Jurisprudence, 2004, v.50 (42); 55–65

THE DOCTRINE OF PROPERTY LAW AND THE CIVIL CODE OF THE REPUBLIC OF LITHUANIA

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Submitted on December 15, 2003
Prepared for print on February 30, 2004

Summary

The legal regulation of private property in the present–day civil law of Lithuania has emerged under specific circumstances: Lithuania has regained its independence, the legal system and economy were in the process of reform, private property was sought to be established and proper conditions for the free market economy needed to be instituted.

Having undergone numerous changes in the beginning of the 20th century the modern Western European doctrine of property law appeared as the main and most important factor for the process of drafting the new Civil Code of Lithuania. However, traditionally the new Civil Code was largely influenced by the Russian legal doctrine that had a direct impact on the Lithuanian law. Apart from that, after the second World War, the Lithuanian law and doctrine of civil law were under an influence of the socialist ideology. Therefore, the application of the doctrine of property law for the new Civil Code of Lithuania was affected by stereotypical regulations established throughout the decades and due to this it was not sufficiently consistent.

Modern and traditional doctrines of civil law are intertwined within the framework of the norms of the new Civil Code. This poses certain difficulties for interpretation. Therefore, the present paper aims to disclose the historical and doctrinal conditions of interpretation of the subject matter of property law and the norms governing property relations. The key submission of this paper is that property law is an inalienable constitutional right and its essence and contents may not be disclosed by the so–called „triad" of the owner's rights that is borrowed from the old civil code. The other issue is the unity of the property law and the market flow which forms the effective legal mechanism of civil law legal relations as well as the conditions to ensure the owner's rights not only by traditional remedies determined by material law. The conclusion is drawn that in order to disclose the contents of the norms of property law and their interpretation it is imperative to resort not only to the Constitution of the Republic of Lithuania or other acts but also on the European Convention on human rights and fundamental freedoms and the practice of the European Court of Human Rights

as well as on the modern doctrine of property law which treats property law and its subject matter much wider than it is conventional for the Lithuanian legal doctrine.

The new civil code of the Republic of Lithuania was drafted and adopted under special historical circumstances: transition from plan to market economy of the re-established independent Lithuanian state, overcoming of legal stereotypes in the doctrine and real life, integration to European and transatlantic economic and political structures with an aim to achieve the long-term interests of state security.

Re-establishing its independence Lithuania not only abolished its occupation. This allowed exercising a free choice to reform the system of government and economics in accordance with the Western European model of free market and democracy.

Constituting a basis of the state system, property law remains a major part of civil law. The method and principles of property regulation determine the nature and peculiarities of most other institutes of civil law. Due to these circumstances property law remains a topical doctrinal issue.

This article focuses on the historical assumptions of legal regulation of property law in the Republic of Lithuania, the issues of how different doctrines of property law influenced the content of the new civil code, and how the institute of property law interrelates with other institutes of civil law. Due to a limited scope of the article it will not cover all aspects of the interrelationship of the doctrine and the civil code of the Republic of Lithuania. The major focus will be on the most topical issue – the factors determining further developments in the contemporary doctrine of property law and a related problem of subject matter of civil law and property law.

The article seeks in particular to disclose the factors influencing the development of property law in the civil code of the Republic of Lithuania, that are important interpreting the said legal institutes at a time of rapidly changing living conditions.

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In the aftermath of World War II Lithuanian law and the civil law doctrine was influenced by the socialistic ideology, consistently propagated in the former USSR. Otherwise than in the Western Europe and other democratic states where the doctrine of civil law and property law served the needs of the free market economy, in the former USSR the doctrine reflected ideological, not scholarly purposes. In other words, the doctrine was meant to secure the realization of the Marxist – Leninist goals disregarding the fact that the majority of those goals were not only wrongful, but also harmful. Scholarly writings published in the USSR subjected to strict criticism any developments of economic and legal doctrine of other democratic states. Without a doubt, the concept of property was treated as constituting the most dangerous threat to the soviet ideology. Propaganda was relegated to negate capitalism as such and private property as its precondition and appraise the socialist order with its basis in the communal property, thus explicitly aiming to demonstrate that there was no alternative to socialism with its socialist property and there never might be one.

