

LEGAL ISSUES IN RECOGNIZING OWNERLESS REAL ESTATE OBJECTS LOCATED ON EXPROPRIATED LAND PLOTS FOR PUBLIC NEEDS

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Abstract

This article examines the legal issues related to recognizing real estate objects located on expropriated land plots for public needs as ownerless property. Particular attention is devoted to the legal nature of ownerless property, the grounds and procedures for acquiring ownership rights over such property, and the existing contradictions in the civil legislation of the Republic of Uzbekistan. The study analyzes the provisions of the Civil Code, the Civil Procedure Code, and the Law of the Republic of Uzbekistan No. ORQ-781 regulating land expropriation for public needs. Comparative legal analysis of the legislation of the Russian Federation, Ukraine, and Kazakhstan concerning renunciation of ownership rights is also conducted. The article substantiates the necessity of improving national legislation by introducing specific legal norms regulating the abandonment of ownership rights and clarifying the legal status of ownerless real estate. It is argued that unresolved legal issues concerning ownerless immovable property may negatively affect legal certainty, property stability, and the balance between public and private interests during land expropriation procedures.

Keywords

ownerless property, real estate, expropriation of land plots, public needs, ownership rights, civil law, acquisitive prescription, municipal property, state registration, renunciation of ownership.

The determination of the legal regime of real estate objects located on land plots expropriated for public needs constitutes one of the most significant issues in modern civil law. In the process of land expropriation for public needs, it becomes necessary not only to identify the legal owner of the immovable property situated on the land plot but also to establish the legal status of property whose owner cannot be identified. In practice, there are numerous situations in which immovable property remains without a clearly identifiable owner or where the owner is unknown. Under such circumstances, the legal institution of ownerless property becomes applicable.

The legal regime of ownerless property is traditionally regarded as one of the mechanisms through which ownership rights may be acquired by the state or other public entities. Therefore, legislation distinguishes between general and special legal regimes governing ownerless property. According to Article 191 of the Civil

Code of the Republic of Uzbekistan⁸², property that has no owner or whose owner is unknown is considered ownerless property. However, despite the existence of this general rule, numerous legal ambiguities remain unresolved in relation to ownerless immovable property located on expropriated land plots.

Ownership rights have historically occupied a central place in civil law systems. The development of ownership institutions is directly connected with the needs of civil circulation and legal stability. Consequently, theoretical and practical issues concerning the acquisition and termination of ownership rights require comprehensive legal regulation. The introduction of the Civil Code of Uzbekistan in 1997 significantly transformed approaches to ownership acquisition, particularly regarding acquisitive prescription and the legal regime of ownerless property.

An analysis of Articles 187 and 191 of the Civil Code demonstrates that the acquisition of ownership rights over ownerless property constitutes an independent legal basis for acquiring ownership. Under the current legislation, ownerless immovable property may be transferred into state ownership or into the ownership of citizens' self-government bodies by court decision after one year has elapsed from the date of official registration of such property by the competent state authority. Furthermore, Part 2 of Article 191 establishes that ownerless movable property may be acquired through acquisitive prescription except in cases specifically provided for by law.

Thus, Article 191 effectively establishes two distinct legal grounds for the acquisition of ownership rights depending on whether the property is movable or immovable. Nevertheless, the legislation does not sufficiently regulate situations where a court refuses to recognize municipal ownership over ownerless immovable property. In such cases, the property may remain outside effective civil circulation because no alternative legal mechanism for possession or ownership acquisition is clearly established.

The legal regime of ownerless property may also differ depending on specific legal facts or categories of property. For example, ownerless inheritance property is regulated under Article 1157 of the Civil Code. Similarly, ownerless property discovered at the state border is regulated by the Resolution of the Cabinet of Ministers No. 533⁸³ dated September 2, 2020, while ownerless residential premises are regulated by Resolution No. 8⁸⁴ dated January 21, 2006. In this regard, ownerless immovable property located on expropriated land plots for public needs should also be regarded as a category subject to a special legal regime.

