



CENTRAL ASIAN JOURNAL OF THEORETICAL AND APPLIED SCIENCES

Volume: 03 Issue: 10 | Oct 2022 ISSN: 2660-5317
<https://cajotas.centralasianstudies.org>

Legal Characteristics of Limited Property Rights in Civil Law

Dilfuza Abdullaeva

dilfuza.abdullayeva@vandex.ru

Acting Associate professor of the Department of Private Law,
Specialized Branch of Tashkent State University of Law
Doctor of Philosophy (PhD) in Law

Received 24th Sep 2022, Accepted 26th Sep 2022, Online 24th Oct2022

Annotation: The article deals the limited property rights of subjects of civil legal relations. In the Republic of Uzbekistan, the issues of limited property rights have not become the subject of extensive scientific discussion. In view of this, the formulated conclusions set out in the dissertation, in the future, can become a good information tool for law enforcement officers, as well as for a wide range of readers.

The materials, conclusions and suggestions that make up the content of the study can be used in the future as a valuable methodological guide for teaching civil law, as well as for scientific work on improving the civil legislation of the Republic of Uzbekistan.

Keywords: civil law, property rights, property, founder, easement, land plots, enterprises, inherited ownership.

The need to expand the powers of state-owned enterprises and associations has led to the introduction into civil circulation and legislation of the right of full economic management.

Abuses by the subjects of the right of full economic management have led to a reduction in its content, as a result of which the right becomes more limited and is formulated as the right of economic management.

In the current Civil Code of the Republic of Uzbekistan, the right of operational management and the right of economic management are named as property rights and are designed to ensure the participation of legal entities that are not owners in civil legal relations [1].

Modern researchers, criticizing the right of operational management and the right of economic management, note that these rights are not limited property rights in the classical sense[2].

Thus, the rights of economic management and the rights of operational management contribute to the registration of the property base for legal entities that are not owners in order to participate

independently in civil turnover. The participation of such organizations in the practice of turnover is not typical of classical concepts.

The transfer of property to a legal entity and granting it the above-mentioned rights is considered one of the manifestations of the possibility of exercising the right of ownership, but not in the form of economic participation of one organization using the rights of another. Since property complexes can act as an object of real rights, which include movable property endowed with both individually defined and generic characteristics, rights and obligations, as a result of which the object of the rights we study is atypical for real rights.

Some scientists believe that the rights we are considering cannot be put on a par with limited property rights due to the fact that they represent a real-legal mechanism for the property separation of the subject of law, while the latter has the opportunity to own property transferred to him[3]. In research, there is a point of view according to which these rights can be considered as a "technical device" that is used for the legal registration of the actual domination of one person over the property of another [4].

V.A.Boldyrev, analyzing the rights we study, notes the following. The principle of typification of real rights provides that not only the system of real rights itself, but also the content of these rights should be provided for in the law. However, some of the powers of non-owners included in the content of the rights depend on the will of the owner of the property[5].

Analyzing the above points of view, it is necessary to say about their relative correctness in relation to the choice of the legislator. So, according to Article 165 of the Civil Code, property rights act, together with such as the right of ownership are. And these rights are related to the right to economic management and the right to operational management. In Uzbekistan, these rights are not called restricted, they are included in "other proprietary rights" and they are assigned a separate status.

According to S.B.Seletskaya, the relations of the founder of a unitary enterprise with the head and staff of a unitary enterprise are based on the principles of subordination to achieve the goals defined in the law and the charter of the enterprise[6]. We can agree with this opinion, adding to it that there are elements of corporatism in the relationship between the head and the unitary enterprise.

This opinion proceeds from the fact that the regime of the right of operational management and the right of economic management itself provides for the limited capabilities of the owner of the entrusted thing. This means that this opinion cannot be refuted, but it can be supplemented by the fact that this specificity of the listed rights is not disputed by us, and in theory these rights are recognized as limited.

When the property assigned to the subjects of the right of operational management and economic management is alienated into the ownership of another person, the latter has a greater right in content. In this connection, the question arises as to the possibility of transferring more rights than those possessed by the subjects of the right of operational management and economic management.

