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KAZAN UNIVERSITY LAW REVIEW

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Dear readers,

I would like to present for your attention the second regular issue of the journal "Kazan University Law Review" in 2022.

The issue you are now holding in your hands contains articles on topical issues in the theory and practice of Russian and foreign law.

The issue starts with an article by a collective of authors: Sergei Baryshev, Candidate of Legal Sciences, Associate Professor of the Department of Civil Law of the Russian State University of Justice (Kazan branch); Ivan Bliznets, Doctor of Legal Sciences, Professor of the Department of Intellectual Rights of the O.E. Kutafin Moscow State Law University (MSAL); Roza Sitdikova, Doctor of Legal Sciences, Professor, and Ekaterina Starostina, Candidate of Legal Sciences, Assistant of the Department of Business and Energy Law of the Kazan Federal University, "Copyright. Comparative essay". In this research paper, the authors conducted a comparative legal study of the concept and types of copyrights in the legislation of Russia, Great Britain and France. In particular, this study argues that subjective copyrights represent the main content of the legal status of both the author and other right holders. The study revealed similarities and differences in the legislative approaches of the countries under consideration, both to the formulation and classification of copyrights, and to the definition of their content.

The issue continues with an article by Guzel Valeeva, Candidate of Historical Sciences, Associate Professor of the Department of Theory and Methods of Teaching Law; Mikhail Vekshin, Master's Degree Student of the Faculty of Law and Ramil Khasanshin, Candidate of Legal Sciences of the Department of Environmental, Labor Law and Civil Procedure of the Kazan Federal University, "To the problem of definition of possession". Researchers have raised the issue of defining the concept of "possession", which is currently, due to the high importance of this phenomenon in civil turnover. The necessity of theoretical development of problems related to the definition of the term "possession" is revealed, the ways of solution are considered, and conclusions are presented.

I am sincerely glad to present to you the study of the Dinara Dayanova, Candidate of Pedagogical Sciences, Associate Professor of the Department of Theory and Methodology of Teaching of the Kazan Federal University, "Psychological and pedagogical model of emotional intelligence development in the context of innovative social and humanitarian projects". The study considers theoretical approaches to understanding emotional intelligence as one of the important competences in the professional activity of future specialists. The issues of creating innovative educational projects and educational route, which allow to significantly increase the level of personal effectiveness of a social sphere trainee, are analyzed and summarized, and, as a result, the indicators of emotional intelligence in the professional activity of a social sphere specialist are revealed.

With best regards,
Editor-in-Chief
Damir Valeev

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Copyright. Comparative essay

DOI 10.30729/2541-8823-2022-7-2-50-62

Abstract. *In this research paper, the authors conducted a comparative legal study of the concept and types of copyrights in the legislation of Russia, Great*

Britain and France. In particular, this study argues that subjective copyright represents the main content of the legal status of both the author and other right holders. Accordingly, the object of the study is the legislation of Russia, Great Britain and France, as well as the theoretical provisions revealing the features of the copyright system in the intellectual property law of the considered countries. The article reveals the peculiarities of the construction of the system of personal non-property and property rights of the author. The conducted study reveals the similarities and differences in the legislation approaches of the considered countries as to the formulation and classification of copyrights, as well as to the determination of their content.

Keywords: *copyright, copyrights, personal non-property rights, exclusive rights, property rights.*

1. Introduction

This article is devoted to a comparative analysis of the personal non-property and property rights of the author under the legislation of the Russian Federation, Great Britain and France. In the Berne Convention for the Protection of Literary and Artistic Works of 1886 (hereinafter — the Berne Convention) in accordance with Article 6bis the personal non-property rights of the author include the following: the right to demand recognition of authorship; the right to object to certain changes and other actions that violate rights. In addition, subject to certain limitations and exceptions, the Berne Convention lists certain powers that must be recognized as the author's exclusive rights. These rights include: the right to translation; the right to adaptation and arrangement of the work; the right to public performance of dramatic, musical-dramatic and musical works; the right to public reading of literary works; the right to communication to the public of performances of such works; the right to broadcast; the right to reproduce the work by any means and in any form; and the right to use the work as the basis for an audiovisual work, and the right to reproduce such a work. Great Britain and France were among the first parties to this Convention. The Russian Federation acceded much later — already in 1995. At the same time, in this article the peculiarities of the normative fixation of copyrights in the legal systems of the Russian Federation, Great Britain and France will be considered.

2. Methods

The research methodology is expressed by systemic, structural-functional, structural-logical, descriptive, institutional, comparative-legal, as well as

dialectical methods of scientific knowledge, collection, and analysis of scientific and practical material.

3. Results and discussion

The copyright law of the countries belonging to the Romano-Germanic family of laws is based on two conceptions of understanding the legal essence of subjective copyright. These concepts are generally opposed to the concept of "copyright", existing in the countries of Anglo-Saxon legal system and prevailing in countries such as the US and UK. Although it should be noted the increasing influence of the EEC on the process of copyright formation in some countries[1]. These theories of copyright have been called dualistic and monistic theories of copyright. The French copyright law is traditionally based on the dualistic concept of copyright. The copyright dichotomy pervades all French copyright law and is the legal basis on which the entire system of French copyright, as a legal institution of intellectual property law, is built. The moral and proprietary rights of the author have a very different legal regime. Thus, the property rights of the author can be limited in order to ensure the interests of society and the state, for example, for educational, informational and cultural purposes. Moral rights of the author cannot be limited under any conditions.

At the same time, it is necessary to take into account the fact that copyright in general is regarded as a special category of rights, which has an intangible nature and has its own special characteristics. Among the most important characteristics of the rights of the author of a work is their independence from the material object in which the work is expressed, so that the transfer of ownership of the thing in which the work is embodied, in accordance with Article L 111-3 of the French Intellectual Property Code (hereinafter the Code) does not entail the assignment of property rights[2]. The exceptions are the cases of posthumous publication (promulgation) of the work (art. L 123-4 of the Code). It is necessary to notice that in France for a long time the proprietary conception of copyrights had a certain success, according to which the copyright

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[1] *Annabelle Littoz-Monnet*. Copyright in the EU: droit d'auteur or right to copy? // Journal of European Public Policy. No. 13:3. 2006. Pp. 438–455.

