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Pledge of obligations rights (claims) under the rules of the Civil Code of the Russian Federation

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5.1.3 – Private law (civilistic) sciences

I. GENERAL CHARACTERISTICS OF THE RESEARCH THESIS

The relevance of the research. Legal entities frequently interact in trade circulation via entering into contractual relations. The latter involve possibility of breach of the obligations. Given this, legal science has developed special tools, called ways of ensuring performance of obligations, to provide additional protection of creditors` interests in case of breach of contract. Among the latter, one of the most effective are traditionally considered to be an in rem security[1], including pledges.

In the course of development of society in general and legal science in particular, various issues regarding pledge have repeatedly been discussed.

Until the 19th century, the discussions devoted to pledge were mostly aimed at analyzing the problems of classic pledge, the subject of which was tangible property.

Active doctrinal debates and comprehension of pledge of obligations rights (claims) began only at the end of the Modern Age, when a number of works were issued, in which prominent scholars discussed the problems of this institution[2].

Referring to the current state of the domestic regulation of pledge of obligations rights (claims), it should be noted that until 1 July 2014 the special legislative regulation of the institution was limited to the now expired Law "On

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[1] For more on this idea see: Zimmermann R. The law of obligations. Roman Foundations of the Civilian Tradition. 1992. P. 115. This idea was also stated by Pomponius, who pointed out the maxim that real security is better than personal security. («Plus cautionis in re est, quam in persona») – see D. 50, 17, 25 (https://www.thelatinlibrary.com/justinian/digest50.shtml; the date the resource was accessed: 15.06.2022).

[2] The following works can be cited as examples: Muehlenbruch C. F. Die Lehre von der Cession der Forderungsrechte, 1836. P. 22; Vangerov K. A. Leitfaden fuer Pandekten-Vorlesungen - Neueste Aufl. Marburg, 1849. P. 102-103 (open access to the source, see the website http://dlib-pr.mpier.mpg.de/; the date the resource was accessed: 15.06.2022); Dernburg H. Das Pfandrecht nach den Grundsaetzen des heutigen roemischen Rechts. Leipzig, 1864; Hellwig K. Die Verpfaendung und Pfaendung von Forderungen. Leipzig, 1883; Lazarus M. Pfandrecht an Forderungen, 1889; Dernburg H. Pandekten, Vol.2 / / under. Ed. A. F. Meyendorff. St. Petersburg. 1905. P. 336.

[2] The following monographs can be cited as examples: Dydynsky F.M. Pledge under Roman law. Warsaw, printing house of P. Orgelbrand, 1872; Zvonitsky A.S. On pledge under Russian law. Kyiv, 1911; Kasso L. A. The concept of pledge in modern law. – M.: Statute, 1999; Strukgov V.G. On the pledge of debt claims. Part two. "Civil Law Bulletin", 2011, No. 4 // computer-assisted legal research system "Consultant Plus".

Pledge" dated 6 June 1992, while the general provisions of the Civil Code of the Russian Federation on pledge and certain provisions of the Mortgage Law dated 16 July 1998 were applied subsidiarily. Meanwhile, even the aforementioned regulation did not become a catalyst for spread of pledge of obligations rights in practice: the existing legal norms did not resolve a number of pertinent issues concerning pledge of obligations rights, including the ways the pledgee can exercise their rights, the possibility of pledging future claims, protection of the debtor's rights and consequences of the pledgee's performance of the pledged claim. It should also be mentioned that the pledge of money was explicitly outlawed by judicial practice[3].

When the need to develop the outdated and incomplete legislation regulating the pledge of obligations rights was realized, this institution became the subject of a private law reform, which resulted in enactment of the new norms devoted to pledge of obligations rights, which were separately placed in the Civil Code of the Russian Federation (Articles 358.1 - 358.8 of the Civil Code of the Russian Federation) and came into force on 1 July 2014. These new norms deal with the many various issues of the institution of pledge of obligations rights.

In particular, the provisions on the subject of pledge of obligations rights and the content of the pledge agreement (Articles 358.1-358.3, 358.5 of the Civil Code of the Russian Federation) were updated and supplemented. The rules on notification of the debtor on the pledge were updated (Article 358.4 of the Civil Code of the Russian Federation). Significant legislative changes also concerned the procedure for protection of pledge right by the pledgee (Article 358.7 of the Civil Code of the Russian Federation) and the regulation of enforcement of pledge rights in general (Article 358.8 of the Civil Code of the Russian Federation), as well as the special procedure for exercise of the pledge right – receiving the performance directly from

[3] Decree of the Presidium of the Supreme Arbitrazh Court of the Russian Federation dated 2 July 1996 № 7965/95// the Supreme Arbitrazh Court of the Russian Federation Bulletin, 1996. № 10.
Paragraph 3 of Information circular of the Presidium of the Supreme Arbitrazh Court of the Russian Federation «Law review regarding disputes related to application of the norms of the Civil Code of the Russian Federation on pledge by arbitrazh courts» dated 15 January1998 № 26 // The Supreme Arbitrazh Court of the Russian Federation Bulletin, 1998. № 3.

the debtor (Article 358.6 of the Civil Code of the Russian Federation). The regulation of pledge rights under the bank account agreement was arranged as a discrete body of norms (Articles 358.9-358.14 of the Civil Code of the Russian Federation).

These amendments with full confidence can be called fundamental. Meanwhile, their thorough study is required for a proper comprehension and further development of the main issues of the post-reform regulation based on history of development of the institution at issue, foreign and domestic doctrine, as well as court practice, which determines the relevance of this study.

