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Real Estate, Unauthorized Constructions, and Forensic Examination

This article examines the conceptual understandings of property law, specifically real estate, as advanced by prominent civil law scholars across various historical periods and as reflected in Russian legislation from the late 19th to the early 21st century.

Despite the temporary marginalization of property rights within the civil law system, the article notes a departure in Russian legal theory and legislation from the established classical doctrine recognizing the multiplicity of real estate objects. The current Civil Code of the Russian Federation is presented as a logical progression in the evolution of these conceptual ideas on property law.

The opinion is put forward that future development of legislation concerning real estate and property law, in general, will follow this main trajectory. One path is the implementation of the “Concept for the Development of Legislation on Property Rights”, developed by leading Russian civil law scholars. This Concept is evolving and undergoing changes but is nevertheless being phased into the civil law system. It proposes expanding the scope of limited *in rem* rights, particularly by implementing the principle of unity of fate for a land plot and the structures located on it.

Within the legal and law enforcement community, the multiplicity of real estate objects has created the problem of unregistered structures (unauthorized constructions). The most recent amendment to Article 222 of the Russian Civil Code on unauthorized constructions was made in 2018 (as revised by Federal Law No. 339-FZ of August 3, 2018) and has since generated extensive case law. Relevant cases have been heard by both the Supreme Court of the Russian Federation and the Constitutional Court.

Judicial review of disputes involving unauthorized constructions invariably necessitates the appointment of a forensic construction-technical expert examination. While this examination is typically a fundamental piece of evidence for the court’s ruling, there are instances where a judicial act is rendered contrary to or independently of the expert opinion. The article reviews specific legal disputes that were resolved independently of the findings from the court-ordered forensic technical examinations, with the final rulings issued by the Supreme Court of the Russian Federation.

Keywords: *Real Estate, Multiple Structures, Unauthorized Construction, Structure Built Without a Permit, Demolition, Expert Testimony, Forensic Construction Expert Examination*

The development of property relations in our country received its primary impetus during the period from 1994 to 2006, with the sequential adoption of the parts of the Civil Code of the Russian Federation (the “Civil Code” or “CC RF”). The first part (which took effect on January 1, 1995) consisted of three sections: General Provisions, Property Rights and Other Rights in Rem, and the General Part of the Law of Obligations. In legal history, the most embattled area has arguably been the law of property (rights in rem), which, like a phoenix, repeatedly died and was reborn. “The remnants of rights in rem that survived in the 1922 Civil Code were expelled from the 1964 Civil Code...” [1]. It should be clarified, however, that the 1922 Civil Code of the RSFSR did contain a section titled “Law of Property”, which encompassed ownership, pledge, and building rights. In the 1964 Code, the law of property reflected only the right of ownership, with a severely truncated description of the classification of things.

A cornerstone of the law of property is the concept of real estate and the associated legal relations. The term “real estate” refers primarily to land plots (and, more broadly, land as a natural feature and resource). During the Soviet era of nationalization, land was removed from commercial circulation, and land law became an independent legal field. To some extent, the principles and norms of land

relations established in the 1922 Land Code of the RSFSR persisted until 2001, when the Land Code of the Russian Federation (the “Land Code” or “LC RF”) took effect. This separation of civil law into distinct codes remains in place today. However, the Land Code of the Russian Federation incorporated rules that are civil-law in nature — covering ownership and other rights in rem to land plots, contracts for the sale and lease of land plots, and others. The corresponding provisions of the Civil Code began to be applied as supplementary.

This situation, where the civil law system contains overlapping and duplicative norms, is expected to be resolved through a reform of the Civil Code. It was initially anticipated that amendments to the section of the Civil Code on rights in rem would render the corresponding provisions of the Land Code obsolete, leading to their repeal [2]. The land legislation itself includes provisions referencing timelines for planned legislative changes, some extending as far as 2033 (the latest version of this law is dated July 31, 2025)¹.