[2] Loi n° 92–597 du 1 juillet 1992 relative au Code de la propriété intellectuelle (partie législative) [Law No. 92–597 of July 1, 1992 on the Intellectual Property Code (legislative part)] // Journal officiel de la Republique française du 3 juillet 1992 [Official Journal of the French Republic of July 3, 1992].

was recognized either as a literary property or as a special kind of property right[1].

The moral rights of the author form the basis of copyright in general. This is another difference from the system of copyright protection that exists in the United States. The emergence of proprietary copyrights on a work is in most cases directly related to the presence of moral rights in the subject. Moreover, the author's property rights are derived from moral rights. The norms of the Code, regulating the legal regime of service works, can serve as an example. Provisions of articles L111-1, L131-1 of the Code prove that French copyright law as a rule does not provide any exceptions to proprietary rights of an author (employee). Thus, the author has all the copyrights to the work created by him, regardless of the fact of the existence of an employment relationship with the employer. In contrast to other countries, in particular the Russian Federation, the author's property rights on an official work, except for some exceptions, according to Article L 111-1 of the Code, belong to the author and may be used by the employer on general grounds.

The moral rights of the author have, according to Art. L. 121-1 of the Code, the properties of timelessness, inalienability, inseparability from the personality of the author and include the right of authorship, the right to respect for his name, the right to respect for his work (right of inviolability), the right of disclosure and the right of revocation.

It must be said that the right to authorship and the right to respect for one's name are often combined under one of these names. These rights are interpreted in French law as the right to be recognized as the author of a work and the right to demand to be identified as the author of the work when using it. As noted in some sources, the right to respect for one's name is subject to certain limitations. These restrictions are that the author's right to name extends only to the use of his works, i.e., the product of his creative activity. Judicial practice also adheres to this position. Thus, the court made a decision to reject the claims of the author to the company Coca-Cola to stop the distribution in France of the drink, the name of which coincided with his name, which he used in his creative activity[2].

The right of disclosure is of the utmost importance in French copyright. The right of disclosure is a kind of starting point for the author's exercise of

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[1] *Recht P.* Le droit d'auteur, une nouvelle forme de propriété: histoire et théorie [Copyright, a new form of property: history and theory]. Paris: Éditions J. Duculot, 1969. P. 230.

[2] Cour de cassation, civile, Chambre civile 1 [Court of Cassation, Civil, Civil Division 1].10 avril 2013, 12–14.525. Publié au Bulletin I, n° 72.

his property rights. The right of disclosure is the exclusive right of the author to make his work available to the public. Thus, legal value has exactly bringing of product to information of wide layers of public. If the work was presented in a narrow circle of people, then such a presentation may not be regarded as promulgation. The significant problem from the practical point of view may be the situation when the only material carrier of the work, existing in the original, is held by one person, and the rights of disclosure belong to, for example, another author. In this case, according to Article L 111-3 of the Code, the author, and his successors in title cannot demand from the owner of the material carrier, in which the work is expressed, to provide them with this object for exercising the right of disclosure. However, in the event of an abuse of right by the owner preventing the exercise of the right of disclosure, the court may take appropriate measures in accordance with the provisions of Article L. 121-3 of the Code.

The right of revocation is the most rarely exercised copyright right. Its meaning, in terms of Article L. 121-4 of the Code, is that the author has the right to withdraw his work from circulation after its promulgation on condition of prior compensation of damages from this action to the person who obtained the right to use the work. The specificity of the right of revocation in French law is also the fact that if the author, after exercising his right of revocation, decides to make the work public again, the person who used the work before its revocation enjoys the preferential right to contract with him under the previous conditions.

Of course, the most important part of the copyright system in France is the author's property rights. Property rights of the author are characterized by their fixed-term nature, secondary to morality and the ability to be subject to agreements on the use of the work[1]. Another feature of French copyright is the absence of an extensive list of powers which would be part of the property right of the author or an equally extensive list of separate property rights. The French law traditionally proceeds from the existence of two rights of the author: the right of reproduction and the right of representation. These rights are interpreted as broadly as possible and in practice include all the powers. In any case, the exceptions to the mentioned copyright property rights are to be interpreted restrictively (L 122-5 of the Code). An example of the restrictive interpretation is the rules on the use of images of works of fine art in open

[1] *Balázs Bodó, Daniel Gervais, João Pedro Quintais.* Blockchain and smart contracts: the missing link in copyright licensing? // International Journal of Law and Information Technology. Volume 26. Issue 4. winter 2018. P. 334.

public spaces[1]. Their existence is due to the fact that "the exclusive right must be balanced with other social purposes"[2].

The right of representation is understood as the right to bring a work to the public by any means, including public display, public live performance, television broadcast, dramatic performance, etc. Thus, the right of representation covers both the cases of direct and indirect use of works and includes a variety of powers related in one way or another to the presentation of a work to the public.

In turn, the right of reproduction is connected to the fixation of the work by any means on a material medium to the public in an indirect, indirect way. An example of such use would be printing the work on any medium: photographs, plastic works, magnetic and video recordings of the work, etc.

According to the UK legislation, according to the Copyright, Designs, and Patents Act 1988 (hereinafter Copyright Act) copyright includes personal and proprietary rights[3]. The changes of the legal regulation in this field were the subject of the research of many scientists, but in this article the mentioned rights will be considered without the retrospective aspect, namely in the condition in which their legal regulation is at the moment of writing this article[4].

The property right of the author is the exclusive right to use the work as follows: copying of the work; distribution of a copy of the work to the public; rental of the work; public performance, demonstration, or playing of the work; making the work available to the public; adaptation of the work.