The primary aim of socialism was to completely eliminate private property from civil law. Only the concept of communal property (state property, cooperative - collective farm property and the property of non-governmental organizations) was conceived as permissible. Natural persons (such concept actually did not exist, because everybody were addressed as “citizens”) could possess only a limited amount of personal belongings, i.e. only as much as was absolutely necessary to satisfy basic personal needs (for example, one house or an apartment, one cow etc.) This property was known as “personal ownership”, not private property. By this it was meant to emphasize that the personal ownership derives from the socialist property, because in accordance with socialist laws personal ownership could be acquired only by income from work. The doctrine aimed to achieve twofold goals:

to abolish private property that was considered to be a form of human exploitation, and to eliminate any circumstances facilitating the functioning of the market economy laws. Market economy laws had been substituted by an administrative planning system.

Elimination of private property from the economic system meant that there was only one owner on the market – the state. The economy was centrally organized, and the questions what should be produced and in what quantities as well as who should buy and consume those products was a matter of centralized decision-making. Due to those circumstances property was regulated by public law.

In fact, the doctrine of socialist law also did not recognize a division of law into public and private because the socialist doctrine did not allow for anything private in the private law, especially when it came to property. Civil law was particularly narrowly applied in the economic sphere. For example, the contract of sale of goods could be concluded only if a seller and a buyer were listed in a certain plan, specifying the period of supply of goods, their quantity, volume, weight and price. It is obvious that the contract was just a symbolic act. It is not an exaggeration to claim that the primary function of civil law was to regulate conclusion of minor contracts between natural persons (citizens). For state economy, where the major subjects were governmental enterprises, civil law was only of an ancillary importance – it provided a legal form to the administrative decisions (i.e. plans, administrative acts, adopted on the basis of plans, permits to supply the goods etc.) taken by the so-called "directive organs".

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The attitude towards property law in Lithuania began to change well before Lithuania regained its independence. The socialist economy during all the period of its existence remained stagnant; however in the eighties all the symptoms of its complete failure became apparent. Any hopes to recover the economy required resort to radical measures. The economy needed to be restructured in order to facilitate establishment of competitive, independent market subjects (enterprises). The government of the USSR understood this, and the so-called "perestroika" began. In 1987 individual producers were allowed into the economy. Co-operatives started to be established both in the sector of industry and of services.

Not much later Lithuanian scholars, mostly economists, established a Lithuanian popular movement "Sajudis". They created a scheme of Lithuanian economic autonomy in the USSR. This scheme later became a foundation for economic restructuring of Lithuania. The most important aspect of the economic reform was the legalization of private property, i.e. it was envisaged to abandon the doctrine of the socialist property law and change civil laws on the basis of the new scheme. The autumn of 1989 was marked by elections to the Supreme Council of the Soviet Socialistic Republic of Lithuania that were won in a landslide by the candidates of the Lithuanian popular movement "Sajudis". The deputies of the Supreme Council, realizing the importance of the developments that were taking place, before the end of their mandate on February 12, 1990 adopted a law on the foundations of property [1]. Article 1 of this article provided that the purpose of the law was to establish the legal basis for restructuring of the Lithuanian economic system. Its basic novelties included the following: "the property of the SSR of Lithuania consists of the private property of citizens, the joint property of citizens, and state property […]" (2str.); "[…] any natural person, a group of natural persons enjoying the rights of a legal entity may be owners of property […]" (Article 4); "an owner has a right to use his possessions in any way not prohibited by laws" (Article 10); "[…] an owner […] has a right […] to employ other persons […]" (Article 13).

Accordingly, Chapter II of the Constitution of the Lithuanian SSR, titled the "Economic system" had been amended [2]. Thus a month later, when independence of the Republic of