It is worth noting that the relevance of the research topic is not solely based on the systematic understanding of a number of innovations of the recent reform of the domestic Civil Code of the Russian Federation on pledge of obligations rights, which is provided in this thesis. The key point is that the thesis deals with the traditionally problematic issues of the institution of pledge of obligations rights (both in Russia and foreign countries), which arise due to the specific subject of the pledge right at issue, i.e., not a corporeal object (tangible property), but an obligations right (claim), in order to comprehend the current state of regulation and propose its amendments for further development of the relevant post-reform provisions of the Civil Code of the Russian Federation.

The most fundamental of those issues is the pertinent problem of lack of a generally accepted approach to understanding the essence of pledge of obligations rights, in particular, which obligations rights may be pledged, what is the legal nature of pledge of obligations rights, whether it is a sui generis institution, or it is a particular manifestation of ordinary pledge, whether it should be understood as a limited property right, or should it be explained in terms of other legal institutions mediating the circulation of rights (particularly, cession).

Absent resolution of the above theoretical problems, it is impossible to properly comprehend the current regulation of rights and obligations of participants of pledge legal relations and to propose the optimal one, namely, to consider

specifics of content of the pledge legal relations concerning obligations rights (claims), not typical for traditional pledge of tangible things.

The reasons for the relevant specifics of content of pledge legal relations concerning obligations rights as well as those for existence of the above theoretical fundamental problems are predetermined by a specific subject of the pledge right at issue – the obligations right (claim), which determines the peculiarities distinctive for the content of legal relations under pledge of obligations rights only. Those peculiarities can be divided into the following 4 groups:

1) peculiarities of regulation of protection of debtor under the pledged claim, which actually boil down to the issues of legal regulation of the procedure and legal effect of notifying the pledgor`s debtor on pledge of the obligations rights (claims);

2) peculiarities of preservation the pledge of obligations right (claim);

3) peculiarities of drawing value from the pledged claim via the pledgee`s ius exigendi (direct claim of the pledgee against the pledger`s debtor to perform the pledged obligation in their favor)[4];

4) peculiarities of priority of pledges of obligations rights (claims).

The need for a detailed analysis of the content, quality and effectiveness of the implementation of the recently introduced domestic post-reform regulation of the institution of pledge of obligations (claims), as well as the need for systematic research and rethinking of the above complex and important issues of pledge of obligations (claims) predetermine the relevance of the topic of this work.

The degree of scientific development of the issue. Significant doctrinal difficulties in analysis of problems related to pledge of obligations rights prompted scientists to study the institution of pledge of obligations rights. Such interest was expressed to the pledge of obligations rights both in Russian (Dydinsky F. M.,

[4] Bartoszek M. Roman law. Concepts, terms, definitions: Transl. from Czech. M.: Law. lit., 1989. P. 246

Zvonitsky A. S., Kasso L. A., Strukgov V. G., etc.)[5], and in Western (Dernburg H., Mühlenbruch K., Som R., Bremer F. et al.)[6] scientific environment of the nineteenth century. Modern foreign (Ellinger E., Wieling H. J., Gert Iro, Baur F. Stuerner R., Michalski L. et al.)[7] and Russian (Bevzenko R.S., Gongalo B.M., Dozhdev D.V., Egorov A.V., Makovskaya A.A., Novikov K.A., Novoselova L.A., Rasskazova N.Yu., Rybalov A.O., etc.).[8] doctrine also deals with certain problems of the pledge of obligations rights.

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[5] See, for example, the following works, which dealt with the issue of pledge of obligations: Dydynsky F.M. Pledge under Roman law. Warsaw, printing house of P. Orgelbrand, 1872; Zvonitsky A.S. On pledge under Russian law. Kyiv, 1911; Kasso L. A. The concept of pledge in modern law. – M.: Statute, 1999; Strukgov V.G. On the pledge of debt claims. Part two. "Civil Law Bulletin", 2011, No. 4 // computer-assisted legal research system "Consultant Plus".

[6] See, for example, the following works, which dealt with the issue of pledge of obligations: Dernburg H. Pandekten, Vol.2 // under. Ed. A. F. Meyendorff. St. Petersburg. 1905.; Muechlenbruch C. F. Die Lehre von der Zession der Forderungsrechte. Greifswald, 1835; Sohm R. Die Lehre vom subpignus – Eine v. D. Rostocker Juristenfak. Gekrönte Preisschrift, 1864; Bremer F. P. Das Pfandrecht und die Pfandobjecte – eine dogmatische Untersuchung auf Grundlage des gemeinen Rechts, Tauchnitz. 1867.

[7] See, for example, the following works, which dealt with the issue of pledge of obligations: Ellinger E.P.,Lomnicka E., and Hare C. Ellinger's modern banking law. Oxford University Press. Fifth Edition, 2011; Baur F. Stuerner R. Sachenrecht. 18. Auflage. Verlag C. H. Beck Muenchen, 2009; Wieling H. J. Sachenrecht. Band 1 Sachen, Besitz und Rechte an beweglichen Sachen. 2 Auflage. Springer, 2006.

