

DEVELOPMENT OF CATEGORY "ACCESSION" WITHIN RUSSIAN CIVIL LAW: THEORETICAL AND JUDICIAL LINGUISTIC RESEARCH

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Abstract: The paper presents the results of analysis made by the authors on features of exercise of the concept "accession" within Russian civil law. The object of research within the paper is expressed in a retrospective analysis of social relations emerged with the challenge to determine the accessory of the property. In 2013 some amendments were made to the Civil Code of the Russian Federation on the legal procedure for incrementing things and establishing a legal connection between the main thing and its accessory. Scholars generally note the need to return legal traditions which were in the Russian Empire in relation to accessory attributes of a property. Deprivation of these historical features causes an increase of controversial issues, which depend not on a single legislative position but judicial discretion.

Keywords: accession, main thing and accessory, complex things, property, real estate, history of civil law, Russian civil law.

1 Introduction

A term "accession" was initially used in civil law to denote the fact that one object belonged to another one. So, in Roman law there was a property category in which the main thing and its accessory were distinguished. The long-term realization of accession as a fruit (*Latin* "fructus") affected the emergence of the classical rule: a secondary thing (part of a thing or a serving thing) is always legally connected with the main thing.¹ At the same time, Romans did not consider such types of property as separate categories. Anything consisting of the main subject and its appurtenance was recognized as a single (whole) object in civil law.² The necessity to separate the composite property was named "accession" to confirm the extension of ownership to all the appurtenance of the thing. In judicial linguistics the term *accession* is classified as being a non-equivalent lexical unit, it was borrowed directly not forming a calque for it is a loanword and a culture-specific element. The lexical item "accession" is not included in general defining dictionaries (by S.I. Ozhegov, V.I. Dal, A.P. Evgenyeva), but presented in dictionaries of legal terms.³ In legal texts in the Russian language the term is used as *aktsessiya* (accession).

Afterwards, the term "accession" became more complicated, specifying not the fact only of belonging of one thing to another one, but also a legal circumstance giving rise to a property-legal status. Thus, the composition of some chose transitory (things) was divided into some types depending on the content of objects themselves. Mixture of things with generic characteristics (liquid, loose, etc.) was defined as the terms of "confusio" and "commixtio".⁴ In the case of a combination of things of different characteristics Roman law distinguished the notion of "adjunctio".⁵

Accession extended to real estate if it was necessary to legitimize the ownership of certain chose transitory for a certain land. Accession was also in force in the cases of addition of land property by the effect of natural causes (disappearance of water bodies on a land plot, heaving or failure of soil, etc.).

This mentioned historical background affected Russian legislation regulating the ownership of both complex and multiple things. At the same time, the classic property rules of accession acquired some features at different stages of legislation development in Russia.

2 Methods

Several methods of legal science were used to carry out the research. In analyzing the laws, the authors used the system-functional method to determine the basic legal norms and specifications of accession. To reveal the essence of the category "accession", a hermeneutic method was used, which allows revealing the hidden meaning of civil law norms. To determine a consistent pattern of development of Russian law and European law, the historical method and the method of comparative law were applied. They allowed to establish the historical and legal traditions of the application of accession to certain types of property and to some contractual structures. The formal legal method has helped the authors to relate the content of legal norms lost their legal force with modern provisions of civil law. The method of complex analysis made it possible to draw generalizing theoretical conclusions about the evolution of the term "accession" in Russian civil law over several centuries, taking into account legal positions developed by courts.

3 Results and discussion

Within the historical and legal context accession was of value in land title. Before the rule of Peter I, legislation did not define objects exactly belonging to a landowner — soil layer only or subsoil included. However, according to the Petrovsky Decree on the Berg-Collegium 1719, the monopoly on the extraction of mineral resources was assigned to the state.⁶

Peasants belonging to lands and factories was of an accessory nature. While Peter I extended the opportunity to get possession of them in such a way and not only to nobles but also to merchants, then under the rule of Peter III and that of Catherine II this title was again narrowed to privileged estates only.⁷

Institution of accession in Russian legislation of the XIX century was of land-industrial character. In particular, in book 2 of the 10th volume of the Code of Laws of the Russian Empire 1832 there was distinguished a whole set of norms, specifying parts forming a certain property.⁸ Thus, as it was prescribed by the Article 388, factories and plants consisted of buildings, pipes, utensils and tools, assigned villages and peasants, and also included land, forests, vegetation suitable for use in industry or agriculture. The note to this provision stated that with purchase of a plant or a factory, the peasants passed into possession along with the property bought, and it was forbidden to release them. Although the peasants themselves were not considered to be property, in their attachment to real estate there were obvious signs of an accession.