As is known, Russia’s civil law system belongs to the Germanic branch of the continental civil law tradition. Consequently, the ideal objective of the reform was to align the fundamental norms of Russian

¹ On the Enactment of the Land Code of the Russian Federation : Federal Law No. 137-FZ of October 25, 2001. Articles 3 (Part 2.7), 3.7 (Part 2), 8, 9, 19, etc.

property law with the traditional approaches of classic European continental codifications, based on the Concept for the draft text of the relevant section.

According to the Concept for the Development of Russian Legislation on Property Law, it was envisaged to expand the range of limited real rights (*numerus clausus*), in particular, by implementing the principle of unity of fate of a land plot and the buildings located on it, " ...which is expected to significantly simplify the turnover of land plots and, consequently, prevent potential disputes in courts and other jurisdictional bodies" [3].

Even Roman jurists believed that "only that which is rooted in the earth is considered part of the land" (anything that is rooted in the ground is considered part of the plot): *Fundi nihil est, nisi quod terra se tenet*. (D.19.1.17. Ulp.) [4]. Likewise: *Gai 2.73 Praeterea id quod in solo nostro ab aliquo aedificatum est, quamvis ille suo nomine aedificauerit, iure naturali nostrum fit, quia superficies solo cedit* (Moreover, whatever is built on our soil by someone becomes ours by natural law, even if he built it in his own name, because whatever is attached to the surface belongs to the soil) [5].

Friedrich Thibaud, a founder of the modern theory of property law, wrote in the 18th century: "no person who had a right to claim the principal thing together with its accessories could claim the latter alone if his right of action with respect to the principal thing was lost and if he had no independent right to the additional things..." At the same time, he also wrote: "There is no presumption that a thing belongs to its principal thing or is absolutely inseparable from it" [6].

By the end of the 19th century, the renowned German pandectist Heinrich Dernburg noted a fundamental rule: "If buildings and similar structures are erected on a plot, serving not merely temporary needs, ...these structures become component parts of the plot and belong to the owner of the plot..." [6]. According to the Pandectist school of thought, the objects of property rights can only be land plots as individually defined things, while buildings and structures represent component parts of the land plots on which they are located: "The right of land ownership affords [the owner] free disposal of the surface of the earth and everything firmly attached to it..." [7]. In classical civil law, a land plot and the buildings on it are considered in the relation of a principal thing and its accessory (*accessio*) [8].

An analysis of the diverse legislative solutions in European legal systems falls far beyond the scope of the tasks set in this article, which are limited to an analysis of the theoretical views of certain representatives of civil law scholarship and are focused on the development of specific legal norms and law enforcement practice. Article 130 of the Russian Civil Code classifies not only land plots as immovable things (real estate), but also buildings, structures, unfinished construction objects, and (since 2016) residential and non-residential premises (among other things). This means the doctrine of real estate separates the rights to land plots from the rights to other associated things or objects. Even pre-revolutionary Russian law, in the Code of Laws (*Svod zakonov*), recognized by law as immovable property not only land but also separate houses and structures: "Lands and all appurtenances, houses, plants, factories, shops, all buildings and vacant lots (a), as well as railways are recognized by law as immovable properties" (Article 384); "Immovable properties that can be divided into separate parts in such a way that each can constitute a separate holding are called divisible; when they, by their nature or by law, cannot be subject to such division, they are called indivisible" (Article 393) [9].

It cannot be asserted that the viewpoint of Russian civil law scholarship is irreconcilably contradictory to the aforementioned

opinion of F. Thibaud; however, 19th-century Pandectism developed an unambiguous view on this issue. That is, a broader concept of real estate has developed in the Russian legal tradition than in Pandect law [9]. This represents a departure from the accepted classical model of civil law, according to which everything firmly attached to a plot is subsumed by its ownership regime (here and throughout, the discussion concerns only private owners of land plots).

So, domestic civil law doctrine and legislative practice have long moved away from the classical (pandect) model of property law, where the legal regime of land ownership subsumed all immovable things (real estate) as its integral parts. Currently, in establishing private ownership, the law has arrived at a diversity of immovable things within a single land plot. In this regard, property relations, from a historical perspective, will develop towards refining the ownership regime. This is because the mere legislative recognition of a multiplicity of immovable objects inevitably gives rise to intractable enforcement challenges.