[8] See, for example, the following works, which dealt with the issue of pledge of obligations: Dozhdev D.V. The European tradition of private law: studies on Roman and comparative law: in 2 volumes. Vol. 2: Pledge law. Commitment. Purchase and sale agreement / Dozhdev D.V.; Private law research center named after S.S. Alekseev under the President of the Russian Federation. Rus. school of private law. - Moscow: Statute, 2021. Gongalo B.M. The doctrine of securing obligations. Theoretical and practical issues. M.: Statute, 2004; Egorov A.V. Pledge of claims. How to use this way of ensuring performance of obligations // Electronic version of the journal Arbitrazh Practice for Lawyers, 2014, No. 11; Pledged accounts. How should the new tool for ensuring obligations work//Electronic version of the magazine "Lawyer of the Company", 2015, No. 2; Novikov K.A. Some issues of pledge of claim rights // Law. - M.: Law, 2011, No. 6; Rasskazova N.Yu. Pledge of rights under a bank account agreement. What inaccuracies of the Civil Code of the Russian Federation can disrupt the work // Electronic version of the journal Arbitrazh Practice, No. 11; Rybalov A.O. Some novelties of the pledge of claim rights // the Supreme Arbitrazh Court of the Russian Federation Bulletin 2014. No. 4. P. 4 – 8; Novoselova L. A. Transactions of assignment of rights (claims) in commercial practice. Factoring. M.: Statute, 2003 // computer-assisted legal research system "Consultant Plus"; Makovskaya A. A. Pledge of funds. Law and Economics, 1998. No. 2 // computer-assisted legal research system "Consultant Plus". Law of contracts and obligations (general part): article-by-article commentary on articles 307 - 453 of the Civil Code of the Russian Federation / Resp. ed. Karapetov A.G. (commentary to Articles 358.1-358.8 of the Civil Code of the Russian Federation; author – Bevzenko R.S.).

At the same time, domestic legal science developed a number of dissertation studies, which partially concern with the problems of pledge of obligations. In particular, we refer to the doctor of philosophy in law dissertations by Irina Viktorovna Rodionova (the research topic: "Pledge of rights")[9]) and Belya Olesya Valerievna (the research topic: "Pledge of Property Rights")[10]).

It should be noted that none of the abovementioned works of domestic scientists provides a comprehensive study of specific problems of the institute of pledge of obligations.

This statement also applies to the above dissertation studies, that focused on wider range of social relations than the pledge of obligations rights, which often shifted the focus of research from pledge of obligations rights to other types of pledge relations – for example, pledge of exclusive IP rights, pledge of in rem rights, pledge of corporate rights, etc. This led to lack of a systematic study of specifics of content of pledge of obligations rights (claims), including that certain problematic aspects of this institution were not covered at all or were not provided with sufficient attention. In addition, the author considers a number of conclusions reached by the above dissertants as controversial, and believes it is necessary to show alternative approaches with support of relevant arguments and counterarguments. Moreover, none of the above dissertation studies covered results of the fundamental reform of domestic legislation of 2013-2014 regarding a number of key issues of pledge obligations. Application of the abovementioned post-reform provisions already causes many difficulties in practice[11], which has not yet been addressed in any doctor of philosophy in law theses.

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[9] Rodionova I.V. Pledge of rights: Thesis. ... Doctor of Philosophy in Law: 12.00.03 Moscow, 2007. 182 P. RSL OD, 61:07-12/798

[10] Belaya O.V. Pledge of rights: Thesis. ... Doctor of Philosophy in Law: 12.00.03 Moscow, 2006. 231 P. RSL OD, 61:07-12/479

[11] See, for example, rulings of the Supreme Court of the Russian Federation dated 22 November 2018 № 305-ЭС18-8062(2) in case № А40-13337/2017 and dated 17 October № 305-ЭС16-7885 in case № А40-57347/2015 (the point of disagreement between the courts was the problem of the expansion of the pledge, as well as the loss of the priority of pledge rights in case of the bankruptcy of the pledgor and in the absence of a pledge account); ruling of the Supreme Court of the Russian Federation dated 28 May 2020 № 303-ЭС18-7751(4) (within the framework of this case, the

Research goal and objectives. The aim of the work is to identify and form a coherent, consistent and scientifically sound theoretical explanation of the pledge of obligations rights (claims), which can be the foundation for improving the current domestic regulation and resolving the urgent problems facing the Russian legal order related to the pledge of obligations rights (claims).

This goal is achieved by solving the following objectives:

1) To identify the essence of the pledge of obligations rights, including to determine its legal nature based on evolution of understanding of the institution at issue and to consider the main issues related to the subject of pledge right – the obligations right (claim). The above is necessary to form a theoretical foundation, which will support the analysis of the specifics of content of the pledge legal relations arising from the pledge of obligations rights.

2) Based on the proposed theoretical foundation, to consider and to propose the best ways to develop domestic regulation of specifics of content of pledge legal relations arising from the pledge of obligations rights (claims), namely:

2.1) To present a systemic solution to problem of notifying the debtor under the pledged claim on the pledge that took place. This issue is specific and crucial for pledge of claims (other types of pledge do not involve this issue), which is typically created without consent of the pledger`s debtor, so that law should focus on comprehensive protection of the latter`s interests via proper addressing the problems associated with notification on pledge and change of the addressee of performance.