The Article 389 of the book 2, volume 10 of the Code of Laws of the Russian Empire 1832 contained an accessory description of a

¹ Hill D. Book reviews, *Light from Roman Law* // The Expository Times. 1986. T. 98. № 2. C. 55. Shiriev V.A. Legal notion of a thing in Roman private law // *Vestnik Moskovskogo gosudarstvennogo oblastnogo universiteta. Seriya: Yurisprudentsiya*. 2009. № 3. Pp. 61-66.

² Seletskaya S.B., Shpagonov A.N. Reception of the Roman Law in modern business activity *Journal of Economics and Economic Education Research*. 2016. T. 17. № 4. C. 35-40.

³ Kuznetsov V.V. *Law dictionary* / V.V. Kuznetsov. Izd. 2-e. Rostov n/D: Feniks, 2010. P. 13.

⁴ Hickey R. Dazed and confused: accidental mixtures of goods and the theory of acquisition of title // *Modern Law Review*. 2003. T. 66. № 3. C. 368-383.

⁵ Levochko V.V. Legal nature of subsurface management in the first half of XVIII century in Russia *Beika* // *Vestnik Voronezhskogo gosudarstvennogo universiteta. Seriya: Pravo*. 2014. № 2 (17). P. 62.

⁶ Levochko V.V. Legal nature of subsurface management in the first half of XVIII century in Russia *Beika* // *Vestnik Voronezhskogo gosudarstvennogo universiteta. Seriya: Pravo*. 2014. № 2 (17). P. 70.

⁷ Kurbanova E. A. Купанона Э.А. Serfdom law in Russia: general stages of development // *Zhurnal nauchnykh publikatsiy aspirantov i doktorantov*. 2010. № 4 (46). Pp. 138-139.

⁸ Code of laws in imperial Russia. Consolidated text 1832-1917 years: [in 16 volumes] / otv. sost.: A.R. Sokolov, D.I. Raskin. Sankt-Peterburg: Avror, 2007. Volume 10. P.302.

house. Its materials included interior and exterior finish, as well as decorations. Impossibility of separating these elements from the house itself without their inappropriate damage was legally defined as a sign of an accession. Objects of such minor parts were: floors made of marble, precious woods and other materials; marble, copper and cast iron fireplaces; expensive wallpaper and in-walls mirrors. The list was left open, therefore, other elements of home decor corresponding to the common features of accessory, could have an accessory character as well.

The Imperial legislation delimited real estate on the basis of its division into separate parts. When such a division allowed to use the generated property element as an independent object, then such a property was called "separate property".⁹ At the same time, such complex types of real estate as courtyards (except those owned by city residents or located in the capital), factories and plants, land plots provided to state peasants, as well as rented real estate, gold mines, etc., were considered inseparable.

Scientists note that such a classification of things according to the Code of Laws of the Russian Empire 1832 did not fully comply with the Roman legal tradition.¹⁰ The state was entitled to determine what property should be classified as inseparable one, even if it was with signs of a separate real estate. In ancient Rome accession was not applicable to people, while in the Russian Empire such a legal validity was formed in relations of peasants and large property complexes (lands, factories, plants).

Accession in pre-revolutionary Russian legislation was understood in its wide sense. It was applicable not only to minor things, designed to serve the main property, but also to complex types of real estate. The legal sign of accession was considered to be the purpose of minor things – handling main (central) property, herewith, an independent property value allowed to consider separable parts of a thing as an object of civil law.

In the first Civil Code of the RSFSR (Russian Soviet Federated Socialistic Republic) 1922 accession was defined in article 25.¹¹ It represented the legal nexus of the main thing and its accessories. Such a stay was of two key features: the purpose of property (it served as the main thing) and its general economic purpose along with the main thing. The Roman legal axiom that an accessory always shares the fate of the main thing had a reservation in the civil legislation of the RSFSR: this rule was allowed to be changed due to a statutory requirement or with a contract. Under Article 196 of the Civil code of the RSFSR 1922, e.g., a buyer was obliged to check the presence of an accessory in a thing being purchased. If a buyer took the property without the appropriate materials, then it meant that the buyer agreed to such a contract.

Similar rules on accessions were prescribed in the Civil Code of the RSFSR 1964. If the main thing and its material were distinguished, then they legally were inseparable from each other. Only cases statutorily prescribed could be excepted from the rule. E.g., under Article 300 it was forbidden to consider part of a room, an adjoining room, or utility room as the subject of a rental agreement. Such residential premises could be transferred on terms of a lease only with the whole apartment (house).

Soviet civil law performed rejection of the legal technique used in laws of the Russian Empire. The statement is proved with the fact of absence of a list of separate and inseparable things. Civil codes of the Soviet period did not indicate examples of the main thing and its materials. Thereby it was not determined what things exactly could be considered as a minor property.¹²

Instead, laws prescribed only two common grounds: the single property purpose of such things and attachment of a minor subject to provide the main thing functions.

