SAINT-PETERSBURG STATE UNIVERSITY

ALDGEM BILAL

Contract of sale and purchase of residential premises under the law of the Russian federation and the Syrian Arab republic

Scientific specialty 5.1.3. Private law (civilistic) sciences

Dissertation for a degree of candidate of legal sciences

Translation from Russian

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List of abbreviations

RF - Russian Federation.

Syria - Syrian Arab Republic.

SCRF – Supreme Court of the Russian Federation.

CC RF - Constitutional Court of the Russian Federation.

HAC RF - Higher Arbitration Court of the Russian Federation.

Civil Code of RF – Civil Code of the Russian Federation of November 30, 1994.

CPC RF – Civil Procedure Code of the Russian Federation of November 14, 2002.

HC RF – Housing Code of the Russian Federation of December 29, 2004.

Fundamentals – Fundamentals of the Legislation of the Russian Federation on Notaries, approved by the Supreme Court of the Russian Federation on February 11, 1993 N 4462–1.

Law on Registration of Real Estate of the Russian Federation - Federal Law N 218-FZ dated July 13, 2015 “On State Registration of Real Estate”.

LC RF – Land Code of the Russian Federation of October 25, 2001 No. 136-FZ.

Criminal Code of the Russian Federation - Criminal Code of the Russian Federation of June 13, 1996, No. 63-FZ.

Civil Code of Syria - Civil Code of the Syrian Arab Republic dated May 18, 1949.

Syrian Notary Law - Law No. 15 of 2014. “On the regulation of notaries in Syria”.

Syrian Real Estate Registration Law - Law No. 188 of March 15, 1926, “On the Registration of Real Estate in Syria”.

Syrian Code of Evidence - Code of Evidence of the Syrian Arab Republic No. 359 dated July 10 of the year, No. 359.

Introduction

Relevance of the topic of the Ph.D. Dissertation is that Syria and Russia have long been strategic partners on many political and socio-economic issues. In addition, the basis for choosing this topic is the long-term bilateral relations of the above countries and Russia's full support for Syria in resolving various political, economic, cultural, and military issues.

Today, legal relations arising from the contract of sale and purchase are among the most common civil legal relations, as they account for the majority of the exchange of economic goods in society. In the modern world, the role of sale and purchase in the market is also steadily growing and turning into a powerful factor of economic development. At the same time, relations regarding the purchase and sale of residential premises occupy a particularly honorable place among all other transactions due to the social significance of the object of purchase and sale, its high valuation by the participants in the transaction, as well as trust in the turnover in general based on the accessibility and safety of the implementation of the fundamental right person on private property. This, among other things, determines the relevance of the topic of the study.

The specificity of Syrian legislation, unlike Russian legislation, is that in Syria the sources of Islamic law have a special role. In the early 19th century, after the French Mandate over Syria, the law of the French Republic replaced Islamic law - with the exception of personal status legislation. After Syria's independence in 1946 and the end of the French Mandate, the Syrian Civil Code was issued in its current form in 1949. Syrian independence necessitated the creation of a codified national civil law, which led to the adoption of the Syrian GC in 1949. The new Syrian Civil Code was based on the most general provisions of Islamic law, in addition, some constructions were borrowed from the civil law of Egypt and France. Based on the above, one can somewhat question the role of Islamic law as an authentic and independent system in the development of the legislative movement in Syria, as the latter came under the significant influence of French law. Nevertheless, Islam is the main religion of the state and is used by the law enforcer

as a "reserve source of law". The Syrian Civil Code of 1949 (Art. 1, para. 1) enshrines as a fundamental principle the provision, according to which the Shariah and the Urf are sources of Syrian civil law. Urf is one of the sources of Islamic law (Fiqh), which represents the views traditionally held in Islamic society. The application of Urf in Islamic law is possible when there is no literal evidence in the Qur'an and Sunnah. In the absence of customary rules, principles and rules of justice are to be applied.

It should be noted that both in Russia and Syria the logical and progressive development of the legal regulation of the purchase and sale of real estate (including residential premises) has undergone a significant transformation due to historical events. The February and October revolutions were a landmark event for Russia, which entailed a complete revision of the system and content of all legislation, and the institution of property in general, and thus the institution of sale and purchase of residential premises in particular, were radically changed. Accordingly, the end of the Soviet period of Russian legislation and the transition to a market economy were also marked by significant changes in civil legislation. Regarding Syria, it is necessary to mention the French Mandate (1923 - 1946), which also entailed a complete restructuring of the legal system, as well as the complete renewal of legislation after independence.

Modern legal regulation of sale and purchase of immovable property both in Russia (late XX century) and in Syria (mid XX century) was formed during one century. Syrian legislation has no norms devoted to the concept of residential premises, the Syrian Civil Code contains only general provisions regulating the contract of sale and purchase in general. The Syrian legislator considers the concept of residential buildings in the context of real estate in general. Unlike Syrian law, Russia has developed and legislated a rather detailed classification of real estate, which implies special rules for the sale and purchase of residential premises.

The list of essential conditions, which are such by virtue of the law, differs significantly in the legal orders under consideration. In Russia, the essential conditions are the subject matter, price and the list of persons retaining the right to reside in the

alienated residential premises. In Syria, these include: the subject matter, the price of the contract and, in addition to the condition relating to the contracting parties, the possession of title.

It should be emphasized that, unlike the Russian civil law, the Syrian legal order does not require a mandatory formal transfer of immovable property, and the actual transfer is not enshrined by the legislator as a separate legal composition.

Ownership under a contract of sale, according to the concept of Islamic jurisprudence, is transferred immediately after the conclusion of the contract, so that the buyer becomes the owner of the thing sold as soon as the contract is concluded. Thus, in Islamic jurisprudence, the transfer of ownership is considered a condition of the contract and not a condition of its fulfillment, the consent of the two parties is sufficient for the transfer of ownership. Such a condition of the transaction derives from the basic principle of Islamic contract law, which prohibits "uncertainty" (Algharar - الغرر) in transactions.

Turning to the legislators of both Russia and Syria, it is necessary to emphasize the legislator's attention to the importance of combining such characteristics of the legal framework for the sale and purchase of residential premises as clarity, clarity for citizens and a sufficient degree of detail, as well as focus on the maximum protection of the rights of the parties to the contract, especially the "weak party" - the buyer. Today, there is a risk that the buyer will find himself in a vulnerable position, having limited access to reliable information, and will be forced to enter into an agreement that takes into account all possible risks as much as possible. The seller, on the other hand, has great opportunities to provide false information or omit facts, such as persons living in the residential premises or methods of managing an apartment building.

The socio-economic aspect of the relevance of the Ph.D. Dissertation lies in the fact that real estate in general and residential premises in particular act not only as a widespread subject of a sale and purchase agreement (and therefore civil legal transactions in general) but also have social value in connection with the most direct relation to ensuring the human right to housing (Article 25 of the Universal Declaration

of the Rights of Man and Citizen[1], Article 40 of the Constitution of the Russian Federation[2]).

Consistent and logical legal regulation of the purchase and sale of residential premises, focused on protecting the parties' rights to the contract, contributes to the growth of public confidence in civil legislation in general and in the corresponding contractual structure in particular.

A significant role in developing the socio-economic policy and strategy of states is played by forming effective and practically implementable protection of the parties to contractual legal relations, especially if their subject is residential premises.

In connection with the above, it seems important to highlight the specifics of the legal regulation of the purchase and sale of residential premises in Syria and Russia.

The consolidation in the current civil legislation of the legal regulation of the purchase and sale of residential premises, with its proper legal and technical elaboration, has great practical potential, the implementation of which is possible, on the one hand, in the form of optimization of the current legislation, and on the other hand, in the form of the state pursuing an active policy, aimed at detailing this institution, which can become an effective tool for protecting the socio-economic rights of citizens, which emphasizes the socio-economic aspect of the relevance of the topic. In addition to the above, it should be noted that properly developed legal regulation of the purchase and sale of residential premises can simplify and facilitate the corresponding regulated legal relations, as well as reduce the burden on the courts.

The law enforcement aspect of the relevance of the Ph.D. Dissertation lies in the fact that today the practice of applying the legal regulation of the purchase and sale

[1] Universal Declaration of Human Rights of 1948 (adopted by the UN General Assembly on 10.12.1948) // Rossiyskaya Gazeta. № 67. 05.04.1995.
[2] The Constitution of the Russian Federation (adopted by popular vote on December 12, 1993 with amendments approved during the all-Russian vote on July 1, 2020) // SPS “ConsultantPlus”

of residential premises is not uniform either in Syria or in Russia. The foregoing indicates, among other things, the presence of gaps and conflicts in the legislation.

The law-making aspect of the relevance of the study is mediated by the potential opportunities to formulate proposals for optimizing the legal regulation of the purchase and sale of residential premises to adjust the current legal regulation. The comparative legal aspect in the context under consideration provides the author of the study with the opportunity to formulate proposals for changing the legislative framework, taking into account the conducted comparative legal analysis.

It seems that the elaboration of individual issues within the designated boundaries of the study will help optimize the legal regulation of the purchase and sale of residential premises in Syria and Russia.

The doctrinal aspect of the relevance of the Ph.D. Dissertation is due to several factors. Firstly, a comparative study devoted to comparing the legal regulation of the purchase and sale of residential premises in Syria and Russia has not been previously conducted, which, of course, actualizes the research topic. Secondly, the legal systems of Syria and Russia belong to different legal families and were formed under the influence of completely different geographical, historical, religious and social conditions, which mediates the rather comprehensive nature of the research being conducted. Thirdly, it is necessary to note the presence of difficulties when working with sources, both legal and doctrinal, devoted to the legal regulation of the purchase and sale of residential premises in Syria. The relevant sources are presented in Arabic, and the vast majority (in terms of doctrine) are not digitized, which, determines the lack of comparative research.

This allows us to review the degree of study of the research topic. As mentioned above, there are no studies of comparative legal character devoted to the legal regulation of the sale and purchase of residential premises in Syria and Russia, which leads to the conclusion that the topic of the study is completely unexplored in the doctrine.

The only exception is the work of Al-Zuhaili Muhammad "Comparative Civil Law in Islamic Jurisprudence"[3]. However, the subject of this study is much broader and includes fully substantive civil law, and the comparativist aspect is not exhausted by the civil law of a particular country or group of countries.

In connection with the above-mentioned peculiarity, as a doctrinal basis for the study, the author has studied the works of Russian researchers concerning the characterization of the sale and purchase of residential premises in Russia and the works of Arab scholars on similar topics about the law of Syria.

In particular, general issues related to the purchase and sale of residential premises or individual issues related to the topic of the study were covered in the works of such Russian researchers as A. I. Bibikov, R. S. Bevzenko, V. A. Belov, K. P. Belyaev, M. T. Sablin, D. F. Bakhitov, M. Yu. Vitryansky, N.M. Denisyak, V.V. Dolinskaya, I.A. Emelkina, S.Y. Zaitsev, V.I. Ivakin, I.A. Pokrovsky, A.V. Kerimova, V.A. Rogov, E.A. Makhinya, V.A. Mikryukov, T.E. Novitskaya, E.Yu. Samoilov, V.N. Sinelnikova, A.S. Solopaev, E.A. Sukhanov, D.A. Formakidov, A.V. Khaldeyev, G.F. Shershenevich, E.V. Yakovleva.

Among the Arab authors who studied both the specifics of civil contract law in general and the peculiarities of legal regulation of the contract of sale, from the literature not translated into Russian, the following works are mentioned in this study: A. S. Abd al-Gawad, A. A. Termanini, M. M. Abu Zahra, H. M. Al Bayat H.M., A. Al-Sanhouri, M. Al-Auji, T.K. Al-Wandawi, S. Al-Jarrah, A.A. Al-Jasem, A.M. Al-Zarqa, Y.M. Al-Zoubi, M.W. Al-Zuhaili, Y.M. Al-Qazzaz, Y.J. Al-Hakim, Z.A. Al-Haraki, A.G. Al-Shamrani, D. Al-Sharkawi, B. D. Weiss, A.M. Ghazal, M.G. Zaki, A.M. Imam, P.M. Qadri, H.M. Mansour, S. Morkus, M. Muzaffar, B. Nazir, E. Nassif, M. Nakhli, A.F. Saleh, V.M. Siwar, M. Suleiman, A.S. Tanago, H.T. Farag, A.M. Shanab, and M.A. Sharba.

[3] Al-Zuhaili Muhammad. Comparative civil law in Islamic jurisprudence - Contracts of sale, barter and lease. - Damascus: Damascus University, 1994.- 556 p. [in Arabic].

The purpose and objectives of the dissertation research. In the framework of the study, the author aims at a comprehensive comparative legal analysis of the legal regulation of the sale and purchase of residential premises in Syria and Russia to identify problems and conflicts of the current regulation and to identify possible areas of improvement of the current legislation. In order to achieve this, the following research objectives were set:

-To study the historical aspects of the regulation of the purchase and sale of residential premises. Within the framework of solving this task, attention is paid to the evolution of the institution of the sale and purchase of real estate in Russian and Syrian law, as well as the retrospective aspect of the formation and development of registers of rights to real estate in Russia and Syria;

-to study the system of legal acts regulating the sale and purchase of residential premises in Russia and Syria;

-outline the conceptual apparatus used by legislators in Russia and Syria to regulate relations in the field of purchase and sale of residential premises;

-to reveal the legal nature of the contract of sale and purchase of residential premises;

-to consider residential premises as an object of the contract of sale and purchase;

-characterize the elements of the contract of sale and purchase of residential premises;

-analyze the specifics of the form and procedure for concluding a contract of sale and purchase of residential premises;

-to study the institute of encumbrance of residential premises with the rights of third parties;

-to study the concept and meaning of transfer of residential premises;

- to study the requirements and specifics of the state registration of the transfer of the right to residential premises.

The object of the research is public legal relations that develop both in retrospective aspect and in modern reality in the sphere of legal regulation of the purchase and sale of residential premises in Syria and Russia.

The subject of the research is represented by a set of legal acts regulating the sale and purchase of residential premises in Syria and Russia, doctrinal sources - works of Russian and Syrian researchers studying in one aspect or another the sale and purchase of residential premises in Conducting research involves the application of a set of methodological techniques, the effective use of which allows the author of the research work to solve the problems and, ultimately, to achieve the goal of the study. As a rule, the research work is complex, combining theoretical-legal and practice-oriented characters.

The methodological basis for research. Research methodology concerning the research is a scientifically based approach to the organization of the research, developed based on the author's position, and mediating the obtaining of the necessary results (both in theoretical and practical contexts). In the process of the research, we studied normative legal acts (both Russian and Syrian), and subordinate and departmental legal acts. In the array of normative-legal bases, the main attention is paid to the acts of federal (in terms of Russian) legislation, codified normative-legal acts, as well as the acts that have amended the above-mentioned sources of law. The main methods used to study the normative-legal basis of the study are the method of abstraction, analysis and synthesis, induction and deduction, logical and formal-legal method, comparative-legal (used by the author both in the cross-comparison of norms of Russian and Syrian legislation in the framework of retrospective analysis and the comparison of norms of Russian and Syrian current legislation). Conducting a scientific study on the topic "Sale and purchase of residential premises in Syria and Russia" implies, first of all, the use of the comparative legal method of research. In addition, the retrospective method of research involves the study and analysis of the process of formation of the subject of research, identification,

and fixation in the study of the prerequisites for the formation of the purchase and sale of residential premises as a legal category, comprehension of the legal phenomenon under consideration in dynamics, which allows to identify the specifics of its evolution and modern regulation. Syria and Russia and materials of law enforcement practice.

The legal basis of the research is the legal acts of the Russian Federation and the Syrian Arab Republic and acts of law enforcement practice. In particular, the Constitution of the Russian Federation and the Syrian Arab Republic, Civil Code of the Russian Federation (part one) dated November 30, 1994 No. 51-FZ1, Civil Code of the Russian Federation (part two) dated January 26, 1996 No. 14-FZ2, Housing Code of the Russian Federation of December 29, 2004 No. 188-FZ, Civil Code of the Syrian Arab Republic of May 18, 1949, Law "On Registration of Real Estate in Syria" No. 188 of March 15, 1926, as well as other regulatory by-laws.

For a more holistic picture of the perception of Syrian legislation, the author translated part of the articles of the Civil Code of Syria, which regulate contractual relations in general, as well as the sale and purchase agreement in particular.

The empirical basis of the research. It includes Russian and Syrian judicial practice.

Hypothesis of the research. The current legal regulation of the purchase and sale of residential premises in Syria and Russia has both similarities and differences (including significant ones). Comparative legal analysis will allow us to formulate specific proposals and recommendations aimed at optimizing the current legal regulation of the sale and purchase of residential premises in Syria and Russia.

Scientific novelty of the research and personal contribution of the author of the work is that this is the first systematic comparative legal study of the legal regulation of Syria and Russia in the field of sale and purchase of real estate, especially residential premises. Previously such scientific research has not been conducted, which mediates the scientific novelty of the study and reflects the personal contribution of the author of the

dissertation. The system analysis of the current civil legislation and judicial practice of Russia and Syria in the part of the sale and purchase of residential premises has been carried out, based on which proposals have been developed and formulated to improve the legal norms on the concept, conclusion, and execution of the contract of sale and purchase of residential premises, aimed at ensuring the effective use in the circulation of the institute of sale and purchase of residential premises and facilitating the resolution of civil disputes.

It is hoped that this study will help not only to identify the differences between the two legal systems, but also to enrich each of them with the best ideas and practices of the other system. For example, the experience of the Syrian model, which has undergone centuries of testing by religious norms and rules, which was strengthened during the French Mandate in the best traditions of European continental law, and which today combines all the best that the difficult history of the country's development has taught Syrian legal thought, seems to be unique for Russia .

The example of Russian law is also unique in this case, which has gone through stages of progressive formation of the institution of private property, abandoned this notion at a certain stage and proclaimed that the entire housing stock belongs to the state in the person of the entire Soviet people, and a few decades ago returned to the concept of private property (including residential premises).

In its desire to restore the authority to private property as soon as possible, the Russian legal community often seeks support from the more stable and developed Western European legal systems in this matter, ignoring its own many years of unique experience and traditions, which are often more akin to the country's Eastern neighbors, allowing Russia not only to take a fresh look at its own history, but also to avoid some of the mistakes already faced by legal systems in similar circumstances.

In light of the unique events experienced by Syria and the challenges it has faced in real estate and real estate registration, whether due to human intervention or natural disasters, were able to highlight that Syria's experience provides valuable lessons that can

be learnt and applied to improve real estate legal systems in various countries and can benefit the legal order in Russia as well.

Analyzing these experiences helped to identify the reasons for the loss of legal documents and the destruction of real estate, and consequently to identify the methods and approaches used by Syrian law to strengthen the legal system and the management of real estate.

The scientific statements proposed for defense:

1. The possibility of combining elements of European legal tradition and Muslim law in the legal system of one country, which does not prevent the normal functioning of law, is substantiated.

The latter is ensured in at least two ways :

1) adapting heterogeneous elements to each other in order to use them in regulating the same relations (for example, the use of the concept of a "single real estate object" peculiar to European jurisdictions, taking into account the definition of immovable property given by Maliki and Shafi'i jurists

2) the distinction between relations governed exclusively by secular law or exclusively by Islamic law.

2. The author's definition of the concept of "residential premises" is given, which, due to the absence of the institution of sale of residential premises in Syrian law, is necessary to avoid contradictions in the consideration of housing disputes and to establish a framework for the protection of rights to residential premises.

Residential premises should be understood as an object (immovable property) of a subjective right (a house, a part of a house, a flat), which is suitable for permanent or temporary residence of a person or a group of people, is structurally separate, has an independent entrance and meets the requirements of the minimum level of improvement, sanitary-epidemiological and other imperative requirements.

3 . Residential premises is an object that requires the creation of special guarantees for persons acquiring or realising the right to it. In this regard, the author argues that the contract of sale of residential premises is an independent type of contract .

This conclusion should be taken into account both by the Syrian legislator (Syrian law lacks both a special contract of sale of residential premises and a special object - residential premises) and by the Russian legislator (Russian law lacks the institution of sale of residential premises).

4. The concept of the absolute identity of the acceptance to the offer, which is dominant in Sharia law, must be corrected. The idea of a contract as the agreed will of the parties is not contradicted by a deviation from the principle of identity of the acceptance, which may contain "technical" adjustments (clarification of details, correction of misprints, etc.).

5. In modern legal orders, the rights of the owner of residential premises should be limited by granting a number of persons the right in rem to use the residential premises .

Although the circle of these persons will vary from one legal order to another, in the author's opinion, it should in any case be determined on the basis of two principles: the principle of family solidarity (a family member has the right) and the principle of increased protection of the weak and infirm (an incapacitated or disabled person has the right). Otherwise, the fair balance of interests of the parties to the turnover, which civil law is designed to establish, is violated. The Syrian legislator can benefit from the experience of modern legal orders.

6. The essential conditions of the contract of sale and purchase of residential premises should include a condition on the right of third parties to use the premises (provided for in Russia, but not in Syria) and a condition on the method of management of an apartment building, if the premises are located in such a building.

7. The irrevocable power of attorney for the sale of real estate existing in Syria, which is equated in its legal essence to a contract of sale of real estate, despite its controversial nature, is an effective legal instrument that should not be abandoned. We believe that this instrument can be effectively used in the Russian legal order as well.

8. Realisation of rights and performance of obligations of private law subjects in relations on sale of residential premises needs public-law control. This goal can be achieved, firstly, by increasing the number of peremptory norms regulating these relations and, secondly, by establishing control of public-law bodies over the emergence, change and termination of these relations. Such bodies may be specialised subdivisions of executive authorities acting on a permanent or ad hoc basis, and notaries.

9. The author substantiates that the open access to the data of the real estate register, which takes place in Syria, violates the balance of interests of the parties. Asserting the necessity of rejecting the openness of the register, the author justifies the range of persons who may be entitled to receive the register data: the owner, other right holders (tenants, trustees), notaries, law enforcement, and other public authorities (including the judiciary), financial institutions (banks, insurance companies).

10. In modern legal orders, the principle of refusal to protect the rights of an unscrupulous person should also apply to the realisation of the constitutional right to housing, despite its importance. In particular, alienation of residential premises for the purpose of subsequent receipt of housing from the state should be considered an abuse of the right.

11. In Syrian law, it is advisable to allow exceptions to the principle of executive immunity in respect of the only housing and to establish in the law the conditions for foreclosure, which include an assessment of when the housing was acquired, its value in relation to the amount owed, and its size in relation to the standard of living space.