2.2) To identify and to propose effective ways of resolving problems related to preservation of the pledge right, specific for pledge of obligations rights (claims), which is necessary for proper regulation of the institution at issue, the security

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disputed issues were concerned with understanding the scope of the claim rights subject to pledge); decision of the Arbitrazh Court of the Moscow District dated 12 September 2018 № F05-14748/2018 in case № A41-63459/2017 (in this case, the courts faced the problem of the effect of notice of pledge and the consequences of a breach of the pledgee's ius exigendi); decision of the Arbitrazh Court of the Ural District dated 23 October 2019 № F09-5984/19 in case № A34-9642/2018 (the case analyzed, among other things, the ability of the pledgee to use the institution of procedural succession, where the claimant was the pledger) etc.

function of which is disavowed under the current wording of the Civil Code of the Russian Federation.

2.3) To determine and to identify the key features of the specific method of drawing value from the pledged claim rights via the ius exigendi, which constitutes the key point of regulation of pledge of rights (claims) (including under the Civil Code of the Russian Federation), which makes the institution at issue an effective way to secure obligations.

2.4) To identify and to propose the optimal regulation of issues regarding subsequent pledge of obligations rights (claims), which were left by the domestic legislator without attention, although resolution of a number of problems of the analyzed institution is significantly complicated due to competition between the pledgees in the situation of pledge priority.

The results to be achieved on the basis of analysis of scientific debates, court practice and provisions of legal norms governing the pledge of obligations rights involve considering a number of main problematic aspects in the domestic post-reform regulation of pledge obligations, proposing possible solutions for relevant problems, as well as developing potential options for the regulation of the institution at issue.

The structure of the thesis is predetermined by the objectives set above. The thesis consists of an introduction, two chapters, which are divided into seven paragraphs, a conclusion and a list of used sources and literature.

The first chapter analyzes evolution of views on understanding of the pledge of obligations rights (claims), the legal nature of the institution, including consideration and comparison of various theories seeking to explain the legal effect of the institution at issue, a comparative analysis with the similar institution of surety, and examines, which types of obligations rights may be subject to pledge rights.

The second chapter examines the distinctive features of content of legal relations arising when a pledge of obligations rights (claims) is established, taking

into account domestic legal regulation in this area. This includes analysis of issues related to implementation and effect of notifying the debtor under the pledged claim on the pledge that took place; consideration of problems of preservation of the pledge right in various situations; review of provisions governing drawing value by a pledgee from a pledged claim via the ius exigendi (direct claim of the pledgee against the pledger`s debtor to perform the pledged obligation in their favor)[12], and consideration of the issues arising in the subsequent pledge of obligations rights (claims) situations.

The object of the research. The object of the research are the social relations that develop in the process of exercising the rights of participants in legal relations arising from the pledge of obligations rights (claims).

The subject of the research. The subject of the research comprises theoretical concepts formulated in the domestic and foreign literature concerning the essence of pledge of claim rights, norms of the Russian civil law governing the institution at issue, as well as practice of their application.

Research methodology. Theoretical and methodological basis of the research consists of methods of analysis, synthesis, induction and deduction, as well as comparative-legal, historical, logical and functional methods.

Comparative and historical methods played a fundamental role for the dissertation research. The use of such methods made it possible, based on historical retrospective, foreign doctrinal discussions and positive law decisions, to identify reasonable and consistent explanations for the institution of pledge of rights of obligations, as well as to establish significant problems of the pledge of rights of obligations (claims) and a range of possible solutions.

Other methods (formal-legal, functional and the above-mentioned general scientific methods) made it possible to use the relevant historical experience and foreign developments in the most optimal way for the proper formation of the theoretical foundation of the study (first of all, disclosure of the essence of the

[12] Bartoszek M. Op. cit. P. 246

institution of pledge of rights of obligations), and also contributed to the development and justification of the proposed in the work of options for the development of domestic positive law in terms of regulating the distinctive features of the content of a pledge legal relationship in the pledge of obligations rights (claims).

Application of all mentioned methods in their totality was aimed at the most objective and versatile study of the issues considered in the thesis.

Scientific novelty of the research. The research is the first comprehensive study of the nature of the institution of pledge of obligations rights in modern domestic post-reform literature, which made it possible to identify and rethink the essence of the named institution, taking into account the recognition of the dominant role of the concept of rights to rights and the proprietary explanation of the pledge of obligations. Based on the updated theoretical foundation, the research for the first time systematized and consolidated into appropriate blocks issues related to the distinctive features of the content of the pledge legal relationship arising from the pledge of obligations, taking into account the current regulation of the Civil Code of the Russian Federation. Focusing on the specified base, the study developed and formulated new solutions for the development of doctrinal ideas and domestic regulation of the distinctive features of the content of the pledge legal relationship in the pledge of obligations (claims) in the context of unresolved problems related to notifying the debtor on the pledged claim of the completed pledge, ensuring the safety collateral, establishment and designation of the key features of a specific method of extracting value from the pledged rights (claims) in the form of ius exigendi, as well as to the regulation of issues of subsequent pledge of obligations rights (claims). The analysis made it possible to formulate and substantiate **the following provisions put to the defense**:

1. The most consistent understanding of the legal essence of the institute of pledge of obligations rights can be seen in the theory of rights in rights and in the corporeal concept of pledge. Other legal structures (including the institutions of

cession and surety) are not suitable for formulation of a coherent and consistent description of pledge of rights (claims). Despite the specifics of its subject, pledge of obligations rights (claims) has the same security nature as classical pledge of tangible property. The peculiarities of a number of features of the pledge right at issue, inherent solely to pledge of obligations, are predetermined by its intangible subject and not by the specific legal nature of the institution itself.