Lithuania was re-established, the necessary legal framework facilitating further adoption of legal acts regulating property relations was already in place. On the very same day of declaration of independence of Lithuania – March 11, 1990 – the deputies adopted a temporary basic law of the Republic of Lithuania. The major provisions of title 4 of this law were copied from the earlier mentioned laws [3, p.16]. Another major act on private property – the law on enterprises of the Republic of Lithuania - followed on May 8, 1990 [3, p.93-102]. Later during a rather brief period a number of other laws regulating economic-commercial activities had been adopted; also the old civil code (dating from 1964) was being constantly amended. Despite the fact that the pioneered novelties were far from perfect, the laws fulfilled their mission – they founded a basis for further development of private property and private enterprise. Also, neither the society, nor the lawyers were yet prepared for legal regulation characteristic to the Western European states. Nevertheless even though acquired during a brief period of time this experience combined with a political will to integrate to the European Union as quickly as possible. The support of the European Union for the reform of the legal system of Lithuania facilitated a new codification of the civil law of Lithuania. In the absence of national preconditions allowing a prompt drafting of a new civil code (i.e. there were no national scholarly traditions with a developed doctrine of property law reflective of the interests and conditions of the free market economy, experts were lacking, etc.) resort was taken to the experience of other contemporary civil law codifications (i.e. Italian, Dutch, etc.). An especially noteworthy issue was that the drafters of the new code to the best of their ability referred to the general principles and specific legal sources of European Union law. In this context the western doctrine was transposed to the new civil code and new legal provisions were formulated on their basis. This is the reason why in the words of the head of the drafting group professor Mikelėnas the legal consciousness of the Lithuanian society lags some twenty years behind the new civil code [4]. Consequently the norms of the civil code should be understood and applied primarily in view of the European doctrine and practice of courts. This especially applies to the doctrine of property law, from which Lithuania is most remote due to the circumstances already discussed.

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While the scholars in the USSR in the attempts to create real socialism were developing a doctrine of socialist property, the traditional continental doctrine of private law in the Western Europe and other democratic states was undergoing substantial changes due to economic developments and democratisation. This change was determined by the same preconditions that gave rise to the socialist revolution in Russia. In other words, the ideas of the socialist revolution and the circumstances allowing for it to occur prevailed after the ideas of an unrestricted private property law and freedom of contract promoted by the French revolution and later incorporated in the French civil code (1804) proved to be disappointing. These ideas had turned into the major principles of civil law in the 19th century. They had spread all over Europe and the world, creating legal conditions to establish a new system of free market economy. This system, based on encouragement of an individual initiative and priority of individualism over collectivism created a powerful instrument and a new social layer – the bourgeoisie. At the same time the absolute nature of the principles of inviolability of property and freedom of contract impoverished the workers who had no resort to accessible civilized means to resist the economic pressure of their employers. Also crises of overproduction, massive unemployment finally led to wars and socialist revolutions. All these factors in the beginning of the 20th century encouraged both scholars and politicians to seek for ways to preserve inviolability of property and freedom of contract from the amassing threat to be terminated in the chaos of the socialist revolution. Attempts were exercised to make these values bring universal benefits.

Elements of such attempts are also observed in the writings of Lithuanian legal scholars of that time. In his article published in 1924 “Rudiments of a collective ownership in the new developments of civil law of the Republic of Lithuania” professor Petras Leonas wrote that: “because the disadvantages of the capitalist legal system lie in the laws of an unlimited private property and freedom of contract – it is clear that they do not correspond to the interest of the present society; therefore these laws should be amended to make them reflect the circumstances of the present time” [5, p. 8]. It is important to note that professor Leonas suggested to change the regulation of property by amending and improving laws, not via violence, i.e. socialist revolution, because “implementation of socialism” […] would throw humanity back into slavery [5, p. 5] The real Russian socialism must have been one of the major arguments why Western Europe had not begun to negate private property and the principle of freedom of contract. Instead, the need to preserve and develop these principles in view of the new conditions of life was acknowledged. One of those conditions is reflected in the works of Duguit, who is quoted by professor Leonas. Duguit observed that the “individual property” such as created by the French civil code and the French revolution was on the verge of extinction [5, p. 4].

It follows that at the turn of the 19th and 20th centuries the doctrine of property law saw the fundamental change in its paradigms. Individualism gave floor to collectivism or at least their reasonable combination. Pure individualism no longer met the needs of international business and global economic system created by rising corporations and huge capital concentrations. Efficient and coherent functioning of the new system could be satisfied only upon a condition that all participants of the system had long-term interests, and that they enjoyed due legal and financial protection. It is worth emphasising that in the 20th century, especially after the World War II, the doctrine of property law was taking shape in the new international and national social context, marked by global integration and cooperation. It has rightly been claimed that […] “the 20th century with its technologies, political or economic processes taught the humankind to cooperate and solve its problems and conflicts rationally. No other period of civilization made humanity closer” [6, p. 171]. This is why the legislative policy, practice of courts and the doctrine of property law in the Western Europe was focused on the legalization of the collective ownership and collective legal status of an owner, workers” right to a part of an achieved result and other topical social questions. An especially important factor was the establishment of the European Community and its law, which in several decades had developed general principles of law binding on the Communities. The doctrine of property law was substituted by the social functions of property law which meant that apart from an interest of an owner, property should also serve a general interest [7, p.22]. This approach led to achieve a balance between individual and collective interests while implementing the principle of inviolability of property. The right to property in contemporary European law and practice of the European Court of Justice is not an exclusive unlimited right […] and should be interpreted in the context of its social function [8. p.112]. The doctrine of European Community law has developed a novel interpretation of the investor's property rights and the problem of the subject matter of property law.