12. In both legal orders, a bona fide purchaser of residential property who has paid for it but has not had time to acquire title to it should, in the event of the seller's bankruptcy, have a pre-emptive right to receive from the bankruptcy estate the amount

previously paid to the seller under the sale and purchase agreement, as well as a pre-emptive right to compensation for damages.

In addition, the author formulates a number of proposals to improve the legislation of both countries. In particular, the author proposes the following changes to the Syrian civil legislation: to create a legal definition of the concept of residential premises and the concept of the contract of sale of residential premises; to define the essential conditions of the contract of sale of residential premises, including the moment of fulfilment of the obligation to transfer residential premises; to fix the mandatory notarial form of the contract of sale of residential real estate; to introduce the institution of formal transfer of residential premises; to fix the possibility of remote registration of the transfer of the right to residential property; to establish the possibility of remote registration of the transfer of the right to residential property.

Main scientific results:

1. The law of Syria and Russia regarding the turnover of real estate (residential premises) is based on similar principles, which allows us to successfully use the same approaches to the formulation of doctrinal and practical conclusions[4] .

2 . The legal regulation of relations regarding the acquisition and transfer of rights to residential premises has specific features that allow us to affirm the need to identify a special legal institute - the institute of rights to residential premises. The Syrian legislator should take this conclusion into account when forming legislation on the acquisition and transfer of rights to residential premises [5].

3 . The right to residential premises has a civil law nature, but it cannot be realized in the absence of administrative and legal guarantees, primarily in the area of making rights public. The legislator is obliged to provide for regulations to safeguard

[4] Aldgem, B. I. Guarantees of the right to housing: a comparison of Syrian and Russian legislation / B. I. Aldgem // Actual problems of Russian law. - 2022. - Vol. 17, No. 1 (134). - P. 162.
[5]Aldgem, B. I. Guarantees of the right to housing: a comparison of Syrian and Russian legislation / B. I. Aldgem // Actual problems of Russian law. - 2022. - Vol. 17, No. 1 (134). - P. 162.

the data of the real estate register in the event of crisis situations such as those experienced by Syria. Any State can face such crises[6].

4 . The legal nature of an irrevocable power of attorney under Syrian and Russian law differs significantly. The Syrian legislator should take this into account when improving the regulation of relations related to the use of an irrevocable power of attorney in the sale of real estate[7].

5 .Different historical conditions and sometimes incompatible factors influencing the development of law in different countries do not exclude the emergence of fundamentally similar legal institutions in the field of not only private but also public law. This applies to the notaries: in Syria and Russia, notarial activity is carried out on the same principles and within the framework of similar procedures.[8].

6 .The introduction of the mandatory notarial form is conditioned not by formal-logical, but by political and legal considerations of the legislator. Thus, the introduction of the notarial form for a contract of sale and purchase of residential real estate is explained by the fact that it effectively protects the owner and helps to combat fraud, which, in turn, strengthens confidence in the real estate real estate market[9].

Theoretical and practical significance of the study. The theoretical results of the study include the definition of the content of basic concepts, analysis of the essence and legal nature of relations arising in connection with the purchase and sale of residential premises. The results can be used in the process of further scientific developments in the field of contractual relations related to the procedure for the execution of contracts of sale and purchase of residential premises and the protection of the rights and interests of participants in contractual relations.

[6] Bilal, A. Legal methods for protecting property rights to real estate during the Syrian crisis / A. Bilal // Bulletin of the Russian State University for the Humanities. Series: Economics. Management. Law. - 2022. - No. 3. - P. 131.
[7] Bilal, A. Aldgem, B. The role of a notary in the circulation of residential premises under Russian and Syrian legislation / B. Aldgem // Leningrad Law Journal. - 2023. - No. 2 (72). - P. 165.
[8] Aldgem, B. The role of a notary in the circulation of residential premises under Russian and Syrian legislation / B. Aldgem // Leningrad Law Journal. - 2023. - No. 2 (72). - P. 165-166.
[9] Aldgem, B. The role of a notary in the circulation of residential premises under Russian and Syrian legislation / B. Aldgem // Leningrad Law Journal. - 2023. - No. 2 (72). - P. 168.

Scientific and practical significance of the obtained results lies in the fact that both countries can be used in:

-normative activity - for improvement of legislative and subordinate acts regulating relations arising in the sphere of execution of contracts of sale and purchase of residential premises and protection of rights and interests of participants of contractual relations;

-law enforcement activity - for the needs of judicial practice, preparation of resolutions of the Plenum of the Supreme Court of the Russian Federation and the Syrian Arab Republic;

- educational process - in the process of teaching the academic discipline "Civil Law", "Legal regulation of property relations" in Syria and Russia.

The validity and approbation of the research results. The results of the study were approved by the author at the International Youth Scientific Forum "Lomonosov-2021", in the framework of which the author made a report on "Residential premises as a subject of sale under Syrian and Russian law", at the V International Scientific and Practical Conference of St. Petersburg State University of Economics (SPbSEU) on "Law and modern economics: experience and future", in the framework of which the author made a report on "Protection of the rights of citizens in the sale of the only housing in the Russian and Syrian law".

The dissertation research was approbated during its discussion at the Department of Notary of St. Petersburg State University on July 2, July 2024.

Publications on the topic of research. The author has published the following articles on the topic of research:

1. Aldgem, B. I. Guarantees of the right to housing: a comparison of Syrian and Russian legislation / B. I. Aldgem // Current issues of Russian law. - 2022. - Vol. 17, No. 1 (134). - P. 154-163.

2. Bilal, A. Legal methods of protecting the right of ownership of real estate during the Syrian crisis / A. Bilal // Bulletin of the RSUH. Series: Economics. Management. Law. - 2022. - No. 3. - P. 116-132.
3. Aldgem, B. The role of a notary in the circulation of residential premises under Russian and Syrian legislation / B. Aldgem // Leningrad Law Journal. - 2023. - No. 2 (72). - P. 156-171.

Publications in other periodicals:

Aldgem B.I. Residential premises as a subject of sale under Syrian and Russian legislation. Proceedings of the International Youth Scientific Forum "Lomonosov-2021" / Edited by I.A. Aleshkovsky, A.V. Andriyanov, E.A. Antipov, E.I. Zimakova. [Electronic resource] - Moscow: MAKS Press, 2021. - 1 electronic optical disk (DVD-ROM); 12 cm. - 2000 copies.

Aldgem B. Protection of citizens' rights in the sale of the only housing in the Russian and Syrian legislation // Law and modern economy: experience and future: collection of materials of the V International Scientific and Practical Conference of the Law Faculty of St. Petersburg State University. C. 342 -348.

Aldgem B. Participation of a notary in the process of purchase and sale of residential premises in Syria and Russia // Proceedings of the International Youth Scientific Forum "Lomonosov-2022".

Aldgem B. Constitutional right to housing in the Syrian Arab Republic. SCIENCE AND TECHNOLOGY RESEARCH: Collection of Articles of the IV International Scientific and Practical Conference (May 12, 2022). - Petrozavodsk: ICNP "New Science", 2022 - P. 142 -147.

The structure of the dissertation research is mediated by the purpose and objectives of the study. The work consists of an introduction, three chapters, suggestions for changing the current legislation, a partial translation of the Syrian Civil Code, a conclusion and a list of references.

The study is divided into chapters oriented to obtain both theoretical and practical results, which allows us to study not only the current legislation of Russia and Syria, but also to trace the genesis of the legal regulation of the contract of sale of residential property in general.

CHAPTER 1. Basics of legal regulation of sale and purchase of residential premises

1.1 Historical aspects of regulation of sale and purchase of residential premises

The contract of sale and purchase (Latin. emptio et venditio) occupies a significant place in the system of legal regulation of civil turnover, as it is a universal mechanism regulating material and monetary relations.

The contract of sale is known from classical Roman law, where it was defined as "a contract by which one party (venditor - seller) undertakes to provide the other party (emptor - buyer) with goods, and the buyer undertakes to pay the seller for these goods the appropriate monetary value", and Roman law defined the contract of sale as a consensual contract (emptio et venditio)[10].

The consensual aspect of a contract of sale under Roman law is that such a contract is not a direct transfer of ownership.

In Roman law, the effect of a contract was limited to the creation of obligations between the contracting parties, and title passed from the seller to the buyer only after the formal act of transfer[11].

[10] Krasnokutsky, V.A. Novitsky, I.B. Peretersky, I.S. Roman Private Law: Textbook / V.A. Krasnokutsky, I.B. Novitsky, I.S. Peretersky, et al.; edited by I.B. Novitsky, I.S. Peretersky. Moscow: Jurist, 2004. - P. 470. (In Russian).
[11] Al-Sanhouri Abdel-Razzaq. Mediator in Explaining Civil Law, Part 4 Sale and Barter. – Cairo: Dar al-Nahda al-Arabiya, 1986. – 514 p. [in Arabic].

1.1.1 Evolution of the institution of sale and purchase of real estate in Russian law

We consider it necessary to highlight the entire history of the contract of sale of residential premises, dividing it into four periods depending on the attitude of society and the state to the institution of the contract of sale :

1. The first period - from ancient times to the beginning of the imperial period (X - XVII-XVIII centuries). During this period there is a development of formalized procedure for establishing rights in rem.
2. The second period - the imperial period (1721 - 1917). The peculiarity of the legislation in this period was that the contract of sale and purchase regulated only relations on the turnover of movable property. As for immovable property, as confirmed in their study by M. Braginsky and V. Vitryansky, "the sale and purchase agreement regulated only the relations of movable property turnover. Vitryansky, "the purchase-sale was referred by the law not to contracts, but to the ways of acquiring rights to property; the bill of sale was considered as an act of transferring the right of ownership to real estate"[12].
3. The third period is the period of Soviet legislation .(1991 - 1917)

In Soviet civil law, the scope of application of the contract of sale of real estate in general was significantly limited due to the planned model of economy, the supremacy of state ownership and the restriction of private ownership of real estate in the legal order based on communist ideas[13]. Citizens in the Soviet Union were allowed to alienate only private houses and summer residences under a contract of sale.

The legal connection of real estate objects with the land has been severed. The connection that determines the possibility of classifying an object as real estate. Land and residential objects were subject to fundamentally different categories of legal regulation - public law and private law, respectively. At the legislative level, in the

[12] Braginsky, M.I., Vitryansky V.V. Contract law: agreements on the transfer of property (book two) / M.I. Braginsky, V.V. Vitryansky. M., 2002. - P. 5. // SPS “Consultant Plus”. (In Russian).
[13] Sadikov O.N., Bratus S.N. Commentary on the Civil Code of the RSFSR / Ed. Bratus, S.N., Sadikov, O.N. - M.: Legal Literature, 1982. - 678 p. (In Russian).

prevailing majority of cases, the priority of the legal status of a structure, including residential buildings, over the legal status of land (in the context of scientific discussion about the main thing and belonging) was fixed.

4. The fourth period - the modern time (from 1991 to our time) .

The concept of "real estate" appears in Russian law since the 18th century[14]. Terminologically, for the first time the word combination "immovable property" is used in the Decree of Peter I "On the order of inheritance in movable and immovable property" (also called "Decree on Uniform Inheritance") in 1714[15]. Although the state became interested in various kinds of real estate much earlier. Thus, the first forms of "real estate" were estates and fiefdoms, which appeared in the time of Tsar Ivan III[16]. The purchase and sale of such fiefdoms and estates was subject to a kind of "registration"; after the transaction was completed, court clerks interviewed the parties and made a corresponding entry in the Book of Orders. The sale and purchase of patrimonial estates (inherited from generation to generation) was restricted. In the time of Peter, the Great a new order of transfer of ownership of immovable property was introduced - serfdom, representing the direct participation of the state represented by the Chamber of Serfdoms, which was under the jurisdiction of the Justices' Collegium. The Code of Laws of the Russian Empire, compiled under the leadership of the famous statesman and lawmaker M.M. Speransky, which existed until October 1917, prepared by the Second Department of His Imperial Majesty's Own Chancellery at the beginning of the Nicholas era, did not contain a general concept of immovable property. This category was defined through an approximate enumeration of "land, miscellaneous lands, houses"[17]. Nevertheless, the Code of Laws retained the

[14] Rassolov I.M. Pevtsova N.S. On some features of legal regulation of the contract of sale of real estate in the history of Russia and Germany / I.M. Rassolov, N.S. Pevtsova // M.: Scientific works of the Russian Academy of Advocacy and Notary. - 2017. - No. 1 (44). - p. 129-132.

[15] Decree of Peter I "On the order of inheritance in movable and immovable property" (also referred to as the "decree on single inheritance") of 1714. // URL: www.hist.msu.ru/ER/Etext/inherit.htm (accessed 27.08.2023)

[16] Klyuchevsky, V. O. Course of Russian history. Works: in 9 volumes / V. O. Klyuchevsky; [ed. V. L. Yanina; entry Art. V. L. Yanina, V. A. Aleksandrova]. — Moscow: Thought, 1987-1990. — P. 203. (In Russian).

[17] Shershenevich, G. F. Textbook of Russian civil law (according to the 1907 edition) / G. F. Shershenevich; Entry Art. E. A. Sukhanova. - Moscow: Spark Company, 1995. - P. 98. (In Russian).

classification of land into patrimonial and acquired land, and, consequently, restrictions related to the alienation of patrimonial estates were also retained .

After the revolution of 1917, with the advent of Soviet power, the landlord's property was abolished and transferred to the Volost Land Committees and District Soviets of Peasant Deputies[18]. The Soviet period of the history of purchase and sale begins with the adoption of the Decree of the Second All-Russian Congress of Soviets of 27 October 1917. "On Land" [19]. Then the Decree of the All-Russian Central Executive Committee of 14 December 1917 "On Prohibition of Real Estate Transactions" from 18 December 1917 prohibited any transactions (including sale and purchase) of any form of real estate[20].

In the civil law of the Soviet Union, after the adoption of the Civil Code of the RSFSR of 1922, the division of things into movable and immovable was abolished. A note was made to Article 21 of the said normative act that "with the abolition of private ownership of land, the division of property into movable and immovable has been abolished"[21]. Land was excluded from civil turnover. The very concept of "real estate" began to be used only in relation to pre-revolutionary or foreign legislation. However, the prohibition of objectively existing in society civil legal relations on possession, use and disposal of property was doubtful. As B.M. Gongalo noted, "it was just as well to abandon the division of the day into day and night, having fixed it in the law"[22] . It is enough to refer to Article 185 of the Civil Code of the RSFSR of 1922, which establishes that the purchase and sale of buildings must be carried out in a notarial procedure with subsequent registration in the communal department, otherwise the transaction will be recognized as invalid.

[18] Shlotgauer M.A. History of legal regulation of the purchase and sale of residential real estate in Russia / M.A. Shlotgauer // Bulletin of Omsk University. Series: Law. 2009. No. 1. - P.35-44.
[19] Decrees of the Soviet government. T.I. M.: Institute of Marxism-Leninism under the Central Committee of the CPSU, Institute of History, Acad. Sciences of the USSR. M.: Politizdat, 1957. P. 17.
[20] Collection of laws of the RSFSR, 1917. No. 10, p. 154.
[21] Novitskaya, T. E. Civil Code of the RSFSR of 1922: History of creation. General characteristics/ / T. E. Novitskaya. — 2nd ed. Moscow: Zertsalo-M, 2012. - 264 p. (In Russian).
[22] Belyaev K. P. Commentary on the Federal Law “On State Registration of Legal Entities” / [Belyaev K. P. et al.]; Ed. B. M. Gongalo, P. V. Krasheninnikova. — 2nd ed., revised. and additional - Moscow: Statute, 2003. - 507 p. (In Russian).

The existence of real estate, which included "building", forced to regulate in the law the rules of transactions with it. With the adoption of the Civil Code of the RSFSR of 1964, Clause 1 of Article 239 and Article 257 established mandatory state registration with the executive committee of the local Council in transactions of sale and purchase or donation of residential premises[23]. In Soviet times there were restrictions on the disposal of residential premises. Therefore, transactions on exchange of residential premises in which citizens lived on the basis of a housing lease agreement were relevant. Such transactions with non-privatized housing stock are practically uncommon today [24].

The division of property into movable and immovable property became applicable again with the adoption of the Law "On Property in the RSFSR" of 24 December 1990[25]. The Fundamentals of Civil Legislation of the Union of Soviet Socialist Republics and Republics[26] also mentioned the term "immovable property".

A thing is categorized as real estate if it is firmly connected to the land and has physical properties that do not allow it to be moved without changing its purpose. However, there are other criteria defining immovable property. Civil legislation provides that other property may be recognized as real estate in accordance with the established procedure (real estate by law).

With the adoption of the Constitution of the Russian Federation of 1993, the right of ownership of real estate was finally restored. Thus, according to part 2 of article 35 of the Constitution. Everyone has the right to own property, to own, use and dispose of it both individually and jointly with other persons", and Article 36 enshrined the provisions

[23] Civil Code of the RSFSR, approved. Supreme Court of the RSFSR 06/11/1964// "Code of Laws of the RSFSR", T. 2, P. 7// The document became invalid on January 1, 2008 due to the adoption of the Federal Law of December 18, 2006 No. 231-FZ.
[24] Rassolov i.m. Pevtsova N.S. op. cit. op. cit. p.129-132.
[25] Law of the RSFSR dated December 24, 1990 No 443-1 (as amended on June 24, 1992, as amended on July 1, 1994) "On Property in the RSFSR" // Gazette of the Council of People's Commissars of the RSFSR and the Supreme Court of the RSFSR, 1990. - No. 30. P. 416. // Lost force due to the adoption of Federal Law No. 52-FZ of November 30, 1994.
[26] Fundamentals of civil legislation of the USSR and republics (approved by the USSR Supreme Council on May 31, 1991 No. 2211-1) (as amended on November 26, 2001) // "Vedomosti SND and the USSR Supreme Court," 06.26.1991. No. 26. From 733 // the document lost force on January 1, 2008 on the territory of the Russian Federation due to the adoption of Federal Law No. 231-FZ of December 18, 2006.

according to which citizens and their associations have the right to have private ownership of land, the right to freely own, use and dispose of land and other natural resources[27]. In the Civil Code of the Russian Federation the contract of sale and purchase of real estate was fixed by the legislator in a special section as a separate type of sale and purchase contract. The contract of sale and purchase of residential premises is not allocated in a separate paragraph[28], but its peculiarities are devoted to Art. 558 in § 7 of Chapter 30.

It should be noted that since the time of the Roman legal tradition, there has been a conditional separation of a single act of sale of an object into two inseparable elements - obligatory (consensus between the counterparties and conclusion of the contract itself) and dispositive (transfer of the thing and the right of ownership to it) transactions .

The institute of sale and purchase of real estate in Russian law has undergone significant development over the past decades. The legal framework governing real estate transactions has been strengthened and clarified by various laws and regulations, such as the Civil Code of the Russian Federation, the Land Code, as well as special provisions relating to real estate transactions. And the provisions on sale and purchase have become more detailed and clearer, which helps to reduce conflicts and disputes between participants of civil turnover.

1.1.2 Evolution of the institution of sale and purchase of real estate in Syrian law

In Syria, as in Russia, the contract of sale and purchase of real estate occupies an important place both in the law and in the life of society as a whole.

The Syrian legal system is currently mixed. Most branches of legislation are based on French law, and issues of personal status (marriage, family, inheritance) and some others are regulated by Muslim law. Arab socialist ideas have had a significant influence

[27] Constitution of the Russian Federation" (adopted by popular vote on December 12, 1993 with amendments approved during the all-Russian vote on July 1, 2020) // SPS "Consultant Plus".
[28] SchlotGauer, M.A. Supervision of residential premises as real estate objects in the Russian Federation: Diss. ... Cand. Yurid. Sciences/ M. A. Schlotgauer. - Moscow: Acad. Economics and Law, 2012. - 229 p.

on the development of the Syrian legal system. In order to understand the reasons for the development of such a system (including with regard to the regulation of the sale of real estate and residential premises), it is necessary to periodise the development of the contractual construction of the sale and purchase of real estate as an institution of civil law in Syria:

1. The first period - pre-Ottoman legislation and the Ottoman period (customary law, Islamic law and sultan's eve) (1299 - 1924);

2. The second period is the period of the French Mandate over Syria (1924-1946);

(3) The third period, from the time of Syria's independence (1946) to the present.

In order to study our topic, it is necessary to get an idea of fiqh. Fiqh (الفقه) is a Muslim doctrine on the rules of behavior (jurisprudence), as well as a set of social norms (Muslim law in the broad sense)[29].

In the Islamic era, Fiqh is divided into two parts:

1 - muamalat (معاملات) clarifies and explains to a Muslim what his behaviour towards other people should be. As the Soviet and Russian scholar Syukiyainen L.R. notes, "the majority of muamalat norms are not directly related to divine revelation and have no analogues in the system of Muslim religious rules of behaviour. Their main quality lies in their rational validity and ability to change (develop)"[30].

2 - ibadat (عبادات) defines man's duties towards Allah - the relation of the creature to the Creator.

Fiqh includes basic questions about transactions, and one of the most important topics addressed by the provisions and rules of sale and purchase.

[29] The term "Muslim law" refers to the legal system based on Islamic religious principles and norms that govern various aspects of Muslim life.

[30] Syukiyainen, L. R. Muslim law. Questions of theory and practice / L. R. Syukiyainen. - USSR Academy of Sciences, Institute of State and Law. - Moscow: Science, 1986. -S. 16. (In Russian).

Islamic law is biased towards every transaction that may not be in the best interest of the individual. Therefore, while allowing buying and selling, Shariah law backs up the sale with safeguards to achieve justice and prevent disputes. According to Shari'ah law, selling - Murabaha (المرابحة) - requires the seller to clearly state the amount of expenses incurred to acquire the goods he sells and the markup at which he sells them to another person[31].

The mark-up in Murabaha can be set by agreement, either in absolute terms or in the form of a multiplier to the costs incurred by the seller[32]. The price of the goods should also be determined by agreement[33]. If the exact costs are not fixed, it is not Murabaha but musawama (المساومة)[34].

The notion of property as an object of rights in rem was enshrined in Islamic legal doctrine. Muslim jurists paid much attention to the classification of land property, singling it out as a special group of objects and dividing it into types (state-owned land, privately owned land, abandoned land, unplugged land, etc.). A special category was made up of things that could not or should not belong to anyone and could not be the subject of civil turnover (air, sea, desert, mosques, waterways, etc.).

The Shari'ah also defined the ways in which the right of ownership arose, the most important and most common of which were inheritance and contract.