2. Domestic regulation of notifying the debtor under the pledged claim, embodied in the Civil Code of the Russian Federation in the form of a reference to rules on cession (see Article 358.4 of the Civil Code of the Russian Federation), cannot be considered as adequate. Pledge of obligations rights (claims) is not cession and has a number of features that imply different (as compared with cession) regulation of notification of the pledger`s debtor. The latter, taking into account the current norms of the Civil Code of the Russian Federation, should be carried out as a general rule in 2 stages[13]:

1) notification that a pledge of claim rights took place: as a general rule, it is sent by the pledgor, but the pledgee has the right to provide the debtor with undisputed evidence of the pledgor's will expression to pledge the property, which will produce the effect of proper notification;

2) if the pledged debt becomes delinquent, a new notice must be given to the pledger`s debtor on the need to perform the obligation to the pledgee: this notice may be given by the pledgee themselves.

If the pledge agreement stipulates that the debtor is to perform the obligation to the pledgee immediately after the conclusion of the pledge agreement, the debtor on the pledged claim shall be notified of the change of the performance address within the framework of the first notification stage.

The effect of notification made in accordance with the above steps shall not, as a general rule, be allowed to be disavowed without the consent of the pledgee.

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[13] For more on this idea see: Volchanskiy M.A. Some problems of notifying the pledger`s debtor on the pledge of obligations rights (claims) // Legislation. 2022. No. 6. P. 30-35.

3. Since pledge of obligations rights should be considered as a type of classic pledge and not as any other institution, it is also necessary to establish the proper functioning of legal mechanisms of preservation of pledge of obligations rights, without which it would lose its effectiveness. The best way to implement this idea is to give the pledgee the control over the asset, which the pledger`s debtor transfers when performing their obligations. This predetermines the need for implementation in the domestic regulation of the following solutions:

- the debtor under the pledged claim, as a general rule, is to perform the obligation to the pledgee after the pledge of a right (claim) is made;

- in case of pledge of a monetary claim, the pledgee shall receive priority in the pledgor`s bankruptcy proceedings for satisfaction in the amount, in which the pledged obligation was performed, including cases when the relevant monetary performance of the pledged obligation was received on the ordinary (non-pledge) account of the pledgor.

4. The intangible subject of the pledge of obligations rights predetermines only some features of the institution at issue, but it does not change the essence of its nature of a pledge. The latter implies that the pledgee receives a limited (not complete) right to the pledged asset. Application of this maxim to the institution of pledge of obligations rights allows us to conclude that the object of non-monetary performance, transferred under the pledged claim to the pledgee, who exercises ius exigendi, should not automatically become the property of the latter, since in this case the object of performance belongs to the pledgor, and the pledgee of the claim is given the pledge right over the received property.

5. To establish proper regulation of ius exigendi, it is necessary to proceed from the standard idea of pledge law on the need to provide the pledgee with effective mechanisms for drawing value from the subject of pledge. To effectively implement this idea in the pledge of obligations rights, the pledgee should be allowed to independently enforce the pledged claim and to receive the performance (including in the court proceedings), which can be dogmatically explained either

through the institution of "substitute representation" or through a new – "subordination" – type of plurality of creditors, involving a senior (pledgee) and a junior (pledgor) creditor of the debtor on the pledged claim.

6. Despite the superficial similarity of the positions of a guarantor and a debtor, to whom the ius exigendi is applied, the latter cannot be recognized as the guarantor, and the rules governing the institute of surety are not subject to the pledge of obligations (claims).

7. To solve the problems of subsequent pledge of obligations rights, the fact that the right of the earlier pledgee has priority over the right of the subsequent pledgee should be taken into account, as well as that exercise of subsequent pledgees` rights is allowed only to the extent that it does not prejudice the rights of earlier pledgees. At the same time, the legal regulation of pledge priority should be adjusted depending on which claim right is pledged. In cases where monetary obligations and claims involving transfer of movable things are pledged, as a general rule, exclusively to the earlier pledgee should be given to obtain performance from the pledger`s debtor; in the case where rights or real estate are pledged, each pledgee has, as a general rule, the right to demand performance from the debtor under the pledged claim.

Recommendations for use of the research results. The conclusions obtained as a result of this research can be used in research, in reforming private law legislation and in resolution of disputes. The conclusions made and the factual material contained in the thesis can be used in teaching as well.

Theoretical and practical significance. The theoretical significance of the work lies in the fact that within the framework of the dissertation research, the essence of the pledge of obligations was revealed based on the history and logic of the development of this institution, Western experience in using this type of collateral, domestic positive regulation, as well as the practice of its application. The study contributed to the formation of a conceptual understanding of what a pledge of obligations is, what its legal nature is and what logic of regulation should be

followed in relation to the mentioned collateral. Such understanding and a system of arguments to substantiate the latter are especially valuable and necessary for theoretical discourse, bearing in mind that there is a very serious uncertainty in the doctrine regarding the nature of the pledge of obligations, the issue of applicability to the pledge of obligations of the classical "real" pledge general principles of regulation, as well as the possibility of considering the analyzed institution through the prism of cession or the theory of rights to rights.

The theoretical understanding of the quintessence of the pledge of obligations set out in the work is also important for a purely practical sphere, since it is the foundation for the solutions proposed in the dissertation to a number of particular applied problems, relating, among other things, to the relevant aspects of notifying the debtor on a pledged claim, ensuring the safety of collateral, extracting value from the pledged claims, as well as the specifics of the implementation of the subsequent pledge of claims.