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The problem of the subject matter of property law is one of the most important theoretical questions that the drafters of the civil code of the Republic of Lithuania had to solve. The first draft of the civil code, published after the first reading, treated only tangible things as subject matter of property law [9]. However the other chapters of the same draft included quite numerous provisions that were not so restrictive. Besides, part III of the first book of the civil code was dedicated for the subject matter of civil rights, which included also intangibles. The expanded scope of subject matter of property law is perfectly

compatible with the needs of the contemporary market economy. The more possibilities to distinguish between the titles of ownership, the more efficient the market flow. That is why these are intangible objects, not things, that dominate the contemporary market. The laws regulating financial accountability also distinguish between different categories of assets (tangible assets are only a category of assets) and each category may be a part of the market flow.

Therefore the drafters of the civil code met an essential inconsistency between the book on the rights *in rem* and the other books of the civil code. If this inconsistency remained, there would have been a need to concede that the market flow might include such objects that do not constitute subject matter of property law. This inconsistency was made even more apparent by the first book of the draft civil code providing that the legal regime of the rights *in rem* is applicable for the rights *in rem*, whereas the sixth book defined the subject matter of a contract for the sale of goods as comprising both personal rights and tangible property. This provision is clearly incompatible with the traditional position of the scholars propagating the rights *in rem* approach who maintain that the subject matter of the contract of sale of goods is tangible property, whereas the personal rights might be transferred in accordance with the rules of *cession*. Similarly the institutes of family law and the law on wills also maintain a number of provisions allowing for a conclusion that the subject matter of property law is not limited to tangible "things". Such ambiguities have probably arisen due to a reason that the drafters of different books of the civil code were under an influence of different property law doctrines. Some of them referred to the traditional continental law approach (which considers only things as constituting subject matter of property law), whereas others seemed to be more attracted to the Anglo-Saxon law, which treats any asset as a subject matter of property law.

Beginning with the Middle Ages continental civil law started to treat property law as a right *in rem*, and most of the European countries still consider that only a material object – a "thing" may constitute a subject matter of property law. At the time of the formation of the doctrine of rights *in rem* the civil legal relationships were not sophisticated. Thus such a simplistic approach to the subject matter of property law in practice did not pose any inconsistencies and was as such acceptable. However after a considerable increase in the market flow this doctrine became obsolete. Intangible assets like rights of creditors to demand performance, proprietary interest, and personal intangible property etc., became a matter of market flow, disregarding the fact that in accordance with the doctrine of rights *in rem* they did not constitute a subject matter of property law.

Especially significant changes came with an introduction of legal regulation of investments. Besides property as a right *in rem* the concepts of capital and property right to the capital emerged. Property control (understood as an element of the content of property) had also changed. Control of capital became to be conceived as an indirect financial - legal instrument of collective property. A corporation is governed not by an owner who is a company itself, but by its shareholders, i.e. an owner of an authorized capital, which is represented through shares. Finally the treatment of the company itself expanded beyond the status of company as a legal entity: a company itself became a subject matter of legal regulation. This raised concern that the doctrine should change its attitude towards property and its subject matter. The scholars and the courts had to search for other methods and principles that were more suitable to regulate contemporary property relationships.