Copying of a literary, dramatic, musical or artistic work means reproduction of the work in any material form. With respect to an artistic work, copying includes making a copy in three dimensions of a two-dimensional work and

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[1] *Dulong de Rosnay, Mélanie and Pierre-Carl Langlais.* Public artworks and the freedom of panorama controversy: a case of Wikimedia influence // Internet Policy Review. No. 6.1 (2017). P. 6.

[2] *Cartwright, Madison*. Business conflict and international law: The political economy of copyright in the United // REGULATION & GOVERNANCE. Volume 15. Issue 1. P. 152.

[3] Copyright, Designs and Patents Act 1988 [Electronic resource] // URL: https://www.legislation.gov.uk/ukpga/1988/48/contents.

[4] *Bonadio E.* Street art, graffiti and copyright: A UK perspective // The Cambridge Handbook of Copyright in Street Art and Graffiti, 2019. Pp. 159–174; *Cook T.* UK implementation of the Copyright in the Information Society Directive // Computer Law and Security Report. No. 20 (1). 2004. Pp. 17–21; *Gadd E.* An examination of the copyright clearance activities in UK higher education // Journal of Librarianship and Information Science. No. 33 (3). 2001. Pp. 112–125; *Sykes J. R.H.* Look and feel has UK copyright protection // Computer Law and Security Report. No. 6 (4). 1990. Pp. 30–31; *Masiyakurima P.* The futility of the idea/expression dichotomy in UK copyright law // IIC International Review of Intellectual Property and Competition Law. No. 38 (5). 2007. Pp. 548–572.

making a copy in two dimensions of a three-dimensional work. Copying, in relation to a film or television broadcast, includes taking a photograph of all or any substantial part of any picture which forms part of the film or television broadcast. Copying of the typographical arrangement of a published publication means making a facsimile copy of the arrangement.

Hiring means making a copy of a work available for use under the conditions that it will or may be returned for direct or indirect economic or commercial benefit. Lending means making a copy of a work available for use under conditions that it will or may be returned, other than for direct or indirect economic or commercial benefit, through an institution accessible to the public.

Public performance of a work means its reproduction through lectures, addresses, speeches and sermons, and generally includes any mode of visual or acoustic presentation, including presentation by means of sound recording, film or broadcast of the work.

Communication to the public of a work means communication by electronic transmission and broadcasting of a work, and making the work available to the public by electronic transmission in such a way that members of the public may access it from a place and at a time individually chosen by them.

Adaptation with respect to a literary or dramatic work, other than a computer program or database, means a translation of a work; a version of a dramatic work in which it is transformed into a non-dramatic work or, as the case may be, a non-dramatic work in which it is transformed into a dramatic work; a version of a work in which the story or action is conveyed entirely or mainly through images in a form suitable for reproduction in a book, newspaper, magazine.

In the case of a computer program, adaptation means a layout or modified version of the program or a translation thereof.

In the case of a musical work, adaptation means an arrangement or transcription of the work.

Consider the personal rights of the author. First, the author's right to a name. The author of a literary, dramatic, musical, or artistic work and the director of a copyrighted film have the right to be identified as the author or director of the work. The author of a literary work (other than words intended to be sung or spoken with music) or dramatic work has the right to be identified. For example, when a work is published for commercial purposes, publicly performed or made available to the public. Thus, the author has the right to be identified on copies of a film or sound recording, including a work that is released to the public. It

also includes the right to be identified whenever a work is adapted as the author of the work from which the adaptation is made.

The next personal right of the author, guaranteed by law, is the right to object to derogatory treatment of the work.

The creator of an authored literary, dramatic, musical, or artistic work, as well as the director of a copyrighted film, have the right not to subject their work to derogatory treatment. Thus, the treatment of a work is derogatory if it amounts to perversion or distortion of the work, or is otherwise harmful to the honor or reputation of the author or director.

The next personal right is the right to object to false attribution. This is the right to prevent the false attribution of literary, dramatic, musical, or artistic works to a citizen as the author and to prevent the false attribution of a film to him as the director; in this section, "authorship" with respect to such work means a statement (express or implied) as to who the author or director is. The right in question prevents, for example, a known author being credited as the author of a story he did not write.

A fourth personal right under the UK Copyright Act is the right to privacy of certain photographs and films. This right allows someone who has commissioned a photo or film for personal and home purposes to prevent it from being published or displayed. For example, it would allow you to prohibit a photographer from posting your wedding photos on their website without your permission.

As for the right to follow, which belongs to the category of other rights of the author under the legislation of the Russian Federation, in the legislation of Great Britain it is better known as the right of resale and does not belong to the category of "other" rights of the author. This right is already enshrined in another law, namely in the Regulation on the resale right of the artist, 2006[1]. The content of this right is similar to that contained in Part Four of the Russian Civil Code, which gives authors of original works of art (including paintings, prints, sculpture, and ceramics) the right to receive a royalty each time one of their works is resold through an auction house or art market professionals[2].

According to the legislation of the Russian Federation, for the results of intellectual activity and similar means of individualization (intellectual

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[1] The Artist's Resale Right Regulations 2006 [Electronic resource] // URL: https://www.legislation.gov.uk/uksi/2006/346/contents/made?wrap=true.

[2] Grazhdanskii kodeks Rossiiskoi Federatsii (chast chetvertaya) ot 18.12.2006. No. 230-FZ [Civil Code of the Russian Federation (Part Four) of 18.12.2006. No. 230-FZ] // Parlamentskaya gazeta [The Parliamentary Newspaper]. No. 214–215. 21.12.2006.

property) by virtue of article 1226 of the Civil Code of the Russian Federation are recognized intellectual rights, which include the exclusive right, which is a property right, as well as personal non-property rights (right of authorship, right to name, right to inviolability of works, right to publicity, right to recall, right to inviolability of performance) and other rights (for example, right of succession, right of access, etc.).

The personal non-property rights of the author include: the right of authorship, the right of the author to a name, the right to inviolability of the work.

The right of authorship is the right to be recognized as the author of a work; the right of the author to a name is the right to use or allow the use of a work under one's own name, a fictitious name (pseudonym) or without a name, i.e., anonymously. These rights are inalienable and non-transferable, including when the exclusive right to a work is transferred to another person or transferred to him and when granting another person the right to use the work. The waiver of these rights is void.