Thus, we can say that the rights we are considering are inherent in the characteristics characteristic of the powers arising from the legal relations of obligations and the legal relations of representation.

D.Petrov believes that in practice, as one promising direction for improvement, the features of unification of the rights of management of the owner's property and the consolidation of the right of operational management are considered[7]. It should be agreed with this opinion and noted that the presence of these types of restricted rights are administrative and legal elements that characterize the regime of management over property, which is slightly inconsistent with the principles of civil law.

It is impossible not to agree with the opinion of researchers who characterize the rights we are considering as a technical device that serves to exercise the property right of the state.

As a result of the analysis, it turns out that the atypical nature of the rights under consideration in relation to limited property rights is obvious[8].

So, if the right of operational management arose on the basis of the right of ownership, then the right of economic management is derived from the first.

Taking into account the conducted research, we consider it expedient to consider the issue of excluding the right of economic management from the limited property right, while extending the practical effect of this right to operational management in the work of unitary enterprises.

The right of permanent (indefinite) use and the right of lifelong inherited ownership of a land plot. Article 54 of the Constitution of the Republic of Uzbekistan defines the main provisions establishing the rights of citizens, associations of citizens, to use and acquire ownership rights to land plots[9].

There are many laws in the legal system of any state. But among them there is one law that is recognized as the most important - the Constitution[10].

The legislators have provided for a wide range of land use rights defined in the normative acts regulating the right of land use — the Land Code, the Civil Code, etc. Based on the existing legislative acts, the following types of land use rights can be distinguished.

The transfer to indefinite use of a land plot owned by the state is strictly limited by law. The authority to transfer state and municipal lands to this type of use is the exclusive right of the state.

Lifetime inheritable possession is a type of right to use a land plot without a pre—determined period, in which the rightholder has the right to use the land, and the right to dispose of is limited only by the right of inheritance.

According to article 19 of the Land Code of the Republic of Uzbekistan, citizens of our country have the right to receive a land plot in the right of lifelong inherited possession mainly for economic purposes[11].

The right of permanent (indefinite) use is the right to use a plot of land where the terms of use are not set. It is the unlimited period of use that is the main similarity between the rights of permanent (indefinite) use and the PNV. The main difference between these types of use is the right of limited disposal in the form of inheritance, where such a right is enshrined in the PNV, but not in permanent (indefinite) use. The right of PNV is provided exclusively for citizens who acquired this right before the entry of the Land Code. The right of permanent indefinite use is provided for state and municipal bodies.

It should be noted that the right to permanent (indefinite) use and lifelong inherited ownership of a land plot was described in the works of K.A. Buev [12].

The legal basis of servitude in civil law. An easement is a proprietary right to use someone else's thing in one or more legal relations[13], which arose from land legal relations.

Based on this, the main feature of land easements was that their subject was land. In essence, this is the right to use someone else's land[14]. The main goal is to make up for the shortcomings of some land plots at the expense of others.

A.V. Kopylov asserts that "the land easement belongs to the oldest and originally the only right to someone else's thing" [15].

It became clear that the easement was put into circulation from the moment of the adoption of the

first part of the Civil Code and the adoption of some other normative acts, it is possible to speak about the serious beginning of the operation of this institution in national legislation only from the moment of the entry into force of the Land Code, which contains legal norms that promote the further development of land relations[16].

Therefore, we consider it necessary to refer to article 30 of the Land Code, which reflects the concept and essence of the easement.

An easement is a contractual transaction. But in case of failure to reach an agreement between the parties, the final decision of the issue will be for the court. The easement begins from the moment the easement act comes into force, and after its registration in the Unified State Register of Rights.

The easement agreement is registered in the state order.

The easement is terminated according to the requirements of the owners of the lands on which it is installed, if there are certain reasons.

Taking into account the requirements of modern legislation and established practice, D.M.Karakhodzhayeva considered the issue of fulfilling contractual obligations in the conditions of the impossibility of the normal functioning of the civil law turnover system, which is violated by a number of circumstances preventing the parties from fulfilling their contractual obligations[17].

So, in the first chapter, we consistently revealed the legal characteristics of limited property rights in civil law, where we paid special attention to the concept, the meaning of the right of economic management and the right of operational management, the right of permanent (indefinite) use and the right of lifelong inherited ownership of land, as well as the legal basis of easement in civil law.