Reliability and approbation of the research results. Reliability of the research is confirmed by the analysis of foreign and domestic normative acts, judicial practice and doctrinal sources, setting goals and objectives of the research and the chosen methodological basis of research.

The thesis was discussed by the Department of Private Law of the Faculty of Law of the National Research University "Higher School of Economics". The results of the research are used in teaching during seminars on private law at the Faculty of Law of the National Research University "Higher School of Economics". Significant part of the conclusions formulated in this research as well as their substantiation were reflected in the reports "Pledge of obligations rights" at the round table (conference) "Pledge of obligations and corporate rights" (2019) and "Ius exigendi in pledge of obligations" at the All-Russian Conference "Law as the Art of Good and Justice" (2020), and in scientific publications of the author.

II. THESIS SUMMARY

The introduction reflects the relevance of the topic of the thesis, as well as the degree of its development, indicates the subject and goals of the research, sets research objectives, defines the object, subject, methodology and research methods, justifies the scientific novelty, presents the main provisions to be defended, reveals the theoretical and practical significance of the thesis, provides information about the study approbation, indicates the structure of the thesis.

The first chapter "The essence of the pledge of obligations rights" consists of three paragraphs. This chapter is devoted to the theoretical understanding of the pledge of obligations rights. This includes the analysis of dogmatic ideas concerning the legal nature and the subject of the institution at issue.

The first paragraph, "The historical perception of pledge of obligations", analyzes the historical development of ideas about pledge of obligations.

It is noted that there was no detailed elaboration of the institution at issue (including doctrinal and regulatory) in Rome, despite presence of few references to pledge of obligations (claims) in Roman sources.

Active doctrinal discussion and understanding of the pledge of obligations rights (claims) began to manifest itself only at the end of the Modern Age, when a number of works were issued, in which prominent scholars discussed the problems of this institution.

Analysis of dynamics of comprehension of the institute of pledge of obligations rights shows that the question of understanding the essence of this institute is complex, fundamental and currently unresolved in domestic law, which contains a wide range of views on the legal nature of pledge of obligations. The above predetermines the need to study the dogmatics of the institute of pledge of obligations rights.

The second paragraph "The dogmatic understanding of the institute of pledge of obligations" studies and analyzes the theories, which seek to explain the pledge of obligations rights.

The study draws attention to the fact that pledge of obligations rights (claims) was not initially perceived by many scientists as a true pledge.

It is noted that the reason for this position, according to a number of scholars, may lay in impossibility to qualify pledge of obligations rights pertaining to incorporeal object as an in rem right, while classic pledge was considered as a limited right in rem over a corporeal object (the same understanding was shared by pandectists).

The thesis states that this argument is not obvious, taking into account that even in the 19th century it was principally impossible to subsume the institution of pledge of obligations rights under the sub-branch of property law.

The most likely reason to qualify the pledge of rights as a cession was *the power of the pledgee to obtain performance from the pledgor`s debtor* in case of breach of the pledged obligation. The status of the pledgee in such cases is very similar to that of the assignee in cession, since the main power of the assignee, for the sake of which in most cases the cession takes place, is to receive performance from the new debtor. It is hence the origin of the theories, according to which the claim of the "pledgee" against the pledgor`s debtor to provide the object of the debt is considered as essence of a pledge of obligations rights.[14]

This paragraph analyzes the relevant cession and related theories, reveals a number of contradictions, including the conclusion that coherent concepts are not able to consistently describe many aspects of the pledge of rights (claims).

In this connection, the author considers other possible theoretical understandings of the analyzed institution, the most consistent of which are the theory of rights in rights and the corporeal concept of pledge of claims, since this

[14] For more on this idea see: Volchanskiy M.A. The pledgee's option to use the procedural succession mechanism in exercising the rights established by clause 3 of Art. 358.6 of the Civil Code of the Russian Federation // Arbitrazh and Civil Procedure. 2021. № 7. P. 30-35.

understanding of pledge of obligations helps to answer all the questions left unanswered by the cession and the related theories (including explaining such property features of pledge of obligations rights as the right of succession, absolute nature, proprietary remedies, the principle of elasticity, etc.).

In view of the above, the thesis concludes that, despite the specifics of its subject, pledge of obligations rights (claims) has the same nature of a pledge as the classic pledge of corporeal objects does, and that the peculiarities of a number of features of the pledge right at issue, inherent solely to pledge of obligations, are predetermined by its *intabgible subject* and not by the specific legal nature of the institution itself.

The third paragraph, "The subject of the pledge of obligations rights", elaborates on the problem, what kind of rights under the pledged obligation are to be considered as pledged.

For this purpose, the thesis analyzes what content is implied by the concept of "obligation".

In particular, the research provides different understandings of the term "obligation" in the domestic and German law, analyzes the content of each of the interpretations. On the basis of the research it is concluded that the domestic legal order, following the German one, pursues the idea of a broad meaning of "obligation" in the regulation of pledge of rights (claims): as a general rule, it is considered that the entire set of creditor's claims arising from the legal relation of an obligation as a whole is subject to a pledge right.

At the same time, the thesis notes that this provision should not be understood in an unduly expansive manner, including that which allows even related rights from *another obligation* (in the broad sense) to be considered as pledged, even if the latter is part of a single (in economic terms) project.

In considering the problems associated with the subject of pledge of obligations rights, special attention is paid to the possibility of pledging future and contingent claims.