The Qur'an[35] directs people to fulfil their obligations arising from contracts. The validity of a contract can be understood as the existence of duties towards Allah - essentially moral obligations - and invalidity as their absence[36].

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[31] Murabaha is one of the forms of transactions in accordance with Shariah.
[32] Murabaha// Spiritual Directorate of Muslims of Moscow and the Central Region of Russia: [website]. – URL: https://roshalalnadzor.ru/nauchnie/murabaha/ (date of access: 17.09.2023).
[33] Sykiyainen L.R. Decree. op. P. 16.
[34] A musawamah agreement is one of the forms of transactions in Islamic financial law. This type of transaction is a form of purchase and sale in which the seller agrees to sell an item to the buyer at a price that was not disclosed at the time of the transaction. Instead, the price is negotiated later, after which the deal becomes final.
[35] Quran :(القرآن) Divine guidance for humanity, the last book revealed by God. Source of Islamic law. In Islamic countries, the Koran, along with the Sunnah) Sunnah - السُنة ,the sayings and deeds of Muhammad (serves as the basis of religious, civil and criminal legislation.
[36] Weiss, Bernard J. The Spirit of Islamic Law: [translation from English] / Bernard J. Weiss. - Moscow; St. Petersburg: Dilya, 2008. - 310 p.

The Qur'an says in this regard: "Honour Allah's covenant when you make a pledge, and do not break your oaths after confirming them, having made Allah your guarantor. Surely Allah knows all you do.!" (An-Nahl: Ayat 91)[37].

Ownership under a contract of sale, according to the concept of Islamic jurisprudence, passes to the buyer as a result of the parties' agreement on the sale. So, he becomes the owner of the thing sold as soon as the contract is concluded. Thus, in Islamic jurisprudence, the transfer of ownership is considered a condition of the contract and not a condition of its fulfilment, this solution stems from the basic principle of Islamic contract law, which prohibits "uncertainty, uncertainty" (gharar- الغرر) in transactions. "Gharar- الـغـرر" literally means "danger" in Arabic[38]. Based on this legal basis, Muhammad Qadri Pasha, in his book "A Guide to the Knowledge of the Human Condition", defined a contract of sale as "the buyer's ownership of the seller's property, provided that money is the selling price and is paid to the seller in exchange for the sold property"[39].

From the Qur'an we can derive some important provisions about agreements and obligations between people (in particular, the need for a written agreement and the need for witnesses). As the Qur'an says: "O believers! When you contract a loan for a fixed period of time, commit it to writing. Let the scribe maintain justice between the parties. The scribe should not refuse to write as Allah has taught them to write. They will write what the debtor dictates, bearing Allah in mind and not defrauding the debt. If the debtor is incompetent, weak, or unable to dictate, let their guardian dictate for them with justice. Call upon two of your men to witness. If two men cannot be found, then one man and two women of your choice will witness—so if one of the women forgets the other may remind her. The witnesses must not refuse when they are summoned. You must not be against writing ⌜contracts⌝ for a fixed period—whether the sum is small or great. This is more

[37] Holy Quran, Surah An-Nakhl: Ayat 91 // URL: https://quran-online.ru/16:91 (date of visit: 08/27/2023).
[38] Taimasov, R. Property rights: a view through the Middle East (Islamic private law) / R. Taimasov // Law. —2018.—P.84-89.//URL: https://zakon.ru/blog/2018/01/26/pravo_sobstvennosti_vzglyad_cherez_blizhnij_vostok_islamskoe_chastnoe_pravo (date of visit: 08/27/2023). (In Russian).
[39] Muhammad Kadri Pasha. A Guide to Understanding the Human Condition. – Egypt: Al-Kubra Al-Amiriya Press in Bulak, 1891. – p. 41. [in Arabic].

just ˹for you˺ in the sight of Allah, and more convenient to establish evidence and remove doubts. However, if you conduct an immediate transaction among yourselves, then there is no need for you to record it, but call upon witnesses when a deal is finalized. Let no harm come to the scribe or witnesses. If you do, then you have gravely exceeded ˹your limits˺. Be mindful of Allah, for Allah ˹is the One Who˺ teaches you. And Allah has ˹perfect˺ knowledge of all things" (Al-Baqarah: Ayat 282)[40]. In Islamic law, the conclusion and cancellation of contracts are invalid if they are contrary to the provisions of the Shariah. For example, it is impermissible to agree on the sale of a mosque or to sell property owned by a minor. Purchase and sale are permissible provided that it does not violate the provisions of the Shariah.

In the Ottoman Empire, the Land Register Law of 1861 was enacted, under which purchases and sales were made on the basis of title deeds. With the enactment of this and subsequent laws concerning land registration, farmers began to avoid registering land in their own names, although some families controlled large tracts of land in towns and villages. Those families that took advantage of this eventually acquired large tracts of land and formed a new class of large landowners[41].

Sultan Abdul-Mejid I considered the codification of Ottoman civil law as one of the main vectors of his legal policy. Therefore, he ordered jurists and scholars to compile the laws in the so-called Islamic Compendium of Norms (Majella)[42]. The journal was published in 1876. Majalla was the first attempt to codify the norms of Hanafi Islamic law in the field of civil law and civil procedure.

All issues related to sale and purchase were collected in the first chapter, called "Judicial Norms". The contract of sale and purchase of real estate was considered concluded as soon as the wills of the seller and the buyer coincided (offer and acceptance

[40] Holy Quran, Surah Al-Bakara: Ayat 282 // https://quran-online.ru/2:282 (date of visit: 12.12.2023).
[41] Zukhdi Yaken. Real estate. – Beirut: Al-Sadri Press, 2020. – 404 p. [in Arabic].
[42] Islamic collection of norms // URL: https://maqam.najah.edu/legislation/158 / (date of visit: 10/30/2021).

coincided) and the ownership was transferred immediately without the need for any additional procedure.

Thus, Article 105 of the Code of Judicial Norms defines a contract of sale as "an exchange of money for property". In addition, Article 369 stipulated that title passes to the buyer as soon as the sale is finalized. At the conclusion of the contract, the buyer must pay the agreed price and the seller must hand over the thing sold.

It is important to note that in the past, French law was applied in Syria, and after the Second World War, several codes based on Egyptian analogues and the Romanesque legal tradition were adopted. The courts have faced a divergence in the interpretation of article 1582 of the French Civil Code, which states that "A sale is a contract whereby one party undertakes to transfer a thing and the other to pay for it. A sale may be affected by a formal or private act"[43]. Some of the lawyers, following the above-mentioned principle of consensually, are of the opinion that a contract of sale does not in itself transfer ownership to the buyer, since it follows from the above article that the seller has only the obligation to transfer the thing sold.

With the declaration of Syrian independence in 1946 and the end of the French mandate, it became necessary to create a codified national civil law, which led to the adoption of the Syrian Civil Code in 1949 in its current form.

The question of combining elements of different legal systems in the law of one country is controversial. The possibility of effective legal regulation on the basis of combining elements of European legal tradition and Muslim law is denied. It is argued that, owing to the fundamental differences between them, it is impossible to harmonize their application within one legal system. The experience of the Syrian Republic shows that such an assertion is erroneous. In Syrian civil law, some relations are regulated on the basis of norms borrowed from the law of continental Europe, and some on the basis of Islamic sharia (in particular, it concerns issues of personal status, such as marriage,

[43] French Civil Code in Arabic from 03/21/1804 // URL: https://www.usj.edu.lb/publications/catalogue/fiche.htm?id=O1737 (date of visit: 10/03/2021)

divorce, inheritance). The new Syrian Civil Code was based on the most general provisions of Islamic law, in addition, some constructions were borrowed from Egyptian and French civil law.

The Syrian Civil Code (art. 1, para. 1) enshrines as a fundamental principle that the Shariah and the Urf are the sources of Syrian civil law. Urf is one of the sources of Islamic law (Fiqh), it is what has been established in the minds of people in the form of a word or action and has become recognized in a certain society. It can be referred to if it does not contradict the explicit provisions of the Qur'an or Sunnah and if it is widely accepted and recognized among people[44]. In the absence of customary rules, principles and rules of justice are to be applied.

The Syrian Civil Code does not have a special section on the sale and purchase of real estate. These relations are regulated under the general provisions on the contract of sale and purchase, which are placed in the second book of the Syrian Civil Code. Article 386 of the Syrian Civil Code establishes that the sale is a contract under which the seller is obliged to transfer to the buyer the ownership of a thing or other property right in exchange for a sum of money[45].

We may criticize this definition because it refers to the transfer of ownership as one of the consequences of a contract of sale as its performance. We therefore prefer the definition contained in the first draft of the Civil Code, which was drawn up by Professor Al-Sanhuri. The Professor defined sale and purchase as the exchange of cash for other property[46].

There are no rules in Syrian law dealing with the concept of residential premises. The Syrian legislator considers residential premises in the context of real estate in general. Real estate is divided into types: residential, non-residential, commercial, etc. The sale of real estate in Syrian law must be registered in the Real Estate Registry (Article 825 of the

[44] Khalaf Abdul Wahab. Fundamentals of Jurisprudence (Fiqh). – Cairo: Al-Da'wa, Egypt, 2007. – 232 p. [in Arabic].
[45] Civil Code of the Syrian Republic. Issued by Legislative Decree No. 84 of 08/15/1949 // URL: https://ar.wikisource.org/wiki) القانون_المدني_السوري/date of visit: 10/03/2021(
[46] Al-Sanhouri Abdel-Razzaq. Mediator in Explaining Civil Law, Part 4 Sale and Barter. – Cairo: Dar al-Nahda al-Arabiya, 1986. – 514 p. [in Arabic].

Syrian Civil Code). The ownership right is not transferred to another person if the transfer of the right is not registered in the Registry (Article 9 of the Syrian Real Estate Registration Law) .

A rational study of the history of the contract of sale of real estate is presented through the doctrine of Fiqh. Although it covers the general understanding of proper behavior, we conclude from the general provisions of Fiqh that this doctrine also regulates the provisions on the sale of things, on the conditions of its validity, which is directly related to the issue under study. Thus, in Islamic law, the invalidity of a transaction is stated in case of its contradiction with the provisions of the Shariah.

1.1.3 History of development of registers of rights to immovable property in Russia

The most important element in the regulation of sale and purchase of residential property in both Syria and Russia is the state registration of these transactions .

In order to understand the purpose of the existence of the Register of Rights to Immovable Property, it is necessary to highlight the history of the emergence and formation of such registers.

In ancient times, land and real estate were one of the main sources of replenishment of the treasury. A similar situation remains in our days. The state always keeps records of immovable objects and persons to whom they belong[47].

Let us consider how the system of state registration of rights to immovable property in Russia developed.

The times of Kievan Rus became the first period of laying the foundation of the institute of state registration of rights. The content of the property right in Kievan Rus

[47] Rogov, V.A. History of state and law in Russia in the 9th-early 20th centuries / V.A. Rogov. — Moscow: Textbook. M.: MGIU, 2000. - P 158. (In Russian).

depended on who was the subject of the right and what was considered as the object of the property right[48]. In the IX-X centuries, customary law prevailed, so contracts were concluded with the help of gestures, ritual actions or the proclamation of sacred words. Scientists emphasise that the forms of Old Russian written acts retain traces of the most ancient verbal and ritual agreements[49]. The form of such agreements was oral, they were concluded in front of witnesses, at auctions in the presence of a customs officer[50].

As a result of the development of princely legislation in 1016, a legal compendium "Yaroslav's Pravda" (Ancient Pravda) was created, which contained norms on violation of the right of ownership[51]. This act distinguished the right of ownership from the right of possession, protected private property.

The legislation of that time contained norms to simplify the procedure for granting loans. If a loan agreement was for an amount exceeding 3 roubles, it had to be concluded in front of witnesses; credit transactions between merchants were allowed for an unlimited amount and without witnesses[52].

Since the XVI century for some territories of Russia the second period of development of the institute of state registration of rights begins, as the oral form of transaction is replaced by the written confirmation of ownership of real estate. According to the law in force at that time, everything connected with land was recognised as immovable property. The right to own land was based on the "grant" of the owner, which was confirmed by a charter or the passage of time. If the holder of land did not have proper documents for the right to own it, the land was assigned to the owner[53].

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[48] Ivanov, V. M. History of state and law: textbook. allowance / V. M. Ivanov. - M., 2002. Part 1. - P.40. (In Russian).
[49] Falaleeva, I. N. Political and legal system of Ancient Rus' in the 9th–11th centuries. / I.N. Falaleeva; Ministry of Education Ros. Federation. Volgograd. state univ. - Volgograd: Publishing hou. Volgograd state University, 2003. – P. 66. (In Russian).
[50] Isaev, I.A. History of state and law of Russia: textbook / I.A. Isaev. - 3rd ed., revised. and additional - Moscow: Yurist, 2004. - P.36-45. (In Russian).
[51] Pavko A., Pavko Y. Legal and political opinion of Kievan Rus 2011. No. 20. // URL: http://www.viche.info/journal/2759/ (Date of access 11/24/2021) (In Russian).
[52] Orlenko, L.V. History of trade: Textbook. allowance / L. V. Orlenko; Ministry of Education Ros. Federation, Moscow. state University of Service. - Moscow: MGUS, 2002. - 182 p. (In Russian).
[53] Goncharenko, V.D., Rogozhin, A.Y., Svyatotsky, R.D. History of state and law: textbook. : in 2 t./qty. authors: V.D. Goncharenko, A. Y. Rogozhin, R. D. Svyatotsky and others; according to Ed. V.Ya. Tatsiya, A. I. Rogozhina, V. D. Goncharenko. 2003. T. 1. - pp. 72-73, 106. (In Russian).

Throughout the history of pre-Petrine Russia, state registration of rights to immovable property was associated with the creation of Decree (state bodies for fixing rights to immovable property), which not only made it possible to record and control transactions with immovable property, but also to receive revenue in the form of duties [54].

Registration of transactions involving land was carried out in zemstvo books[55], with obligatory public notification of local public authorities[56]. The publicity of such transactions protected the interests of the participants and confirmed their rights.

The contract of sale and pledge of an estate during the period of the Statutes of 1529-1588 was executed only in writing (signed and sealed by the parties to the transaction and witnesses of noble origin) with mandatory registration in court[57], if the price of the transaction exceeded 10 Rubles. During this period, the "serf" (notarial) form of transactions appeared[58].

In the XVII century, documentary confirmation of ownership rights became a priority in the resolution. A contractual charter was used, which came into force after it was stamped with a seal by court scribes[59]. They were professional scribes. A person aspiring to become a court scribe submitted a petition to the tsar with a request for appointment. At the same time, the whole corporation of professional scribes was collectively responsible for his actions in case his work caused damage. This institution can be considered a prototype of the modern notary[60] .

The bodies that carried out state registration of rights in Russia in the second half of the 17th century were judicial bodies[61]. Registration of the rights of ownership of

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[54] Sinelnikova, V. N. Formation and development of the institution of registration of rights to real estate in Russia / V. N. Sinelnikova // NB: Issues of law and politics. - 2014. - No. 9. - P. 51. (In Russian).
[55] Deryabina, E.S. History of state and law of Russia (IX century - February 1917): textbook / E.S. Deryabina, I.K. Soviets; Perm branch of the National Research University Higher School of Economics. - Perm, 2021. -S. 57-59. (In Russian).
[56] Statute of the Grand Duchy of Lithuania in 1566 / [from the date of 1855]. Minsk, 2003. P.121. (In Russian).
[57] Muzychenko, P. P. History of state and law of Ukraine: textbook. manual / P. P. Muzychenko. - 6th view, ext. and additional - Knowledge, 2008. // URL: https://litresp.ru/chitat/ru/%D0%9C/muzichenko-petr-pavlovich/istoriya-gosudarstva-i-prava-ukraini-ucheb-posobie (date of visit: 24.11 .2022). (In Russian).
[58] Isaev I.A. Decree. op. P.85.
[59] Isaev I.A. Decree. op. pp. 196-197.
[60] History of the formation of notaries in Russia // URL: http://notariat-penza.ru/history-of-the-formation-of-notaries-in-Russia.html (date of access: 08/03/2023).
[61] Goncharenko V.D., Decree. op. p. 121.

peasants and estates in the period from 1726 to 1729 was carried out by voivodeship chancelleries, which were the bodies of general administration in district towns[62] .

During the reign of Peter, the Great, a different procedure for registering rights to immovable property was established, which was called "serfdom" and had mainly fiscal purposes; the registration was entrusted to special officials - serf scribes. Ving disputes about land legal relations.

During the reign of Catherine II, the 1775 Provisions on the Province entrusted the civil chambers and district courts with the execution of serfdom deeds .

During the reign of Alexander II in 1866, a notarial regulation was approved, according to which real estate deeds were prepared by a junior notary, then submitted for approval to a senior notary, who entered them into his registers, which served as "quasi-land registers."

Adoption of the "Regulations on the Notarial Part" 1866 before the separation of the notaria from the courts to perform deeds and other non-judicial actions characterises the next stage in the development of the institution of state registration of rights - the period of the Russian Empire. The notary, before being appointed, took an oath and made an insurance bond in case of damage to the client[63].

It can be said that in that period there was a serious flaw in the legal regulation of real estate transactions, which consisted in the absence of a single set of data on the transfer of ownership rights, since the seller could perform the transaction in any place, including in another province, and the buyer had no opportunity to verify the fact of sale of the property to other persons in another place. Accordingly, in the legal practice of that time there were cases of sale of the same property to several persons, which sooner or later "overlapped", and, accordingly, there was a dispute about the priority of the right [64].

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[62] Isaev I.A. Decree. op. P.278.
[63]Denisyak, N. M. History of the origin, development and reform of the notary institution / N. M. Denisyak. - K., 2013. - P. 146.
[64] Sinelnikova V.N. Decree. Op. p. 51-83.

Thus, by the beginning of the XIX century in Russia a system of civil law regulation of transactions with immovable property was formed, the basis of which was the entry of information about real estate, its encumbrances and the subjects of the relevant rights in special registers[65]. However, according to G. F. Shershenevich, "the purpose of introducing the register of serf deeds (to streamline the execution of records and 'remove' many issues)" was not achieved, because "...in reality the registers of serf deeds leave much to be desired. Two circumstances contributed to this: firstly, the fact that entries in the register were not given the proper legal significance, and secondly, the lack of publicity"[66].

The development of land relations was influenced by the Stolypin Decree of 09.11.1906, which regulated the procedure for transferring communal lands into ownership. Land resources were managed on the basis of the Decree on the organisation of land surveying and the establishment of the Committee for Land Surveying Affairs, as well as provincial and district land surveying commissions. The Committee determined the terms of sale and lease of state lands, managed land affairs and loans, and heard reports of land banks[67].

After the October Revolution of 1917, the Soviet period of development of the institute of state registration of rights began. The order of regulation of relations, the object of which is real estate, in particular, land, is significantly changed. The authority to dispose of land and organise land use belonged exclusively to the state in the person of authorised bodies.

During the Soviet period, the need for state registration of immovable property was partially eliminated, as land and other means of production were nationalised

[65] Novikov, K. A. Sinelnikova, V. N. Legal Foundations of the Institute of State Registration of Rights to Real Estate / [K. A. Novikov, V. N. Sinelnikova]; edited by A. A. Ivanov; Higher School of Economics, National Research University. - Moscow: Publishing House of the Higher School of Economics, 2015. - 191 p.
[66] Shershenevich G. F. Textbook of Russian civil law: in 2 volumes / G. F. Shershenevich. – M., 2005. T.1. P.23. (In Russian).
[67] Sidelnikov S. M. Stolypin's agrarian reform: textbook. allowance / ed. E. F. Chermensky. M., 1973. P.63. (In Russian).

(established by the Decree on Land, adopted on 26 October 1917 at the Second All-Russian Congress of Soviets of Workers' and Soldiers' Deputies)[68].

The Land Decree of 1917 abolished the right of private ownership of land and prohibited the lease of land. All transactions involving land were recognised as invalid[69]. In February 1919, the "Regulations on Socialist Land Management and Measures of Transition to Socialist Farming" were adopted - all land constituted a single state fund, which was under the direct authority of the Commissariat of Commissars[70].

The October Revolution was also the occasion for reforming the notaries, which acquired the status of a state notary. During the period of backwardness and economic devastation associated with the civil war, when legal relations in civil turnover were extremely limited and there was practically no need for the notaries, there was a tendency to its complete liquidation[71].

If we talk about registration procedures, in the Soviet period both buildings and land plots were registered. Private or non-municipalised buildings were registered by means of entries in the books of registers of possessions and okladniye books, which existed before the revolution, on the basis of the Circular of the NKJ and NKVD of 29.10.1924 "On the procedure for establishing the fact of ownership of non-municipalised buildings"[72].

Prior to the adoption of the USSR Constitution of 1936, the activities of state bodies and the distribution of powers between them were accompanied by a significant

[68] Scientific communism: Dictionary / [Alexandrov V.V., Amvrosov A.A., Anufriev E.A. and others]; edited by A. M. Rumyantseva. M.: Politizdat, 1983. - 352 p. (In Russian).
[69] Piontkovsky, S. A. Civil war in Russia (1918–1921): a reader / S. Piontkovsky. - Moscow: Com. University named after Y. M. Sverdlova, 1925. - P. 61. (In Russian).
[70] Isaev I.A. Decree. op. P.578.
[71] Trofimenko, E. V. Past and present // E. V. Trofimenko / Current problems of state and law. - 2001. - Issue. 10. - pp. 231-237. (In Russian).
[72] On the procedure for establishing the fact of ownership of non-municipalized buildings: Circular of the People's Commissariat of Justice and the People's Commissariat of Internal Affairs dated October 29, 1924 No. 185/463. Weekly of Soviet Justice. 1924. No. 44. - pp. 46–47. (In Russian).

overlap of their powers, which had a negative impact on the quality of fulfilment by state bodies of their functions [73].

Issues of granting land for use were decided by the Soviets of People's Deputies of Labourers. The land use rights of citizens living in rural areas were certified by entries in the land-cord books and economic books of rural councils, and in cities and urban-type settlements - in the registry books of the executive committees of city and settlement Soviets of Workers' Deputies.

On 10 February 1985, the USSR Council of Ministers adopted Resolution No. 136 "On the Procedure for State Registration of the Housing Fund"[74], the main purpose of which was statistical registration of immovable property rather than confirmation of ownership of immovable property. According to paragraph 1 of the said Resolution, the state registration of the housing stock, irrespective of its ownership, is carried out according to the unified system for the USSR on the basis of registration and technical inventory. The main object of state registration under the said Decree was recognised as residential buildings and premises. In accordance with paragraph 3 of this Resolution, residential houses and residential premises in other buildings intended for permanent residence of citizens, as well as for use in accordance with the established procedure as service residential premises and dormitories, are subject to state registration .

