

## The Phenomenon of Ownership in Terms of Economic and Legal Categories

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(Presented by Academy Member Avtandil Silagadze)

**ABSTRACT.** Ownership is a unique social phenomenon and the core of any economic system, no human activity is performed without ownership. All this conditions the importance of determining the essence of this phenomenon. At the same time, until now, both in domestic and foreign science there is no unity of views on the interpretation of the concept and content of ownership. The paper analyzes the legal and economic interpretation of the category of ownership, their commonality and difference. It was fixed the need to deepen economic research of the essence and forms of ownership demonstration. On the basis of a comprehensive analysis of existing views and approaches to the definition of the concept and essence of the ownership the economic and legal content of this category was justified that allowed the author to consider ownership as a special phenomenon of economy and law. The legal and economic aspects of the content of ownership are not mutually exclusive or incompatible, but complementary, interconnected, mutually dependent and conditioned, that is, the system of industrial relations between people cannot act and progress outside the law what the creative role of the state is conditioned by, as well as legal norms cannot regulate what does not exist.  
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**Key words:** ownership right, economic relations, specification of ownership rights, material goods

Ownership is "the cornerstone of human existence and the basis for the formation of a person as personality, his freedoms and rights. In Hegel's philosophy, a person is considered as personality depending on possessing the ownership. Without a

person as personality there is no ownership and without ownership there is no person as personality. Ownership is the economic basis of freedom and human rights. [1].

Ownership in Kazakhstan is an actively developing social institution, relations between the state and ownership are a priority direction of the economic function of the state and determine the development of the society and statehood. In practice, there is a number of problems associated with insufficiently detailed legal regulation of individual elements of these social relations.

Mankind cannot do without (right) ownership. For centuries this right has been developing, and at present it forms the basis of the functioning of the legal systems of all developing countries of the world [2]. First of all, one should note that ownership belongs to the number of the concepts every person thinks about during his life. At the same time, the right of ownership is one of the most difficult categories which are not easily perceived by ordinary people. Many scientists were engaged in studying the problems (right) of ownership, but still there is no single point of view on this issue [3].

When engaging in the issues of ownership, lawyers often identified it with freedom. This is a very important characteristics of ownership because acquiring the right of ownership can only be voluntary, but loosing such a right in the period of the USSR could be forced (for example, conduct of collectivization). The fact is not limited to the struggle for ownership in theoretical terms, many social changes and shocks are connected with ownership relations as well as attempts to change them in some way and approve their new system.

Ownership is considered primarily as both an economic and a legal (real) category. As an economic category, ownership characterizes the type of property relations between people regarding the belonging (production, distribution or appropriation) of certain material goods.

### **The Concept of Property in the Interpretation of Scientists**

Property is a complex and multidimensional phenomenon. Many scientists (V.I. Stoliarov, V.I. Kushlin, A.V. Sidorovich and N.I. Bazyliov) share

the opinion on the existence of economic and legal properties of ownership, pointing to the subject of one or another. But some researchers do not consider ownership an economic category while the others refuse to recognize its legal essence. The well-known Marxist doctrine suggests the importance of both components, giving priority to the economic one, since ownership is considered here in terms of the ratio of content and form. The content is the social relations themselves concerning the appropriation and alienation of means of production and material goods. In this case, ownership as an economic category is a "real process" that determines it as an intrinsic and fundamental element of the production relations which nature it conditions and predetermines. When permeating them, ownership acts as a kind of "circulatory system" of production relations [4: 50], and its forms represent the rules of behaviour of subjects established by the law which concern their rights to objects of property.

V.P. Shkredov, on the contrary, does not consider property an economic category, defining it as the actual interaction of a person with property. The other well-known scientists-economists (V.Z. Balikoiev, A.A. Kochetkov, A.V. Sidorovich and Ye.N. Lobachova) deny such an interpretation, considering that these are social relations regarding the appropriation of things. Indeed, to have any goods, it is necessary that this right be recognised by the others, not just by one entity. Besides, if to consider the ownership relations only legal, it turns out that we have legal norms, but the economic content is absent. In this respect, the following quote of Ye. Schweitzer is actual: "Without an economic basis, the legal norm is fiction" [4: 46].