Within our legal and judicial enforcement systems, this circumstance (the multiplicity of objects) creates a specific problem of unregistered structures, referred to in the Russian Civil Code as "unauthorized constructions". The problem appears contrived, yet deeply entrenched. Its primary cause lies in tax collection (the search for ways to increase payments by administrative authorities, or ways to evade them by owners) [10].

The problem of unregistered constructions, in a substantive legal sense, is resolved by local administrative authorities based on Articles 285 and 222 of the Russian Civil Code, relevant articles of administrative and procedural law, and other accompanying prohibitive regulations.

Article 285 of the Russian Civil Code provides for the possibility of land plot seizure if, among other reasons, an unauthorized construction has been erected on the plot and the persons specified in clause 2 of Article 222 of this Code have failed to fulfill their legal obligations to demolish it or bring it into compliance with established requirements. In other words, the meaning of these articles offers the said persons an alternative: to bring the construction into compliance with requirements or to demolish it. If this condition is not met, the threat of plot seizure looms. The legal drafting technique initially intended for this part of the article seems to have been forgotten, as court practice shows that administrative authorities, upon discovering such a construction, invariably demand its demolition. The number of lawsuits for the demolition of unauthorized constructions is enormous. From October 2019 to September 1, 2025, the Supreme Court of the Russian Federation alone heard 1,340 cases under these articles.

However, the Supreme Court of the Russian Federation consistently clarifies in its rulings on specific cases that "...the demolition of an unauthorized construction is an extreme measure of state intervention in relations concerning the erection (creation) of real property objects, and the elimination of the consequences of a violation must be proportionate to the violation itself, must not create an imbalance between public and private interest leading to the disruption of the stability of commercial transactions and the infliction of disproportionate losses"². Furthermore, it states that "demolition of an unauthorized construction is an extreme measure of civil liability, applicable only when the consequences of the violation cannot be eliminated by other means, and the preservation of

² On certain issues arising in judicial practice when applying the rules on unauthorized construction : Ruling of the Plenum of the Supreme Court of the Russian Federation dated December 12, 2023, No. 44. Clauses 10, 19, 25.

▶ the construction violates the rights and legally protected interests of citizens, and these violations are irremediable"³.

It appears that the Russian Supreme Court's position is being interpreted selectively by both local and federal administrative bodies. They seem to view the upcoming changes to land legislation primarily as an expansion of their administrative powers to demolish structures and, more broadly, to regulate construction on privately owned land plots.

The proposed amendments, in essence, grant a three-year period for developing the land plot and an additional five years for completing construction. As stated, *"By March 1, 2028, when the development period expires, all supervisory and municipal control bodies will face the question of whether the land plot is being used for its designated purpose and in accordance with its permitted use starting from March 2, 2028"*⁴.

The anticipated consequence of unauthorized construction, construction delays (or "failure to develop" the land) is the demolition of the structure, and in the worst-case scenario, the seizure of the land plot itself. At this time, it is unknown what the final outcome of the legislative process will be, so any predictions or discussions on this specific point are premature.

In nearly all cases where administrative bodies raise concerns about violations of land law through unauthorized construction (or other non-compliant construction), the court orders a forensic construction and technical expert examination. However, in some cases, issues of unauthorized construction are resolved independently of the expert's findings — either without ordering an examination at all or by ruling contrary to its conclusions.

In both civil and criminal proceedings, an expert examination is considered a form of evidence — a source of information upon which the court bases its conclusions regarding the existence (or absence) of circumstances that support a party's position (in civil cases) or characterize an unlawful act (in criminal cases). Both types of proceedings require the establishment of facts, which are often decisive in cases involving unauthorized construction, though not always. Let's examine a few such instances.