An important step towards expanding the circle of real estate owners was the Law of the USSR of 06.03.1990 "On Property in the USSR", part 2 of article 7 of which stipulated that members of cooperatives established for the construction of real estate objects are the owners of the objects provided for their use, provided that they have paid their full share contributions[75]. That is, in order to become the owner of such premises, two grounds were required: membership in the co-operative and payment of the share contribution.

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[73] Petrov, G.I. Soviet administrative-legal relations / Leningrad. state University named after A. A. Zhdanova. - Leningrad: Publishing house Leningr. University, 1972. - 157 p. (In Russian).
[74] Resolution of the Council of Ministers of the USSR of 10.02.1985 N 136 "On the procedure for state registration of housing stock" // SPS "Consultant Plus."
[75] Law of the USSR of 6 March 1990 N 1305-I "On Property in the USSR" // SPS “ConsultantPlus”.

Federal Law No. 122-FZ of 21 July 1997 "On State Registration of Rights to Immovable Property and Transactions with It" established that state registration of rights to immovable property and transactions with it is carried out throughout the Russian Federation according to the system of records of rights to each object of immovable property in the Unified State Register of Rights to Immovable Property and Transactions with It (Unified State Register of Rights - USRR) established by law. This law was replaced by the Law on Registration of Real Estate in the Russian Federation), according to which the transfer of rights to immovable property, including residential premises, is subject to mandatory registration in the Unified State Register of Real Estate (USRN). At the same time, since 1 March 2013, Russia has cancelled, with a few exceptions, the registration of real estate sale and purchase agreements (clause 9 of Article 2 of Federal Law No. 302-FZ dated 30.12.2013) .

From 1 March 2023, federal state register will provide extracts from the Unified State Register of Real Estate only to owners and certain third parties specified in the law.

1.1.4 History of the development of immovable property registries in Syria

The system of registering immovable property rights in Syria has gone through three main stages. These stages are the same as in the development of the institution of real estate in general.

To begin with the system of real estate registration applied by the Ottomans, which was based on the provisions of Islamic law, especially the Hanafi school.

As mentioned above, the Holy Quran establishes the necessity of concluding a transaction in writing, in addition to the presence of witnesses at the conclusion [76].

During the Ottoman era, which was characterised by the application of the Shariah, there was initially no need for a special system of registration of rights to

[76] Holy Quran (Russian Quran), Surah Cow: Ayat 282.

immovable property due to the absence of real estate transactions at that time, most of the land belonged to the tribe and was given for public use, such as grazing[77].

After strengthening the role of real estate in creating profit for the state and individuals, it became necessary to create a system of real estate registration with the introduction of restrictions on transactions related to real estate. Thus, in the Ottoman Empire, real estate transactions were formalised in written documents called huja. These were created in the presence of two witnesses, and the title holder retained this document to prove his ownership when necessary. This mechanism evolved over time into a process of confirming real estate transactions by recording and registering land in records that are documented and sealed with the official seal of the sultan to give the record absolute evidentiary value[78].

The recording of land rights itself has a long history. The land tenure system in the Ottoman era was based on Islamic principles, which required payment of land tax from the original owners .

The Ottoman Empire, by issuing the Land Law in 1858, sought to tighten state control over land by recording the names of owners.

The land registry of the Ottoman Empire is one of the oldest documents. It contained information about the area of the property, the date of transfer to the new owner and its monetary value, as well as other information related to the location of the property.

The Ottomans divided the lands into private property lands, throne lands, Beylik lands (state lands), dead lands, Al-Mahzan reserve lands, fenced lands or Al-Waqif lands. (Note that this was specified in the current Syrian Civil Code in Article 86).

[77] Zodur Engi Hind. Protection and proof of legal actions within the real estate registration system. dis. Ph.D. legal Sci. Algeria, 2016. – 311 p. [in Arabic].
[78] Korlik Khoury Youssef. Registration of real estate in Algerian law and comparative law. – 2nd ed., Algeria, 2015. – 512 p. [in Arabic].

Private lands are lands owned by private individuals who have the ability to dispose of them through sale, donation, investment in accordance with the provisions of the Islamic Shariah.

Throne lands are the lands of families that share common assets and values in one area in the form of clan assembly [79]. Researcher Weiss Fathi confirms in his paper "Real Estate Registration in Algerian Law and Comparative Arab Law" that these lands were inalienable, so the Ottoman Empire did not deprive these clans of their lands. Given that they served the interests of these tribes and met their needs[80].

Beylik lands (state lands) were properties held by the Ottoman Empire that the Turks acquired by confiscation, purchase, or seizure when they were unoccupied or had no owners or heirs.

Magzan land is land granted by the Ottoman state to citizens who were conscripted into the army to use and benefit from as a reward for their loyalty.

Dead land was land that was outside the cities, about which it was unknown who was its owner, whether this land was exploited for farming or grazing, accordingly, it was included in the property of the state[81]. In his work "Studies on Real Estate Laws", Nasir al-Din Saiduni confirms that these lands do not pass from state ownership to private ownership except by reviving them, i.e. their exploitation, cultivation and turning them into private lands by the ruler (by the decision of the Sultan)[82].

Waqouf lands are lands designated for religious or charitable purposes. These lands are forbidden to be owned by anyone (e.g. mosques and religious places)[83]. It is noted that during Ottoman rule, the ownership of real estate, as well as the regulation of

[79] Hamdi Muhammad Lowen. Loris real estate registration system and its application. – Algeria: Dar Huma, 2015. – 460 p. [in Arabic].
[80] Wes Fathi. Registration of real estate in Algerian law and comparative Arab law. – Algeria: Houma Publishing House, 2015. – C 228. [in Arabic].
[81] Imam Alaeddin Abi Bakr bin Masud al-Hanafi. Bada al-Sanai - the order of laws. – Part VI, second edition., Beirut: Scientific Book Publishing House, 1982. – 492 p. // URL: https://waqfeya.net/book.php?bid=5002 [in Arabic].
[82] Saedoni Naseredin. Study of real estate legislation. – Algeria: National Publishing Corporation, 1986. – 367 p. [in Arabic].
[83] Mahmoud Zaki Shams. Current legislation on real estate. – Damascus: Al-Noor Printing Corporation, 2000. P. 187. [in Arabic].

relations concerning it, was stable due to the application of the provisions of Islamic law, and surveying and organisational work was carried out during the reign of Sultan Suleiman the Magnificent, who appointed a committee to organise and define the lands. After the committee completed its work, it presented the owners with bonds and documents proving their ownership.

During the French Mandate period, the French colonisers first tried to subject the regime of Syrian lands to the norms of French law. But because of the real estate situation left by the Ottomans, who applied the provisions of Islamic law, it was difficult to impose French law, which was an obstacle for the French administration, and it soon resorted to enacting laws that conformed to the status quo[84]. An attempt was made to harmonise the status of the lands, including the Awqaf lands, but the reform brought few changes. The most important of these laws were Decree No. 3339[85] of 11.12.1930 regulating the ownership of immovable property and rights in rem over immovable property, the Syrian Real Estate Registration Law[86].

At that time in Syria, real estate registration is carried out by means of Land Registers. According to Article 1 of the Syrian Real Estate Registry Law: "The Real Estate Registry is a set of documents that describe each property, determine its legal status, establish the rights arising from and to it, and show the transactions and changes related to it". Each land plot is assigned a special column in the Register .

Thus, in accordance with Article 825 /1 of the Civil Code of Syria, in order to conclude a contract for the sale and purchase of real estate, it is necessary for the property to be registered in the Register and for the right holders to express their will to alienate the property .

[84] Shams ad-Din Muhammad. Real estate registration system in Lebanon and Syria. – Damascus: Dar ar-Raja' books, 1987. – 440 p. [in Arabic].
[85] System of real estate and immovable property rights. Resolution of the French Commissioner No. 3339 dated: 11/12/1930. // URL: http://77.42.251.205/LawView.aspx?opt=view&LawID=177709 (accessed: 03/11/2022).
[86] Law of Syria No. 188 of March 15, 1926, (as amended by Decree No. 48 of September 10, 2008). “On Real Estate Registration in Syria” (Real Estate Cadastre) // URL: https://www.parliament.gov.sy/arabic/index.php?node=201&nid=16256 (date of visit: 03/11/2022)

The register contains the following information :

-information about the owner of the immovable property;

- necessary information about the immovable property, the holders of rights to it, transactions with the immovable property and references to the documents on the basis of which the rights were acquired[87].

The modern legal regulation of state registration of rights is set out in the Law on Real Estate Registration of Syria. According to this law, the real estate registry is defined as "a state body that carries out the registration of documents that contain detailed characteristics of each object of registered real estate, the status of rights to it and arising from it, and contains information on transactions with the real estate in question". The law defines the basic principles of registration: publicity, evidentiary value and permanence. According to the first, all decisions and judgements establishing, modifying and terminating ownership and other rights in rem, regardless of whether they are original or derivative, may be effective against other persons only from the date of their registration in the Real Estate Register (Article 9 of the Syrian Real Estate Registration Law).

Every registered right is an argument against all other unregistered rights. Accordingly, no one can invoke a right that is not declared in the register. The principle of evidentiary value means that the Real Estate Register is the only means of defending rights against any third parties. The information recorded therein is presumed and is the only evidence of ownership (Article 8 of the Syrian Real Estate Registration Act). Finally, the principle of permanence or non-applicability of the statute of limitations is that real estate and rights thereto recorded in the Registry are not subject to the statute of limitations (article 19 of the Syrian Real Estate Registration Law)[88].

[87] Sherba Amal. Civil law - purchase and sale agreement. – Virtual University in 2018. – 230 p. [in Arabic].
[88] Aldgem B. Legal methods of protecting property rights to real estate during the Syrian crisis / B. I. Aldgem // Bulletin of the Russian State University for the Humanities. Series "Economics. Management. Law". - 2022. - No. 3. -S. 116–132. (In Russian).

According to lawyer Mahmoud Zaki Shams, mentioned in his paper "Current Real Estate Law": "The real estate registry system in Syria relied on the absolute evidentiary value of the records and data of the real estate registry in accordance with Article 13 of the Syrian Real Estate Registration Law, which established the legal classification of real estate through the real estate registry"[89].

It can be concluded that the French authorities gradually introduced the real estate registration system in Syria, and the process of transition from the Islamic real estate system to the real estate registration system was a complex one. The French authorities relied on the real estate registration system to register all legal actions with real estate (transfer of ownership, mortgage, seizure, etc.). A real estate register was opened in each town, with one or more pages for each property, in which all data relating to the property (including what happens to it in terms of transfer of ownership or titling) were entered.

As it follows from the above, in Syria only the transfer of rights is registered in the Registry. The contract itself is registered with the financial authorities to determine the type of contract and to assess the tax payable.

1.1.5 Conclusions

To summarise, the following can be noted.

1. On the basis of the study of archival sources, judicial practice and special literature the author's periodisation of the evolution of the institute of purchase and sale of real estate in the Russian law, which includes 4 stages, namely: the first - (initial from ancient times to the beginning of the imperial period (X - XVII-XVIII cc.) - the period of formation of formalisation of the procedure for establishing proprietary rights; the second - imperial (1721-1917) - the period of regulation of the turnover, for the most part, of movable property; the third - Soviet legislation (1917-1991) - the period of dominant

[89] Mahmoud Zaki Shams. Decree. op. P. 280.

property rights; the second - imperial (1721-1917) - the period of regulation of the turnover, for the most part, of movable property; the third - Soviet legislation (1917-1991) - the period of dominant property rights.) - the period of regulation of the turnover, for the most part, of movable property; the third - Soviet legislation (1917-1991) - the period of domination of the command-administrative economic system and the corresponding restriction of the turnover of purchase and sale of real estate; the fourth - the newest time (from 1991 to the present day).

The evolution of the institution of sale and purchase of real estate in Syrian law should be considered through the prism of division into three main stages: pre-Ottoman legislation; the period of the French mandate over Syria; the independence of Syria and the present.

2. The history of the development of the turnover of non-residential property explains the current shortcomings in the regulation of non-residential property and rights to it. In particular, the study clearly shows the reasons why the Russian legal order has not yet adopted the promising German concept of a single object of non-residential property. To date, the principle of unity of fate of land plots and real estate objects firmly connected with them, which is singled out in the Land Code as one of the principles of land legislation, is in force in the Russian Federation[90]. The rationale for this approach, in our opinion, lies precisely in the political history of the institution of real estate turnover. Despite the fact that the Constitution of the Russian Federation proclaimed that citizens and their associations can have private ownership of land (Art. 36), the chapter of the Civil Code of the Russian Federation regulating land legal relations (Chapter 17) did not come into force when the Civil Code of the Russian Federation was adopted. Its effect was suspended until the adoption of the Russian Federation Land Code. This happened because the representatives of the Communist Party of the Russian Federation (CPRF), which at that time had a majority in the State Duma of the Russian Federation,

[90] Kozhokar I.P., Ustyukova V.V. The principle of unity of fate of a land plot and real estate on it: its specification and relationship with the concept of a single object / I.P. Kozhokar // Proceedings of the Institute of State and Law of the RAS. 2021. Vol. 16. No. 2. Pp. 69–88.

were categorically opposed to the recognition of private ownership of land in the 1990s in Russia there was a turnover of buildings and structures built on public land. Therefore, there was nothing left but to de jure enshrine in the Civil Code of the Russian Federation the norm that a building and a structure are independent immovable things after the CP Russian Federation influence began to decline, the land was put into circulation. However, the influence of the CP Russian Federation was enough to make it impossible to switch to the concept of a single real estate object for decades. This shows the direct influence of the political situation in the state both on the interpretation of the very concept of "real estate" and on its turnover. Moreover, it is obvious that even through direct legalisation of a certain idea (for example, in the case of fixing in the Civil Code of the Russian Federation that land and buildings on it are a single object) will not give legal effect, due to the fact that de facto "launched" a long period in which the land plot and buildings on it belong to different owners, and to overcome it (attempts of which are certainly visible based on the provisions of the Land Code of the Russian Federation, for example, the central provision in paragraph 4 of Article 35 of the Land Code of the Russian Federation, and so on) will require, it seems, more than one decade.

After the CP Russian Federation influence began to decline, the land was put into circulation. However, the influence of the CP Russian Federation was enough to make it impossible to switch to the concept of a single real estate object for decades. This shows the direct influence of the political situation in the state both on the interpretation of the very concept of "real estate" and on its turnover. Moreover, it is obvious that even through direct legalisation of a certain idea (for example, in the case of fixing in the Civil Code of the Russian Federation that land and buildings on it are a single object) will not give legal effect, due to the fact that de facto "launched" a long period in which the land plot and buildings on it belong to different owners, and to overcome it (attempts of which are certainly visible based on the provisions of the Land Code of the Russian Federation, for example, the central provision in paragraph 4 of Article 35 of the Land Code of the Russian Federation, and so on) will require, it seems, more than one decade.

3. The analysis of the historical material has shown the similarities and fundamental differences of the contract of sale and purchase of residential premises in Syria and Russia .

-General: the historical roots of most branches of Syrian law, including civil law, go back to ancient Roman law and are connected with the Roman legal heritage, which brings it closer to the civil law of Russia.

- Principal differences: at the moment, given the Ottoman influence as well as the French influence, Syrian civil law is a mixed system. Accordingly, the sale and purchase of immovable property is governed by both secular law (Syrian Civil Code) and Muslim law in cases that are not regulated by law.

The interaction between the European and Muslim legal orders consists in the implementation of certain Islamic norms into the existing positive law. This can be seen in the Syrian legislation, where Shariah norms have been implemented in the Personal Status Law, regulating the issues of marriage, divorce and inheritance.

1.2 System of legal acts regulating the purchase and sale of residential premises under the legislation of Russia and Syria

International norms define the key requirements for the protection of the rights of civil parties and basic human rights. The right to housing is recognized as an important guarantee of a decent standard of living[91]. Protocol 1 to the Convention for the Protection of Human Rights obliges respect for the right to property and prohibits unjustified seizure of property [92] .

[91] Universal Declaration of Human Rights Adopted by the UN General Assembly on December 10, 1948 // Rossiyskaya Gazeta, 1998.
[92] Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms ETS No. 009 of March 20, 1952 // Bulletin of International Treaties, March 2001. No. 3.

In Russia, the basis for legal regulation of the contract of sale of residential premises is the Constitution of the Russian Federation, which establishes guarantees of the right to housing (Article 25, Article 40)

The Constitutional Court of the Russian Federation has stated that Russia as a social state protects the rights of citizens to housing and creates conditions for ensuring a decent life and the rights of citizens, including the right to housing[93]. For example, by virtue of Article 446 of the Code of Civil Procedure of the Russian Federation, the only residential property of a debtor may not be seized in the event of foreclosure if it is not the subject of a mortgage. The latter most of all illustrates the social essence of regulation of civil turnover of residential objects[94].

In accordance with Art. 71 and Art. 72 of the Constitution of the Russian Federation, civil legislation is referred to the jurisdiction of the Russian Federation, and housing legislation - to the joint jurisdiction of the Russian Federation and its subjects[95]. In this regard, special attention is required to distinguish civil law relations from housing relations. Norms of civil law can be included in various laws, but these can only be federal laws .

The main normative legal act regulating the procedure for termination and acquisition of ownership of real estate is the Civil Code of the Russian FederationIt establishes requirements to the form and essential conditions of the contract of sale and purchase of real estate, rules of invalidity of transactions, rights of a bona fide purchaser.

The issues of ownership of residential premises and the procedure for their realisation are subject to the regulation of the Housing Code of the Russian Federation (Art. 30 and others), while relations regarding the transfer of ownership of residential

[93] Resolution of the Constitutional Court of the Russian Federation dated March 24, 2015 No. 5-P “On the case of verifying the constitutionality of Article 19 of the Federal Law “On the Entry into Force of the Housing Code of the Russian Federation” in connection with the complaint of citizen A.M. Bogatyr Eva" // Collection of legislation of the Russian Federation. 2015. No. 14. P. 2197.

[94] Kerimova, A. V. Legal regulation of contracts for the sale and purchase of residential premises / A. V. Kerimova // Enigma. —2021. —No. 29-1. — P. 38-41. (In Russian).

[95] Ruchkin, G.F. Housing Law: a textbook for students of universities students in the direction of "Jurisprudence" / [Ruchkina G. F., Baranov V.A., Vengerovsky E. L., etc.]; Ed. Dr. sciences, prof. G. F. Rushkina; FGOBU "Financial University under the Government of the Russian Federation". - Moscow: Justitia, 2017. - P. 370.

buildings are regulated by some norms of the Land Code of the Russian Federation (for example, the norms of Art. 35) .

In addition, the norms regulating the turnover of residential premises are also included in the Law No. 218-FZ "On State Registration of Real Estate". The law enforcement practice of the Constitutional Court of the Russian Federation (Supreme Court of the Russian Federation), courts of cassation and appeal instances is of no small importance .

The specificity of the Syrian legislation in contrast to the legislation of continental countries (in particular, Russia) is that in Syria the sources of Islamic law have a special role .

We see the influence of the principles of Islamic law on civil law, in particular, in the field of contracts and legal actions.

In the early nineteenth century, after the French mandate over Syria, the law of the French Republic (Romano-Germanic legal family) replaced Islamic law, with the exception of provisions related to the personal status of Syrian citizens (marital status, private life, etc.). These matters and the rules for resolving disputes related to them remained within the native Syrian tradition of rule-making, i.e. Islamic law. At the same time, Islamic law in general remained isolated from the regulation of the most important spheres of state life, politics and economy during the colonial period.

After Syrian independence, the Syrian legislature issued many laws as a national response to independence from the laws of the French Mandate period. However, French law and legal tradition continued to be essential in the organisation of the political life of society, including in the area of civil law, which is not surprising. After all, it is the French Civil Code (Code Napoleon) of 1804 that is considered the benchmark and model for civil law regulation in many Romano-Germanic countries.

Then, in the next step, the Syrian legislator took the initiative to create find and systematise the entrenched rulings inspired by Islamic jurisprudence. The study of Islamic

law became a necessity because of its scholarly and practical importance. The judge is required not only to interpret the civil law but also to fill the gaps in it by referring to the provisions of Shariah as the material source of law. The influence of Islamic law is clearly evident in the 2012 Syrian Constitution, as it took into account the fact that the majority of the population is Muslim Arabs and that Islam plays a prominent role in the public and private life of the country. Therefore, article 3 of the Constitution states that the Religion of the President of the Republic is Islam and that the Muslim Doctrine is the main source of legislation[96]. The Syrian legislator was clearly influenced by the principles of Islamic law, but this influence was not direct, but, among other things, through Egyptian civil law. In Egypt, the Civil Code was adopted in 1875. It is obvious that Egyptian law was influenced by French law much earlier than Syrian law and adapted it to the norms of Islamic law.

Earlier constitutional acts in force in Syria (the Ottoman Constitution of 1516-1918 and the French Mandate over Syria of 1920-1946) did not contain provisions relating to the right to housing. For the first time in the history of Syrian constitutional legislation, the right of citizens to housing was provided for in the Syrian Constitution of 1961. The right to housing was understood solely as a positive right proclaimed by the will of the State and not as a natural right.

At present, the Constitution is the main and basic regulator of all relations, including civil relations relating to the sale and purchase of real estate.

It should be noted that Syria does not have a housing code. Housing relations are regulated by separate laws and presidential decrees. For example, Presidential Decree No. 683 of 1961 on the establishment of the State Housing Institution, which is under the control of the Ministry of Housing. The decree defines the working mechanisms of this institution, which since 1975 has been subject to the Law on State Institutions of an

[96] Constitution of the Syrian Arab Republic of February 26, 2012, // URL: https://www.constituteproject.org/constitution/Syria_2012.pdf?lang=ar (date of visit: 07/21/2023). (In Arabic).

Economic Nature. It should be noted that the institution did not play an active role at that time[97].

The mass of norms on the sale and purchase of residential premises is concentrated in the Civil Code of Syria of 18.05.1949. The norms of Article 84 define real estate as "everything that is stable in its space, fixed in it and cannot be moved without damage (land and buildings)"[98]. This definition is based on the definition of Maliki and Shafi'i jurists[99]. Law No. 186 of 1926 defines real estate as: "certain parcels of land surface of the same legal type, located within a closed line, with plants on it which are additional parts thereof, and owned or disposed of by one owner or several co-owners - common participation"[100].

