

Comparative analysis of possession in Anglo-Saxon and Russian law

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Possession is one of the fundamental legal phenomena that form the basis for the realization of legal opportunities within the framework of various property relations. Since the time of Roman law, the regulation of ownership has been one of the main tasks of determination and has a high social significance.

This institution plays a key role both in the system of Anglo-Saxon law and in continental law. It should be agreed that in Russian legislation the institution of property rights protection is not regulated, there are no special rules defining it. During the decades when property law did not exist in our country, it is necessary to "gain momentum" in the field of its development and improvement, whereas this institution has already been regulated and "implemented" in detail in many countries [3]. Although ownership is currently not legally determined in domestic legislation, there are Concepts regarding its consolidation, which, however, the legislator still does not give an exact formulation.

In English law, possession is defined as "the lowest degree of title to property that can exist without any obvious right". This definition of this concept contains only the first attempts by English researchers to define the content of the term "possession". Later, in the English dictionaries, possession was defined differently.

In 1959, in England, the concept of "possession" was more structured and consisted in physical control over a property, combined with the intention to own property against all the individuals. Possession should have three signs: first, physical control, secondly, the intention to own one, and finally, these features should be visible or should be expressed externally in such a way that their presence can be proved [1]. The last point is of particular importance, having no analogues in continental law, and is in fact a distinctive attribute of Anglo-American ownership.

Despite the fact that the essential difference between the systems of Anglo-American and Continental law (to which Russian law is the most genetically close) is generally recognized, followers still insist on the necessity of introducing into Russian law the rules and provisions existing in Anglo-American law. In domestic law there are new discussions about the necessity of borrowing the institute of trust, which remains debatable [2].

All of them usually do not take into account the peculiarities of English law system and its "legal understanding". This is most clearly seen in the sphere of property law, where the central place is occupied by possession.

It can be argued that the desire of domestic entrepreneurs to use the institutions of Anglo-American law is conditioned not by its special legal advantages [4], but by the stability of Common law justice, the economic power of its legal order and distrust of the domestic judiciary.

To summarize, the concept of "possession" in Russian and foreign law has common features, which consist in the fact that in Russia and England, possession refers to the actual domination of a thing, possession of it for oneself, for one's own purposes, however, before adopting a more generalized concepts it has been going through different stages of its formation in each of the countries.

Thus, the institute of property law is extremely interesting to this day and is indicative of the dynamics of its development: at what stage is society, what things are lost and what issues arise due to largely forgotten aspects of law.

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