The presence of administrative, legal and corporate elements in the right of operational management and economic management seems alien to civilistic constructions. As a result of the analysis, it turns out that the law of operational management and economic management is atypical in relation to limited property rights.

So, if the right of operational management arose on the basis of property rights, then the right of economic management is derived from the right of operational management and is the result of the modernization of the right of operational management in order to adapt to changing economic realities.

Taking into account the conducted research, it is proposed to exclude the right of economic management from the number of property rights, extending the scope of the right of operational management to unitary enterprises. Institutions and unitary enterprises that have property on the right of operational management have the right to independently dispose of the products produced by them and the income from entrepreneurial activity. Other transactions involving the alienation of the property of an enterprise or institution should be concluded only with the consent of the owner.

State-owned land plots are provided for permanent (indefinite) use exclusively to: state authorities and local self-government bodies; state institutions (budgetary, autonomous).

The right of permanent (indefinite) use is the right to use a land plot where the terms of use are not set.

It became clear that the easement was put into circulation from the moment of the adoption of the first part of the Civil Code and the adoption of some other normative acts, it is possible to speak about the serious beginning of the operation of this institution in national legislation only from the moment of the entry into force of the Land Code.

Taking into account the above, it should be noted that the easements existing in the law enforcement practice of the Republic of Uzbekistan do not have all the features of classical predial easements, since they do not provide for the presence of neighboring real estate, may be of an urgent nature and represent a previously unknown construction of a special real right.

It should be noted that the absence in the legislation of the Republic of Uzbekistan of the legal structure of negative easements, which are provided for in the legislation of a number of foreign countries, should not be considered as an omission of the legislator, since the presence of a negative easement can lead to unjustified infringement of the rights of the owner.

Reference

1. Окюлов О. Конституционные нормы о формах собственности как составная часть доктринальных основ в новом Гражданском кодексе Республики Узбекистан. Текст научной статьи по специальности «Право». Журнал «Review of law sciences». 2020 г. // Источник: <https://cyberleninka.ru/article/n/konstitutsionnye-normy-o-form-ah-sobstvennosti-kak-sostavnaya-chast-doktrinalnyh-osnov-v-novom-grazhdanskom-kodekse-respubliki>
2. Белов В.А. Гражданское право. Т. III. Особенная часть. Абсолютные гражданско-правовые формы: учебник для бакалавров. - М.: Издательство Юрайт, 2013. С. 310-311.
3. Суханов Е. Ограниченные вещные права // Хозяйство и право. - 2015. - № 1. - С. 15-16.
4. Собчак А.А. Собрание сочинений в пяти томах. Т. 2. Правовые проблемы регулирования хозяйственных отношений в период проведения реформ и перехода к рыночной экономике / Под общей редакцией Л.Б. Нарусовой. - СПб.: Санкт-Петербургский общественный фонд Анатолия Собчака. 2013. С. 424 - 434.
5. Болдырев В.А. Являются ли имущественные права учреждений и унитарных предприятий - вещными? // Российский юридический журнал. - 2011. - № 6.
6. Селецкая С.Б. Право хозяйственного ведения и право оперативного управления как элементы правового положения унитарных предприятий: дисс. к. ю. н: 12.00.03 / Селецкая Стелла Борисовна - Казань, 2016. С. 112.
7. Петров Д.В. Право хозяйственного ведения и оперативного управления. - СПб., Издательство «Юридический центр Пресс», 2012. С. 101, 104, 106, 110.
8. Белов В.А. Гражданское право. Т. III. Особенная часть. Абсолютные гражданско-правовые формы: учебник для бакалавров. - М.: Издательство Юрайт, 2013. С. 310-311.
9. Бекмирзаев Н. Гарантии прав человека в конституции Республики Узбекистан. Текст научной статьи по специальности «Политологические науки». Журнал «Review of law sciences». 2017 г. // Источник: <https://cyberleninka.ru/article/n/garantii-prav-cheloveka-v-konstitutsii-respubliki-uzbekistan>
10. Мухаммедов Х. М. Конституционное регулирование и защита личных прав и свобод в Узбекистане. Текст научной статьи по специальности «Право». Журнал «Евразийский Союз Ученых». 2020 г. // Источник: <https://cyberleninka.ru/article/n/konstitutsionnoe-regulirovanie-i-zaschita-lichnyh-prav-i-svobod-v-uzbekistane>

