

IMMOVABLE THINGS AS THE SUBJECT OF CIVIL LAW

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The research of the concept of “immovable thing” in civil law is important. This category has been known since the Roman times. It is still widely discussed by scholars. The main aim of the research is to interpret the concept of "immovable thing" in the context of the Civil Code of Ukraine, to clarify its nature, identify its contradictory aspects and find out the ways to solve them.

According to Article 179 of the Civil Code of Ukraine, the subject of the material world is the subject in regards to which civil rights and obligations may be applied. Objective law classifies things according to various criteria. One of the most important is the division of things into movable and immovable [3].

For a long time the category of “immovable thing” has been discussed in the Ukrainian legal studies. This discussion was finalized in Article 181 of the Civil Code of Ukraine, which states that immovable things (real estate) include land plots, as well as objects located on a land plot, the movement of which is impossible without depreciation and change of its use. The real estate item can include aircraft and seagoing vessels, inland navigation vessels, space objects, as well as other things that are subjects to state registration. The definition and additional information to this rule of civil law promote the development of the category of “immovable thing” [3].

The legislator in the first paragraph of Article 181 of the Civil Code of Ukraine uses the notions “immovable thing”, “immovable real estate” and “realty”, so we can conclude that the legislator identifies three types of immovable things. However, we should underline that the notion "thing" is different from the notion "real estate". The set of immovable things can form a real estate. The notion "realty" has its own meaning and should not be considered synonymous of the notion "real estate". It is a set of the objects of nature on the earth's surface and they cannot be moved.

The classification of immovable things by their features includes natural origin, physical attachment to the land plot and the legal nature of immovable things; it is reflected in Article 181 of the Civil Code of Ukraine.

The first feature underlines that the main object to denote the notion of immovability is a land plot. This thought was introduced in Ancient Rome law and it is still relevant nowadays as it is the best example of immovable property.

The next feature is the physical attachment to the land plot. Article 181 of Civil Code of Ukraine defines it as follows: “<...> objects are located on a land plot, the movement of which is impossible without depreciation and changing of their use”[3].

Modern developments in science and technology allow changing location in space even of such big real estate objects as buildings. Ability to move things around the surface of the earth with the help of modern technical means does not exclude the status of these things as immovable. However, at this stage, the movement of motionless things is something unique and exceptional. Moreover, the characteristics of immovable property change, especially those of address and anchorage to the land plot.

Considering the characteristic of the physical attachment to the earth, it is necessary to mention not only the objects that are directly located on its surface, but also the underground objects. They are not described as immovable things in Article 181 of the Civil Code of Ukraine. This category includes underground car parks, storages, automobile and railway tunnels, etc. The definition of these objects as immovable can be illustrated by the example of linear pipelines.

Analyzing the characteristics of the pipeline, we can conclude that they correspond to immovable things as far as they are attached to a definite land plot, they are durable, stationary, capital, designed for a prolonged use, besides, they are of high value and have a definite purpose (trafficking of gas and liquid). A good example for the Ukrainian legislator can be that of the Republic of Belarus, where they made up the state cadastre of underground immovable objects [1].

“Legal character” is considered to be the third characteristic of an immovable object. There is a problem if state registration can become an instrument of defining the immovability of an object. It is necessary to refer to Article 181 of the Civil Code of Ukraine in order to define the interrelations between such notions as: “thing is immovable” and “the spread of legal regime of real estate to the thing”. If we take into consideration physical characteristics of immovable things, then state registration of the rights to immovable objects is not a characteristic of the latter. State registration of the right to a thing must be a classifying characteristic of the real estate [2].

The state registration of space objects, air, sea and river vessels (but not the rights to them) is regulated separately, because the Law of Ukraine “On the State Registration of Rights to Immovable Property and Their Encumbrances” does not apply to these objects.

Having summarized all the above, it is possible to suggest few changes to Article 181, namely: Immovable things (real estate) include land plots, objects located above and under the land plot, the movement of which is impossible without their destruction and change of their use, an enterprise as a single property complex is on the list of immovable things too.

References

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