For example, in the aforementioned civil case (No. 18-KG25-214-K4 of August 4, 2025), it was revealed that two contradictory forensic construction and technical expert reports existed for the same unauthorized structure — one from the civil dispute and another from a criminal case. The Supreme Court (its Civil Cases Judicial Collegium) indicated that the courts handling the case should have considered the possibility of preserving the structure regardless of the experts' conclusions, since demolition is an extreme measure. The Court also pointed to the option of commissioning a repeat or additional expert examination.

In another civil case (No. 18-KG25-199-K4 of August 5, 2025), the lower courts also ruled independently of the expert opinion, citing the circumstance that the residential house was erected without obtaining the requisite permits, including for site planning. However, the Supreme Court pointed out that a construction permit is not required for the construction of individual residential housing projects (clause 1.1, part 17, article 51 of the Russian Urban Development Code). Furthermore, no red lines exist within the settlement boundaries, and their establishment is not planned; consequently,

there were no grounds to classify the disputed structure as unauthorized due to the lack of site planning documentation (part 3, article 41 of the Russian Urban Development Code).

The findings of a construction technical expert examination must be considered by courts not only for their final conclusions but also based on the internal content of the report. The Supreme Court reviewed case No. 18-KG25-249-K4 (July 29, 2025), in which the court of first instance denied a petition for the demolition of an unauthorized structure. However, the higher courts reached the opposite decision based on a judicial construction technical expert examination conducted during the appellate stage. In the expert report, specifically in its research section, the expert concluded that the object of study does not comply with the structural standards for residential buildings and lacks the spatial-planning and functional layout of premises that create conditions for permanent residence. Therefore, based on its technical characteristics, it cannot be recognized as an individual residential house; meaning the object of study is a non-residential building with the actual purpose of a small accommodation facility (mini-hotel). Additionally, the object under study lacks auxiliary rooms typical of residential buildings, such as a study, walk-in closet, pantry, dining room, living room, or children's room. Yet, at the same time, it also lacks spaces characteristic of hotels, such as administrative offices, guest reception areas, floor lobbies, and other similar rooms. The contradictory nature of the report's research section is evident: the object lacks auxiliary rooms characteristic of residential premises, but it also lacks rooms characteristic of hotels.

The Supreme Court indicated that the appellate court's conclusion — that the capital construction project is a hotel, which cannot be located on the defendant's land plot with the permitted use "for individual residential construction" — was based solely on the fact that the disputed object contains six isolated rooms, consisting of furnished rooms equipped with bathrooms and having separate entrances, and lacks premises that create conditions for permanent residence.

For an expert opinion to be unambiguous in its necessity and correctness, the examination must be conducted properly. Primarily, the internal logic of the investigation is significant; it must conform to well-known laws of logic, in this case, the law of non-contradiction. "Violations of this law are grounds for ordering a repeat examination..., which often deprives the expert's report of its status as evidence in the case" [10]. The range of questions put before the expert must be exhaustive for resolving the specific case. The list of questions is quite standard and should, of course, include straightforward issues such as the necessity for or existence of permits. "This list includes the following questions (does it conform, does it create, does it cause):

- the building (structure or facility) to conform to urban development legislation (including land use and development regulations) in parts requiring interpretation through specialized knowledge;
- the building (structure or facility) to conform to building codes and regulations, as well as fire safety requirements;
- the building (structure or facility) to conform to the issued construction permit;
- the building (structure or facility) to conform to the urban development plan of the land plot;
- the (structure or facility) to conform to the project design;
- the building, structure, or facility to create a threat to the life and health of citizens" [11].

³ Ruling of the Supreme Court of the Russian Federation of August 4, 2025, in case No. 18-KG25-214-K4; ruling of the Supreme Court of the Russian Federation of August 5, 2025, in case No. 18-KG25-199-K4; ruling of the Supreme Court of the Russian Federation of July 29, 2025, in case No. 18-KG25-249-K4 and numerous other similar cases.