11. Земельный кодекс Республики Узбекистан (Утвержден Законом от 30.04.1998 г. N 598-1) // Источник: <https://lex.uz/docs/149947>
12. Буев К.А. Право на постоянное (бессрочное) пользование и пожизненно наследуемое владение земельным участком: теоретические основы, сравнительный анализ. // Источник: <https://cyberleninka.ru/article/n/pravo-na-postoyannoe-bessrochnoe-polzovanie-i-pozhiznenno-nasleduемое-vladenie-zemelnym-uchastkom-teoreticheskie-osnovy-sravnitelnyy>
13. Подопригора А.А. Основы римского гражданского права. - К., 2010. - С. 151.
14. Новицкий И.Б. Основы римского гражданского права. - М., 2012. -С. 127-128.
15. Копылов А.В. Вещные права на землю. - М., 2015. - С. 59.
16. Земельный кодекс Республики Узбекистан (Утвержден Законом от 30.04.1998 г. N 598-1) // Источник: <https://lex.uz/docs/149947>
17. Караходжаева Д. М. Особенности исполнения договоров в условиях covid-19: основные риски и правовые механизмы их преодоления. Текст научной статьи по специальности «Право». Журнал «Review of law sciences». 2020 г. // Источник: <https://cyberleninka.ru/article/n/osobennosti-ispolneniya-dogovorov-v-usloviyah-covid-19-osnovnye-riski-i-pravovye-mehanizmy-ih-preodoleniya>.
18. Бурханова, Л. М. (2018). Механизм возмещения убытков физическим и юридическим лицам в связи с изъятием земельных участков для государственных и общественных нужд по законодательству республики узбекистан. In vii international correspondence scientific specialized conference" international scientific review of the problems of law, sociology and political science" (pp. 5-9).
19. Бурханова, Л. М. (2022). ИСТОРИЯ ВОЗНИКНОВЕНИЯ ДОЛЕВОГО СТРОИТЕЛЬСТВА. ОСОБЕННОСТИ ВОЗНИКНОВЕНИЯ ДОГОВОРА ДОЛЕВОГО УЧАСТИЯ В СТРОИТЕЛЬСТВЕ. O'ZBEKISTONDA FANLARARO INNOVATSIYALAR VA ILMIY TADQIQOTLAR JURNALI, 1(8), 472-477.
20. Абдуллаева Д. Ходимларни дам олиш ва байрам кунлари ишга жалб қилиш масалалари //Общество и инновации. – 2022. – Т. 3. – №. 2. – С. 48-53.
21. Dilfuza Abdullaeva. (2022). FLEXIBLE WORKING HOURS IN LABOR RELATIONS. International Journal Of Law And Criminology, 2(07), 1–8. <https://doi.org/10.37547/ijlc/Volume02Issue07-01>
22. Абдуллаева Д. Иш вақти режими ва ҳисоби ҳамда уни ташкил этиш тартиби //Общество и инновации. – 2021. – Т. 2. – №. 6/S. – С. 225-234.
23. Зиядуллаев, М. 2022. Роль социального обеспечения в стратегии развития Нового Узбекистана . Общество и инновации. 3, 4/S (май 2022), 120–125. DOI:<https://doi.org/10.47689/2181-1415-vol3-iss4/S-pp120-125>.
24. Djurakulovich Ziyadullaev Makhmudjon. (2022). YESTERDAY'S, TODAY'S AND FUTURE PENSION REFORMS IN UZBEKISTAN. Conference Zone, 119–121. Retrieved from <http://www.conferencezone.org/index.php/cz/article/view/362>
25. Зиядуллаев, М. 2021. Сильная социальная защита - требование времени. Общество и инновации. 2, 5 (окт. 2021), 64–68. DOI:<https://doi.org/10.47689/2181-1415-vol2-iss5-pp64-68>.