Civil legislation identifies several features characterizing ownerless property: the absence of an owner, the inability to identify the owner, or the abandonment of ownership rights by the owner unless otherwise provided by law. However, it is important to note that the mere absence of possession or practical necessity for the

⁸² <https://lex.uz/docs/-111189>

⁸³ <https://lex.uz/ru/docs/4976017>

⁸⁴ <https://lex.uz/docs/973450>

property does not necessarily mean that the owner does not exist. The owner retains the legal authority to determine the fate of the property irrespective of claims made by third parties. Therefore, the criterion of “necessity” cannot independently serve as a basis for terminating ownership rights.

One of the most significant shortcomings of Uzbek civil legislation is the absence of explicit legal norms regulating renunciation of ownership rights. Unlike the legislation of Uzbekistan, the civil legislation of several foreign states contains special provisions concerning abandonment of ownership rights. Article 236 of the Civil Code of the Russian Federation expressly permits individuals and legal entities to renounce ownership rights by declaration or by actions indicating refusal to possess, use, or dispose of the property. Similar rules are contained in Article 347 of the Civil Code of Ukraine and Article 250 of the Civil Code of Kazakhstan.

The legislation of these countries demonstrates that the legal institution of ownership renunciation plays an important role in ensuring certainty regarding the legal status of abandoned property. In the absence of such norms, significant legal difficulties arise concerning the classification of property as ownerless and the subsequent transfer of ownership rights. Therefore, it appears appropriate to supplement the Civil Code of Uzbekistan with a separate provision regulating renunciation of ownership rights.

It is proposed to introduce Article 198¹ titled “Renunciation of Ownership Rights” into the Civil Code of Uzbekistan. This article should establish that an individual or legal entity may renounce ownership rights through a declaration or by other actions clearly indicating refusal to possess, use, or dispose of the property without the intention of preserving any rights over it. At the same time, ownership obligations should remain with the owner until another person acquires ownership rights over the property.

Another problematic issue concerns the relationship between acquisitive prescription and municipal ownership of ownerless immovable property. Current legislation permits local self-government bodies to apply to court for recognition of ownership rights over ownerless immovable property. However, scholars disagree on whether such authority constitutes a right or an obligation of local authorities.

Certain scholars argue that local authorities should be obligated to seek recognition of municipal ownership in order to prevent legal uncertainty and protect public interests. Others maintain that granting priority to public ownership over private acquisition through acquisitive prescription contradicts the private-law nature of civil law and undermines the rights of bona fide possessors.

This issue creates a direct conflict between administrative mechanisms for transferring ownerless property into municipal ownership and private-law mechanisms based on acquisitive prescription. The question therefore arises as to which subject should have priority: the actual possessor acting in good faith or the local self-government body claiming municipal ownership.

The problem becomes particularly significant in situations where open state registers do not contain information concerning the owner or lawful possessor of immovable property. The absence of registration data cannot automatically serve as sufficient evidence that the property is ownerless because ownership documents may not have been submitted for registration in a timely manner, or another person may already exercise actual possession over the property.

Theoretical disputes also arise regarding the interpretation of acquisitive prescription. Different doctrinal approaches exist concerning the relationship between good-faith possession and acquisitive prescription, the moment when prescription periods commence, and the extension of possession periods necessary for acquiring ownership rights through vindication claims.

Civil legislation generally allows acquisition of ownership rights through acquisitive prescription. Nevertheless, some scholars argue that ownerless immovable property constitutes an exception because ownership rights over such property should primarily belong to the state or local self-government bodies. Such an approach effectively grants priority to public ownership over private-law acquisition mechanisms.