This law, which regulates the processes of identification and liberalisation of real estate, specifies how to identify real estate, movable and immovable property through technical works carried out by research teams headed by a qualified engineer.

The symbiosis between the European legal tradition and Muslim law has been fully manifested in Syrian civil law. In the process of globalisation, the Syrian Republic has adopted many norms of European law while maintaining the supremacy of Sharia and Muslim law. Thus, contractual and property relations are almost completely regulated by the norms of European civil laws, which does not prevent Muslim legislators and public associations (for example, the Accounting and Auditing Organisation for Islamic financial institutions) from developing the concept of "Islamic economy" and the corresponding constructions and institutions based on the norms of Islamic law (for example, Murabahaالمرابحة, Modaraba المضاربة)[101].

[97] CM. Aldgem B. Constitutional right to housing in the Syrian Arab Republic. SCIENCE AND TECHNOLOGY RESEARCH: collection of articles of the IV International Scientific and Practical Conference (May 12, 2022). – Petrozavodsk: ICNP “New Science”, 2022 – P. 142 -147. (In Russian).
[98]Civil Code of the Syrian Arab Republic 05/18/1949. // URL: http://www.wipo.int/wipolex/ar/text.jsp?file_id=243234 (accessed 10/30/2021). (In Arabic).
[99] Alamira Ahmed bin Abdul Aziz. Real estate problems - legal research. dis. ...cand. Law, Riyadh, Saudi Arabia: Imam Muhammad bin Saud Islamic University, 2010, 608 p. (In Arabic).
[100] Law No. 186 of 1926 on the regulation of the processes of identification and liberalization of real estate in Syria (In Arabic).
[101] Taimasov, R. Property rights: a view through the Middle East (Islamic private law) / R. Taimasov // Law. — 2018.— P.84-89. //URL:

The availability in the Russian Federation of a unified codified act - the Housing Code of the Russian Federation, seems more promising both from the position of legal consciousness of citizens and from the point of view of convenience and predictability of law enforcement practice. Codification seems to be the most correct solution, because already in Article 1 of the Housing Code of the Russian Federation the basic principles of housing legislation are regulated. Accordingly, the fundamental provisions that are guaranteed by the state and through the prism of which the courts make judgements when housing disputes arise, become immediately obvious. In this regard, it seems rational to adopt a similar codified act in Syria, which will streamline the provisions of housing legislation, ensure consistency and compactness of norms, free the legal system from outdated and "unjustified" norms, and ensure maximum completeness of regulation.

https://zakon.ru/blog/2018/01/26/pravo_sobstvennosti_vzglyad_cherez_blizhnij_vostok_islamskoe_chastnoe_pravo (date of visit: 08/27/2023). (In Russian).

CHAPTER 2. Sale and purchase of residential premises as a type of civil law contract

2.1 Residential premises as an object of civil rights

The concept of dwelling has different definitions in different sciences[102]. In addition, housing in the sociological context is a factor mediating housing inequality as an indicator of social stratification in a given area[103].

The concept of dwelling from the point of view of psychology is connected with the idea of human well-being and mental balance[104].

In economic terms, housing is a private good that depends directly on the production processes[105], creation and maintenance of housing objects[106]. In this regard, housing objects are a commodity[107].

A.S. Solopaev emphasizes that the category of "housing" is an important concept, widely used both in national legislation and in international legal norms[108]. In particular, according to the provisions of Article 25 of the Universal Declaration of Human Rights of 1948[109], housing (along with food, medical care and social services) should correspond to the level that is necessary to maintain the health and well-being of a person and his family. This is a prerequisite for the human right to a decent standard of living.

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[102] Ananyev, A. G. On the issue of the category "housing" as an object of law / A. G. Ananyev // Scientific works of the Moscow University named after S. Yu. Witte. Volume Issue 7. - Moscow: Moscow University named after S. Yu. Witte, 2020. - P. 5-15.

[103] Starikova, M. M. Housing inequality in cities as a form of social stratification: criteria for identifying housing classes and strata / M. M. Starikova // Urbanism. - 2018. - No. 3. - P. 72-98. (In Russian).

[104] Panyukova, Yu. G., Panina, E.N., Bolaeva, G.B. Problems and prospects for studying the phenomenon of well-being in Russian psychology / Yu. G. Panyukova, E. N. Panina, G. B. Bolaeva // Society: sociology, psychology, pedagogy. —2017. - No. 12. - P. 58-62. (In Russian).

[105] Maksimova, E. V. Housing as an object of economic analysis / E. V. Maksimova // Economic journal. - 2005. - No. 9. - P. 43. (In Russian).

[106] Kosareva, N. B., Polidi, T. D., Puzanov, A. S. Economic urbanization / N. B. Kosareva., A. S. Puzanov., T.D. Polidi. - M.: Foundation "Institute of Urban Economics", 2018. - 418 p. (In Russian).

[107] Zainullina, T. G. Housing as an economic category / T. G. Zainullina // Economic space. — 2007. —№4-3. — P. 143. (In Russian).

[108] Solopaev, A. S. Concept and characteristics of residential premises / A. S. Solopaev // Bulletin of the Udmurt University. Series "Economics and Law". —2008. - No. 1. - P. 155. (In Russian).

[109] Universal Declaration of Human Rights (adopted by resolution 217 A (III) of December 10, 1948 by the UN General Assembly; status - recommendations) // Rossiyskaya Gazeta. 1995. No. 67. (In Russian).

From the legal point of view, the concept of "residential premises" has different aspects[110]. As V.V. Dolinskaya rightly points out, the terms "dwelling" and "housing" are not equivalent concept[111]s, although sometimes they are synonymous, for example, in connection with the contract of lease of residential premises.

The concept of "home" is used in the Constitution of the Russian Federation (Art. 40), in the Convention for the Protection of Human Rights and Fundamental Freedoms (concluded in Rome on 04.11.1950) with "Protocol No. 4 on ensuring certain rights and freedoms other than those already included in the Convention and its first Protocol" (signed in Strasbourg on 16.09.1963) and "Protocol No. 7" (signed in Strasbourg on 22.11.1984). (signed in Strasbourg on 22.11.1984), ratified by Russia by Federal Law No. 54-FZ of 30.03.1998 "On Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols".

As A.B. Khaldeyev correctly notes, "in the practice of the European Court of Human Rights, in addition to residential and non-residential premises, the mobile caravans of Gypsies are recognised as dwellings, traditionally used by them in accordance with their way of life, and the vehicles of journalists connected with their private life by the nature of their work"[112].

The integrated concept of residential premises in the Russian legislation is enshrined in part 2 of article 15 of the Housing Code of the Russian Federation (the definition of which is almost identical to the definition used in article 673 of the Civil Code of the Russian Federation: "it is an isolated premise, which is immovable property and is suitable for permanent residence of citizens.

[110] Sedugin, P. I. Housing law: a textbook for universities / P. I. Sedugin. - M.: INFRA-M - NORM, 1997. - p.46. (In Russian).
[111] Dolinskaya, V.V. Essential characteristics of residential premises in the legislation of the CIS countries / V.V. Dolinskaya // M.: Bulletin of the University named after O.E. Kutafina. — 2019. — No. 2 (54). — P. 132. (In Russian).
[112] Khaldeev, A. V. On the concept of “dwelling” in the practice of the European Court of Human Rights / A. V. Khaldeev // Housing Law. - 2007. - No. 6. - P. 9. (In Russian).

Due to the fact that the concept in question is well studied in the Russian doctrine, it will be used in the comparative legal analysis of the norms on housing in the Russian and Syrian legislation.

In Syrian legislation there is no definition of residential real estate (residential house, premises, etc.), but there is a definition of real estate in general.

A justified provision of the Syrian Civil Code is the approach to the understanding of the concept of "real estate", which means all objects that cannot be moved in space (Article 84 of the Syrian Civil Code). In Russian law, despite compliance with this approach as a general rule, there are exceptions, in particular, we are talking about the so-called "real estate by virtue of law" or "artificial real estate". For example, by virtue of Article 130 of the Civil Code of the Russian Federation, real estate also includes, among other things, air and sea vessels, inland waterway vessels, i.e. objects that are designed to move in space. This approach of the Russian legislator seems to be at least inconsistent, since there is no other purpose for recognising these things as immovable other than to extend mandatory state registration to such objects. At the same time, it is possible to extend registration to these objects by simply indicating in a legal norm the corresponding obligation, as was done in the case of motor vehicles. There is no need to recognise these things as immovable.

The concept of a "single real estate object", which is currently absent in Russian law, is promising in Syrian law. Syria applies the concept of a "single real estate object" borrowed from Roman law: if a building or structure stands on a land plot, the real estate object itself will be the land plot, and the building or structure - its constituent parts (Articles 994 - 997 of the Syrian Civil Code)[113]. This approach puts the Syrian law in line with other European jurisdictions, in which the immovable thing is considered to be the land plot and the building is considered as its constituent part. In our opinion, in Syrian law, the concept of a single real estate object has a number of advantages that contribute to the efficiency of real estate management and risk reduction, as it simplifies the

[113] Siwar Mohamed Wahid El Din. Explanation of civil law - real rights. – Damascus: Publications of the University of Damascus, 2015. – 422 p. (In Arabic).

procedures for registration and management of real estate. But one of the most important defects of this system that owners may face is in case of seizure (foreclosure), as there is a possibility of losing the entire property. Thus, it is clear that both the Syrian and Russian models of real estate regulation have both advantages and disadvantages. It is most advisable to adopt the above and thereby enrich both legal systems with each other's advantages and thereby get rid of the existing deficiencies.

It should be noted that Article 16 of the Housing and Communal Code of the Russian Federation provides that residential premises may exist in the form of a residential house, a part of a residential house, a flat, a part of a flat or a room. Residential premises must comply with the established sanitary norms and legal requirements.

The main difference between residential premises and non-residential premises is its suitability for permanent residence (clause 2 of article 15 of the Housing and Utilities Code of the Russian Federation). This, according to A.V. Khaldeyev, means the possibility of living in the premises during all seasons of the year, so "dacha capital constructions that are not designed for year-round residence, as well as premises that do not provide safe sanitary and epidemiological living conditions, regardless of the duration of residence in them during the year, cannot be recognised as residential premises"[114].

B. Kamyshansky gave the following definition of residential premises: "Residential premises are premises completed by construction and accepted in the prescribed manner into operation, subject to cadastral and technical registration (inventory)"[115].

"A residential building is an independent object (a type of dwelling) with its own characteristics and is divided into two basic types: individual and multi-apartment, which correlates with the provisions of subparagraphs. 9 ч. 5 of Article 8 of the Law on Registration of Real Estate in the Russian Federation"[116]. In general terms, any residential

[114] Khaldeev, A. V. On the legal model of residential premises in the housing complex of the Russian Federation / A. V. Khaldeev // Journal of Russian Law. - 2006. - No. 8. — P. 11. (In Russian).
[115] Kamyshansky, V. P. Property rights: limits and limitations = Law of property: scope and limitations: Law of property: scope and limitations / V. P. Kamyshansky. - Moscow: UNITY: Law and Law, 2000. - P. 266. (In Russian).
[116] Letter of federal state register dated March 11, 2020 No. 14-01967-GE/20 and Letter of the Ministry of Economic Development of Russia dated January 30, 2020 No. D23i-2702. (In Russian).

building is an independent object that has its own characteristics and is subdivided into individual and multi-apartment types[117]. Any residential building is a free-standing structure consisting of rooms and other premises designed to meet the domestic and other needs of individuals living in it. (part 2 of article 16 of the Housing and Construction Code of the Russian Federation).

A room is the minimum structural unit of a dwelling intended for living. It can be a part of a residential building or a flat[118]. It is clear that a dwelling as an object of law must be suitable for citizens to live in .

So, in Syria as well as in Russia, residential real estate, acting as an object of the contract of sale, must be suitable for citizens to live in. This means that the residential property must comply with the applicable sanitary and technical norms[119] and regulations and other requirements of the Syrian legislation, as well as be safe and comfortable. But the relevant norms are not part of either civil or housing legislation. They are part of the urban planning legislation, in particular placed in Law No. 4 of 2005, which regulates construction in Syria[120].

From a legal point of view, residential properties in Syria must meet the fire safety requirements of the population by implementing the necessary prevention and protection measures[121]. The existence of technical, sanitary, engineering and other requirements for housing is confirmed and verified through specialised municipal commissions formed by the competent authorities to carry out inspection and verification work.

In Syria, the procedure for recognising immovable property as a residential building is determined by the Urban Planning Authority (hereinafter referred to as the Urban Planning Authority) in each city[122], in accordance with Law No. 4 of 2005. It is the

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[117] Ananyev, A. G. Decree. Op. pp. 5-15.
[118] There too
[119] Legislative Decree No. 82 of 2010 "On the definition of urban communities and lands and the conditions for licensing construction on plots and real estate" [Electronic resource] // URL: https://saraia-sy.com/PublicFiles/File/saraia-82-2018.pdf (In Arabic).
[120] Building Regulations issued No. 4 of 2005 and amendments thereto. // URL: http://www.mola.gov.sy/upload/Building%20System%202005.pdf (accessed 02/21/2022). (In Arabic).
[121] Tanago Samir Abdel Sayed. Contract of sale. – Alexandria: Al-Wafa Law Library, 2009. – 485 p. (In Arabic).
[122] Circular of the Council of Ministers of Syria No. 271/15 of 2017 to public authorities on compliance with construction requirements and conditions to be met in cases of licensing of construction and completion of its construction [Electronic

Urban Planning Authority that is authorised to issue building permits. Facilities are recognised as residential if they are located in the designated urban planning zones and comply with the statutory health and sanitation regulations and other requirements of Syrian law, as well as being safe[123]. It is noted that the Syrian legislator did not stipulate that a residential property must be suitable for permanent residence in order to be recognised as a residential property. The Civil Administration[124] in each city may declare and recognise that a dwelling is uninhabitable for reasons and in a manner that it determines, whether they are reasons that pose a danger to the health of citizens or technical reasons. In Syria, when carrying out the procedure of declaring a dwelling uninhabitable/uninhabitable, an inspection of the dwelling is carried out to assess its condition. The relevant inspection is carried out in cases defined by law, usually upon complaint by the population of the neighbourhood or due to damage to the neighbourhood. The location of the building is determined and a specialised commission of experts is formed by the Department of Urban Development and Planning to assess the condition of the property. Upon completion of its work, the commission draws up an act in which it explains the condition of the dwelling and its suitability for habitation. The commission also indicates all information about non-compliance with the requirements established by law. However, in practice in Syria this happens in an unorganised manner and quite rarely, on high-profile complaints.

Therefore, in Syria, it seems important to form real committees (which are established by the GP's Office) on a permanent and periodic basis that work to ensure the safety and protection of the population, especially in light of the ongoing crisis and its main consequence in the area in question - the emergence of a large number of uninhabitable dwellings.

source]. Access mode: http://www.pministry.gov.sy/contents/13087/تعميم-إلى-العامة-الجهات-للالتزام-بالمتطلبات-والاشتراطات-الإنشائية-واستكمال-الأبنية-ترخيص-لحالات-تحقيقها-الواجب إنشائها (date visits 02/17/2022).

[123] Aleppo Building Regulations No. 964 of 2012, issued by the decision of the Minister of Local Government // URL: https://www.academia.edu/41284425/السورية_العربية_الجمهورية_المحلية_اال دارة_ارة_وز_حلب_ مدينة (date of visit 02/17/2022).

[124] The Town Planning and Planning Authority is a government department that contributes to the formulation of overall planning and development policies and the preparation of development plans and programs in the field of housing and real estate development, working to provide the essential components for the development of the housing sector. // URL: http: //www.damascus.gov.sy/Home/gov (accessed 12/16/2023).

The total area of a dwelling must be at least 32 square metres and of a living room at least 20 square metres (art. 67 of the Syrian Law No. 5 of 2004), otherwise the dwelling may be considered uninhabitable and, consequently, the property will not be considered habitable.

The Syrian Court of Cassation confirms in its decision No. 119 on the basis of 23 of 10 May 2006[125]. The Syrian Court of Cassation affirms in its judgement No. 119, based on 23 May 2006, that buildings (including residential buildings) must comply with the statutory standards. Minimum hygiene, health and safety requirements such as ventilation, electricity, potable water, sanitation and other conditions that ensure normal and healthy conditions for decent living must also be met, as set out in the provisions of articles 63 and 64 of the Building Act No. 5. If it is proved that these requirements are violated, the residential premises will be recognised as non-residential and living in it will be prohibited.

The dwelling must be isolated from other neighbouring properties by walls, have an independent entrance and exit, be equipped with all kinds of engineering improvements in accordance with engineering plans, and have an independent connection to the common areas of the dwelling, the staircase or the street. Thus, it can be concluded that the Syrian legislator has not recognised a part of a room or a room connected to another room through a common entrance as an independent living space.

There is no rule in Syrian law that allows a room to be recognised as a dwelling merely because someone uses it for living purposes.

The right of ownership of residential property includes possession, use and disposal of it. Possession ensures the owner's ability to dispose of the property economically, use - to extract the useful properties of the object, and disposal - to decide the fate of the property. The owner of residential property in Syria may use it for his own, his family's or other persons' residence, as well as rent it out (freedom to dispose of his

[125] Al-Kazzaz Muhammad Yassin. Legal and scientific advantages in civil and criminal cases. – Damascus, 2020. – 269 p. (In Arabic).

property)[126]. The Syrian legislator also indicates that residential property may not be used by the citizens living in it for professional intellectual or commercial activities if this violates the legitimate rights and interests of other citizens and neighbours, and is not in accordance with the purpose of residential property, which is residence. This was confirmed by Article 43 of the Syrian Trade Act No. 33 of 2007, which regulates the place of commercial activity)[127].

Thus, violation of the intended use of residential real estate and violation of the rights of neighbours are independent grounds for bringing the offender to liability.

If residential property is used for professional intellectual or commercial activities, it is necessary to obtain permission from the competent authorities to transform the type of property from residential to commercial or professional, which is allowed under certain conditions and with statutory restrictions.

In addition, decisions may be taken at the city level to authorise the use of residential property for intellectual activities that do not require the conversion of the property from residential to commercial[128].

Recently, in support of intellectual activities, it has been allowed to use residential real estate for their professional implementation, but not in a way that does not lead to the conversion of the real estate from residential to commercial. This allows for a commercial licence to engage in the intellectual profession[129].

According to the Building Act No. 4 of 2005, the owner of residential property is obliged to maintain it in good condition in such a way that it does not cause damage to neighbours, respects and takes into account their rights and legitimate interests, and takes care of the common property of the apartment building (in case of flat system).

[126] Abd al-Gawad Sarmini and Abd al-Salam Termanini. Civil law - real rights. – Aleppo: Aleppo Library Publications, 1965. – 540 p. (In Arabic).
[127] Law No. 33 of 2007, Syrian Trade. // URL: http://www.parliament.gov.sy/arabic/index.php?node=55114&cat=4864 (date of visit: 08/21/2023). (In Arabic).
[128] Decree No. 62 MD dated March 20, 2005, issued by the Governorate of Damascus. (In Arabic).
[129] Resolution of the Ministry of Internal Trade in Syria No. 11 of October 3, 2020 (In Arabic).

So, by analysing and studying the articles of Law No. 4 of 2005, we can define residential real estate as an object of a sale contract as follows: "real estate that complies with the standards and conditions set by the Urban Planning and Urban Development Department (sanitary and technical standards), being suitable for habitation".

To summarise, it can be said that in Russia all residential premises that meet the special definition given in housing legislation are objects of housing legal relations .

In Syrian law, with respect to each specific object, taking into account its actual condition and a number of technical norms, a conclusion is made as to whether it is residential or not, and whether it is an object of housing legal relations. The conclusion that a real estate object is residential is made if it meets certain characteristics that distinguish it from other objects of ownership, regardless of whether it is suitable for permanent or temporary residence (in the long term, this could be an ideal solution, especially in Syria, where many people have lost their permanent homes. Many people who have lost their homes are forced to live in temporary accommodation on a permanent basis. The state cannot completely ignore this fact, especially in times of emergency such as wartime. In this context, it may be advantageous for the State to allow registration of residence in temporary housing. The state could undertake this task until the situation stabilises). And this is in contrast to Russian law. In both Syrian and Russian law, we believe that the legal requirements to recognize a building as residential are sufficient to safeguard and protect the interests of the occupants. However, it is necessary to regularly update these requirements to keep them in line with modern standards and technologies in the construction industry. If gaps or deficiencies in the legislation are identified, there is a need to revise and tighten the regulations to ensure that buildings meet minimum standards of safety and comfort for occupancy. To successfully update the requirements, it is important to involve experts and stakeholders to ensure that the changes are effective and feasible.

What unites these approaches is that in order for a premise to be recognised as residential, it must meet all the legal requirements for it: purpose, suitability, structural

and functional requirements, sanitary and technological norms. Residential premises must guarantee the safety of living, normal and safe accommodation of people in it [130].

Due to the significance and importance of housing as an object and its, its characterization will not be complete without considering the issue of foreclosure on the only housing. It is also important to note that this issue is of significant social importance and is closely related to the right to housing, as well as to agreements on the sale of mortgaged property.

Let's pay attention to situations in which foreclosure occurs on a single dwelling.

Let us consider an example. For example, in 2006, a family purchased a flat with a mortgage from Bank "M" at a cost of RUR 1200 thousand. Through a chain of transactions, the rights under the mortgage were transferred to creditor "U" in autumn 2015. Over the next two years, the debtors defaulted several times on the loan payments, on the basis of which the creditor decided to collect the entire debt from the family, which at that time amounted to about 500 thousand Rubles. The plaintiff also demanded that the defendants pay interest on the loan in the amount of RUR 80,432 and for the use of the loan at the rate of 14 per cent per annum, and a late payment penalty of RUR 115,992. In view of this number of claims, the plaintiff asked to foreclose on the pledged flat, setting its initial sale value at 1.28 million robles.

The district court awarded U only 145,584 robles and did not put the flat up for auction. In support of that decision the court pointed to the disproportionality of the remainder of the loan debt to the value of the property. However, the Court of Appeal quashed that decision and awarded the applicant 298,811 robles. The court motivated its position by the calculation of the debt submitted by the claimant[131].

[130] Decree of the Government of the Russian Federation of March 31, 2021 No. 517 “On introducing amendments to the state program of the Russian Federation “Providing affordable and comfortable housing and utility services to citizens of the Russian Federation” and invalidating certain provisions of certain acts of the Government of the Russian Federation” // SPS “ConsultantPlus”." (In Russian).
[131] Decision of the Sovetsky District Court of Krasnoyarsk No. 2-7010/2017 of March 13, 2017 in case No. 2 - 7010/2017 // URL: https://sudact.ru/regular/doc/QFj6AKtErJYp/ (date of visit: 10.01 .2022). (In Russian).

