LINEAR OBJECTS AS REAL ESTATE OBJECTS: LEGISLATIVE APPROACHES OF RUSSIA AND FOREIGN COUNTRIES

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INTRODUCTION

The world’s modern infrastructure is difficult to imagine without a network of linear structures. Today, the total length of linear objects in the world is enormous. On the one hand, these are communication lines of various types through which resources or signals are transmitted (power grids, power lines, water pipelines, gas pipelines and other fuel communications). On the other hand, these are structures and structures connected technically with communication lines (different types of technological installations, stations, nodes, overpasses, power, transport structures and objects (GUBAREVA, 2014; KALINICHENKO, 2016). The problem of attributing linear objects as movable or immovable property is gaining relevance in the legal field.

For this purpose, it is advisable to analyze the foreign experience of the legal regime of linear objects from the point of view of their differentiation as real estate objects. At the same time, special attention should be paid to the concepts and approaches that have developed in the countries of the Anglo-Saxon and Romano-Germanic legal systems. Indeed, without a close study of legal structures that have developed in different countries, effective communication in the global economic space is impossible (KURBANOV, 2016). Thus, taking into account the state of the problem and the needs of society, the purpose of the study is to develop theoretical and practical approaches to solving the problem of the legal regime of linear objects as real estate objects. To achieve this goal, a comparative study of the legal category «linear object» in Russian and foreign law seems relevant from the point of view of systematizing the legal regime of objects as real estate objects.

MATERIALS AND METHODS

The achievement of this goal is facilitated by the use of both general scientific and special research methods. When clarifying the definition of a linear object and its assignment to real estate objects, the systematic, dialectical, logical methods, the method of analysis and synthesis were used. When comparing approaches to the interpretation of a linear object in different legal systems, comparative legal and historical legal methods were used.

RESULTS AND DISCUSSION

A linear object represents a system of structures of surface, aboveground or underground structures of considerable length. The main purpose of linear objects is aimed at ensuring the movement, movement and transfer of materials and substances for the purposes of the state and local population. Based on this, the following characteristics of a linear object can be distinguished. First, a linear object is distinguished by its considerable length and scale. It can cover large territorial areas of several regions of the state at once. Secondly, a linear object is a structure of a three-dimensional, planar or linear structure, including above-ground, above-ground or underground elements, consisting of load-bearing and enclosing building structures. Thirdly, a distinctive feature of a linear object is its strong connection with the
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Fourthly, attention is drawn to the purpose of linear objects, according to which they can be divided into such two categories as pipelines and networks.

Reference to the basic concepts and principles used in the Romano-Germanic and Anglo-Saxon legal systems regarding linear objects gives reason to believe that when determining the legal category of «linear object» it is advisable to start from the legal meaning of real estate. Each state has its own modification of this concept, defined by the norms of civil law, based on which it can be concluded whether a linear object belongs to real estate in one sense or another.

Germany is of particular interest in terms of legal regulation of relations with linear objects. This is explained by the fact that Russia and Germany belong to the same Romano-Germanic legal family. Professor E.A. Sukhanov notes: «Indeed, Russian and German law belong not only to the single legal family of European continental law, but also belong to its common German branch. Both Germanic and Russian civil law are based on Roman private law substantially revised by German pandectists » (SUKHANOV, 2006).

Starting from the concept of «real estate» in Russian and German law, we come to the conclusion that the concepts are significantly different from each other. So the Civil Code of Russia recognizes real estate separately as land plots and objects that are firmly connected with land. According to Russian civil law, a land plot is considered as one of the real estate objects.

According to the German Civil Code, only land plots are recognized as immovable things. Other objects are recognized as real estate on the basis that they are specially equated by law to land plots. Thus, the concepts of «real estate» and «land plot» in German law completely coincide. If we talk about the concept of a linear object in German law, then, as such, there is no concept. But here it is advisable to proceed from the term «essential constituent parts of a land plot», to which linear objects are referred. At the same time, German legislation does not directly indicate the relationship of linear objects to real estate objects. However, the concept of the essential constituent parts of a land plot makes it possible to significantly simplify the procedure for identifying linear objects as real estate. On this basis, linear objects and the land plot with which they are firmly connected cannot belong to different owners or be encumbered by the limited property rights of different owners of rights (VLADIMIR et al., 2020).

An appeal to Russian legislation indicates that the current regulatory legal acts also do not actually provide a definition of a linear object. In fact, they only list them. At the same time, the list of linear objects remains open. It is no less important that in the Russian civil law there is no established legal mechanism for regulating the regime of linear objects as real estate objects. Indeed, Russian legislation does not directly define linear objects as real estate objects. However, referring to the concept of real estate in the Civil Code of Russia gives reason to believe that linear objects to one degree or another can be attributed to the category of real estate. One of the prerequisites for such a statement is that, according to Art. 130 of the Civil Code of Russia, immovable property should be understood as objects that cannot be moved to a new location without commensurate damage to the land. Thus, one of the important classifying features of immovable objects is their strong connection with the land. This category includes buildings and structures, unfinished objects. As for pipelines, communication lines and other line-cable structures that were put into operation as capital construction objects, in accordance with Art. 55 of the Urban Planning Code of the Russian Federation with a high degree of probability should also be considered real estate with all the ensuing legal consequences (BORISOV et al., 2018).

