Plants as objects of civil law

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Abstract. The article contains the results of the scientific study about plants as a legal object. The basis of the work is the hypothesis that plants belong to the objects of wildlife, because there are metabolism and other biological processes in them. In this regard, it is unacceptable to identify plants with animate nature objects, as only a "living organism" is capable to transmit and replicate genetic material, including genetic material obtained by modern biotechnology. The result of rethinking traditional approaches to the concept of an object is a set of new legal techniques. These techniques, according to the authors, allow to determine the location of live objects in the system of civil rights objects and to develop a classification to optimize legal regulation on the basis of a new methodological approach. Authors propose ways to improve legal regulation of relations in which various types of plants are concerned as legal objects, to give recommendations on the use of plants in civil law, taking into account the proposed classification.

1. Introduction

Rapid growth in the planets' population creates a whole new range of households, political and ecological problems for the humanity. These include the problem of nutrition, as well as the necessity to preserve natural habitats and biological diversity in the modern global world. With regard to the abovementioned the importance of plants greatly increases, since these are not only the natural foundation for farming, necessary dietary components and crucial elements of global ecosystem, but also an object of agricultural and genetically modified production. Moreover, in the domestic and global science, plants are merely considered as objects of civil trade.

The investigations about plants in modern civil law require to revise traditional methodological approaches to the classification of civil law objects. Criterion for such a classification should be, in our opinion, the basis of including objects to animate or inanimate nature. This is due to the fact that non-living objects, for the most part things, depend solely on the will of individuals (subjects) and have no prospects for the development (the growth, fruiting, reproduction), and dying (for example, the death of a plant in return frosts).

This fact is extremely important for civil law, as the purchaser of the plant may be interested in its genetic potential for obtaining new modifications of the purchased plant. When purchasing things as objects of inanimate nature, the realization of such interest is completely excluded.

Thus, the substantiation according to which objects of animate nature are legal objects should be assumed as an urgent task of modern civil law. At the same time, it should be noted that there are made attempts to differentiate the legal status of animals from the legal status of thing, for plants this problem has not been set yet.
The specificity of animate nature objects is their ability to constant renewal both by people’s will, and against it. It is obvious that animate nature objects and inanimate nature objects have a number of the same features, but their identification and, especially, the same legal regulation is unacceptable. In some cases, two objects of animate nature (for example, an egg and a sperm in extracorporal fertilization – AVF) do not generate a new animate nature object, but they generate a new animate nature subject (individual), while two things will never be capable to generate a new subject (individual).

The hypothesis of the study is based on the assumption that animate nature objects, taking into account their genetic modifications and other factors, require special legal regulation, consideration as separate form of objects of law, internal classification and optimization of legal regulation.

The projected result of rethinking traditional approaches should be a set of new legal techniques that will determine the location of living objects in the system of civil law objects and develop their classification to optimize legal regulation on the basis of a new methodological approach.

The exceptions are seen in the studies from the authors, who engage in research of selective cultivation. In fact, E P Gavrilov [1], O F Onoprienko [2], V N Sinelnikova [3], highlight such selective cultivation achievements as seeds and planting material, as well as define absolute rights for the following objects. We also have to mention the workings of experts in the fields of ecological rights, who consider the world of plants as an object for protection and preservation (V E Lizgaro, T I Makarova [4] and others).

Foreign authors study legal regulations of particular types and groups of plants, as well as various aspects of their utilisation. Thus, Mahbuba Sadikova [5] justifies the need to develop relevant legislation about rare and almost extinct types of plants in the Uzbekistan Region the problems of patenting regime of traditional knowledge, related to the medical utilisation of plants in Southern Africa are evaluated in the study by Emeka Polycarp [6]. However, various research devoted to the scientific-practical studies of plants as objects of civil law is absent in the modern legal practice.

Studying plants in the context of civil-legal positions will not only allow to evaluate the nature of such objects and its features, but will also help to develop effective legal instruments for their legal protection and unify demands for regulation of their civil-legal turnover.

Due to the lack of legal justification of plants nature as objects of civil rights, legal practice cannot distinguish between a landsite and the plants that are located at this landsite. Such approach does not allow for full protection of plants rights as natural objects [7]. The proposed theoretical construction of a plant as an object of civil right, allows to overcome practical problems of identification of plants by law enforcing agencies, as well as eliminates legislative blind spots in the sphere of legal protection of plants.

