



## THE CIVIL LEGAL NATURE OF LIMITED MATERIAL RIGHTS

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<b>Article history:</b>		<b>Abstract:</b>
<b>Received:</b>	October 11 <sup>th</sup> 2022	The article examines the problematic issues of determining the legal nature of limited material rights, and analyzes the signs of limited material rights established by national civil legislation and formed by scientists in the doctrine of civil law. On the basis of the performed analysis, it is proposed to determine the limited material right by its characteristics characteristic of all its types.
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The success of comprehensive and systematic work on the further development of the economic system of our country depends on effective and sufficient legal frameworks that meet modern requirements. The requirement of uniformity of content and form in legal regulation is important for civil legislation as well as in other areas of law. In this regard, the President of the Republic of Uzbekistan dated April 5, 2019 No. F-5464 Decree The approval of the concept of improvement of Civil legislation is of great importance and serves to bring civil legislation to a qualitatively new level.

In accordance with the concept, in the new version of the Civil Code, special attention is paid to strengthening the institution of material rights by expanding the rights of the owner. In an economic system based on market relations, there is no economic opportunity to satisfy the resource needs of the participants of civil transactions based only on property rights. Therefore, in the system of legal regulation of property relations, a number of institutions have been developed that provide the opportunity to use property for economic benefits<sup>1</sup>. One of them is the limited physical rights that give non-owners the opportunity to own and use property belonging to others.

Before talking about this institution of substantive law, it is necessary to clarify the terms associated with its naming. In the legal literature, this institution can be called "limited property rights" and "rights to the property of another". The rights to another's property (*jure in re aliena* in Roman law) is not a very clear concept from the point of view of the present time, because officially the right to another's property is acquired by any legal (titled) owner, who is not the owner of the property. Unlike the Roman private law, in the current civil legislation (as in other CIS countries) the categories of "ownership" and "storage" are not distinguished. and the custodian of the object, the trustee will also have. At the same time, all of these persons, as the title owners of the object, will have the

right to protect their ownership by means of material-legal claims (Article 232 of the Criminal Code). However, it is not possible to declare the persons listed on this basis as subjects of material rights. After all, in this case, any subjective civil right, the object of which is material, becomes a material right, and as a result, the separation of civil rights into a material right and a right of obligation loses any meaning. Therefore, we agree with the following opinion of E.A. Sukhanov: "In order to avoid confusion ... it is appropriate to use a more precise term that came to us from Germanic civilization - the term "limited material rights"" At the same time, all of these persons, as the title owners of the object, will have the right to protect their ownership by means of material-legal claims (Article 232 of the Criminal Code). However, it is not possible to declare the persons listed on this basis as subjects of material rights. After all, in this case, any subjective civil right, the object of which is material, becomes a material right, and as a result, the separation of civil rights into a material right and a right of obligation loses any meaning. Therefore, we agree with the following opinion of E.A. Sukhanov: "In order to avoid confusion ... it is appropriate to use a more precise term that came to us from Germanic civilization - the term "limited material rights" At the same time, all of these persons, as the title owners of the object, will have the right to protect their ownership by means of material-legal claims (Article 232 of the Criminal Code). However, it is not possible to declare the persons listed on this basis as subjects of material rights. After all, in this case, any subjective civil right, the object of which is material, becomes a material right, and as a result, the separation of civil rights into a material right and a right of obligation loses any meaning. Therefore, we agree with the following opinion of E.A. Sukhanov: "In order to avoid confusion ... it is appropriate to use a more precise term that came to us from Germanic civilization - the term "limited material rights"" However, it is not possible to declare the persons listed on this basis as subjects of



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During the period of the former union, the legislation regarding limited material rights was not interpreted in any way. The GK of the RSFSR of 1922 was a special section regulating material rights (Articles 52-105), which included the right of construction and the right of mortgage along with the right of ownership. Later, after the nationalization of the economy and the denial of private property, these institutions practically fell into disuse. The restoration of the right to limited use of another's immovable property after a long period of legal oblivion is connected with the acceptance of the valid FC.