Lithuanian legal scholars also joined this scholarly discussion concerning the subject matter of property law. One of the more interesting works on the topic is a book by Kaunas university professor Beliackinas "General principles of private law", published in 1928 in Russian. Continuing a discussion with scholars who treated only "things" as subject matter of property law and argued that *"res corporales*" and *"res incorporales" (*Roman law categories of things) were inventions that no contemporary lawyer might treat as reasonable, professor Beliackinas wrote that division of things into these categories is "[…]

practical, representing daily realities and unavoidable in the context of the present progressive conditions" [10, p. 205] and that it is only "for the market to determine if any of the intangible objects are subject matter of law" [10, p. 204]. As to this issue professor Joffe's remarks on the contemporary doctrine of property law and its comparison with the Roman law remain topical. He writes: "referring, for example, to an especially naļve and primitive approach to property law, and assuming that it is possible to restrict the subject matter of property to tangibles only, this possibility is completely excluded when it comes to creditors" rights and debtors' obligations [11, p. 63]. Joffe claims that Roman lawyers were particularly excellent casuists but were poor in their abstract formulations. This is why they failed to create any general definition of "things". Their approach to tangible property as a subject matter of property may be understood only in accordance with the titles and classification of things used in their legal sources. However it is completely clear that besides tangibles (*res corporales*), intangibles (*res incorporales*) also played an important role in the theory of "things". The Roman lawyers did not consider it to be very important that *res incorporales* were not a part of the material nature. They sought to find a way to express an extraordinary phenomenon by an ordinary legal form. If they succeeded, the problem was considered solved disregarding whether this solution reflected a traditional and consensually accepted attitude or not [11, p. 63].

The discussed contrast may be overcome by establishing more detailed definitions. For example, professor Sklovskis in his claim that a subject matter of property law may be only a material "thing" refers to a German scholar, who considers that it is market, not physics that decides what a "thing" is [12, p. 428]. Such treatment of tangibles allows seeing the concept of "thing" as encompassing also intangibles. It follows that the subject matter of civil rights may be anything that is not a title-holder of those rights. However not every scholar understands the concept of a "thing" in such a wide manner. For example, Suchanov claims that when it comes to goods, only individualized goods may be considered as comprising the subject matter of property law. Explaining his attitude, Suchanov refers to the Marxist distinction of social – economical relations into a base and a super structure and considers that there are two ways to understand property – i.e. property is both an economical and a legal concept. In his opinion, in the economic terms both the law of contracts and the law on the rights *in rem* may govern property relationships. However, the subject matter of property as a legal term may comprise only tangible things. This is why Suchanov concludes that Article 212 of the Constitution of the Russian Federation establishing the categories of property employs the category of property in an economic, not a legal sense [13, p. 332].

This approach was never questioned during the socialist times, and still dominates the approach of Russian lawyers and economists. Lithuanian scholars also supported a similar approach [14, p. 251]. However this approach is difficult to agree with. To begin, property is a unitary phenomenon and it is not possible to divide it into parts even for scholarly purposes, through a method of abstraction. However that does not mean that the economic and legal elements of property may exist separately in reality. Consequently the category of property enshrined in the basic law of a state (the Constitution) and the civil code should be viewed as a legal category only. The legal regulation of property relations is complex, i.e. the legislator, exercising the will of the electors and seeking to fulfil its program employs all available means of legal regulation. This is why the legal norms governing property relationships make up a unitary whole of public (constitutional, administrative, etc.) and private law. There is only one difference between constitutional laws and other laws – the fact that the constitutional category of property is understood as a widest term whereas the ordinary laws allow for different legal regulation of property in view of its subject matter (for example, rights *in rem,* capital, money and income) or depending on the title-holders, etc. Secondly, at the time of conclusion of any contract the acquiring party primarily seeks that the transferring party confirmed the right of an acquirer to disposition (*ius disponendi*) of the

subject matter of a contract. This is why the new civil code establishes a provision that "property may be transferred only by an owner himself or his entrusted person" (Article 4.480). Accordingly a conclusion follows that in their relationships the titleholders understand each other only as an owner or a person entrusted to act on behalf of an owner having the transferred rights to disposition of certain possessions. Therefore if a certain thing is not a subject matter of property, it can never appear on the market.