⁴ Butovetsky A.I. Innovations in Land and Real Estate. Report, May 18-25, 2025. Part 2. URL: <https://icped.ru/articles/zem/kopiya-chast2-novovvedeniya-v-sfere-zemli-i-nedvizhimosti/> (rus.)

When ordering an expert examination, the court specifies (among other things) the facts that the examination is intended to confirm or refute, as well as the questions posed to the expert (Part 1, Article 80 of the Russian Code of Civil Procedure). It is the expert, within their expert report, who determines whether there has been a violation of construction, urban development, fire safety, sanitary, and other established norms and parameters, as well as land use and zoning regulations.

The court evaluates the expert report based on its inner conviction, which is formed through a comprehensive, complete, objective, and direct examination of the document, and if necessary, on the expert's oral clarifications provided during a court hearing. It is evident that the court is bound by the questions it posed to the expert. Consequently, if the answers to these questions are unequivocal, it is impossible to disregard them without compelling reasons.

The Russian Constitutional Court, while reviewing the constitutionality of the provisions of Article 222 of the Russian Civil Code, noted that under the revised version of this article (as of August 3, 2018) a structure is not considered an unauthorized construction if it was built in violation of established limitations on the use of the land plot, provided the owner of said structure did not know and could not have known about such limitations applicable to their plot⁵ (Ruling of the Constitutional Court of the Russian Federation No. 48-P of November 11, 2021). Furthermore, when courts consider cases involving changes to the federal legal grounds for recognizing a building, structure, or other erection as an unauthorized construction, they must establish the landowner's good faith at the time of construction.

These circumstances are established by the court through a comprehensive examination of the case materials and can also influence the outcome of the case independently of the expert report's findings.

Since the obligation to demolish an unauthorized construction constitutes a sanction for an offense — which may involve violating norms governing the allocation of the land plot and its development — the Constitutional Court concluded that imposing the burden of demolition presupposes the owner's fault and does not imply imposing the obligation to demolish an unauthorized construction at their own expense on a non-culpable party. The degree of fault is also a matter exclusively for judicial determination. Specifically, landowners must have the opportunity to be aware of limitations on their rights, especially when new, previously non-existent limitations are introduced. This means it is essential to ascertain whether the person who carried out the construction knew or could have known about the existence of these limitations.

⁵ On the case of verifying the constitutionality of the provisions of paragraph 6 of part four of Article 392 of the Civil Procedure Code of the Russian Federation, paragraph 1 of Article 222 of the Civil Code of the Russian Federation and Article 32 of the Federal Law "On Gas Supply in the Russian Federation" in connection with the complaint of citizen Yu.V. Tikhonov : Resolution of the Constitutional Court of the Russian Federation of November 11, 2021 No. 48-P.

Moreover, when assessing the conduct of the person who erected the structure, current legislation is based on the principle of protecting parties acting in good faith in civil transactions. For a person who did not know and could not have known about the (newly introduced) limitations, such demolition does not constitute a sanction and cannot be carried out at their expense. Imposing adverse consequences, such as the obligation to demolish the structure at their own cost, on a party who acted in good faith is impermissible in any case. If a person did not know and could not have known about the limitations on their land plot, or if this issue was not examined by the court, then such a judicial decision would lack legality and substantiation.

Thus, we see that in judicial practice there are instances where a forensic construction-technical expert examination, while necessary, is not the foundation for the court's ruling. Instead, the justification is based on the interpretation of substantive legal norms and their role within the legal system. Furthermore, the judicial qualification of a specific disputed legal relationship cannot rely on an expert's findings in cases where the constitutional property rights of the owner — which fall outside the scope of a forensic construction-technical examination — are violated or require protection.