The existence of problems concerning the legal nature of renunciation of ownership rights is also supported by E.A. Gryada⁸⁵. Civil legislation provides for the possibility of transferring ownerless immovable property into private or state ownership only through acquisitive prescription, while its transfer into mahalla ownership additionally requires judicial recognition. In this regard, the following question becomes relevant: does the court's recognition of mahalla ownership constitute merely a right of the local state authority, or does the law impose a mandatory obligation upon it? This issue is also supported in the works of E.A. Gryada and A.B. Yelizarov⁸⁶. Furthermore, in her research, N.V. Klyaus⁸⁷ reflects the position that such a claim constitutes a legitimate interest of local self-government bodies.

According to Article 191 of the Civil Code, state registration authorities register ownerless immovable property upon application by authorized public entities. After one year from the date of registration, these entities may apply to court seeking recognition of state or municipal ownership over the property. However, the legislation does not clearly establish the grounds upon which courts may refuse such claims.

A particularly important issue concerns the wording of Article 191 itself. The provision defines ownerless property merely as property "that has no owner or whose owner is unknown." This definition fails to address property abandoned by

⁸⁵ Гряда Э. А. Основания приобретения права собственности на бесхозные недвижимые вещи // Власть Закона. 2013. – № 2 (14). – С. 63-76.

⁸⁶ Елизаров А.Б. Административно-правовой статус бесхозного имущества // Вестник Омской юридической академии. 2010. – № 2 (13). – С. 6-18.

⁸⁷ Кляус Н. В. Некоторые проблемы предмета судебной защиты в гражданском процессе по делам особого производства // Арбитражный и гражданский процесс. 2006. – №8. – С. 14-20.

the owner and leaves unresolved whether such property should automatically be classified as ownerless.

Comparative legal analysis demonstrates that the legislation of the Russian Federation and Kazakhstan expressly includes abandoned property within the category of ownerless property. Therefore, it would be appropriate to amend Article 191 of the Civil Code of Uzbekistan by adding provisions concerning property abandoned by the owner.

Procedural issues concerning recognition of ownerless property are regulated by Articles 327–330 of the Civil Procedure Code of Uzbekistan. According to Article 330, a court may recognize property as ownerless if the property has no owner, if the owner is unknown, or if the owner abandoned the property without the intention of preserving ownership rights. In such cases, the court may transfer the property into state or municipal ownership.

Cases concerning transfer of ownerless immovable property into municipal ownership are considered by courts with mandatory notification of all interested persons. If the court establishes that the property has been officially registered as ownerless for more than one year, it may issue a decision transferring the property into municipal ownership.

Article 28 of Law No. ORQ-781 concerning expropriation of land plots for public needs provides that immovable property located on expropriated land plots shall be considered ownerless if its owner does not exist or cannot be identified. However, this provision also refers to permanent residential registration of citizens in relation to residential property.

Such an approach appears inconsistent with contemporary constitutional principles guaranteeing freedom of movement and freedom to choose one's place of residence. Article 32 of the Constitution of Uzbekistan guarantees every person the right to move freely and choose their place of residence without imposing mandatory registration requirements. Therefore, retaining residential registration as a criterion affecting ownership rights appears legally questionable.

Another inconsistency arises because Law No. ORQ-781 reproduces only part of Article 191 of the Civil Code while omitting provisions concerning subsequent identification of owners or acquisition of ownership through acquisitive prescription. Consequently, the Law regulates only the procedural stage of applying to court without addressing the broader legal regime governing ownerless property.

In order to eliminate this inconsistency, it is proposed to supplement Article 28 of Law No. ORQ-781 with a provision stating that rights concerning immovable property located on expropriated land plots shall be determined in accordance with procedures established by civil legislation.

In conclusion, the establishment of a clear and comprehensive legal regime governing ownerless immovable property is essential for ensuring legal certainty during land expropriation procedures for public needs. Proper regulation of

ownerless property contributes to the prevention of disputes, the stability of property relations, and the maintenance of balance between public and private interests. Therefore, issues concerning ownerless real estate located on expropriated land plots should be resolved directly on the basis of civil law principles and norms. Further improvement of legislation regulating ownership renunciation, acquisitive prescription, and ownerless property remains an important direction for the development of civil law in Uzbekistan.

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