The right to inviolability of a work implies the prohibition of making changes, cuts, and additions to the work, supplying illustrations, a foreword, an afterword, comments or any explanations to the work when using it, if there is no consent of the author.

When using a work after the author's death, the person who has the exclusive right to the work has the right to allow changes, cuts, or additions to the work, provided that this does not distort the author's intention and does not violate the integrity of the perception of the work and does not contradict the author's will expressly express in a will, letters, diaries, or other written form.

The Decree of the Plenum of the Supreme Court of the Russian Federation of 23.04.2019 No. 10 "On the application of Part Four of the Civil Code of the Russian Federation" clarifies the difference between the author's right to inviolability of the work and the author's right to process the work, which is one of the rights within the exclusive (proprietary) right[1].

Thus, according to this Decree, the right of inviolability concerns such modifications of a work which are not connected with creation of a new work on the basis of the existing one. Revision of a work implies creation of a new (derivative) work on the basis of an existing one. The right to process a work

[1] Postanovlenie Plenuma Verkhovnogo Suda RF ot 23.04.2019 No. 10 "O primenenii chasti chetvertoi Grazhdanskogo kodeksa Rossiiskoi Federatsii" [Resolution of the Plenum of the Supreme Court of the Russian Federation of 23.04.2019 No. 10 "On the Application of Part Four of the Civil Code of the Russian Federation"] // Rossiiskaya gazeta [The Russian Newspaper]. No. 96. 06.05.2019.

may be transferred among other rights as part of the transfer of exclusive rights under an agreement on alienation of exclusive rights in full, or granted under a licensing agreement, and may also be transferred on the grounds stipulated by law without conclusion of an agreement with the right holder (by way of inheritance, universal succession and in other cases).

In addition, the same Decree states that, when considering cases of infringement of the exclusive right to a work through the use of its processing, to satisfy the claimed claims, it must be established that one work was created on the basis of another. In this case, creation of a similar (for example, due to the fact that the same source information was used by two authors) but creatively independent work does not constitute an infringement of the exclusive right of the author of the earlier work. In this case, both works are independent objects of copyright. Thus, the court does not deny the possibility of existence of parallel creativity.

The category of "other rights" of the author includes the right of access, the right of succession, and the right to receive official remuneration. At the same time, these rights can also be referred to the category of personal rights, as they are inseparably connected with the personality of the author.

The right of access gives the author of a work of fine art the opportunity to demand from the owner of the original work the right to reproduce his work. However, the owner of the original work cannot be required to deliver the work to the author.

In addition, the author is entitled to remuneration from the seller in the form of a percentage of the resale price if he alienates the original work of fine art at each resale of the respective original, in which a legal entity or individual entrepreneur (in particular, an auctioneer) participates as an intermediary, buyer, or seller.

The exclusive (proprietary) right of the author of a work or other right holder gives the right to use the work in any form and in any way not inconsistent with the law. Legislator in part four of article 1270 of the Civil Code lists the possible ways of such use. The said article lists eleven different actions, which are the ways of using the works, each of which can be transferred separately, according to the license agreement. However, this list is not exhaustive.

These acts include, for example, the reproduction of a work, which is the making of one or more copies of the work or a part of it in any material form.

The following actions are also recognized as use of a work:

1) distribution of a work by selling or otherwise alienating its original or copies;
2) public display of a work;

3) importing an original or copies of a work for the purpose of distribution;
4) rental of an original or copy of a work;
5) public performance of a work, i.e., presentation of a work in live performance or by technical means, as well as demonstration of an audiovisual work in a place open to the public;
6) communication of a work to the public by radio or television;
7) communication to the public by cable, i.e., communication of a work to the public by radio or television, by cable, wire, optical fiber or similar means;
8) translation or other revision of a work;
9) practical implementation of an architectural, design, urban planning or landscaping project;
10) making the work available to the public in such a way that any person may access the work from any place and at any time of his own choosing (making the work available to the public).

4. Summary

Thus, the copyright of the countries under consideration is based on the concept of principled distinction of copyright into two kinds: moral (personal non-property rights of the author) the author's rights and property rights. Of course, the normative consolidation of moral rights and proprietary rights of the author has its own features in each legal system, but to a greater extent these features are due to the specific legislative technique.

5. Conclusions

The study of the copyright system in the legislation of the Russian Federation, Great Britain and France shows that this system is currently developing in line with the traditions of the dualistic concept of copyrights. At the same time, moral (personal non-property) rights of the author continue to play a decisive role and are considered as a source of property rights of the author. Property rights of the author are stated in the most general way, which gives the French jurisprudence wide opportunities to specify these rights in case of disputes.

6. Acknowledgements

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TO THE PROBLEM OF DEFINITION OF POSSESSION

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Abstract. *The question of defining the concept of "possession" is due to the high importance of this phenomenon in civil turnover. Possession represents the foundation of the majority of civil-law relations connected with possession or domination over a thing. Such a position of ownership determines close attention of law researchers to the issues of ownership and, at the same time, a special caution of both domestic and foreign legislators in defining legal categories related to ownership.*

At present, the topic of ownership and its problems are very widely covered in special literature. Researchers have been asking questions of possession, qualification,

and consequences of its violation since the emergence of ancient concepts of belonging of a thing to a particular subject (including corporate) in general, but given the changing views on the world around, on the concept of "possession" and issues related to its protection, the specified problematic do not lose its relevance at present.

The need for theoretical development of the issues associated with the definition of the term "possession" is largely due to the fact that modern law and order often leave open the question of determining the essence of the concept and its essential features.

Keywords: *civic, civil law, possession.*

1. Introduction

Modern continental approaches to ownership originate in the legal doctrines formulated by F.C. von Savigny and R. von Iering. The first noted that researchers before him encountered great difficulties in developing the subject of ownership due to its complexity and complexity, and, therefore, before F.K. von Savigny there was simply no systematic work in which the concept of "ownership" would be disclosed.