In particular, the thesis notes the fundamental admissibility of pledge of claims under the contingent transactions not only as future claims, emergence of which is possible in case the condition occurs, but also as legal expectations before the condition occurs, since expectations themselves may be of value in trade circulation. The dogmatic argumentation of this thesis is based both on the institution of legal expectations, which are recognized as negotiable in German doctrine for a number of situations, as well as on a number of explanations provided by domestic court practice concerning leasing issues, which show recognition of existence of legally significant legal expectations with a significant effect on the legal regulation.

At the end of elaboration on the subject of pledge of rights (claims), the thesis analyzes what kind of obligations rights can be the subject of a pledge. Within this framework it is proposed to proceed from the general maxim that pledge of claims is possible in all cases where the claims at issue may be assigned, absent a special legislative ban on pledge.

The second chapter "Distinctive features of content of pledge legal relations in pledge of obligations in view of the norms of the Civil Code of the Russian Federation" examines the specifics of content of pledge legal relations in pledge of obligations in view of domestic legal regulation in this area. It is noted that the reasons for specifics of content of pledge legal relations in pledge of obligations rights are the same as those for the theoretical fundamental problems discussed in Chapter 1, and are predetermined by a special subject of the pledge right – the obligations right (claim), which underlies peculiarities of content of legal relations specifically in the pledge of obligations rights. The latter can be divided into the following 4 groups:

1) peculiarities of regulation of protection of debtor under the pledged claim, which actually boil down to the issues of legal regulation of the procedure and legal effect of notifying the pledgor`s debtor on pledge of the obligations rights (claims);

2) peculiarities of preservation the pledge of obligations right (claim);

3) peculiarities of drawing value from the pledged claim via the pledgee`s ius exigendi (direct claim of the pledgee against the pledger`s debtor to perform the pledged obligation in their favor)[15];

4) peculiarities of priority of pledges of obligations rights (claims).

To conduct a proper (including the systematic one) study for each of the above groups, which constitutes a consolidated layer of features of pledge legal relations, Chapter 2 provides separate paragraphs, which deal with a coherent set of issues, limited by the subject of the relevant part of the thesis.

**The first paragraph, "Peculiarities of notification of the pledgor`s debtor",** analyzes one of the key issues of pledge of obligations rights – notifying the debtor that the claim was pledged. Since, as a general rule, the pledge of obligations between the pledgor and the pledgee does not require the debtor`s consent, the legal regulation of this institution should be accompanied by full protection of the debtor, whose position should not be worsened by the pledge of obligations rights (claims).

In order to achieve the goal of protecting the debtor, it is proposed to recognize that when a debtor who is unaware of the pledge performs his obligation to the pledgor, it should be considered that he duly performed his obligation, even if the contract or law provides that the performance should be carried out to the pledgee. A similar postulate prevails in the German and French legal order.

At the same time, the thesis notes the need to take into account the peculiarities of pledge legal relations, which imply a different (as compared with the cession) regulation of the notification of the pledger`s debtor. The thesis argues that the notification, taking into account the current norms of the Civil Code of the Russian Federation, should be carried out as a general rule in 2 stages[16]:

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[15] Bartoszek M. Roman law. Concepts, terms, definitions: Transl. from Czech. M.: Law. lit., 1989. P. 246.

[16] For more on this idea see: Volchanskiy M.A. Some problems of notifying the pledger`s debtor on the pledge of obligations rights (claims) // Legislation. 2022. No. 6. P. 30-35.

- notification that a pledge of claim rights took place: as a general rule, it is sent by the pledgor, but the pledgee has the right to provide the debtor with undisputed evidence of the pledgor's will expression to pledge the property, which will produce the effect of proper notification;
- if the pledged debt becomes delinquent, a new notice must be given to the pledger`s debtor on the need to perform the obligation to the pledgee: this notice may be given by the pledgee themselves.

Although under the Civil Code of the Russian Federation, notification of a pledge does not by itself indicate that the debtor has changed the addressee of performance, the need for such notification does not disappear. On the contrary, it is a prerequisite for a second notice (of the need to perform to the pledgee), since it allows to disclose to the debtor the identity of the pledgee, from whom the debtor may subsequently be bound by a notice of the need to perform to the pledgee when exercising ius exigendi. This part notes that a second notice (of the need to perform to the pledgee) may be given to the pledgee themselves, since their identity is disclosed to the debtor via the first notice.

The paragraph also draws attention to the inadmissibility of allowing the pledgor to revoke the notice of pledge sent to the debtor: in such a case, the pledgee would be deprived of the opportunity to properly exercise the ius exigendi. In order to achieve a balance between the parties, it is proposed to use the solution that, as a general rule, withdrawal of notification is permitted only with the consent of the pledgee.

The second paragraph "Peculiarities of preservation of security" analyzes the issues specific to pledge obligations related to the preservation of security.

The thesis states that the current domestic regulation of the problem at issue cannot be considered as satisfactory.

In particular, the current norms of the Civil Code of the Russian Federation assume that the debtor under the pledged claim is obliged to perform to the pledgor

only. This regulation does not allow the pledgee to gain control over the asset transferred by the debtor to the pledgor.

Based on comparative analysis, the author concludes that even prior to breach of the pledged obligation, the pledgee must be allowed to participate in acceptance of performance of the pledged claim in order to obtain adequate protection.

At the same time, the thesis notes that the mechanism of pledgee`s participation in acceptance of performance of the pledged claim is only the first way to guarantee a control over the relevant asset (the subject of performance of the pledged claim). The second one is the principle of substitution, which, however, does not apply as a general rule to monetary performance of a pledged claim.