Naturally, the distinction between rights in *rem* and "things" is important and will maintain its importance in the future. A concept of a "thing" is especially facilitative in the property law. It is well known that the most important aspect of property law as rights *in rem* is their absolute nature. It is manifested through the ability of a right holder to exercise his right without consideration of the acts of others [14, p. 96]. Possessing a thing the owner may affect it in a direct and comprehensive way. Besides, a thing may be consumed, used or otherwise disposed of, and this allows fulfilling the needs of an owner. This is why traditionally property is understood as a subject matter of control (*ius possidendi*), and the concept of control is used both in theory and practice to characterise the rights in *rem*. For example, it is said that a person controls a certain thing in his capacity as an owner, a tenant, a guardian, etc. When an owner does not control it, for example, the thing is leased, passed for guardianship etc., this is not to say that the owner no longer owns the thing. The said circumstances mean that the owner may not directly affect the thing, however, he does not lose a possibility to exercise his ownership rights. It follows that the control of a thing is not the fundamental characteristic of property law. Therefore a new doctrine developed in the beginning of the 20th century which abandons the theory of "control" in favour of the theory that an owner may comprehensively exercise his ownership rights (the doctrine of "benefit"), i.e. changing a title of ownership facilitates receiving of income (benefit) from the property reflected through shares or other securities [15]. This doctrine does not consider the right to control *(ius possidendi*) as the main right of an owner; this is why the title to control is not important to it. A much more important question is who has a title to exercise the rights to property and receive benefit from it. Consequently, the right to receive benefit, equally as a right to control in the terms of the traditional doctrine, may also be a separate legal title.

Having overcome the psychological stereotype in the understanding of property it is not difficult to observe that an absolute nature characteristic to rights *in rem* is also characteristic to the right to demand performance under the law of contracts.

The need to facilitate an easier market flow was noted already in the early period of the formation of the free market. For this purpose the new financial – legal means were employed, and these were no longer restricted to tangible objects only. Securities turned out to be of the highest importance in the modernization of the market flow. By nature securities are not tangible objects, instead, they are […] documents, confirming that the issuer (emissary) has certain obligations to the holder of the document […] – [Article 1.101]. The same Article of the civil code emphasizes that the subject matter of civil law are the securities themselves, not the rights confirmed by them. On the other hand, contracts or the other documents instrumental of the right to demand performance are not considered as comprising the subject matter of civil rights. According to the civil code, the subject matter of civil rights is comprised of the right to demand performance.

An apparent inconsistency may be observed. Both the securities and contracts create only rights to demand performance. A question is what is the justification for such a difference in their treatment. Presently, when the form of the securities is changing and instead of formal paper documents so-called "uncertificated securities" are beginning to take over, this attitude should be considered obsolete or at least in need of amendment. Historically the introduction of securities into the market flow was very important. They substituted tangible things and thus intensified market flow. The laws provided that a transfer of securities was equivalent to a transfer of tangible things. That is why traditional

doctrine of property law considers securities as tangible things, even though in the course of time transfer of securities became a complex operation with little difference from ordinary transfer of rights to performance.

However, traditional doctrine of property law faced substantial difficulties after introduction of uncertificated securities. Without tangible securities, for example, shares, there no longer was a tangible object that could be transferred by transferring a property right to it. That is why scholars who remain strict adherents of the traditional property law doctrine attempt to claim that uncertificated securities cannot be considered to comprise a subject matter of property law at all [12, p. 263]. This shows that strict adherence to the traditional approach to property law cannot facilitate the understanding of novelties in real life and therefore needs to be reformulated.

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While drafting the new civil code of the Republic of Lithuania it was attempted to reconcile the legal norms defining the subject matter of civil law with the legal rules governing property law that had been incorporated into the book on rights in *rem*. Two options were available – either to improve a definition of a "thing" or to expand the subject matter of property law. The second option was chosen. The definition of a "thing" was maintained, because a number of provisions of the civil code referred both to the concept of things and possessions, in the attempt to distinguish between the two of them. It is natural that in general the legal regime of things and possession may differ. This is why it is a valid solution to allow for two different legal regimes in two different books of the civil code. The expansion of the concept of the subject matter of property law should not be understood as a peculiarity or an abnormal feature of national legislation. It is also not a subject of concern. As already mentioned, apart from Anglo-Saxon law, continental civil law is also in search for methods to expand the scope of subject matter of property law and to reconcile the legal norms of tangible objects allowing to apply them even when the governed subject matter does not strictly fall under the concept of tangible things. Contemporary doctrine of continental law and practice of courts understands property as a sufficiently wide concept. Legal scholars are correct to view the 20th century as an age of integration of Anglo-Saxon and continental civil law, which is marked by the disappearance of strict differences between the rights *in rem* and the law of contracts. This is shown by the fact that the rules on the rights *in rem* are beginning to be applied on the contract rights, by granting the contract rights a legal status of tangible things [7, p. 200].

