed to sell the property but cannot dispose of it in other ways. In some cases, the right to dispose of property may be exercised by someone other than the owner. Specifically, this happens when the property is forcibly sold to satisfy creditors' claims in relation to the owner's debts.

The content of the right to dispose of property is closely linked to the content of citizens' private property rights, as it allows the owner to use their property to satisfy both material and spiritual needs.

The right to dispose of property is exercised by entering into various transactions. Citizens dispose of their property by entering into sales, lease, loan, or donation agreements. One of the methods of exercising the right to dispose of property is the possibility, provided by legislation, of transferring the property to a trustee for management. This type of agreement is a new development in our legislation.

Transferring property to a trustee for management does not result in the transfer of ownership rights over the property to the trustee. Rather, the main goal of such an agreement is to ensure the effective use of the property for the benefit of the owner or a third party designated by the owner by entrusting it to a qualified manager. Accordingly, the legal relationship between the property owner and the trustee has an obligation-based legal nature.

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