The thesis shows that in this part (pledge of monetary claims) the domestic legal order does not allow the pledgee to rely on priority over other creditors if the money was not transferred to the pledgee's pledged account.

The author argues that this position is inadequate in a situation where money was received by the pledgor already declared bankrupt, since it is possible to ensure in this case (with the assistance of the bankruptcy trustee) the pledgee's priority in respect of money transferred under the pledged claim, even if the money was not transferred to the pledgor's pledged account after the bankruptcy declaration of the latter.

The third paragraph, "Peculiarities of regulation of the pledgee's ius exigendi", analyzes the instrument for drawing value from the pledged claim - the pledgee's right to demand performance of the pledged claim directly from the pledgor`s debtor in case of breach of the secured obligation.

This specific method of drawing value predetermines a number of distinctive problems, among which the following come first as the most fundamental:

- Whether the pledgee becomes the owner of the object of performance under the pledged claim in the exercise of ius exigendi;

- What are the consequences of a breach by the debtor under the pledged claim of its obligation to perform for the pledgee;

- Whether the relationship between the pledgee and the debtor subject to ius exigendi can be considered a situational type of surety.

The thesis addresses the first question on the basis of a dogmatic analysis (including the German experience), as well as the current legal regulation, with the conclusion that, contrary to the literal wording of para. 3 clause 2 (3) Article 345 of the Civil Code of the Russian Federation, expansion of pledge on the object of performance of the pledged claim should be recognized, as a general rule, regardless to whom the object was transferred. This solution is consistent with the legal nature and purpose of establishing a pledge right, as well as with the general concept of regulation of the principle of substitution.

To properly regulate the second issue (concerning the consequences of the debtor's breach to perform the pledged obligation to the pledgee), we propose that in pledge of obligations rights, the pledgee should be allowed to independently enforce the pledged claim and to receive the performance (including in the court proceedings), which can be dogmatically explained either through the institution of "substitute representation" or through a new – "subordination" – type of plurality of creditors. A logical and inseparable extension of such idea is that the pledgee should be allowed to use the institution of procedural succession to substitute the pledgor in court proceedings, if the action for enforcement was already won by the pledgor.

Based on the results of the analysis of the third issue (concerning the relationship between surety and pledge of obligations, in which the pledgee applies ius exigendi), the thesis concludes that, despite the superficial similarity of the positions of a guarantor and a debtor, to whom the ius exigendi is applied, the latter cannot be recognized as the guarantor, and the rules governing the institute of surety are not subject to the pledge of obligations (claims). This conclusion is justified by difference of surety and pledged obligation in their causa, by difference in the structure of obligation relations under pledge of obligations and surety, as well as by the fact that the basic principles of regulation of surety are not applicable for the pledgor`s debtor in respect of whom ius exigendi is applied.

Since the solution of a number of the main problems of the analyzed institution is significantly complicated due to competition between the pledgees in the situation of pledge priority, **the fourth paragraph "Features of the subsequent pledge of the obligations rights"** separately examines the relevant problems of pledge priority in pledge of obligations rights.

In view of absence of any regulation in the current norms of the Civil Code of the Russian Federation in this area, it is proposed to use the basic principle of regulation of conflicts of property rights prior tempore - potior iure: the right of the earlier pledgee takes precedence over the right of the subsequent pledgee, and the exercise of rights of the subsequent pledgee is allowed only to the extent that it does not damage the rights of earlier pledgee.

The thesis states that the regulation of pledge priority in pledge of claim rights should be adjusted depending on what kind of claim right is pledged. In particular, in cases where monetary obligations and claims involving transfer of movable things are pledged, as a general rule, exclusively to the earlier pledgee should be given to obtain performance from the pledger`s debtor; in the case where rights or real estate are pledged, each pledgee has, as a general rule, the right to demand performance from the debtor under the pledged claim.

The conclusion sets out the results of the thesis, as well as recommendations for improving regulation in the research topic area.

III. List of the author`s relevant scientific publications on the topic of their dissertation:

Articles in journals recommended by the Higher School of Economics (list D):

1. Volchanskiy M.A. Pledgee's ius exigendi in the pledge of obligations and the institution of suretyship // Bulletin of Civil law. 2022 № 3 – 2,7 p.p. (accepted for publication).

2. Volchanskiy M.A. Some problems of notifying the pledger`s debtor on the pledge of obligations rights (claims) // Legislation. 2022. No. 6. P. 30-35 – 0,5 p.p.

3. Volchanskiy M.A. Legal consequences of a failure to perform pledged obligation in favour of the pledgee (point 3 of Article 358.6 of the Civil Code of the Russian Federation) // Bulletin of Economic Justice in the Russian Federation, 2020, № 6. P. 79-99 – 2,5 p.p.

4. Volchanskiy M.A. Conflict of pledgeholders' rights to obtain an execution from a debtor of a pledged obligation in the event of its repledge // Bulletin of Economic Justice in the Russian Federation, 2018. No. 10. P. 145-155 – 1,4 p.p.

Other articles:

1. Volchanskiy M.A. The pledgee's option to use the procedural succession mechanism in exercising the rights established by clause 3 of Art. 358.6 of the Civil Code of the Russian Federation // Arbitrazh and Civil Procedure. 2021. № 7. P. 30-35 – 0,5 p.p.; (was on the HSE list of recommended journals at the time of publication).