In our opinion, it is impossible to consider ideas about the essence of possession without the reservation that major world legal orders rather late stop using Roman law as directly applicable law. The iconic researchers of ownership and its place in Roman law (and thus in all law in general, since Roman law is the recognized standard), F.C. von Savigny and R. von Iering, do not seek in their works to develop the most correct approach to ownership and ownership protection based on the available normative base: their task is to comment on the Roman sources in the most accurate way. However, their "commentary" on the Roman sources has been so successful that it has, in fact, shaped the theories of ownership that are still relevant today.

2. Methods

The research methodology is expressed by systemic, structural-functional, structural-logical, descriptive, institutional, as well as dialectical methods of scientific knowledge, collection, and analysis of scientific and practical material.

3. Results and discussion

1) Savigny, aware of the borderline state of the phenomenon "possession" between law and non-law, could not find its place in the system of Roman law,

noting that possession is not a right in rem, but it would be most logical to consider it in the section on the right in rem[1].

Savigny's major work on possession is entitled "The Right of Possession" (***Das Recht*** des Besitzes), in which the phenomenon is presented in corpus and animus. Possession is perceived by Savigny as a fact to which a certain mental process corresponds — such a state of will of the owner when he wishes either to dominate (to be the owner) over a thing or to possess it (to possess the thing as an intermediary owner). Possession in such a case is characterized not simply by a fact, but by a legal fact.

If the statics of "possession" according to Savigny raise only minor, rather fundamental questions — the owner is the one who wishes to be the lord of the thing and at the same time excludes all others from the possibility to lord over the thing, given the requirements for the character of custodia (in the broad sense it is "every position of the thing which according to a generally recognized empirical calculation of probabilities ensures our power over it"[2], but Savigny apparently means the literal sense of the word — "protection". Hereinafter custodia is understood in its literal meaning), the situation with the transfer of possession according to Savigny is somewhat more complicated, also because of the numerous exceptions described by the author.

The acquisition of possession under Savigny requires simultaneously:

1) loss of corpus by one person;
2) acquisition of corpus by another person;
3) loss of animus by one person;
4) acquisition of animus by another person.

Under such circumstances, possession can be retained by the animus alone. A thing accidentally left somewhere in this case will not pass to its new master, who excludes all others from physical dominion over it, into possession, because the previous master still possesses the will to dominate. Possession in such a case will cease only when the previous owner has come to terms with the loss of the thing once and for all.

As exceptions, Savigny's theory knows, among other things, cases where, as such, physical possession is not required — our thing is brought to our house, which, in turn, is in custodia, while we are away. Thus, possession could be

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[1] *Savi'n'i F.K.* Sistema sovremennogo rimskogo prava: v 8 t. T. V [The System of Modern Roman Law: in 8 vols. T. V] / per. s nem. G. Zhigulina; pod red. O. Kutateladze, V. Zubarya. M.: Statut, 2017. P. 116.

[2] *Yushkevich V.A.* O priobretenii vladeniya po rimskomu pravu [On the Acquisition of Possession under Roman Law]. M., 1908. P. 75.

acquired even when the acquirer and the thing are on different continents-the domestic notion of possession is certainly in rebellion here.

2) Iering's theory of possession is presented in its main part in his major work, On the Basis of the Defense of Possession. This work aims primarily at criticizing Savigny's theory and only secondarily at opposing his own theory:

"Savigny's chief error, in my opinion, is that he identifies the concept of 'possession' with that of 'actual dominion over a thing,' without noticing that 'actual over a thing' is a relative and limited concept. Through this, he puts himself in the necessity of artificially expanding this later to such an extent that it loses all meaning and is completely distorted"[1].

Throughout most of his work, Iering does not so much criticize the provisions of Savigny's theory as he notes the logical "inconsistencies" of these provisions: "Possession continues according to Savigny as long as it is possible to reproduce the original state arbitrarily …

The bridge that leads to our land is destroyed; until it is repaired, our access to it is absolutely barred: I ask, does possession continue? Yes, answers Savigny, "it is self-evident that such a temporary obstacle does not deprive us of possession. I cannot understand how it is "self-evident" … does this temporary obstacle not exclude the possibility of an arbitrary reproduction of the original state, at least for the time being?

This passage makes it clear that Iering does not agree with the very idea of "possession persists as long as there is a possibility to arbitrarily reproduce the original state," but rather with how to determine the point at which this possibility is considered terminated for one person and initiated for another.

Iering categorically disagrees that possession is only a physical dominion over a thing, but notes that, according to Savigny, the termination and establishment of possession is not characteristic of the mere fact of physical dominion.

Whereas Savigny singles out animus domini as a necessary element in the transition of possession, because its place is taken by the certainty of the restoration of one's physical dominion again, Iering rejects the necessity of the will to dominate a thing — it is simply superfluous in the system of objective possession.

Iering objectifies animus domini: first, through what the concept of custodia incorporates — directly creating such conditions under which the physical domination of another person is impossible (locking things up, setting up a fence, posting guards, etc.). Secondly, through the moral restrictions of

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[1] *Iering R.* Ob osnovanii zashchity vladeniya [On the basis of protection of possession]. M.: Tipografiya A. Mamontova i K°, 1883. P. 129.

a particular society to the possession of an obviously alien thing (including the fear of punishment for an offense) — there is a custom in society according to which a particular type of thing (for example, bicycles) people leave unattended, or the thing is in such a position that it is impossible not to conclude that it belongs to someone (for example, it is impossible to conclude that a laptop left on the table in a cafe does not belong to anyone).

This is how Iering criticizes the theory of possession, which is based on custodia: it is not necessary for all things to physically remove all third parties from being able to possess it. Possession can be exercised as long as the thing is kept in the form in which circulation is accustomed to finding it. In other words, the nature of possession may differ depending on the characteristics of the thing itself: "For some things it (the external state of a thing — my V.M. note) coincides with holding or physical possession, for others it does not. Some things it is customary to keep under personal or real supervision, others it is customary to leave unguarded and unattended.