The Supreme Court of the Republic in this situation decided that in the disputed situation there were no grounds to refuse the claim to foreclose on the flat. However, the family did not agree with this decision and appealed to the Supreme Court of the Russian Federation.

The judges of the Supreme Court of the Russian Federation emphasized that in such cases the property may not be foreclosed if the debtor has committed an extremely minor breach and the amount of the pledgee's claims is clearly disproportionate to the value of the pledged asset.

The Judicial Board for Civil Cases of the Supreme Court of the Russian Federation also explained that in the analyzed case the court had to determine the exact number of the debtor's delinquencies, the period and the market value of the flat (Case No. 49-KG19-5)[132]. As a result, the act of the Supreme Court of the Republic of Bashkiria was sent back to the republic for a new review, and "U" dropped this claim[133].

In commenting on this decision, it is worth paying attention to the Law "On Mortgages"[134] In particular, it is worth noting that the mortgaged property can be foreclosed only if the debtor has defaulted on loan payments more than 3 times in a year.

Situations similar to the one discussed above are often the subject of court proceedings. People living in their flats, defaulting on payments, think that owning the only dwelling they are protected from eviction. They base it on clause 1 of article 446 of the Civil Procedural Code of the Russian Federation, which establishes that the only residential premises in which a citizen lives are not subject to sale or other means of realization within the framework of enforcement proceedings. However, this is not the case. The pledge status of immovable property implies the possibility of foreclosure by the creditor, as the enforcement immunity of the property encumbered by a pledge is

[132] Decision of the Supreme Court of the Russian Federation, case No. 49-KG19 - 5 // SPS “Consultant Plus”. (In Russian).
[133] Decision No. 2-1057/2020 2-1057/2020~M-865/2020 M-865/2020 dated July 8, 2020 in case No. 2-1057/2020 // URL: https://sudact.ru/regular /doc/zWu6q0Wgap19/ (date of visit: 01/10/2022). (In Russian).
[134] Federal Law “On Mortgage (Pledge of Real Estate)” dated July 16, 1998 No. 102-FZ (latest edition) // SPS “Consultant Plus”. (In Russian).

absent by virtue of the provisions of Article 446 of the Code of Civil Procedure of the Russian Federation.

As noted by O.P. Kazachenok, "allowing foreclosure on the only dwelling does not apply to all cases of mortgage, but only if the house or flat was pledged to secure repayment of a loan or purpose loan provided by a bank or other credit organization or other legal entity"[135].

According to Article 106 of the Housing and Utilities Code of the Russian Federation, citizens whose only housing has become unfit for living may be provided with housing from the manoeuvre fund. We believe that housing should also be provided to those whose only housing has been seized in connection with a mortgage. At the same time, actual foreclosure is only allowed if such housing has been provided.

Based on the above, we propose to amend paragraph 1 of part 1 of Art. 446 of the Code of Civil Procedure. 1 of Art. 446 of the Code of Civil Procedure of the Russian Federation, supplementing it with the following sentence: "Foreclosure of the premises, if it is the subject of mortgage and it can be foreclosed in accordance with the legislation on mortgage, is allowed in the case of preliminary provision to the debtor of housing of the manoeuvre fund or other housing, on the grounds provided by law".

The Constitutional Court of the Russian Federation in its ruling of 26.04.2021 N 15-P[136] proposed only one clear criterion for restricting the right to housing: the debtor and his family members must be provided with housing with an area not less than the norms for the provision of housing on the terms of social rent, and within the same settlement where these persons live. The other criteria on the basis of which a citizen may be deprived of the only housing (cost of the premises, its area, comparability of the quality of the housing with the replacement housing, etc.) are not established by law and will be

[135] Kazachenok, O. P. Grounds and procedure for foreclosure on residential premises that are the subject of a mortgage / O. P. Kazachenok // Legal Concept. — 2016. —№2 (31) — pp. 188-194. // URL: https://cyberleninka.ru/article/n/osnovaniya-i-poryadok-obrascheniya-vzyskaniya-na-zhiloe-pomeschenie-yavlyayuscheesya-predmetom-ipoteki (date of visit: 09.14.2022). (In Russian).

[136] See: Resolution of the Constitutional Court of the Russian Federation dated April 26, 2021 N 15-P “In the case of verifying the constitutionality of the provisions of paragraph two of part one of Article 446 of the Civil Procedure Code of the Russian Federation and paragraph 3 of Article 213.25 of the Federal Law “On Insolvency (Bankruptcy)” in connection with complaint of citizen I.I. Revkov." (In Russian).

determined by the court on a case-by-case basis. It seems that such an approach creates a risk of violation of the guarantee provided to citizens by the norm of para. 1, Article 40, paragraph 1 of the Constitution of the Russian Federation.

It seems appropriate to cite as an example the dissenting opinion of Judge of the Constitutional Court of the Russian Federation N.S. Bondar, who noted that "the provision of the second paragraph of the first part of Article 446 of the Code of Civil Procedure of the Russian Federation in the system of the current legal regulation does not allow to achieve an optimal balance of interests of creditors (recoverees) and debtors, and the lack of differentiated criteria for the application of property (enforcement) immunity in respect of the residential premises (its part) owned by a citizen-debtor by right of ownership, as well as normative legal criteria, leads to a violation of the constitutional principle of equality of all before the law and the court. Thus, in relation to the creditor, the lack of clear normative legal criteria leads to a violation of the constitutional principle of equality of all before the law and the court.

It seems appropriate to establish certain criteria under which residential premises may be used for the purpose of fulfilling an obligation to a creditor. I believe it is possible to propose the following options to settle this issue:

1. Take into account the moment of purchase of the residential property (part of it) (if it was purchased before the moment when the citizen borrowed money and was subsequently declared bankrupt, this property should not be included in the bankruptcy estate).

2. It is necessary to assess the value of the residential property and the amount of the debt. For example, if the debtor has a residential property worth 10,000,000 roubles and owes 2,000,000 roubles, then in this case, it is possible to sell the residential property, satisfy the creditor's needs and buy a residential property with a lower value and square footage necessary for the debtor and his family members to live in.

3. If the residential property was purchased at the time when the citizen has already borrowed money or is borrowing money to buy residential property,

then in this case, in order to fulfil the debtor's obligation and to ensure the right of the debtor and his family members to housing, it is necessary to take into account the minimum allowable area of residential premises per 1 person living in such a house, according to the example of a social rent agreement (the minimum area per 1 family member is determined by the subjects of the Russian Federation).

Thus, property (execution) immunity in respect of the debtor should not be abolished altogether, but it is necessary to define the criteria in which cases it may not apply or may apply with certain reservations.

It is also necessary to consider the issue of foreclosure of the sole dwelling in Syrian legislation.

Al-Sahure Abd al-Razzaq confirms that "it is not permissible to seize the home of a debtor during his lifetime, nor the homes of those who supported him after his death, in order to settle a debt. In order to protect the debtor and his family, especially since the right to housing is a right that every country must respect[137] ".

The Syrian Code of Civil Procedure establishes a list of property that is not subject to recovery. Such property includes residential premises that are the only habitable accommodation for a citizen and his family members (article 304 of the Syrian Code of Civil Procedure). This legal norm, due to its great importance in legal turnover, is one of the most debatable, as it establishes a balance between, on the one hand, the creditor's right to foreclose on the debtor's property and, on the other hand, the constitutional right of a citizen to residential premises[138]. Let us take a closer look at the main elements of the above balance:

1. The right of the creditor to foreclose on the debtor's only dwelling if such dwelling is subject to a mortgage.

The second paragraph of Article 304 of the Syrian Code of Civil Procedure states that if a dwelling house or an ordinary share is subject to a mortgage, or if the debt arises

[137] Al-Sanhouri Abdul Razzaq. Decree. Op. P. 256. (In Arabic).
[138] Al-Sanhouri Abdul Razzaq. Right there.

from its price, any of these properties may be seized and sold in payment of the mortgage, insurance or debt compensation.

Obviously, in this case, in Syria, refusal to foreclose on property is not an option, as a ban on foreclosure of housing that is the subject of a mortgage will lead to the actual destruction of the mortgage lending market, which will contribute to reducing the availability of housing to citizens. At the same time, a situation that leaves people (including members of the debtor's family) effectively without any housing is contrary to everyone's constitutional right to housing.

2. The question of the value of the debtor's sole dwelling. The legislator establishes a prohibition of foreclosure on the debtor's only home.

It can be said that the Syrian legislator intended to prevent the seizure of the house, to protect the debtor or convict and to prevent him and his family from being evicted from the house in which he lives, and this protection extends to his heirs (Aleppo Court of Appeal Decision No. 305, 07.08.1997)[139].

The Syrian legislator also provides for the prohibition of seizure of what is required of the debtor and his family members, including bedding, household furniture and so on (Art. 298 of the Syrian Code of Civil Procedure)[140].

But at the same time, if the dwelling in which the debtor lives exceeds his/her needs, it is subject to realisation, and subsequently the purchase of the dwelling is made at a value corresponding to the financial condition of the debtor. The difference in price shall be foreclosed according to Art. 302 and 304 / 3 of the Syrian Code of Civil Procedure. It is up to the decision of the head of the real estate realisation department to assess whether the dwelling corresponds to the debtor's financial situation or exceeds his need. That is, he has discretionary power in this matter[141].

[139] Kurd Abdul Wahhab. Civil implementation between theory and practice. – Aleppo: Al-Asil Printing House, 2000. – 540 p. (In Arabic).
[140] Syrian Civil Procedure Code No. 1 of 2016. // URL: http://www.parliament.gov.sy/arabic/index.php?node=5556&cat=15810& (date of visit: 05/31/2023). (In Arabic).
[141] Jamal Eddin Meknes. Implementation principles. – Damascus: Virtual University, 2018. – 244 p. (In Arabic).

In Syria, it does not matter whether the house is registered in the real estate register or not (Damascus Court of Appeal Judgement No. 129 7.8.1964)[142]. What matters is that the house is intended for habitation[143] .

Miknas Jamal al-Din confirms in his work "Principles of Enforcement" that the Syrian legislator does not require the debtor to be the actual occupant of the house in order to take advantage of the inadmissibility of the seizure, as he may reside elsewhere due to work or other reasons. It may be in his interest to rent the house; in which case the debtor enjoys protection from foreclosure on his home.

In applying the principle of protection of the debtor's home, it is not permissible to seize the amount allocated to the rent of a debtor who does not own any other residential real estate to live in[144].

In general, all problems related to encumbrances of residential premises with third party rights can be divided into the following:

-Abuses as a result of gaps in the legislation in the area of mortgages, rents and channelling maternity capital amounts for the purchase of housing;

-contradictions in the legislation in terms of determining liability for alienation and encumbrance of the only dwelling;

-poorly developed mechanism of enforcement proceedings for the seizure of residential property;

- lack of legal literacy among the population and, as a consequence, their making many mistakes when concluding real estate transactions.

The crisis in Syria has raised a serious problem in the legal field with regard to the legal consequences of the loss of housing as an object due to its destruction. It is therefore important to consider this issue in this context. The massive earthquake that occurred in Syria on 6 February 2023 revealed a major problem in the legal field: what

[142] Haider Nasra Manla. Methods of enforcement. – Damascus: Fathi Al-Arab, 1966. – 704 p. (In Arabic).
[143] Court of Cassation 05/22/1965 / Journal of Lawyers, 1965. P. 305. (In Arabic).
[144] Kurd Abdul Wahhab. Decree. Op. P. 347. (In Arabic).

are the legal consequences of the loss of housing in the event of such significant destruction.

We do not believe that the current regulation is acceptable under the current conditions.

Although such large-scale natural disasters have not occurred to date, there are many examples of man-made disasters (wars) that require the same issues to be addressed. The Syrian legislator has not adopted relevant legal acts, despite the need to regulate these relations.

Earlier legislation on the organisation and urbanisation of Syrian cities, dating back to the Law on the Organisation and Urbanisation of Cities issued on 22 January 1933, obliged the municipality concerned, in its first article, if an entire district or several neighbourhoods were destroyed by war, earthquake or other cataclysm, to take the measures necessary to remedy the situation immediately, within the limits of its competence. The Act provided for measures to be taken by the municipality within 10 days of the occurrence of a natural disaster.

This law was later repealed with the issuance of several pieces of legislation on urban organisation and urbanisation, the latest of which was Law No. 23 of 2015. This law was later repealed with the issuance of several legislative acts on the organisation and urbanisation of cities, the most recent of which was Law No. 23 of 2015[145], which is still in force today and whose texts do not contain the principle that obliges administrative bodies (municipality, governorate) to take measures to support citizens within a specific period of time.

Article 5 of the said law clearly states that urban planning shall be applied in areas affected by natural disasters, such as earthquakes and floods, or affected by wars and fires, but it is subject to the will of the executive to organise it within the time limit set by these competent authorities. Article 49 also explicitly states that properties affected by natural

[145] Law of Syria No. 23 of 2015 “On the implementation of planning and urbanization of cities”. https://www.syrian-lawyer.club/wp-content/uploads (accessed 03/20/2023). (In Arabic).

disasters or wars shall be exempted from financial charges, local costs and other charges related to reconstruction.

The issue of ownership of real estate, especially residential real estate, in areas destroyed by earthquakes arises.

It should be pointed out at the outset that the status of the owner of immovable property in earthquake-affected territories differs significantly between areas built up in accordance with the requirements of the law, on the one hand, and areas of illegal (accidental) construction, on the other hand

Taking into account the areas of accidental construction, let us distinguish two types that should be described in detail.

Firstly, residential properties built in violation of requirements on land owned by the state.

Residents of these neighbourhoods have no rights to real estate. In the event of a cataclysm, they can only pick up the ruins of their houses. At the same time, Law No. 10 of 2018[146] grants them certain privileges, namely the provision of alternative housing. Municipal authorities are obliged to provide alternative housing within a period not exceeding four years from the date of the actual evacuation, regardless of whether the evacuation was caused by natural or anthropogenic factors.

Secondly, residential real estate built in violation of requirements on agricultural land .

The rights of the owner of such real estate are limited to ownership of the land on which the real estate is located, except in cases where the executive authority decides to organise the territory. Thus, the executive authority may make decisions to organise certain lands and bring them into order for construction, so that according to this decision these lands become organised in a certain way and are under the name of lands included in the organisational plan of a city or district. When such decisions come into force,

[146] Syrian Law No. 10 of 2018, "On the admissibility of creating one or more areas of regulation within the framework of the organizational plan" // URL: https://www.sana.sy/?p=739408 (date visited: 03/20/2023). (In Arabic).

residential premises may be built on such lands on the laws of foundation. Regarding the fate of ownership of residential buildings and flats established in accordance with the requirements of the law and which have been destroyed by an earthquake, the Syrian Civil Code has clearly stated the following in Article 823: "If the building has been destroyed by fire or any other cause, the partners shall honour the decision of the 'Union of the owners of flats in the building' regarding its renovation, unless otherwise agreed. If the union decides to renovate the building, the necessary amount of compensation due to the destruction of the property shall be allocated for the renovation work".

In fact, the Syrian legislator proposes the creation of an analogue of the Russian homeowners' association. Article 817 of the Syrian Civil Code provides for the possibility of forming a Union of Apartment Owners (hereinafter - Union of Owners): "If there is joint ownership of immovable property divided into several floors and premises, the owners may unite in unions ".

The right to decide whether to rebuild the building or not belongs to the Owners' Union. If the Union of Owners decides not to rebuild the building, the owners retain common ownership of the land and the Union of Owners is dissolved. The owners receive assistance from the state. This may be compensation, an insurance sum, or assistance provided by the state in case of general disasters.

If the Owners' Union decides to rebuild the building, the owners respect this decision and the Owners' Union carries out the repair works on behalf of the members of the Owners' Union, allocating the money received as a result of the destruction (compensation, insurance amount or other state aid to the victims). At the same time, the owners complete the building from their own funds, each according to their share in the building, if the funds allocated by the state are not enough (Art. 823 of the Civil Code of Syria) .

In case an owner is unable to pay his share of the cost of repairing the building because he has lost everything due to a natural disaster or some other reason, and he does

not have the personal money to fulfil his obligation, the Union of Owners has the right to lend him an amount for which he can fulfil the obligation.

According to Article 817 of the Syrian Civil Code, there are two types of Owners' Unions. The first type occurs when a building already exists and the formation of an Owners' Union is not mandatory. The second type, mandatory, involves the formation of an Owners' Union for the construction, acquisition or distribution of real estate. Although the Syrian Civil Code does not recognise the Owners' Union as a legal entity, its functions, such as obtaining loans and mortgages, require such recognition. Therefore, it is suggested that special legislation be developed to regulate the activities of Building Owners' Unions. It is important to note that the Syrian GC imported these articles from the French GC where they are integrated into a coherent legal system, unlike in Syria where additional legislation is required to implement them. Syria took the articles of the law literally and did not study the requirements for its application.

The restored building is owned by its owners in the same shares as before, each of them owning his own flat with his share in the common property[147].

The problem, in our opinion, is that in the Syrian legal system there are no norms obliging the formation of a union of owners and clearly regulating the mechanism of its work. And there is no legislation granting this union the status of a legal entity. We believe that the nature of the union's work (e.g., obtaining loans from banks or the right to litigate and represent owners before others) requires that it be considered a legal entity. In Russia, the situation is different, as a partnership of owners (similar to a union of owners) has a legal entity. This is a gap in the law, which causes many questions and problems in law enforcement, so it requires the intervention of the legislator and the adoption of such a law that would facilitate the process of restoring real estate in distress and any other cataclysms.

The solution to this problem is to adopt a law regulating the establishment of a homeowners' union so that the union, according to the law, acts as a legal entity and can

[147] Morsi Mohamed Kamel. Property and real rights. – Alexandria: Manshaat Al-Maarif, 2005. – 459 p. (In Arabic).

interact with banks and other organisations and administrative bodies to obtain reconstruction permits, borrow money and so on.

With regard to the fate of ownership of flats in buildings located in zones where construction is permitted and destroyed by an earthquake, we are dealing with a destroyed building that consisted of a group of separate, detached flats of different value and area, sharing common parts in the common property, as well as ownership of land.

When a building collapses and the flats are destroyed before they are completely demolished, the owner's right is limited to ownership of the land on which the building stood. All flat owners become co-owners of the land without specifying the share of each of them in it, according to Article 780 of the Civil Code of Syria: "If a thing is owned by two or more persons, the share of each of whom is not specified, they become co-owners.

What is the nature of this common ownership?

It can be said that this common property is coercive, artificial, since usually common property arises either by the will of a person: if several persons have bought a house, or if the property is bequeathed to several persons[148]. Thus, from a theoretical point of view, such a right is subject to all the stipulated legal rules, whether in terms of its ordinary administration, or withdrawal from it, since there are no special legal texts that provide otherwise[149]. And so, the nature of this common property arises compulsorily, and otherwise it is subject to the general rules.

From a practical point of view, it is very difficult to make a separation from such shared ownership by means of a court action for termination of joint ownership of immovable property, as the land deed kept in the immovable property register does not allow filing a lawsuit in court, since formally and legally the building still consists of flats destroyed by the earthquake. For this purpose, it is necessary to carry out the procedure of correcting descriptions and cancelling real estate records for the flats that perished, to exclude the damaged flats from the list and to merge them into one document in the

[148] Morsi Mohamed Kamel. Decree. Op. P. 459.
[149] Sherba Amal. Decree. Op. P. 175.

register prepared for construction, after which the issue of shares of co-owners of this land is resolved.

Art. 780 of the Civil Code of Syria expressly provides that shares shall be equally distributed between co-owners, unless proven otherwise.

It seems to us illogical to apply the provision on equal shares in the ownership of a plot of land, since there is a difference in the area, the storey and the location of the pre-existing flats.

Evidence of this difference can be easily established through documents stored in the real estate register, such as cadastral data and cadastral plans, which makes it possible to prove the condition required by the aforementioned Article 780 of the Civil Code of Syria.

Disputes also arise related to the formation and division of shares, for example, upon a statement by one of the owners that the shares are not equal, or an assertion that the assessment made by an expert is erroneous, and so on .

In the absence of other legislative regulation, each owner may file a lawsuit in court to determine the shares of co-owners who own flats on the land plot on which the demolished building stands, taking into account the technical expertise based on the documents we mentioned above[150]. Such court proceedings take quite a long time.

It should be noted that according to Clause 4 of Article 287.3 of the Civil Code of the Russian Federation (the said norm came into force in 2022), accidental destruction of a building or structure located on someone else's land plot does not deprive the owner of that building or structure of the right to the land, unless otherwise provided for by law or agreement. The owner shall have the right to restore the destroyed building or structure in an order established by law. If the owner fails to commence restoration within five years, his right to restore shall be terminated, unless otherwise provided for by law or contract. Indeed, the legislator in both cases addresses the issue of the fate of the plot in

[150] Morsi Mohamed Kamel. Decree. Op. P. 459.

case of destruction of the building or structure. It is indicative that the Russian legislator here gives the right to restore the property (physical restoration) within five years.

We consider it necessary to amend Article 780 of the Civil Code of Syria, suggesting that the shares of owners who lost their housing as a result of its destruction, retain in the right of common shared ownership of the land plot on which the house was located and should be determined on the basis of the area of the share of the owner of the destroyed housing. It is proposed to borrow the wording from the Housing and Communal Housing Code of the Russian Federation (part 6 of article 36) and to set out the norm in the following form:

" 1. In case of destruction, including accidental destruction, demolition of an apartment building, owners of premises in the apartment building retain a share in the right of common shared ownership of the land plot on which the building was located, comparable to the area of residential premises that existed at the time of destruction of the apartment building .

2. In case of destruction, including accidental destruction, demolition of the apartment building, owners of premises in the apartment building retain a share in the right of common share ownership of the land plot on which the building was located, with elements of gardening and landscaping, and other objects intended for maintenance, operation and improvement of the building, located on the specified land plot, in accordance with the share in the right of common share ownership of the common property in the apartment building at the time of destruction, including

3. Disagreements and disputes on the establishment of shares shall be resolved by a special judicial committee, which shall include an expert appraiser of immovable property".

Also, we consider positive the regulation of relations in Saudi Arabia, according to which each deed (which is considered a title document) indicates the size of the share

in the right of common share ownership of the land on which the house was located, in accordance with the area of the flat[151]. This experience can be applied in Syria.