A contemporary Lithuanian approach to the subject matter of property law and property law itself is impeded by the so-called concept of "triad" enshrined in the doctrine of civil law. In accordance with this notion the content of property includes three kinds of legally protected expectations: a right of possession (*ius possidendi*), a right of use (*ius utendi*) and a right of disposition (*ius disponendi*). This triad defining the content of property law remains in use only in Russia [13, p. 328]. In Europe the doctrine of property as a natural right is dominant. That is the reason why contemporary codifications of civil law avoid defining the content of property by a specific indication of the expectations of an owner, because it is not for the legislation to establish the content of rights. Because the right to property is a natural and absolute human right, the laws may only subject this right to certain restrictions by defining the limits of exercise of this right. Establishing the content of property law is a question of the doctrine of civil law, not a matter for the legislator. As a consequence the scholarly writings consider that the laws should not provide for the content of property law at all, and its establishment in any event does not have a practical role to play [12, p. 118]. The content of property law is subject to constant change. Science and information technologies constantly create new ways to exercise property law that may not be restricted by the pre-imposed legal framework. That is why the Anglo-Saxon legal

doctrine, that is not familiar with excessive formalism of continental legal system, allows for more than ten possibilities for the owner to exercise his property rights. The French civil code was the first in Europe on the way to overcome the Middle Ages approach to property law as comprising a number of pre-defined rights. Later the doctrine was completely negated by Article 903 of the German civil code (BGB) establishing that "an owner has a right of disposition of his tangible property in accordance with his own will and to object to any restriction of his rights as long as this is not against the law and the rights of third parties […]". Consequently the "triad" established in the civil code of the Republic of Lithuania should not be seen as a very important provision because it does not disclose a true content of the right to property. This is so despite the fact that compared with the "triad" provided in the previous civil code the new "triad" is improved with an added phrase "on his own discretion".

Finally, formulating concepts is not a matter for a legislator, and thus the text of the civil code with its definition of "triad" should be seen only as a means of the legal technique, allowing for a logical sequence of legal norms and their compatibility. The true content of property law may be disclosed by a systematic interpretation of the provisions of the civil code book on the rights *in rem* and other rules of the civil code. The fact that property law is understood differently in Europe and in Lithuania and that this difference needs to be removed has already been observed in Lithuanian scholarly writings. Staugaitiene notes that: "Deliberating whether a respondent state has violated Article 1 of the first additional protocol of the European Convention on Human Rights, the European Court of Human Rights interprets the concept of property widely. Lithuanian lawyers still find it hard to understand this concept […] I would consider that the constitutional guarantees of the right to property allow for a sufficiently wide content of this right" [16, p. 73, 74]. Therefore the subject matter of property law in the new civil code of the Republic of Lithuania should be considered as reflecting the contemporary doctrine of property law. It opens a way for a wider interpretation of legal rules already in force as well as leaves sufficient scope for further developments.

Conclusions

1. The doctrine of property law has been significantly influenced by a number of economic, political and ideological factors. The article seeks to analyse the traditional, socialist and contemporary doctrines of property law. All of them have exerted some influence on the provisions of the rights *in rem* and other institutes of the new civil code.

2. The content of property law may not be disclosed by the Marxist methodological assumption of "base and super structure" which is a basis for the socialist doctrine arguing that property, as a basic phenomenon, is separate from property law. The author reaches a conclusion that property is an integral social phenomenon comprised of both legal and economic elements.

3. The scope of subject matter of property law is not limited to tangible property; these are also proprietary rights. Property relationships whose subject matter is an intangible right are also absolute, because an owner has a right to disposition of intangible rights just as of a tangible property, i.e. the owner is not restricted by the will of others in his exercise of such rights.

4. The legal relations in property law are multifaceted – primary and derivative. This conclusion is made in accordance with the distinction of titleholders under civil law into natural persons (primary subjects) and legal (derivative) entities established by primary subjects.

5. A "triad" coming from the Russian civil law doctrine is not sufficient to properly disclose the content of property rights. However, the drafters of the new civil code of

Lithuania referred to this doctrine formulating certain provisions of the civil code. The content of the right to property is very important defining the limits of property law and its protection. The article concludes that the right to property law is a natural right, and therefore the "triad" of property rights describes the content of the property only partially. Besides, the content of the right to property is constantly changing therefore its limits may be defined only by the means of the contemporary doctrine of civil law and practice of courts, including the practice of the European Court of Human Rights.

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LIST OF SOURCES

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