V.I. Kushlin treats property as a set of subject-object (person – thing) as legal and subject-subject (person – person) as economic relations, i.e. these are the relations regarding the appropriation of something by someone at the expense of alienation from someone. And only a dialectical set, but not some separate relation of assignment of alienation,

characterizes ownership as a social phenomenon [5: 29].

One should disagree with the statement that the legal content of ownership is revealed as the relations of a subject of law to the good because obviously, "legal certainty is expressed in the fact that by means of legal acts legal norms which regulate the relations between people related to the possession, use and disposal of property which belongs to different subjects of ownership are established" [6: 49].

Economic and legal components are considered in the scientific literature sometimes as objective and subjective processes. Thus, "ownership as a legal category is a subjective interpretation of the objectively established relations of appropriation and the result of the social need to consolidate what has already happened in practice in the specific regulatory form of public consciousness" [7: 173].

Economic relations actually cover the processes of production, distribution, exchange and consumption between people. At the same time, without legal regulation, the implementation of these processes and any development are doubtful. The legal side of the ownership is usually associated with civil law. In civil law, ownership is primarily considered as a type of property relations [8: 17]. Ownership acquires legal form through legal norms that fix the functioning system of economic relations. Yefimova emphasizing the importance of the legal content of ownership, argues that "legal decisions (the adoption of certain laws) can fundamentally change the economic content of ownership..." [9: 37].

### **Differences in the Concept of "Ownership" as in Terms of Economic and Legal Approach**

There are differences in the content of the ownership in terms of legal and economic approaches:

1. Ownership as an economic category is social relations that develop in the process of

production regarding the use of factors of production and the assignment of a useful result. In legal science it is used not so much the category of "ownership" but "ownership". Ownership right has two meanings:

- in the objective sense,
- in the subjective sense.

The right of ownership in the objective sense is a set of legal norms that consolidate and protect the relations on ownership, use and disposal of means or products of production in the interests of a citizen (private property), collective (collective property) or state (state property).

The right of ownership in the subjective sense includes the powers of an owner to own, use and dispose the property which belongs to him within the limits established by law [10].

2. Ownership is a necessary prerequisite for production. It is proper to any society: it existed in the primitive communal system and it still exists. In its turn, the right of ownership arises later than ownership as an economic category and is associated with the need for its protection.

3. Unlike economic ownership relations, the right of ownership is the system of legal norms that are established by the state to regulate economic relations of ownership. In this regard, the right of ownership has no timing [11].

4. In the legal approach, the ownership acts as a static object and shows what you have and what are the limits of your authorities. In this case, it would be appropriate to find out in what way (purchase and sale, exchange, donation, inheritance, etc.) the right of ownership was acquired. In the economic approach, these circumstances are of little importance. Economic science is interested in the way ownership appears, including primarily production, exchange and distribution.

5. The main condition for the stability of ownership as a legal category is the physical preservation and inviolability of a thing. From the

standpoint of the economic approach, the main form of ownership implementation is the appropriation of income. The absence of income also means the absence of ownership in the economic sense of the word. On the contrary, stable income generation testifies to the effectiveness of the existing ownership relations.

6. The economic approach involves maintaining a balance of material and social interests in the sale of ownership. According to economic theory, there are 4 main factors of production: labour, capital, land and entrepreneurial talent [12]. The owners of these factors of production can be an employee, a banker, a land owner and an entrepreneur. In the legal approach, it is possible to allow the development of events when one of the above persons will be able to appropriate the whole useful result obtained during the sale of ownership. On the contrary, the economic approach should be based on the fact that none of the above owners of production factors should alone, without taking into account the economic interests of the others, fully assign the whole useful result.

Meanwhile, considering the differences between ownership in the economic sense and ownership in the legal sense, it is impossible to ignore the close interconnection between ownership as an economic category and ownership as a legal category [13]. Legal right of ownership acts as a result and a prerequisite for the development of economic relations:

1. The result of development is that the right of ownership enshrines established economic relations by its norms. It is secondary to ownership in the economic sense because it confirms what has already been formed in practice and strengthened in the public consciousness.

2. As a prerequisite for the development of economic relations, the right of ownership is demonstrated in the fact that it establishes binding rules for the upcoming economic behavior. This way, a legal framework for the activities of business entities is being created.