Civil code of the Russian Federation 1994 drew toward the tradition existed in the legislation of the Russian Empire.¹³ In Article 133, things were classified into divisible and indivisible, but without a detailed listing of examples of such a property division. Accession resulted in materials belonging to an indivisible thing, those which inextricably bounded up with its legal fate. A similar rule applies to transactions with complex things (Article 134). Such things are a set of property, the set is a single subject in its integral form.

Unlike the Soviet civil legislation, in Civil Code of the Russian Federation 1994 the exception to accessory to the main thing can be established only by an agreement. It means that the minor thing is associated with the main thing in all transactions, as well as when it is being levied. Such exceptions are no longer provided legally.

A term "accession" was not applied in Russian laws, but it was actively used in the science of civil law. E.g., the possibility to apply this Roman legal principle toward real estate in the Russian Empire was considered by S.S. Abamelek-Lazarev in his work in 1902.¹⁴ Peculiarities of the accession in civil law were investigated by a well-known Russian civil law scholar G.F. Shershenevich.¹⁵ However, the primary purpose of an accession in Russian legal science was subsoil use.¹⁶ At the same time, researchers emphasized the need to realize traditional Roman law principle of accession within Russian legislation, taking into account peculiarities existed in Russian property relations.

4 Summary

The classic principle of accession has acquired certain peculiarities in Russian civil legislation. During the period of serfdom, the "main thing and accessory" model was applied to peasants, i.e. to subjects, and not to property objects. Accessory signs were distinguished to large and valuable real estate objects that were of special legal protection. At the same time, the legislation of the Russian Empire listed examples to which the principle of accession was applied.

Under the pre-revolutionary civil law, accession is a legal characteristic of a property, in which all minor things of a single property purpose are recognized as a part of a certain main thing. Such property was forbidden to be divided as a result of transactions and upon collection of debts on it.

Two criteria were legal signs of an accession:

- 1) a general property purpose of a compound thing – the thing and its accessories could only be used together for the purposes for which such a property was acquired;
- 2) inability to use an accessory to a thing as being an independent object because of an inappropriate damage to it or as a result of its narrow property function.

Occurrence of accession in the form of general rules in Soviet civil law was accompanied by a small category of contracts that could contain an exception for this principle application. This feature explains the fact of disappearance of the possibility in modern civil law of Russia to establish through legal norms the peculiarities of an accession. Parties to the contract are entitled to determine exceptions in accessory appurtenance of the property being passed round.

⁹ Code of laws in imperial Russia. Consolidated text 1832-1917 years: [in 16 volumes] / otv. sost.: A.R. Sokolov, D.I. Raskin. Sankt-Peterburg: Avror, 2007. Volume 10. P.302.

¹⁰ Apolsky E.A. History of concept of national property law evolution in development of law of things in Russia // *Problemy sovremennoy nauki i praktiki*. 2009. № 3 (5). Pp. 128-130. Andrews T.R. Income from separate: towards a theoretical foundation // *Law and Contemporary Problems*. 1993. T. 56. C. 171-216.

¹¹ Civil code of the RSFSR 1922 // *Foundation for research on P.A. Stolypin legacy* [URL]: <http://музейреформа.рф/node/13715> (access date - 01.05.2019).

¹² Golovanov N.M. Development of trendiness on property in soviet civil law // *Vestnik grazhdanskikh inzhenerov*. 2014. № 3 (44). Pp. 276-282.

¹³ Civil code of the Russian Federation (I part) under 30.11.1994 N 51-FL Corpus of legislative acts of the Russian Federation, 05.12.1994, N 32, article 3301.

¹⁴ Abamelek-Lazarev S.S. Issue on sub-soils and mining industry development in XIX century. SPb., 1902. P. 109.

¹⁵ Shershenevich G.F. Russian civil law textbook (on edition 1907). M., 1995. P. 174.

¹⁶ Yanovsky A.E. Яновский А.Е. First principles of mining legislation and its restatement in Russia. S.-Peterburg, 1900. P. 141. Shtof A.A. Do we need "mining liberty"? Kharkov, 1908. P. 16.

5 Conclusions

Russian civil law borrowed Roman principle of accession. The term initially had a fragmentary performance in the form of listing cases when things were of an accessory nature. With the development and codification of civil law, there was a change towards its general (abstract) characteristics from the establishment of special provisions for accession. It arises under condition that there is a complex thing in which the main (central) property and its accessories are distinguished. All accessories acquire a minor property character, therefore they do not represent economic value separately from the main thing. It is legally demanded that transactions with such a property apply to all accessories, but it is not fully determined what exactly is an accessory (minor thing). The same rule is applied to complex things, where it is not possible to establish the main property, while its parts are all of a single purpose.

Abstractly formulated civil law rules on accession open the way to courts in their discretion to think fit to recognize certain property objects as accessories to a larger (valuable) property. We do believe that in Russian civil law it is necessary to establish boundaries to the application of accession in order to prevent a double interpretation of an act of legislature.

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