It should be noted that some types of linear objects will be real estate due to the provisions of special legislation. For example, line-cable communication facilities in accordance with Art. 8 of the Federal Law of July 7, 2003 No. 126-FZ «On Communications» refer to real estate. In addition, if linear objects constitute a common complex of buildings and structures and take part in the turnover as a whole, then according to Art. 133.1 of the Civil Code of the Russian Federation, a linear object is recognized as an immovable thing (BORISOV et al., 2018). A broader interpretation of the concept of «real estate», from which one should proceed when interpreting a linear object as a real estate object, is presented in French law. So, in accordance
with the French Civil Code, there are three types of property attributed to real estate: real estate «by nature», real estate «by purpose», real estate «by the object of the application».

- The first in this case means land plots, buildings, wind and water mills, growing crops, etc. In addition to houses, the French Civil Code includes sewer networks and power transmission lines and similar structures, as well as wind or water mills, approved on poles and forming part of the structure, to buildings.
- The second category includes items used by the owner for the operation of the land. In addition, real estate «as intended» is considered to be items, the separation of which from the property is impossible without damage or significant deterioration.
- The third category includes usufruct for immovable property, easements, land obligations, as well as claims aimed at the return of immovable property.

In accordance with this classification, it can be concluded that French law classifies the so-called linear objects as real estate. At the same time, it is very problematic to single out the category to which linear objects should be attributed. On the one hand, Articles 518, 519 of the FGK classify sewerage networks and power transmission lines and similar structures as real estate «by nature». On the other hand, French law recognizes real estate «as intended» those objects, the separation of which from the land is impossible without damage or significant deterioration. Therefore, the question regarding linear objects remains controversial in the legal scientific field. An appeal to American law allows us to determine the absence of a single term «linear object» in US civil law. First of all, attention is drawn to the fact that the division of property into movable and immovable in American law occurs according to the classification determined by the courts, if the object of regulation is legal relations with the participation of a «foreign element».

Drawing a parallel with the countries of the Romano-Germanic legal system, it can be argued that the principle of inseparable connection with the land characterizes linear objects in the legal field of the United States. Moreover, in most states, this category is defined as real property. In this regard, we can talk about various infrastructural objects. For example, buildings, pipelines, power lines, etc. The US court practice classifies such objects as real estate. At the same time, for the purpose of legal regulation of this category of objects, the term «infrastructure» is used (SVECHNIKOVA, 2016).

Of particular interest are measures to protect the legal regime of land for the construction of linear facilities in the United States. The specificity of the regulation of land relations associated with the construction of linear objects is determined by the fact that a significant number of them are in state ownership. Therefore, the relevant government programs are of great importance in the regulation of relations related to the construction of linear facilities (MITYAKINA et al., 2019). To implement US government programs for the development of infrastructure (linear facilities), when providing land plots for construction, authorities at various levels resort to using the institution of easements. A feature of the procedure for using easements in the United States is an easement in the form of an advantage (TURANIN et al., 2019).

Florida’s charter sets forth easements for the construction of public or private utilities, drainage, sewerage, and the like. In this case, the concept of «communal» in relation to the enterprise, includes any state or private program. For example, storm sewers, sewerage, electricity, water supply, gas service, or telephone lines. In the event of the sale of land for non-payment of taxes, the transfer of ownership of the land to another owner will be carried out with the maintenance of easement. This will ensure the operation of the telephone, telegraph, pipeline, transmission of electricity, etc. The action of the easement must be confirmed by a written document. It must be registered in the district court of the district where the land plot, encumbered with the easement, is located, and where the tax act is to be executed (BONDARENKO et al., 2020).

It should be noted that the institution of public easements as one of the main methods of granting land rights for the placement of linear objects is gaining more and more popularity in
Russia. This approach will reduce the costs of legal entities to ensure the placement of socially significant objects (power lines, water pipelines, gas pipelines, etc.). Therefore, the need to improve the legal regulation of public easements to ensure the construction and operation of linear structures in Russia is growing. It should be noted that in the development and approval of design estimates for the placement of linear facilities, you should be guided by some fundamental rules of the US Constitution, the US Federal Land Use Act, the US Code of Laws, as well as the Urban Land Use Codes.

CONCLUSION

Summing up, we note that a comprehensive analysis of the legal status of linear objects in Russian and foreign legislation has revealed the peculiarities in the approach to the assessment of the concept of «linear object» and its attribution to real estate. The analysis of foreign experience showed that the civil legislation of Russia and a number of foreign countries (France, Germany and the USA) have both common and distinctive features in the identification of linear objects as real estate objects. At the same time, it was found that none of them contains specific legal terms, both «linear object» and «real estate». There is only a listing of their types. However, based on the features of real estate identified in the legislation of these countries, it can be argued that in each of the states under consideration, linear objects are, to one degree or another, referred to as real estate objects.