## **Category of "Ownership" as a Tool for Analyzing Economic Relations**

In a number of theories, the category of ownership acquires central or key importance and is used as an important tool for the analysis of economic relations. An example of the most consistent application of this approach is the work of an institutionalist John Commons. J. Commons proceeded from the fact that the behaviour of people was governed by certain norms and collective rules. Therefore, any actions of economic agents in the modern economy with no private exchange for a long time (i.e. exchange not regulated by legal norms) are collective actions. They are carried out according to the rules concentrated in the system of institutions established in the society.

The rights of ownership are an important part of these institutions. According to J. Commons, they determine the character of all economic phenomena. In particular, it concerns such a basic economic category as rarity. Since property law is nothing more than the right to restrict the access to a particular resource, from an economic point of view, the property system regulates the access or availability of certain resources. J. Commons concludes that the rarity of goods is no less dependent on the effectiveness of the system of rights of ownership than on effective organization of the production and exchange [14].

For J. Commons, all economic activity is the settlement of the parties' interests in the course of negotiations. According to J. Commons, the essence of any transaction is the alienation and appropriation of rights of ownership and freedoms established by the society. Any transactions on the market are market transactions and any decisions within the firm are managerial transactions. In the result, both the category of value and the indicators of supply and demand are dependent on the system of law. The dependence of private transactions on legal norms is enhanced by the fact that in the modern economy, the future goods are most often

the subject of negotiations, thus, the cost of the transaction depends heavily on the legal protection of the parties' interests.

At the same time, economy itself is the sphere where "collective norms" of behaviour are formed. Any negotiations are a process of determining the rules of interaction between the negotiating parties on this or another good. These rules gradually acquire institutional form (model contracts, company charters, prescribed and unspoken codes of conduct) and on the equal basis with legal norms regulate the behaviour of individuals [15]. Thus, according to J. Commons, rational economic decisions are the source of the formation of behaviour norms as a kind of law-making which sets the framework for the future behaviour of economic agents.

One more example of the theory where the system of law determines the nature of economic actions belongs to John K. Galbraith. The approach of Galbraith is significantly different from the described above. Here the rights of ownership do not play the role of a legal framework that sets the strategy of the behaviour of individuals. They ensure the dominant position of the owner and his motivational model in the company's behaviour. Thus, the ownership system does not directly dictate the nature of the taken decisions, as J. Commons considers, but it determines who makes these decisions. Therefore, the character of these decisions will be consistent with the motives of the holder of this right. In particular, it is through the change of legal relations that Galbraith reveals the nature of the fundamental differences between a simple corporation and a "new corporation". These differences are manifested in the pricing policy of firms and in their internal strategy, in determining the level of salaries and investment flows, in general, in the behaviour of the firm in foreign markets.

In the ownership rights theory, the ownership system, considered as a set of sanctions and prohibitions, determines the cost-benefit structure

for different behavioural strategies. The most profitable and low-cost behaviour becomes within the framework established by the system of ownership rules. The violation of these rules leads to costs in the form of different kinds of punishment for illegal actions or the risk of this punishment [16]. As the result, choosing between different strategies, an individual compares the potential profit from his actions, including the costs connected with the violation of the rules of the game that are formed by the system of ownership 55. Thus, the system of ownership rights sets the framework and determines the behaviour of all economic agents.

However, legal categories are used here only as a language of analysis. The category of ownership rights serves as a convenient term to include in the analysis a very wide range of both tangible and intangible assets, including the right to set prices, make decisions, handle the actions of the contract participants, etc. At the same time, the system of law in its traditional sense plays almost no role [17]. The main aspect is the contract and the powers established within it. From the standpoint of some authors, the ownership rights do not matter at all, since all disputes can be settled by the contract. In the final result, the ownership rights play a role only during the conclusion of incomplete contracts as "residual control rights". They determine the weight of the parties in the resolution of conflicts and disputes not stipulated by the contract. Thus, the ownership rights act as the rights to make ex-post decisions on monitoring the contract implementation.

At the same time, in the framework of the ownership rights theory, the ownership system itself is presented as a result of purely economic calculation. It is not without a reason that this theory is referred to economic imperialism. Considering any economic transaction as a purchase and sale of rights and powers, while maintaining the economic logic of the behaviour of the parties of transactions, the theory of

ownership rights subordinated to this economic logic the process of formation of legal relations and structures. Consequently, the ownership system appeared as a result of purely economic calculation based on the minimization of costs, risks, effects of "mutual dependence" and so on. Thus, the attempt to apply legal categories to the economy led to the fact that legal issues had been integrated into the system of rational actions of economic agents.