Thus, R. von Iering concludes that animus domini is completely absorbed by the fact of physical domination: where there is a desire to possess, there the subject of possession either carries out direct protection of the thing from another's domination (for example, locking his house), or leaves the thing in a position in which other people perceive the thing as a stranger. At the same time, when the thing finds itself in a situation from which there is no desire to possess (for example, the owner fails to take measures within a reasonable time to return the violated possession or leaves the thing in an environment in which one would not normally leave such a thing), possession ceases.

In the end, Iering's main point is that the basis of the defense of possession (he does not assess the appropriateness of such a category of Roman law as "defense of possession") is the right of ownership. In this sense, it is the owner's interest that is the basis of the defense of possession, and it is the owner's interest that is the basis of the defense. The owner in the above sense must be presumed to be the owner of the thing until proven otherwise: "the possession of things is the reality of ownership. It alone is able to reproduce that full coincidence between ownership and possession which the interests of civil turnover demand.

It is for this reason that possession must be protected, that the owner is usually the owner of the thing. This statutory regulation meets the requirements of turnover because it simplifies the means of protecting the owner by reducing the standard of proof. To prove that a person is the owner of a house (in circumstances where ownership is not tied to registration), there is no need to prove the entire succession of title to the house all the way back to the

person who created the house — it is sufficient to prove that possession has been acquired.

In such circumstances, the defense of the thief is a necessary evil in the name of the common good in the form of stability of circulation and protection of property rights (in Savigny, on the contrary, the defense of the thief is the crown of proprietary protection).

3) Subsequent scholars have in one way or another been forced to lean towards one of the above concepts: either "possession is a fact, and is protected by itself" or "possession is a right, and the protection of possession is conditioned by it". Iering and Savigny, through their legal research, instilled in the continental legal model the understanding that the concept of "possession" is something more than mere physical possession, which arises and ends only through the transfer of physical dominion over a thing (traditio).

Thus, A. V. Germanov, beginning his discussion of the legal nature of possession, points out that it is necessary to distinguish between possession as a mental and physical state. In fact, here are the author points to the need to draw the reader's attention to the very corpus and animus of possession according to Savigny. Further, A. V. Germanov elaborates on the possessive will (animus) in the end, concluding that the psychophysical state of a person in relation is so firmly connected with factual circumstances that to separate it from corpus makes sense only to determine the reasons for termination of one possession and establishment of another: "the question of possession consists not in the autonomy of the will as such, but in the circumstances under which one will take priority over another (volitional emancipation)"[1].

A. O. Rybalov, on the contrary, gives the mental relation of a person to a thing the dominant position, classifying possession into types exactly through animus to "possession as one's own" — the strongest possession, in which the owner does not recognize anyone's power over the thing, except his own. At the same time, possession (echoing Savigny) can also be indirect — for example, the owner, by leasing a thing, continues to be the owner of that thing through the preservation of his will to dominate[2].

M. A. Aleksandrova also in her work "The right of ownership and methods of its protection" points to all the same dualism of ownership: corpus and animus, but clearly sympathizes with the position reflected in the partially realized later

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[1] *Germanov A. V.* Ot pol'zovaniya k vladeniyu i veshchnomu pravu [From use to possession and right in rem]. M.: Statut, 2009. P. 149.

[2] *Rybalov A. O.* Kratko o vladenii [Briefly about possession] // URL: https://zakon.ru/blog/2020/08/26/kratko_o_vladenii/.

Concept of development of civil legislation of the Russian Federation[1], according to which the Russian legislation should not contain indirect ownership (i.e., possession of "bare" animus) for the purpose of maintaining the stability of circulation and simplifying procedures of ownership protection never appeared in the Russian civil law[2].

The most interesting in this context is the approach of G. F. Pukhta, who is also in the paradigm formed by the concepts of Iering and Savigny. The author supported the concept, according to which possession is an independent right, simultaneously being a right: "possession of a thing without the right of ownership to it and independent in relation to this right is a legal condition, the very fact is a right — the right of possession…

Others, in a kind of despair, have denied the "fact is a right" position altogether, arguing that possession is not a right, although at the same time they admit that the violation of possession is an offense." G. F. Pukhta adds: "possession in itself does not have the properties of a right, but must borrow them from some other right, under the protection of which it is placed"[3].

In our opinion, it is impossible to disagree with these thoughts, because the fact as such, without the introduction of additional constructions in its contents (whether animus domini/ possissendi according to Savigny or Eigentum according to Iering), cannot be protected — the violation of the fact of possession is its termination (even if temporary). In such a case, the legal order has nothing to protect at all — only memory remains of possession.

Pukhta also correctly points out a flaw in Iering's theory: the right of ownership cannot be the starting point for the right of possession, since the right of ownership must be independent of possession, but, on the contrary, ownership in relation to possession is not true.

Having drawn conclusions crucial to our study, Pukhta concludes that in possession the subjective possibility of the right is protected; the right of

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[1] *Yakovlev V. F.* Kontseptsiya razvitiya grazhdanskogo zakonodatel'stva RF (odobrena resheniem Soveta pri Prezidente RF po kodifikatsii i sovershenstvovaniyu grazhdanskogo zakonodatel'stva ot 7 oktyabrya 2009 goda) [The concept of development of civil legislation of the Russian Federation (approved by a decision of the Presidential Council for codification and improvement of civil legislation on October 7, 2009)] // Vestnik VAS RF [Herald of the Supreme Arbitration Court of the Russian Federation]. 2009. No. 11. 78 p.

[2] *Aleksandrova M. A.* Pravo sobstvennosti i sposoby ego zashchity v grazhdanskom prave [The right of property and the means of its protection in civil law]. Sankt-Peterburgskii gosudarstvennyi universitet, 2017. Pp. 28–29.

[3] *Pukhta G. F.* Kurs Rimskogo prava T.I [A Course in Roman Law, Volume I.] / per. s nem. prof. Rudorffa. M.: Tipografiya "Sovrem. Izv.", 1874. P. 320.

possession is the right to one's own person. By violating possession, a person simultaneously violates the natural right of the individual to submit to things.