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Недвижимость, самовольные постройки и судебная экспертиза

В статье рассматриваются концептуальные представления об имущественном праве, в частности, о недвижимости, которые высказывались видными цивилистами различных эпох, а также получили свое отражение в законодательстве России конца XIX – начала XXI в. Несмотря на времен-

ное забвение гражданско-правовой системой вещного права, в статье констатируется отход российской правовой теории и законодательства от общепринятых классических представлений о множественности объектов недвижимости. Закономерным продолжением развития концептуальных представлений о вещном праве является современный Гражданский кодекс Российской Федерации. Высказывает- ся мнение о дальнейшем магистральном развитии законо-

дательства в части недвижимости и вещного права в целом. Один из путей — это реализация Концепции развития законодательства о вещном праве, которая была разработана виднейшими российскими цивилистами. Концепция развивается и претерпевает изменения, но тем не менее поэтапно внедряется в гражданско-правовую систему. Концепция предполагает расширение круга ограниченных вещных прав, в частности, реализацию принципа единства судьбы земельного участка и находящихся на нем строений. В правовой и правоприменительной среде множественность объектов недвижимости породила проблему незарегистрированных строений (самовольных построек). Последнее изменение статьи 222 Гражданского кодекса РФ о самовольных постройках имело место в 2018 г. (редакция Федерального закона от 03.08.2018 № 339-ФЗ) и в настоящее время получило обширную судебную практику. Судебные дела рассматривались как Верховным судом Российской Федерации, так и Конституционным судом. Рассмотрение судами спорных вопросов в связи с самовольными постройками неизменно требует назначения судебной строительно-технической экспертизы. Судебная строительно-техническая экспертиза, как правило, является одним из основополагающих доказательств при вынесении судом решения по делу, однако имеют место случаи, когда судебный акт принимается вопреки либо независимо от экспертного заключения. Рассмотрены конкретные судебные споры, разрешение которых состоялось независимо от выводов назначенных судебно-технических экспертиз, окончательное решение по которым принималось Верховным судом РФ.

Ключевые слова: вещное право, недвижимость, множественность объектов, самовольная постройка, снос, судебная строительно-техническая экспертиза

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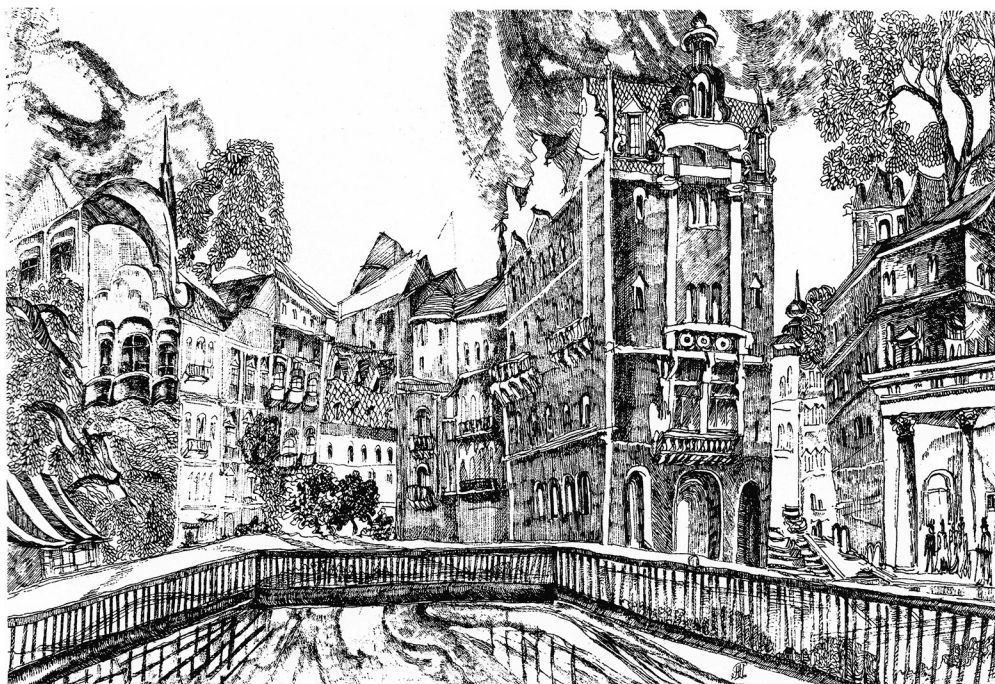
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