The main purpose of this study is to test this hypothesis and methodological approach to formation of legal mechanism of regulation of relations with animate nature objects.

The implementation of this purpose is achieved by solving the following tasks:
– to substantiate the need for a new methodological approach to divide objects of Civil law into animate nature objects and inanimate nature objects;
– to determine the status of plants in the system of objects of civil rights;
– to determine the criteria for the classification of plants to form the main directions of legal regulation of relations with plants as inanimate nature objects.

2. Materials and methods
The theoretical basis of the study is investigations of philosophers and lawyers in Russia and abroad on concept of the law object M M Agarkov [8], D D Grimm [9], and other authors. Their ideas are included into the theory of law object and legal relations, as well as the basis of the doctrine about certain types of objects used both in science and teaching, and law-making and law enforcement.

The informational and empirical base of the research is formed on the study of current legislation and the analysis of real social relations.

The regulatory and legal basis of the study is Federal legislation.
The article is based on the normative, systematic, complex and dynamic approaches to the study of objects of animate nature objects and inanimate nature objects. Such methods as formal-legal, grammatical, logical, modeling, functional and situational analysis were used for the study.

The analysis of scientific works on the topic leads to the conclusion that it is necessary to investigate inanimate nature objects. Legal regulation on the basis of this methodological approach has not been investigated in science yet.

The object of this research is social relations connected with the use of plants as inanimate nature objects. The subject of the research is legal norms that fix the position of plants in the system of objects of civil rights, as well as the mechanism of their differentiation.

3. Results and discussion

Before analyzing the position of any object in law, it is necessary to determine whether it is an object of social relations or an object of law (law in an objective sense), an object of subjective law (law in a subjective sense), an object of legal relations, an object of civil law. In the theory of law, these terms have different meanings. In this paper, the object of law is analyzed without differentiation into objective and subjective features, and in general coincides with the object of legal relationship.

The concept of the rights object is formulated on the basis of generalization of knowledge about the features of certain objects of reality. The differentiation of these objects is based on their qualitative features that have legal value and can determine their civil and legal turnover and optimal legal status.

In the investigation of theories about the object, legal science is based on achievements of natural and social sciences. With the development of human society, the application of law is significantly expanded due to the complexity and development of social processes existed before, as well as new ones. Today these processes are complicated by virtual reality, that needs a closer link of law with engineering science, natural and social sciences. However, law does not simply summarize data in various areas of science, but on the basis of knowledge about objective, material, virtual, and spiritual reality there is the isolation of the legally relevant segment of reality for a choice of optimum means of legal action on the specified object. It is this set of knowledge, "multiplied" by knowledge of means and methods of legal influence, that gives rise to new legal ideas, on the basis of which there is a new approach to legal regulation.

According to D A Kerimov, legal regulation of social relations is carried out in cooperation with other social regulators. Therefore, lawmaking should be systematic, using the data of all sciences, based on objective laws of social development [10].

As a result, legal knowledge includes knowledge gained in other fields of science – physics, chemistry, medicine, biology, genetics, cybernetics, economics.

Making effective normative acts can be based on data not only and not so much of legal science, but also of natural and social sciences.

Normative-legal acts formed without taking into account the above mentioned ideas will be ineffective and the implementation of optimal and effective legal regulation on their basis is very difficult.

It is necessary to pay attention to the fact that the legislator establishes a certain regime of participation of the object in civil turnover. Through these norms of law there occurs not regulation of individual elements, but regulation of public relations as a whole.

Therefore, determining the object it is necessary to proceed from the essence of actual social relations, their diversity, among which there are both regulated and not regulated by law, for example, virtual relations (digital money (Yandex money, Qiwi, cryptocurrency); multiplayer online games; e-wallets; gaming goods and currencies; services provided in virtual reality). At the same time, both the first and the second ones have their own elemental structure, which should not be identified, because it has different qualitative features. Distinctive qualitative features of these structures are in the established civil law regime of the last one. V.I. Senchishev drew attention to this feature of the object of the legal relationship, pointing out that "the object of the legal relationship is not the behaviour of the obligated person and not the thing, but legal value (legal characteristic) of the thing, behaviour or
other category of property... and non-property rights. In other words – their legal status" [11].