4. Summary

As a result of our study, we conclude that possession can be perceived either as an already formed subjective right, or as an actual state that is subject to protection, because when possession is violated, there is a simultaneous violation of some subjective right of the owner of the thing.

The other side of the "ownership" issue is represented by the position according to which possession as such, outside the context of any greater right to a thing, is not subject to protection.

In the context of the Russian legal order, we believe that possession is exclusively a factual condition expressed in the fact that the owner exercises custodia — protection in relation to the thing, or leaves the thing in such a setting without protection, in which the legal order is used to find the thing with the possessor. Such an approach to the definition of possession allows flexibility in determining the moment when a thing is removed from a person's possession, depending on the cultural specifics of a particular locality.

However, the positioning of possession as a fact does not allow for its full-fledged protection within the framework of the civilizational process, since in order to protect possession it is necessary to have some subjective right that corresponds to the inadmissibility of taking a thing out of a person's possession.

5. Conclusion

In continental Europe, notions of possession were developed under the influence of two major theorists in the subject, F.C. von Savigny and R. von Iering, who became the symbol of the irreconcilable concepts of "possession-fact" and "possession-law". All subsequent continental scholars in the field adopted one or another concept with certain reservations and offered their own vision of the problem points of each of the concepts.

To date, the legislators of continental countries also reflect in their jurisdictions the concepts of these jurists, taking into account the political and legal situation in a particular country, seeking to meet the challenges posed by the civil turnover.

The Russian legislator today has cautiously defined possession as the fact of a person's dominion over an object, thereby allowing for a "painless" transition

both to an approach that takes into account the owner's will and to an approach that equates possession and subjective right, in connection with which we can conclude that in this area of knowledge legal scholars have been given very fertile ground for research.

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PSYCHOLOGICAL AND PEDAGOGICAL MODEL OF EMOTIONAL INTELLIGENCE DEVELOPMENT IN THE CONTEXT OF INNOVATIVE SOCIAL AND HUMANITARIAN PROJECTS

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Abstract. *The study considers theoretical approaches to understanding emotional intelligence as one of the important competences in the professional activity of future specialists. The issues of creating innovative educational projects and educational route, which allow to significantly increase the level of personal effectiveness of a social sphere trainee, are analyzed and summarized, and, as a result, the indicators of emotional intelligence in the professional activity of a social sphere specialist are revealed.*

In the end the conclusion is made that Rigid competences imply: technical skills of a specialist, work with equipment, process management and analysis, relying on technology, regulations and standards, and flexible competences basically imply communicative skills – work with people, human resource management, relying on art, intuition, and experience.

Keywords: *emotional intelligence, social intelligence, flexible competences, cultural identity, laws of communication, indicators of emotional intelligence, innovative educational space.*

1. Introduction

In the modern educational space of higher education institutions, the issue of understanding emotional intelligence as one of the important competences in

the professional activity of future specialists is becoming increasingly relevant. According to primary sources, the formation of the concept of "emotional intelligence" or "flexible skill" has gone quite a long way and was considered by S. J. Stein, Howard Book. The problem of emotions was raised by Sigmund Freud, American scientists J. Mayer, P. Salovey, D. Caruso, D. Golumann and others. For example, D. V. Lusin in his studies convincingly proves that this concept grew out of the concept of "social intelligence". For the first time this concept was introduced by E. Thorndike, defining it as "foresight in interpersonal relations, taking it to the ability to act wisely in human relations…", he identified the main types of social intelligence: abstract intelligence, concrete intelligence, social intelligence (which is exactly the ability to understand people and flexibly interact with them)[1]. This issue was further developed in the works of the American psychologist G. Allport, and Russian researchers — M. I. Bobneva, V. N. Kunitsina. Scientists structurally distinguish the following components:

1) Social perceptual abilities;
2) Social imagination;
3) Social communication technique[2].

In the presented structure the first group of components the personality correctly accepts as individual features of mental processes, emotional qualities and traits. The second group of components allows the personality to synthesize the external diversity of people and predict model behavior in different situations. The third group of components speaks of flexibility and mobility in all situations. According to D. V. Lusin, the most clearly to the concept of emotional intelligence, coming out of the concept of social intelligence, was approached by H. Gardner, "who in the framework of his theory of multiple intelligences described intrapersonal and interpersonal intelligence. The abilities he included in these concepts are directly related to emotional intelligence. Thus, intrapersonal intelligence is interpreted as "access to one's own emotional life, to one's affects and emotions: the ability to instantly distinguish feelings, name them, translate them into symbolic codes and use them as means for understanding and managing one's own behavior"[3].

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[1] *Aizenk G. Yu.* Intellekt: novyi vzglyad [Intelligence: a new perspective] // Voprosy psikhologii [Psychological issues]. 1995. No. 1. Pp. 111–131.

[2] *Lyusin D. V.* Sposobnost' k ponimaniyu emotsii: psikhometricheskii i kognitivnyi aspekty [Ability to understand emotions: psychometric and cognitive aspects] // Sotsial'noe poznanie v epokhu bystrykh politicheskikh i ekonomicheskikh peremen. Materialy mezhdunarodnoi nauchno-prakticheskoi konferentsii. 20–24 oktyabrya 1999 g. [Social cognition in an era of rapid political and economic change. Materials of the International Scientific-Practical Conference. October 20–24, 1999.] / pod red. G. A. Emel'yanova. M.: IP RAN, 2000. P. 42.

[3] Ibid. P. 46.

In this study we will try to create a perspective innovative model of emotional intelligence development of social and humanitarian educational project with regard to modern employer requirements to future specialists.

2. Methods

The research methodology is expressed by systemic, structural-functional, structural-logical, descriptive, institutional, as well as dialectical methods of scientific knowledge, collection, and analysis of scientific and practical material.