### Conclusion

At the end of the analysis of the issue of distinguishing ownership as legal and economic categories, it can be noted that the legal interpretation of their forms and manifestations prevails. Such a situation was noted by the classics. In economic theory, we continue to use legal concepts. The attempts to give a clear economic definition of ownership still bring no results. There are two reasons for such a state of economic theory of ownership: first, economists-theorists have managed for a long time to refer to the quotes of the founders of Marxism and their interpreters and, second, in recent decades, they have been satisfied with vulgar ideas borrowed from the authors of market concepts. As a result, there was a degradation of scientific knowledge about

ownership. For a clearer definition of the content and forms of demonstration of the economic category of ownership, it may be worth remembering the fundamental scientific provisions of the classic authors that the essence and primary basis or substance of ownership is labour. There is no ownership where is no labour.

Also, one should pay attention to the fact that the ownership "accompanies" the society since the very beginning of its origin with and each stage of society's development the relations of ownership were changing that allows to speak about this category as about historical. Without a doubt, ownership is a special social phenomenon because of its specific property of both economy and law. The legal and economic aspects of the content of ownership are not mutually exclusive or incompatible, but complementary, interconnected, mutually dependent and conditioned, that is, the system of industrial relations between people cannot act and progress outside the law what the creative role of the state is conditioned by, as well as legal norms cannot regulate what does not exist.

Therefore, we talk about the multidimensionality of this phenomenon which contains economic, legal, historical, political, psychological and social components.

## ეკონომიკა

# საკუთრების ფენომენი ეკონომიკური და სამართლებრივი კატეგორიების კონტექსტში

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§ ალ-ფარაბის ყაზახეთის ეროვნული უნივერსიტეტი, სამოქალაქო სამართლისა და სამოქალაქო პროცესის ფაკულტეტი, შრომითი სამართალი, ალმათი, ყაზახეთის რესპუბლიკა

# აბაის სახ. ყაზახეთის ეროვნული პედაგოგიური უნივერსიტეტი, სახელმწიფო და სამოქალაქო სამართლის დისციპლინების ფაკულტეტი, ალმათი, ყაზახეთის რესპუბლიკა

(წარმოდგენილია აკადემიის წევრის ა. სილაგამის მიერ)

საკუთრება წარმოადგენს უნიკალურ სოციალურ მოვლენას და ეკონომიკური სისტემის არსს; საკუთრების გარეშე ადამიანის არანაირი საქმიანობა არ წარიმართება. ყოველივე ეს განაპირობებს საკუთრების ფენომენის არსის განსასაზღვრას. ამასთანავე, ამ დრომდე, არც ჩვენს და არც უცხოურ მეცნიერებაში არ არსებობს საკუთრების შინაარსისა და ცნების განმარტებაზე ერთიანი შეხედულებები. სტატიის მიზანია საკუთრების კატეგორიის სამართლებრივი და ეკონომიკური ინტერპრეტაციის ანალიზი, მათ შორის არსებული საერთო ნიშნები და განსხვავებები. გამოიკვეთა იმის საჭიროება, რომ უფრო გაღრმავებულიყო საკუთრების ფორმებისა და არსის ეკონომიკური კვლევა. საკუთრების ცნებისა და არსის განსაზღვრასთან მიმართებაში არსებული შეხედულებებისა და მიდგომების კომპლექსური ანალიზის საფუძველზე, დასაბუთებულ იქნა ამ კატეგორიის ეკონომიკური და სამართლებრივი შინაარსი, რითაც ავტორს საშუალება ეძლევა საკუთრება განიხილოს როგორც ეკონომიკისა და სამართლის განსაკუთრებული მოვლენა. საკუთრების შინაარსის სამართლებრივი და ეკონომიკური ასპექტები არ არის შეუთავსებელი ან შეუსაბამო, არამედ არის კომპლემენტარული, ერთმანეთთან დაკავშირებული, ურთიერთდამოკიდებული და განპირობებული, ანუ, ადამიანებს შორის არსებული სამრეწველო ურთიერთობების სისტემა ვერ იმოქმედებს კანონის მიღმა, რითაც განპირობებულია სახელმწიფოს შემოქმედებითი როლი, ასევე, სამართლებრივი ნორმები ვერ დაარეგულირებს იმას, რაც არ არსებობს.

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*Received May, 2019*