The administrative authorities of the Syrian cities affected by the earthquake have decided that the cost of reinforcing and rebuilding buildings destroyed by the earthquake should be borne by the affected citizens. In our view, this clearly contradicts article 24 of the Syrian Constitution[152], which states that: "The State, in solidarity with society, shall guarantee to assume the burdens arising from natural disasters".

The legal text here is clear and does not need interpretation, which means that the state is in solidarity with society, not with those who bear the burden of public disasters. This means that any decision that conflicts with this principle is invalid (due to unconstitutionality).

We come to the following conclusions:

1. A dwelling as an object of law should be understood as a structurally separate object that has an independent entrance and is intended for living. At the same time, the premises must meet the minimum requirements of improvement, sanitary-epidemiological and other mandatory criteria, which are used in determining its status as a dwelling.

2. Before the Syrian crisis, many buildings and housing complexes were built without complying with the necessary technical standards and without obtaining licences, and during the crisis period their number has increased dramatically in different regions. It is therefore necessary to find effective and swift legal mechanisms to eradicate "slums" (residential properties built with violations), as they are not yet registered in the real estate register and do not fall within the minimum technical standards required for a residential building (in fact, they are flimsy buildings unfit for habitation). These areas should be included in the areas subject to urban planning in order to properly restructure the buildings to prevent

[151] Saif bin Abdullah. Resolution of real estate disputes in Saudi Arabia // The Arab Journal for Scientific Publishing. – 2019. – P. 52. (In Arabic).
[152] Constitution of Syria 2012 // URL: https://www.constituteproject.org/constitution/Syria_2012.pdf?lang=ar. (date of visit: 03/17/2023).

damage that may be caused by possible natural disasters, as well as to solve the problem of proving ownership of them and registering them in the real estate register, registering them after complying with the necessary standards and permits.

3. We also conclude that it is necessary to form permanent and periodic committees in Syria, which will be responsible for making decisions on the safety of residential properties, especially in the light of the ongoing crisis and its main consequence in this area - the emergence of a large number of uninhabitable houses.

4. According to article 24 of the Syrian Constitution, the State, in solidarity with society, guarantees and assumes the burdens resulting from natural disasters. It is proposed that the necessary financial State support be provided to the victims in such a way as to guarantee their right to housing.

5. We consider it advisable to amend Art. 446 of the Code of Civil Procedure of the Russian Federation and Art. 304 of the Code of Civil Procedure of Syria, establishing the possibility of recovery of the only residential premises, in the simultaneous presence of three conditions:

- Provision of residential premises on the right of social hire or housing from the manoeuvre fund with further provision of premises on the right of social hire. It is necessary for the Syrian legislator to use Russian experience in this area due to the lack of social housing system.

-The value of the alienated property exceeds 1000 minimum wages in the region where the property is located. This amount in our opinion is the criterion by which housing can be defined as "luxury".

-The area of the property is more than twice the area of the social norm in accordance with the number of persons living in the premises.

These changes will create a reasonable balance between the civil law interests of creditors and the constitutional right to the debtor's home. They will be of no small importance in transactions involving the purchase and sale of housing.

2.2. Legal nature of the contract of sale and purchase of residential premises

In the special part of the Civil Code of the Russian Federation[153] the institute of sale and purchase is the most voluminous in terms of the number of legal norms, and its importance for market relations can hardly be overestimated .

Before proceeding to the definition of the concepts of "contract of sale" and "contract of sale of residential premises", it should be noted that the concept of "contract", which has been formed in civilities, is characterised by a combination of three approaches that allow to assess it from different sides. Firstly, the science of civil law considers the contract as a legal relationship, secondly, the concept of the contract is based on its perception as a transaction (a legal fact), thirdly, the contract is considered as a source of regulation of relations arising between its parties - as a document .

Speaking directly about the contract of sale, it should be noted that the legal definition of this concept is formulated by the legislator in paragraph 1 of Article 454 of the Civil Code of the Russian Federation. Under a contract of sale, the seller undertakes to transfer a thing (goods) into the ownership of the buyer, and the buyer undertakes to accept this property and pay a certain sum of money for it.

It follows from the definition of a contract that it is :

1. consensual - the moment of conclusion is tied to the moment of agreement of all essential conditions ;
2. compensatory, as a result of which the party receives payment or counter-provision for the fulfilment of its obligations ;
3. sinalagmatic (mutual) - mutually binding.

The purchaser of residential premises acquires the right of ownership only after state registration, unless the law provides otherwise (Article 8.1, Article 223 of the Civil Code of the Russian Federation) .

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[153] Civil Code of the Russian Federation (Part Two) of 26.01.1996 № 14-FZ (ed. of 01.07.2021, as amended from 08.07.2021) // SPS "ConsultantPlus"

According to Syrian doctrine, as mentioned in the first chapter, the essence of a contract throughout the ages has been that the will of the two parties to the relevant contract has been agreed upon, and the contract itself is a document confirming that the two parties have reached agreement on the subject matter and other terms of the contract[154]. The Syrian legislator limited himself to the definition of immovable property and the definition of sale in general, leaving the classification of sale contracts to the doctrine[155]. The current state of affairs can be explained by the Syrian legislator's desire to leave the matter to legal scholars; however, it is thought that detailed and clear regulation of types and categories of contracts helps to a sound, correct and accurate understanding of the essence of the contract, contributes to ensuring uniformity of judicial practice.

In Russia, real estate is divided into residential and non-residential, so the Russian legislation separately considers this type as an object of the contract of sale, while in the civil legislation of Syria, as already mentioned in the first chapter, there is no division of real estate objects into residential and non-residential[156].

It seems necessary to fix in the Civil Code of Syria the definition of the contract of sale and purchase of residential real estate, formulated as follows: "A contract whereby the ownership of residential property intended for residential use (a house, part of a house or a flat) is transferred in exchange for an agreed sum of money". The indication that the property is intended for residence is necessary to prevent abuse by sellers. At the moment, many residential premises, although legally existing, in fact do not meet the characteristics of residential premises, as they have been destroyed.

It should be noted that the legislator has allocated special provisions linking the transfer of ownership to the need to register rights in the real estate registry. This

[154] Al-Hakim Jacques Youssef. Named contracts - Purchase and sale agreement. – Damascus: University of Damascus, 2006. – 462 p. (In Arabic).
[155] Mansur Muhammad Hussein. Explanation of named contracts (in Egypt and Lebanon). Part one: Sales and barter. – Dar an-Nahda al-Arabiya, 1995. – 238 p. (In Arabic).
[156] Siwar Muhammad Wahid El Din. Explanation of civil law, Property rights and other property rights - Damascus: Damascus University, 1976. - 943 p. (In Arabic).

condition follows from the text of Article 11 of the Law on Real Estate Registration in Syria and Article 825 of the Syrian Civil Code[157].

The transfer of title must not violate the registration rules, as real estate is not acquired and transferred between the parties to the transaction or to third parties until it is registered in the registry in accordance with Article 825/1 of the Civil Code of Syria, which states: "Real property rights in real estate are acquired and transferred by registering them in the registry". According to the contract, the buyer acquires the right to request the registration of the transfer of ownership and the seller of the real estate is obliged to transfer the ownership of the sold property to the buyer. If the seller refuses to register without a valid reason, title to the property sold passes from the moment of its establishment, unless the contract provides otherwise. Syrian law does not contain special provisions in case the seller creates obstacles to the transfer of ownership of the sold property and the consequences arising therefrom. Therefore, it is important to refer to the general rules and the provisions of Article 206 of the Syrian Civil Code, which gives the buyer the right to claim the value of the thing as well as the right to compensation, if justified, shall apply. Within the meaning of the provisions of Article 826 of the Syrian Civil Code, it can be said that the legislator considers the contract as one of the grounds for acquiring the right to demand registration in the real estate registry.

In practice, contracts are concluded in accordance with various templates drawn up by lawyers or in free form, without any strict requirements to the structure of the contract. We consider this fact to be negative, as the diversity of contract forms complicates law enforcement. We believe that it is important to develop standard forms of such contracts that comply with the law and allow taking into account the will of the parties. The specifics of a contract for the sale and purchase of residential property are determined by many aspects, such as the condition of the property, the rights of third parties, the list of persons retaining the right to use the residential property, the moments of transfer of ownership and actual transfer, as well as financial

[157] Civil Code of the Syrian Arab Republic 18.05.1949.

obligations and other elements. A standard form of contract helps to structure and standardise these components, ensuring uniformity and simplifying the transaction process.

It can be said that Articles 386-453 of the current Syrian Civil Code have specified the mechanisms of execution of the sale and purchase agreement .

In the Syrian legislation the party to the legal relations - the seller is the owner of the property, whose rights are confirmed by documents: a certificate of confirmation of ownership of immovable property issued by the Real Estate Registration Department or a court decision[158]. The seller of immovable property may be either the owner himself or another person to whom the owner gives the right to dispose of the property on the basis of, for example, an irrevocable power of attorney. Any contract concluded by a person who is not the owner of the property or does not have the right to dispose of it is a void contract in accordance with Article 434 of the Civil Code of Syria, which provides that if a person sells a thing of which he is not the owner, the buyer may demand that the contract be recognised as void.

Thus, if the buyer files a lawsuit to cancel the contract of sale of another person's immovable property, the buyer's right is to invalidate the contract and cancel the sale, and the court must rule on this[159]. If the actual owner recognises the sale, it is considered as a subsequent agreement to the contract and the contract is considered valid (Art. 435 of the Syrian Civil Code) .

In this regard, it is necessary to refer to some cases and judgements of the Syrian Court of Cassation in this regard. For example, one of the heirs, who owns a part of a share in the right to a property consisting of a residential flat, entered into a sale and purchase agreement with a buyer for the sale of the entire property (selling his own and others' property) without the knowledge of the other heirs, and then prevented the other heirs from participating in the sale.

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[158] Al-Hakim Jacques Youssef. Decree. op. P. 258.
[159] Decision of the Syrian Court of Cassation No. 96 of 1985. Ground 1532. Rule 50. - Damascus: Journal of Lawyers. - 1986. - No. 2. (In Arabic).

It should be noted that the buyer cannot demand confirmation of the sale with respect to the other heirs, since each heir owns his share in full from the date of the testator's death (Art. 434 of the Syrian Civil Code). The sale will be invalidated against the share of the owner who did not authorise the sale. This will bring the situation back to what it was before the contract, i.e. the buyer will return the goods received and the seller will return the money after the decision to invalidate the contract[160].

In the particular example under consideration, the execution of the contract was suspended pending the authorisation of the other heirs.

The sale of another's property does not affect the rights of its owner, so the sale of the share of the intended heir does not apply to the actual heir[161].

The use of irrevocable powers of attorney for the disposal of immovable property is a peculiarity of housing turnover in Syria. The relevant power of attorney must include the power to dispose (including in favour of oneself and one's relatives) of immovable property and the power to register the transfer of ownership (including in respect of oneself and one's relatives). Such a power of attorney cannot be revoked by the principal and is not terminated by his death[162]. In essence, the representative is an agent, and the issuer of the power of attorney is the principal. The agent exercises the power to dispose of property in the interests of the principal. In accordance with Article 683 of the Civil Code of Syria, the agent's heirs (having the necessary legal capacity) shall take measures to dispose of the property in the interests of the principal.

[160] Resolution of the Court of Cassation No. 1830/1982 in case 2549/1982 // Judicial practice of the periodic supplement of the Syrian civil legalization Damascus: Journal of Lawyers, 1986. No. 88. (In Arabic).
[161] Resolution of the Court of Cassation No. 401 / 1979 // Civil Jurisprudence - Istanbul Classification, Part 1. 1998. (In Arabic).
[162] CM. Aldgem, B. I. The role of the notary in the turnover of residential premises under Russian and Syrian legislation / B. I. Aldgem // Leningrad Legal Journal. – 2023. – No. 2 (72). – pp. 156–171. (In Russian).

Speaking about the legal nature of such a power of attorney, it should be mentioned that it is equal in legal essence to a contract of sale of immovable property[163]. At the same time, it remains in form a power of attorney and not a contract of sale[164].

If a representative sells immovable property on the basis of an irrevocable power of attorney, the buyer may sue the representative, requesting confirmation of the validity of the power of attorney and the validity of the owner's will, respectively, without reference to the owner who has registered the property in his name in the real estate register, and the case may be considered by the court[165].

The Russian legislation (Article 188.1 of the Civil Code of the Russian Federation) as well as the Syrian legislation (Part 2 of Article 682 of the Syrian Civil Code) enshrines the institution of irrevocable power of attorney. However, in Syrian civil law such a power of attorney is fundamentally different from an irrevocable power of attorney under Russian law. Despite the same name, these powers of attorney have significant differences and different legal nature, so that the terms "irrevocable power of attorney" under Syrian law, on the one hand, and under Russian law, on the other hand, cannot be perceived as synonymous.

We have considered above the peculiarities of irrevocable power of attorney under Syrian law, let us now turn to Russian law. Thus, according to Clause 1 of Article 188.1 of the Civil Code of the Russian Federation, an irrevocable power of attorney may be issued for "fulfilment or securing the fulfilment of an obligation of the represented to the representative or persons on whose behalf or in whose interests the representative acts, if such obligation is related to the implementation of entrepreneurial activity"[166].

[163] Al-Sharqawi Jamil. Explanation of civil contracts “Purchase and sale and barter”. –Dar Al-Nahda Al-Arabiya, 1997. – 366 p. (In Arabic).
[164] Judgment of the Court of Cassation - Syria No. 1288 of 1983, Ground 146. Istanbul Mustafa - Civil Code, Part 1 (Rule No. 2444), available on Hammurabi's blog: 30375. (In Arabic).
[165] Decision 1807/1982 - Ground 184 - Courts of Cassation - Syria. (Rule 2447 - Parts 1 - Parts 9 of the Civil Code. Istanbul: Hammurabi Reference Number: 30378). (In Arabic).
[166] Encyclopedia of solutions. Irrevocable power of attorney. // URL: https:// base.garant.ru›58074800/ (date of visit: 11/12/2022).

In Syrian civil law, an irrevocable power of attorney for the disposal of residential premises acts as an independent basis for making changes to the real estate register in terms of transfer of ownership rights without the additional will of the owner of the residential premises. More precisely, the very fact of issuing an irrevocable power of attorney reflects the will of the owner to redistribute the scope of the owner's powers (Art. 681 of the Civil Code of Syria) between the principal (owner) and the representative. We can say more, in fact, we are talking about granting the representative an equal volume of powers to dispose of the object with the owner.

According to Article 188.1 of the Civil Code of the Russian Federation, an irrevocable power of attorney may be cancelled in the cases provided for in the power of attorney, after the termination of the obligation for the performance or securing the performance of which it was issued, as well as at any time in the event of abuse by the representative of his powers, as well as in the occurrence of circumstances obviously indicating that this abuse may occur.

The irrevocability of a power of attorney in Syrian law is that it cannot be terminated at the will of the principal without the consent of the representative, nor is it terminated by the death of the principal. Its content includes the power to dispose of immovable property (including in favour of the representative himself or his close relatives) and to apply for the registration of the transfer of ownership thereof. In Syrian court practice, an irrevocable power of attorney is equated in its legal essence to a contract of sale of immovable property. Since a power of attorney cannot be revoked by the principal and is not terminated by his death, the sale of real estate on its basis is not associated with the risk of losing the authority to sell the real estate before the transfer of title to it to the buyer.

The following should be noted.

Firstly, an irrevocable power of attorney does not in itself terminate the principal's title.

Secondly, the determination of the value of the residential real estate for the sale of which the power of attorney is issued is not an essential condition of an irrevocable power of attorney. This circumstance does not allow such a power of attorney to be considered identical to a contract of sale of real estate, since the price of the object must be determined in the contract. Nor is such a power of attorney an analogue of a preliminary contract of sale, since it must specify, in addition to the price of the object, the obligation to sell and the corresponding obligation to buy the object.

Thirdly, the execution of such a power of attorney does not deprive the owner of the right to use, possess and dispose of the relevant real estate object (until the transfer of ownership according to the register entry). In practice, this leads to the fact that the owner who issued such a power of attorney to the representative may immediately conclude a sale and purchase agreement with a third party.

In view of the above, we can speak about the actual strengthening of the position of a trustee under Syrian law in the presence of an irrevocable power of attorney, given the possibility of transferring rights to the trustee's heirs, fixation of the relevant right in the real estate register and the impossibility of its unilateral termination. In this case, a representative on the basis of an irrevocable power of attorney may file a lawsuit with the court to recognise the ownership of residential premises (according to the circumstances of the case for him - the representative - or another person to whom he intends to transfer the ownership right). If it is proved that the price of the residential property has been paid to the owner, such a claim will be satisfied.

Fourth, neither the owner who issued the irrevocable power of attorney nor the representative has a statutory obligation to initiate an entry in the real estate register that an irrevocable power of attorney has been issued in respect of a particular property. Contacts with the register are the responsibility of Syrian notaries, who are obliged to ensure that, once an irrevocable power of attorney has been executed, a notation confirming its existence is made in the real estate register in order to protect the rights of

the parties. Article 34 of Law No. 15 of 2014 regulating the notary public in Syria[167] (hereinafter referred to as the Syrian Notary Law), confirms that a notary must send a copy of any power of attorney related to the sale of residential property to the registry. Although there is no legal deadline for this, the notary usually does so no later than the end of the working day. The problem is caused by the difficulties the notary faces in transmitting information, as the electronic document flow with the real estate registry (as with many other registries, such as the vehicle registry) is not yet established. Recently, the Syrian Government has been working on its creation and automating the archiving of notarial documents.

Fifthly, the rights (powers) of the representative and restriction of the rights of the principal under an irrevocable power of attorney (in accordance with Clause 1 of Article 681 of the Civil Code of Syria, as mentioned above, the principal may not terminate or restrict the irrevocable power of attorney without the consent of the representative) shall be transferred by succession both to the legal successors of the principal and to the legal successors of the representative.

In practice, an irrevocable power of attorney is executed in order to use it instead of a gift or contractual sale mechanism, or instead of entering into an agency or assignment agreement. The reasons why parties prefer the issuance of an irrevocable power of attorney to the certification of one of the above contracts are as follows:

1) Longer (several months) processing of the transfer of ownership.

2) Significant amount of state duty for registration of transfer of ownership under a sale and purchase agreement. Thus, the state duty for registration of the transfer of ownership of immovable property in Syria ranges from 1% to 3% of the value of the immovable property (depending on the type of immovable property, 1% if the property is residential and 3% if it is non-

[167] See. Law No. 15 on Notaries of 2014, which regulates the activities of notaries in Syria. // URL: https://www.ilo.org/dyn/natlex/natlex4.detail?p_isn=98929&p_lang=en (date of visit: 05/11/2022). (In Arabic).

residential)[168]. In the Russian Federation, the state duty payable by an individual for registration of title to immovable property is 2 thousand rubles (clause 22 of Article 333.33 of the Tax Code of the Russian Federation[169]), and if the value of real estate, for example, is 5 million rubles, the state duty will be 0.04%.

3) Unwillingness of the representative to bear the burden of maintenance of the immovable property (which remains with the owner until the transfer of ownership according to the real estate register). In the case of an ordinary sale and purchase, prior to the registration of the transfer of ownership, the buyer does not have the rights of the owner and therefore does not bear the burden of maintenance of the residential property. When an irrevocable power of attorney is executed, the representative acquires the rights of use, possession and disposal of the real estate under the power of attorney and cannot be deprived of these rights without his consent. In this case, the burden of maintenance of the property may lie on the owner for decades, until the representative decides to register the transfer of ownership.

Since Syrian civil law is not familiar with the institutions of a sham or sham transaction, it is not unlawful for an irrevocable power of attorney to be executed as a contract of sale or, under the circumstances of the case, another of the above-mentioned contracts, but in any case, as a contract for the alienation of residential property. As an example, we can cite a quote from the cassation judgement, according to which "if the power of attorney is irrevocable and it is confirmed that the owner has received the price of the property, it is considered a formalised contract of sale in accordance with the law and court practice"[170].

[168] Syrian Law No. 15 of 2021 “On Real Estate Sales Tax” // URL: https://www.sana.sy/?p=1347631 (accessed 06/01/2023). (In Arabic).
[169] Tax Code of the Russian Federation (part two) dated 08/05/2000 No. 117-FZ (as amended on 02/17/2023) // SPS "ConsultantPlus"
[170] Decision of the Syrian Court of Cassation No. 421, dated 04/05/1984, Ground 852, Rule No. 2449, Syrian Civil Code, parts (1) Shafik Tome - Adib Istanbuli. (In Arabic).

The difference between an ordinary power of attorney and an irrevocable power of attorney in Syrian civil law is clear. The difference lies not only and not so much in the manner in which the power of attorney is terminated, but in its very different legal nature. In the first case, it is a power of attorney in the common civil law sense. In the second case, it is an analogue of a contract aimed at alienation of ownership (as interpreted by the Syrian legislator and interpreted by the Syrian law enforcer). This difference predetermines different legal consequences in case of legal disputes arising from transactions made on the basis of an ordinary power of attorney, on the one hand, or an irrevocable power of attorney, on the other hand. An irrevocable power of attorney, while remaining a power of attorney in form, is in essence a document that provides a basis for the transfer of ownership of property[171].

At the same time, the law enforcer widely uses the rule that if there is a note in the register of immovable property about the presence of an irrevocable power of attorney, and the owner (trustor) transfers the right of ownership to a third party, the consequences of disputes arising from the presence of a power of attorney are imposed on this third party, and the transaction is recognised as a fictitious sale between the owner and the third party. That is, a purchaser of immovable property who is aware of the existence of an irrevocable power of attorney in respect of such property is not bona fide[172]. In fact, this is an analogue of a sham transaction in Russian law.

In view of the above, the following conclusion can be formulated. The irrevocable power of attorney as a way of registration of relations of purchase and sale of housing, being a specific institution of Syrian civil law, generates ambiguity, entails the risk of errors, both for judges and legal practitioners. The irrevocable power of attorney causes many conflicts and disagreements, in fact, it is a way of avoiding both the payment of tax on the transfer of real estate in the real estate registry and the burden of maintenance of the relevant property.

[171] Decision of the Syrian Court of Cassation No. 1288 of 1983. Ground 146. Rule No. 2444. (In Arabic).
[172] Sherba Amal. Decree. Op. From 183.