In the course of the study, it was found that the strong connection of a linear object with the ground is an essential criterion for its classification as immovable. This concept combines approaches to the legal status of a linear object as a real estate object in the legislation of the countries under consideration. At the same time, there is also the individuality of the legal regime of the objects under study in each of the states. So German civil law is distinguished by the identification of the concepts of «real estate» and «land lot». This state of affairs allows, based on the concept of essential constituent parts of a land plot, to classify linear objects as real estate objects.

A distinctive feature of relations associated with linear objects in the United States is the absence of special legislation in individual states, as well as the current federal legislation in relation to them, which creates certain difficulties in legal regulation. However, it is worth noting that linear facilities in the United States are very long and are considered infrastructural. Therefore, for the purposes of legal regulation of linear facilities, the term «infrastructure» is used in US law. US judicial practice defines linear objects as real estate objects.

The conducted research suggests that one of the basic rights to land intended for the construction and operation of linear objects is easement. This mechanism greatly simplifies access to land resources and reduces the cost of building linear facilities. As for the Russian system of law in relation to linear objects, it is distinguished by its uniqueness. On the one hand, it also does not give a clear legal definition of a linear object, limiting itself only to listing. On the other hand, it has a large number of special laws governing relations with linear objects. Therefore, in order to avoid a broad interpretation of this concept in judicial practice and streamline the procedure for classifying linear objects as real estate objects, it is worth solving the problem of the absence in the current Russian legislation of a clear legal definition of «linear object» that would accumulate its features and types. This approach will improve the level of the legislative framework in this area. Thus, it can be argued that the concepts of real estate and linear objects in Russian civil law are partially borrowed from foreign legal systems. But one should not deny in many ways their originality. At the same time, scientific discussions regarding the assignment of a linear object to real estate objects continue. This state of affairs testifies to the further development of the content of the concept of «linear object» in the domestic civil law doctrine.

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Resumo
O objetivo do estudo é desenvolver teoricamente o problema de atribuição de objetos lineares a objetos imobiliários. Para atingir este objetivo, uma análise abrangente da legislação russa e estrangeira foi realizada no âmbito das relações com instalações lineares. Ao mesmo tempo, é dada atenção especial aos conceitos e abordagens relacionados à classificação de objetos lineares como objetos imobiliários na legislação russa e nos países dos sistemas jurídicos anglo-saxão e romano-germânico. Considerando a legislação civil da Alemanha, Rússia, Estados Unidos e França, os autores concluíram que não há definições unificadas dos conceitos de “objeto linear” e “imóvel”; apenas uma lista de seus tipos foi estabelecida. No entanto, o conceito declarado pode ser identificado a partir da descrição das características dos imóveis nesses países. A este respeito, pode-se argumentar que cada país tem um entendimento próprio ao avaliar o conceito de «objeto linear» e sua atribuição aos objetos imobiliários.

Keywords: Linear objects. Real estate. Movables. Easement. Land plot.

Palavras-chave: Objetos lineares. Bens imóveis. Bens móveis. Servidão. Lote de terreno.

Abstract
The purpose of the study is to theoretically develop the problem of attributing linear objects to real estate objects. To achieve this goal, a comprehensive analysis of Russian and foreign legislation was carried out in the framework of relations with linear facilities. At the same time, special attention is paid to the concepts and approaches related to the classification of linear objects as real estate objects in Russian law and in the countries of the Anglo-Saxon and Romano-Germanic legal systems. Considering the civil legislation of Germany, Russia, the USA and France, the authors concluded that there are no unified definitions of the concepts of "linear object" and "real estate"; only a listing of their types has been established. However, the declared concept can be identified based on the definition of the characteristics of real estate in these countries. In this regard, it can be argued that each country has its own understanding in assessing the concept of «linear object» and its attribution to real estate objects.

Keywords: Linear objects. Real estate. Movables. Easement. Land plot.

Palabras-clave: Objetos lineales. Bienes inmuebles. Bienes muebles. Servidumbre. Parcela.

Resumen
El propósito del estudio es desarrollar teóricamente el problema de atribuir objetos lineales a objetos inmobiliarios. Para lograr este objetivo, se llevó a cabo un análisis integral de la legislación rusa y extranjera en el marco de las relaciones con las instalaciones lineales. Al mismo tiempo, se presta especial atención a los conceptos y enfoques relacionados con la clasificación de objetos lineales como objetos inmobiliarios en el derecho ruso y en los países de los sistemas legales anglosajón y romano-germánico. Teniendo en cuenta la legislación civil de Alemania, Rusia, Estados Unidos y Francia, los autores concluyeron que no existen definiciones unificadas de los conceptos de “objeto lineal” y “bienes raíces”; sólo se ha establecido una lista de sus tipos. Sin embargo, el concepto declarado se puede identificar con base en la definición de las características de los inmuebles en estos países. En este sentido, se puede argumentar que cada país tiene su propio entendimiento al evaluar el concepto de «objeto lineal» y su atribución a los objetos inmobiliarios.

Keywords: Linear objects. Real estate. Movables. Easement. Land plot.

Palabras-clave: Objetos lineales. Inmuebles. Bienes muebles. Servidumbre. Parcela.