3. Results and discussion

Modernization of technologies and content of training future specialists in accordance with the State Federal Standard and innovative requirements of employers to new generation specialists, and, in particular, to specialists formed by "flexible competences" in accordance with the basic provisions of these concepts, actualizes the issues of creating innovative educational projects and creating an educational route, allowing to significantly increase the level of personal effectiveness of the learner. That is why from June till September 2021, the Department of Theory and Methodology of Law Education at Kazan (Volga Region) Federal University started to study and summarize the demand for social professions in the labor market in the training direction 39.03.02 "Social Work", profile: "Social Work with Family". The data obtained allowed us to reveal that there is an acute shortage of highly professional staff in the city of Kazan.

During the meeting of the faculty on July 1, 2021 these conclusions were confirmed by the Director of the complex center of social services in the city district of Kazan, Nadezhda Ibragimova. The specialist emphasized that social services provided to needy citizens — service recipients are not reduced to the activities of the primary needs, but are provided through the provision of social and psychological, socio-pedagogical, social and labor, social and legal services to enhance the communicative potential of these individuals. That is why under the conditions of the federal law on social services for citizens, it becomes obvious that today it is necessary to create conditions for continuous access to opportunities to improve professional competence on topical issues in the practice of social services.

This sphere of professional activity belongs to the group of professions, highlighted by E. A. Klimov — "Person-to-Person" and is characterized

by highly developed communicative abilities, empathy, responsiveness, helpfulness, observation, the ability to listen to other people, emotional stability, etc[1].

Among the employer's requirements, great attention should be paid to the formation of the following flexible competences when creating an educational route:

1) Identifying national, ethno-cultural and confessional features of family upbringing and folk traditions;
2) Establishing contacts with different types of families and their social environment;
3) Ensuring effective interaction with families in difficult life situations;
4) Conducting different types of social counseling;
5) Showing sensitivity, politeness, benevolence, taking into account the physical and psychological condition of the person;
6) Establishment of communicative contact with parents, persons replacing them;
7) Determining the direction of work to improve relationships with children in different types of families, etc[2].

Let's take a closer look at the presented competency characteristics of the job function of a family outreach specialist (approved by Order No 683n of the Ministry of Labor and Social Protection of the Russian Federation, November 18, 2013). The purpose of professional activity: "Providing assistance to different types of families and comprehensive support to families with children on the basis of identifying family dysfunction through various technologies, developing a rehabilitation program, reintegrating the child and family into society, involving the immediate environment to change relationships between family members, improve the social and psychological situation in the family, increase parental responsibility for raising children"[3]. The territory of the Republic of Tatarstan is a confessional center, on the territory of which live numerous nationalities,

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[1] *Klimov E.A.* Klassifikatsiya professii [Classification of professions] // URL: https://docs.yandex.ru/docs/view?tm=1634530759&tld=ru&lang=ru&name=Klassifikacija_professij_E.A.Klimova.pdf&text (date of application: 18.10.2021 g.).

[2] Prikaz Ministerstva truda i sotsial'noi zashchity RF ot 18 iyunya 2020 g. No. 351n "Ob utverzhdenii professional'nogo standarta "Spetsialist po sotsial'noi rabote". Kod A, Uroven' kvalifikatsii 6. Deyatel'nost' po vyyavleniyu raznykh tipov semei i semei s det'mi, nakhodyashchimisya v trudnoi zhiznennoi situatsii s tsel'yu okazaniya im pomoshchi [Order of the Ministry of Labor and Social Protection of the Russian Federation No. 351n dated June 18, 2020 "On Approval of the Professional Standard "Specialist in Social Work". Code A, Qualification level 6. Activities to identify different types of families and families with children in difficult life situations in order to help them].

[3] Ibid.

therefore, the formula of modern progress becomes civilization as a single-type, based on planetary synergy, a prerequisite for free development, diversity and blooming complexity of cultures.

The current situation allows information to be transmitted through speech, language, and printed sound and sign systems to representatives of different national communities, and also to interact directly with each other. The processes taking place allow us to take a critical look at our own culture and the inherent human type, to identify their intercultural boundaries. Today's research in cultural anthropology shows that the cultural identity of any nation is inseparable from the cultural identity of other nations that all cultures are subject to the "laws" of communication.

The signs of the so-called communicative ideal manifest themselves in communication: sensitivity, politeness, benevolence. A specialist must be able to listen, be polite, well-mannered, have good manners, be tactful, have competent speech, must also be able not to argue, agree, seek consensus, not impose their point of view, have calmness[1]. That is why the ability to understand the so-called "foreign" culture and points of view, as well as the ability to conduct a comprehensive critical analysis of the bases of one's own behavior is becoming increasingly important. The result in the end will be the recognition of "foreign" cultural identity.

Taking into account the abovementioned, it becomes obvious that emotional intelligence in the professional activity of the specialist of the considered sphere is characterized by social skills of communication, skills to build social connections, empathy as the ability to understand the current emotional state of other people.

M. N. Bochkova and N. V. Meshkova prove that in the modern market of professions the competence of emotional intelligence as the basis of successful social interaction is at the top of the ten key and in-demand competences. Understanding one's own and other people's emotions and, as a consequence, their management, play one of the important components in modern professional activity[2].

4. Summary

The result of the work of teaching staff to date is formed educational route 39.03.02 direction of training "Social Work", profile: "Social Work with the

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[1] *Sternin I.A., Shilikhina K. M.* Kommunikativnye aspekty tolerantnosti [The communicative aspects of tolerance]. Voronezh, 2000. P. 29.

[2] *Bochkova M.N., Meshkova N. V.* Emotsional'nyi intellekt i sotsial'noe vzaimodeistvie: zarubezhnye issledovaniya [Emotional Intelligence and Social Interaction: Foreign Studies] // Sovremennaya zarubezhnaya psikhologiya [Modern Foreign Psychology]. 2018. T. 7. No. 2. Pp. 49–59.

Family", which identified the professional competencies that are disclosed in the content of the curriculum[1]. And for the next academic year the Department of Theory and Methodology of teaching law plans to enroll applicants in this direction. From what follows that development of the innovative model of the maintenance of professional education for institutions of social sphere will give the chance to receive qualitative education, new experience which can be applied in practical activity.

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