Objects of social relations should not be identified with objects of rights. To get this feature, it is necessary to fix the object of rights itself in law. Only then it gets relevant, high-quality legal characteristics. Special attention should be paid to the question of terminological definition of the object involved into public relations and received the status of the civil rights object, since thereby it acquires new properties.

Thus, it is necessary to differentiate public relations objects without special legal fixation and objects of rights with such fixation.

In this regard, the question arises whether there may be objects of public relations, on which the regime of rights objects diffuses. We believe that they can act this role, but outside the state that defined them as an object of, for example, civil rights. The question of differentiation of the bases for the classification of objects in the civil law is controversial.

It should be noted that, for example, a lot of researches including dissertations are devoted to animals as objects of civil law relations [12]. However, there is few works on plants as objects of civil rights.

In our view, the use in terms of civil law "animate nature object" or "inanimate nature object" is the most appropriate. Plants, like all other objects in which metabolism occurs, are "animate nature objects". They cannot be identified with objects of civil rights, which do not belong to the category of living objects, because legal regulation of living objects should be significantly different from legal regulation of relations in which they do not act as an object.

"Living organism" is any biological entity that is capable to transmit or replicate genetic material, including sterile organisms, viruses and viroids. The term of "living modified organism" means any living organism possessing a new combination of genetic material obtained with the use of modern biotechnology [13].

Attempts to give objects of civil rights a sign of animacy brings additional confusion both into the theory of the object and into law enforcement practice. Thus, V A Plungyan notes that in Slavic languages (where the sign of animacy plays an important role) trees are not included into this class, and in Algonquin languages they are" [14]. Traditionally in the Russian language nouns denoting people and animals are animate nouns. All other nouns are inanimate nouns. This division very approximately reflects the concept of living and non-living nature and it is inaccurate. Thus, inanimate nouns are nouns that call plants.

In this regard, for plants, taking into account their reasonable classification, it is necessary to legally fix both the basis and the classification system, as well as the definition of certain plant species, fixing them as objects of law at the federal level, to choose the appropriate method of regulation. When determining the classification (or classification) of plants, it is necessary to take into account the criterion of their turnover as an object of civil rights. At the same time, it is disputable to consider this criterion as a basis for classification.

Plants in their natural habitat can be differentiated according to their species and the required protection regime, and isolated plants, in turn, can be differentiated according to their social significance. Thus, the differentiation of plants can be represented by the following Table 1.

4. Conclusion

Thus, the implementation of differentiation of civil rights objects on the basis of the proposed methodological approach should be aimed at differentiation of all civil rights objects, dividing living organisms into a separate type of objects, capable to transfer or replicate genetic material obtained including with using modern biotechnology.

Today, regulation of relations with animate nature objects does not have sufficient scientific argumentation, consistency and coherence.

Different types of plants as animate nature objects should be classified taking into account the peculiarities of their use in civil law and social significance of plants as animate nature objects.
Table 1. Classification of plants as civil rights objects.

| Plants in their natural habitat | Isolated plants (they can be differentiated according to their social significance) |
|---------------------------------|----------------------------------------------------------------------------------|
| 1) Endangered plant species:    | 1) Agricultural plants;                                                         |
| - listed into the International Red book; | 2) Uterine varietal plants;                                                     |
| - listed into the Russia’s Red book; | 3) Genetically modified plants                                                   |
| - plants of specially protected natural areas (state nature reserves, national parks, nature monuments, arboretum parks and botanical gardens). |                                          |
| 2) Plants included into objects of collecting (mushrooms, berries, flowers, grass and roots of medicinal plants and so on). |                                      |
| 3) Plants that are in conditions of natural freedom and their status as objects is not defined by general regulations. |                                      |

Classification of plants as animate nature objects, proposed by the authors, makes possible to develop a legal regime for each of the species of plants pointed out by the authors, as well as for the whole system of plants as animate nature objects.

This methodological approach makes possible not only to optimize legal regulation, but also the civil turnover of plants both isolated plants and in conditions of natural habitat.

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