Despite the fact that limited material rights have all the common features of material rights (with property rights), at the same time, they also have their own characteristics.<sup>3</sup>.

Such rights, as material rights similar to property rights, allow authorized persons to exercise direct, but limited, control over another's property (and not over the behavior of another person who is obligated). Their content is always narrower and more

limited than property rights. According to their content, they represent restrictions on the powers of the owner and usually deprive him of the possibility (authority) of independent and free use of his property in one way or another.

In the presence of such rights, property rights "shrink" in size, sometimes significantly. In some cases (for example, when a classical usufruct is established for an object), the owner can retain only "general control over the object", "dry right" (*nudum ius*)<sup>4</sup>. However, as soon as the limited material right is canceled, the property right is automatically restored in its full size without any additional actions of the owner ("elasticity" or "flexibility" of the property right).

On the other hand, the invalidation of the property right to the object (for example, when it is dead or taken out of circulation) should lead to the automatic invalidation of all the limited material rights assigned to it. Because of this, the subordination of material rights to property rights as the main material right is another important aspect of these rights<sup>5</sup>. Limited material rights cannot exist "independently", that is, without property rights. For this reason, it is impossible to assign a limited material right to an unowned object, including the recognition that the real owner of the unowned object has such a right.

The object of limited material rights is usually always immovable property. Limited physical rights allow the use of the object only for certain purposes. Limited material rights serve the property interests of persons who aim to ensure their safety from negative consequences that may arise due to the long-term use of a certain material, the transfer of property rights to another person.

A generally recognized feature of limited material rights is that they remain in place even if the owner of the material subject to the limited material right changes. This situation, which is usually described as a "right to follow", ensures the legal "solidity" of the material right. However, as a general rule, the subject of the right of obligation (contract) is required to agree with the new owner on the conditions for continuing to use another's property.

In the civil law of the Republic of Uzbekistan, this classic rule, unfortunately, was not consistently established until the end: during the Soviet period, the legislator gave the "right to follow" to the lessee of the object, who seemed to him to be the weaker party (Article 288 of the FC of the UzSSR of 1963).<sup>6</sup>. This provision is preserved in the current legislation (Part 1 of Article 549 of the Criminal Code).

Naturally, such a situation may affect the interests of the lessee even if the damage he suffered is fully covered. Because of this, "the struggle between legal logic and the interests of tenants is reflected in



almost all legislation, which usually has a hard time solving this issue."<sup>7</sup>.

In our opinion, the right to follow by itself cannot serve as the main feature that allows the property right to be characterized as a limited material right, because for this the set of features mentioned above must be fully present.

At the moment, it can be said that the material-legal element of the tenant's rights as the right to follow (as well as their absolute legal protection) is one of the characteristics of the national civil law<sup>8</sup>. In this case, from the point of view of material rights, the rights of the lessee are not recognized as material rights, but as rights of obligation, even in civil law.

Finally, the above-mentioned signs of limited material rights require another important rule for their consistent implementation - official registration of limited material rights. The need for such a record, aimed at creating an opportunity for third parties to get acquainted, is called the principle of openness. This principle is implemented in the form of mandatory registration of limited physical rights to real estate and transactions concluded with them in the state register (CIS countries) or in the land book (Germany, Austria). According to E.A. Sukhanov, the need for official

registration in the state register is one of the signs of limited material rights.<sup>9</sup> However, in our opinion, the need for state registration of a limited material right arises as an obligation only in relation to the rights to immovable property of another and is not an essential feature of the material right, but is a product of the subjective right belonging to the material right.

The analysis of the listed signs allows us to come to the following conclusions: limited material rights, firstly, are characterized as rights to the property of others, originating from the property right and subject to it; secondly, it includes the right to follow the property as physical obligations set for the property; thirdly, the law clearly and fully defines certain rights according to their types and content.

Thus, the limited material right as a structural element of the system of material rights is a material-legal right arising from the property right, and in the cases provided for by the law - from the will of the owner, guaranteeing direct control over other people's objects in economic activity in the amount necessary and sufficient for the effective use of real estate objects at their disposal. is an interconnected set of absolute rules of behavior.

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