The introduction of the irrevocable power of attorney in 1949 with the adoption of the Syrian Civil Code was due to the need to regulate at the legislative level the relations between dealers in the real estate sector. Initially, the irrevocable power of attorney was introduced as a simplifying mechanism enshrined in law - an alternative to the traditional sales contract. The advantages of an irrevocable power of attorney include the ability to authorise one representative at a time. Such a power of attorney provides the buyer with the certainty that the seller cannot revoke the power of attorney without their consent, thus ensuring security in the transaction process. It also saves time and effort for both the principal and the representative due to its continuous and perpetual nature. The irrevocable power of attorney is often used in the sale of residential property and land.

In light of the controversial nature of the irrevocable power of attorney, the Syrian legislator should optimise the current legal regulation by minimising the possibility of misconduct committed when using an irrevocable power of attorney. Furthermore, it appears that this could be done by legislating the need to initiate notification of the existence of an irrevocable power of attorney to all interested parties (such as banks and public authorities) within a certain period of time, not exceeding, for example, 3 working days. The implementation of such a proposal in practice would significantly reduce the risk of abuse of powers of attorney both transferred and received under an irrevocable power of attorney.

The irrevocable power of attorney provides greater access to property disposal transactions for all segments of the population because it is a simpler way than entering into a contract of sale.

The irrevocable power of attorney provides greater access to property disposal transactions for all segments of the population because, despite its controversial nature, it is an effective legal instrument and a simpler way than entering into a sale and purchase agreement.

The issuance of an irrevocable power of attorney, which is recognised by the Syrian legislator and law enforcer as a contract for the disposal of immovable property,

is an established and customary institution of Syrian law. To abandon it would significantly complicate the civil law turnover of immovable property, including residential premises. Therefore, the present study contains a proposal aimed at optimising this institution rather than eliminating it. Thus, the Syrian legislator needs to make a legal amendment to the Syrian Civil Code by which it prohibits, if the representative has an irrevocable power of attorney, to conclude a contract of sale and purchase of real estate with himself[173].

Let us turn to the issue of the characteristics of residential property as a condition of the contract.

When entering into a contract for the sale and purchase of residential property, it is necessary to determine whether the property is licensed and whether it is legally and factually located within certain territories. Due to the existence of many infringing and unorganised territories in Syria, the aspect outlined is of utmost importance. There are areas in Syria that have been developed in violation of urban planning and building regulations (especially after the war with Israel in 1968 and the displacement of a large number of residents who became homeless after Israel's occupation of the Golan Heights, while other such areas were formed during the crisis Syria is currently experiencing). In these areas, real estate is considered unlicensed, i.e. built or acquired in violation, not registered in the real estate registry, no official data is available[174]. It is dangerous to conclude contracts in respect of such real estate, as it is impossible to prove the existence of the object itself or the ownership right to it. Moreover, by virtue of the provisions of Article 136 of the Civil Code of Syria, such contracts are invalid (the object of the contract must not contradict the law or public order).

Consequently, we can say that there are problems related to the inability to legalise and dispose of residential properties in the respective territories. It seems that it is

[173] SM: Aldgem, B. I. The role of the notary in the turnover of residential premises under Russian and Syrian legislation / B. I. Aldgem // Leningrad Law Journal. – 2023. – No. 2 (72). – pp. 156–171. (In Russian).
[174] Legislative Decree No. 40 of 2012, “On construction violations in Syria” // URL: http://parliament.gov.sy/arabic/eindex.php?node=201&cat=4311&nid=4311&print=1 (date of visit: 01.10. 2022). (In Arabic).

necessary to develop a set of normative-legal documents, which will include the methodology of legalisation of real estate objects, entering the relevant information into the real estate register in order to normalise the civil law turnover of both residential premises and real estate objects in general.

This problem is even more acute after the earthquake in Syria, as a result of which many houses were destroyed. The construction of new housing on the destroyed territories will also fall into the "grey zone", due to the impossibility of legalisation of such real estate by entering it into the state register of immovable property.

It should be noted that at present the Russian Federation has created a system of legal norms regulating the legal regime of residential premises as an object of ownership.

With regard to Syria, the conducted research allows us to formulate the following conclusions.

In Syria there is no special legal regulation of relations related to the contract of sale and purchase of residential premises, as the legislator does not classify real estate objects according to the relevant features. In this regard, the provisions on the contract of sale and purchase of real estate are fully applicable to contracts of sale and purchase of residential premises in Syria. The absence of a legislative definition of residential property results in a lack of a clear understanding of the legal features of contracts for the sale and purchase of residential property .

The following definition of the contract of sale of residential property is proposed, which should be reflected in the Civil Code of Syria: "A contract under which the ownership of residential premises intended for living (house, part of a house or flat) is transferred in exchange for an agreed sum of money".

2.3 Elements of a contract for the sale and purchase of residential property

The purchase and sale of residential property is an important process in people's lives, both in Islamic Shari'ah and secular law. According to Islamic Shari'ah, there are several important elements to be considered when buying and selling.

Islamic schools distinguish the elements (conditions) of a contract of sale and purchase as follows[175]:

The basic condition required for the existence of a deal (ar-arkanالأركان).	**Dispositive (arbitrary) conditions ,(ash-shurut wa-l-ahkam.الشروط والأحكام) ,** These conditions, which are related to each essential element, prevent disputes and problems between people.
parties to the contract.	must be capable, of sound mind, and owners and possessors of the object (proper legal possession).
The subject matter of the contract (al-maqud alayhi or al-mabi'i المعقود عليـه) and the price (as-saman الثمن).	the object (al-mabi'i), and the price (as-saman) must exist and be clearly defined so that each party can make the transfer to the other party, otherwise it is Gharar (غرر) which is forbidden in Islamic law.
The form of the contract (ash-shakel الشـكل as-siga الصـيغة), orally or in writing. The existence of full compliance	According to Fiqh, an assertion (an offer to contract) must be expressed in the prescribed words and must contain the

[175] Al-Jaziri Abd al-Rahman. Jurisprudence Correct Legal Ownership (Fiqh) in the Four Islamic Schools - Book of Sales Rules. – Beirut: House of Scientific Books, 2003. –337 p. (In Arabic).

with the will of both parties - offer (al-ijab الإيجاب) and acceptance (al-kubul القبول).	verb meaning "to buy and sell" in the past tense and directly to the person to whom the offer is addressed. Acceptance (acceptance) must be expressed in the same form, without any limitation or exception. Non-observance of the above rules entails invalidity of the transaction. It is important to note that the Hanafi school considers acceptance as a counter consent of either party to the offer of the offeror, while other Islamic schools consider. The concept of absolute identity of the acceptance to the offer prevails in the Shariah, so if the acceptance contains any changes, it can be considered as a new offer. In our opinion, the idea of a contract as an agreement of will of two parties does not contradict the possibility of making changes in the acceptance, including, for example, clarification of details, correction of misprints. In this context it is possible to refer to the rules of the Principles of International Commercial Contracts, which can be applied by analogy. (Art. 2. 1.12)[176].

[176] UNIDROIT Principles of International Commercial Contracts. [electronic resource] — // URL: https://docs.cntd.ru/document/901784163 (date of visit 07.07.2024).

	Islamic jurisprudence, as an exception to the general rule, also allows the conclusion of a contract of sale by silence "tacit conclusion of the deed", but only in cases where misunderstanding cannot be feared.

The Russian and Syrian legal regulations do not differ with regard to the definition of essential terms of a residential property contract, since the relevant provisions of the Syrian Civil Code were adopted from French law, which belongs to the Romano-Germanic legal family, as well as Russian law.

The essential conditions of a contract of sale and purchase of residential premises in both Russia and Syria are[177]:

- individualizing features of the object of sale (Art. 554 of the Russian Civil Code, Art. 387 of the Syrian Civil Code);

- the price of the sold object (article 555 of the Civil Code of the Russian Federation, article 386 of the Syrian Civil Code). As an essential condition of the contract of sale of residential premises, the Russian legislator also refers to the list of persons who, in accordance with the law, are entitled to use this premises after its sale (Article 558 of the Civil Code of the Russian Federation).

The subject of a contract for the sale and purchase of residential property is the specific residential property on which the parties agree.

[177] Aldgem B.I. Residential premises as a subject of sale under Syrian and Russian legislation. / Materials of the International Youth Scientific Forum “LOMONOSOV-2021” / Responsible editors: I.A. Aleshkovsky, A.V. Andriyanov, E.A. Antipov, E.I. Zimakova. // URL: https://lomonosov-msu.ru/archive/Lomonosov_2021/data/22402/126368_uid499461_report.pdf

According to the legislation of both countries, when drawing up the contract, it is necessary to include detailed information fully characterizing the property, including the registry number, address, area and other relevant data. It is also important to note that when describing the object of the contract, in addition to the characteristics of the residential property, it is also necessary to specify data on the land plot on which it is located (Article 554 of the Civil Code of the Russian Federation)[178].

The specification of the subject of the contract of sale of housing depends on the type of housing. For individual objects of residential real estate - houses and equivalent structures, the author believes that it is necessary to specify their technical parameters (total area, living area, category of materials of walls, flooring and the like), binding to the land plot and neighboring objects. Under extraordinary circumstances, such as the loss of cadastral registration, this issue may become particularly relevant. Therefore, we believe it is necessary to describe all characteristics of the property, including its technical and physical parameters, in as much detail as possible.

In the case of sale of a homestead under Syrian law, in addition to the above-mentioned criteria characterizing a residential house as the subject of the contract, it is necessary to list the household buildings, indicating their location on a particular plot and the size of the latter. If the subject of the sale and purchase agreement is flats, isolated rooms in flats and dormitories, it is necessary to specify the listed objects by defining their technical and legal parameters according to the technical passport.

Both in Russia and Syria, when selling a residential building, the ownership of the land plot is transferred to the buyer simultaneously with the transfer of ownership of the building (Articles 273, 552 of the Civil Code of the Russian Federation and Article 796 of the Syrian Civil Code). According to Article 811 of the Syrian Civil Code, if there are several owners of floors and different flats, they are considered co-owners of the land on which the building is located. It is not allowed to alienate a land plot without the

[178] Belov, V. A. Residential premises and obligatory relations = Residential premises and obligatory relations = Residential premises and obligatory relations: [monograph] / V. A. Belov. - Moscow: Justitsinform, 2018. - 159 p. (In Russian).

building located on it, if they belong to one person (Clause 4 of Article 35 of the Land Code). But, in Syria, according to Clause 3 of Article 769 it is allowed by agreement to separate the ownership of the surface of the land from the ownership of what is above or below it.

Another essential condition of a contract for the sale of housing is the agreement of the price .

Article 373 of the Syrian Civil Code, in addition to stating that the validity of a contract of sale depends on the agreement of the contracting parties on the subject matter of the contract and the determination of the price, emphasizes that the price of the contract must be determined in Syrian currency[179]. In Russia, the currency of payment is the roble (Clause 1 of Article 317 of the Civil Code of the Russian Federation). At the same time, in accordance with paragraph 2 of Article 317 of the Civil Code of the Russian Federation, a monetary obligation may provide that it is payable in Rubles (currency of payment) in an amount equal to a certain amount in foreign currency or in conventional monetary units (currency of debt). Syrian law does not contain such provisions.

The mandatory inclusion of the price of real estate in the sale and purchase agreement is mainly due to the high value of the property, as well as the need to pay sales tax, which is calculated on the basis of the sales price [180].

It follows from Article 386 of the Civil Code of Syria that the price is determined by the amount of money that the buyer is obliged to pay to the seller in exchange for the residential property, the amount of which is established by agreement of the parties on the principle of contractual will, taking into account the full freedom of its determination. If the contract of sale does not specify the price of the thing being sold or the method of determining it, the contract shall be deemed not concluded. The legislator in article 386 of the Civil Code of Syria, provided that the payment shall be in monetary form. It may

[179] Al-Hakim Jacques Youssef. Decree. Op. P. 242.
[180] Tikhomirov, M. Yu. Property and other property rights to residential premises. Practical guide./ M. Yu. Tikhomirov. - M.: Tikhomirov M.Yu. Publishing House, 2011. - 109 p. (In Russian).

be paid to the seller in a single payment, in instalments, in the form of agreed income or in other forms that do not deviate from the intention for which the price was set[181].

The Syrian Court of Cassation considers that "in a contract of sale, the determination of the price and its payment is one of the conditions for the validity of the contract. The payment of the price is therefore one of the conditions for the legality of the sale. The seller's title to the thing is not waived until he has received the price"[182] . That is to say, if the seller relinquishes ownership and the information about it is transmitted to the real estate registry, this creates a presumption that the sale has been completed and the amount of payment has been received by the seller .

Article 398 of the Syrian Civil Code states:

"1. If the sale is made with deferred payment of the price, the seller may stipulate that the transfer of ownership to the buyer is conditional upon payment of the full price, even if the thing sold has already been transferred.

2. If all parts of the price have been paid, the transfer of ownership to the buyer shall be deemed to be based on the moment of sale".

In practice, this means that settlement after the transfer of ownership is possible by agreement of both parties, but before the transfer of ownership in the real estate registry. When registering the transfer of ownership, the competent officer of the real estate registry verifies that the seller has received the full value of the property and fulfilled the relevant obligations by asking the parties to the contract. In Syria, as in Russia, unfortunately, it is not uncommon for the contract to be understated and the true price to be transferred. This mechanism is often used for tax evasion.

The valuation of housing by professional appraisers, introduced in accordance with the Syrian legislation, should currently be the basis for calculating the fee and paying

[181] Al-Zubi Muhammad Yusuf, Explanation of the contract of sale in civil law. – Damascus: House of Culture of Publishing and Distribution, 2006. – 573 p. (In Arabic).
[182] Decision of the Syrian Court of Cassation No. 2030, ground 550, August 14, 1957. Lawyers Journal, p. 332.

taxes, i.e. for the fulfilment of fiscal duties. But in Russia the parties have the right to choose not only the market value, but also the cadastral value for the calculation of the duty (see, for example, Article 333.25 of the Tax Code of the Russian Federation).

It is worth noting that cadastral value in both the Russian Federation and Syria is not related to market value. Thus, when determining the market value, appraisers are guided by the sale value of similar residential properties in the area where the object of appraisal is located.

It is noted that Syrian law does not contain provisions obliging the seller of residential property to include in the contract of sale and purchase terms related to the manner of management of the residential building. However, from a legal perspective, these terms play an important role in protecting the rights of both the seller and the buyer. For example, these conditions may ensure the provision of regular building maintenance services, ensure the safety of residents, regulate the rules of living and use within the building. In addition, the existence of such conditions contributes to the stability and safety of the surrounding property and helps to prevent disputes between different property owners. All this underlines the importance of having mandatory conditions for such situations, especially in residential property sale and purchase agreements because of their economic and social importance. Therefore, we believe that the inclusion of such provisions in the contract may serve as an additional guarantee for the parties and provide a higher level of protection of their rights.

One of the contracting parties may deceive the other party by increasing or decreasing the price, therefore the Syrian Civil Code in Article 126 regulates this situation and the sale shall be recognised as null and void. Also, Article 393 of the Syrian Civil Code prohibits injustice in the sale of the real estate of a minor or incapacitated person. If the property of a minor is sold with manifest injustice, the buyer is obliged to increase the price to the extent necessary to eliminate the injustice, which is four-fifths of the real value of the property (the value of a similar object) at the time of sale. This rule is laid down in the Civil Code of Syria in Article 393.

In Islamic law, four schools of thought agree that a guardian is permitted to dispose of a minor's property in two cases: when there is an acute need for the minor or that the action involves a net benefit to the minor[183] .

In Syrian law, a guardian or custodian is not allowed to sell the property of a minor unless there is a clear interest or benefit in the sale, for example, if the minor is in need of alimony and there is no money to pay it. And of course, this is in accordance with the provisions of the Shariah, but the legislator binds it with an additional condition - obtaining the authorization of a competent judge. This is confirmed by paragraph 2 of Article 172 of the Syrian Personal Status Law: "A guardian or custodian has no right to sell or mortgage the property of a minor except with the permission of a competent judge after verifying the validity of such actions".

In Russia, as a legal defense, transactions involving property of a minor are notarized (Article 54 of the Law on Real Estate Registration).

In Syria, it is mandatory to specify the price not only in the contract itself, but also in the deed of transfer of the property. This serves as proof of the seller's income for the tax authorities[184].

Other conditions may also be considered as essential terms of the contract, if at least one of the parties insists on it. Such are, for example, the term of release of the residential property from encumbrance, the condition on the order of payment of funds by the buyer (with instalments or deferred payment) and the same[185].

By virtue of Article 250 of the Civil Code of the Russian Federation, if the premises belong to several owners, each of them has a pre-emptive right to purchase the share that any of them intends to sell.

[183] As-Sawafi Salem Hamid Muhammad. Guardianship of a minor's property. – Egypt: Cairo-Publishing Center Al-Ghandour, 2009. – 180 pp. (In Arabic).
[184] Morkus Suleiman, Imam Muhammad Ali. Contract of sale. – Cairo: Cairo University, 1955. – 463 p. (In Arabic).
[185] Al-Shamrani Adlan. Sale and rental of real estate in Islamic jurisprudence. – Riyadh: Publication of the Saudi Fiqh Society, 2016. – 978 p. [in Arabic].

In Syria, the pre-emptive right to purchase a share in the right to residential property was regulated in detail during the era of the French Mandate over Syria and Lebanon. The regulation was broadly similar to that provided for in the Civil Code. The Syrian Civil Code expressly repealed the Judicial Code and Law 3339, which regulated real estate rights in Syria and today, Syrian law does not contain specific provisions on the pre-emptive right to purchase an interest in residential real estate.

The reluctance of the Syrian legislator to adopt provisions on pre-emption rights has triggered a wave of criticism from proponents of legislation derived from Islamic law, considering the right of pre-emption among the provisions provided for in Islamic law[186].

One of the most important representatives of this current was Professor Mustafa al-Zarqa, who sharply condemned the legislator and his disregard for the provisions of the Islamic Shariah.

In our opinion, one of the institutions regulating the limits of freedom of contract in order to protect the rights of the interests of others is the institution of pre-emptive right. Also, the right of pre-emption is compatible with notions of equity. Therefore, we believe that the Syrian legislator should correct this mistake and take into account the place and role of pre-emption in our times.

We suggest that the Syrian legislator regulate this issue at the legislative level. For example, this issue can be regulated in such a way that when selling a share of residential property (common ownership), the person wishing to sell must notify in writing the other participants of common ownership of his intention to sell his share to a third party, specifying the price and other conditions. We believe that such notifications are best provided through a notary by submitting applications to the other participants of the shared residential property. If the other participants in the common shared ownership do not purchase the share to be sold within one month from the date of the notice, the seller has the right to sell his share to whomever he wishes. If all other participants refuse (in

[186] Al-Zarqa Mustafa. Sales and barter agreement. – Damascus: 1965. –540 p. (In Arabic).

writing) the pre-emptive right of purchase, the share may be sold to a third party before the expiry of the specified terms. And if the seller violates the pre-emptive right of purchase, any other participant of the common property has the right to object in court. Thus, a participant in common ownership may defend its rights through court proceedings, requesting that the transaction be recognised as invalid, that the rights and obligations of the buyer be transferred to itself or that damages be reimbursed.

In Syria and Russia, the legislator, while establishing the right of every person to housing, does not specify that the above-mentioned housing must necessarily be owned by the citizen. The right to housing implies the right of a person to live in a dwelling, but this provision, in itself, does not provide a guarantee that the dwelling is owned[187]. However, if the dwelling is owned by a person, he or she is not deprived of the right to sell it.

In our opinion, in the Russian legal order the voluntary sale of the only housing by a capable subject of civil law relations cannot contradict the constitutional right to housing, given that such a right, based on a literal interpretation of the Basic Law, does not contain a legal obligation to own premises. A different interpretation of Article 40 of the Constitution of the Russian Federation would contradict the very principle of realization of constitutional rights of citizens.

At the same time, the sale of the only housing by its owner should entail a restriction of the right to housing in terms of the requirement to improve housing conditions at the expense of the state. Such a norm is explicitly stated in Article 53 of the Housing Code of the Russian Federation, according to which citizens who have committed acts as a result of which they may be recognised in need of housing do not have the right to claim to be registered in need of housing within five years after the commission of these acts.

[187] See: Aldgem B. Protection of citizens' rights during the sale of the only home in Russian and Syrian legislation // Law and modern economics: experience and future: collection of materials of the V International Scientific and Practical Conference of the Faculty of Law of St. Petersburg State University of Economics. pp. 342 -348. (In Russian).

It should be noted that the above norm is the subject of criticism by a number of researchers. As noted by E.A. Makhinya, the main problem is that the Housing Code of the Russian Federation does not contain a closed list of criteria that would indicate the bad faith of a person applying for registration of persons in need of housing. Therefore, in law enforcement practice practically any action aimed at alienation of residential premises is considered as a conscious deterioration of housing conditions[188].

There are no special rules in Syrian law restricting the owner's right to dispose of his real estate, especially housing. The owner enjoys complete and absolute freedom of action.

There are also no rules obliging the State to help citizens to improve their housing conditions. The Syrian Constitution provides for the right of a citizen to housing, but in fact the State does not guarantee housing for all.

In both the Syrian and Russian legal orders, it is impossible to disagree with the fact that there should be a legislative barrier to prevent abuses related to the alienation of residential real estate and the reacquisition of residential real estate from the state. Otherwise, it would be an abuse of the constitutional right and would lead to the impossibility of its realization by other subjects who really need to improve their housing conditions. At the same time, not every alienation of residential real estate should be considered as a malicious deterioration of such conditions, limiting the right to apply for assistance to the state in connection with registration as a person in need of better housing conditions.

This approach is supported by the Constitutional Court of the Russian Federation, which in its ruling No. 1543-O-O found that Article 53 of the Housing Code of the Russian Federation may be considered as not violating the rights and freedoms of citizens only to the extent that this norm restricts the right of citizens to be registered in the event

[188] Makhinya, E. A. Some problems of application of Article 53 of the Housing Code of the Russian Federation / E. A. Makhinya // Siberian Legal Review. —2015. —No. 2 (27). — P. 57-66. // URL: https://cyberleninka.ru/article/n/nekotorye-problemy-primeneniya-stati-53-zhilischnogo-kodeksa-rossiyskoy-federatsii (date of visit: 10/14/2022). (In Russian).

that citizens have committed deliberate acts with the purpose of creating artificial conditions for registration[189].

Thus, in our opinion, the presumption of bad faith of a seller of residential premises who applies for registration within the next five years can be rebutted if the sale of real estate was caused by valid reasons. The list of such valid reasons cannot be a closed list and the determination of validity must be in the discretion of the authority making the decision to place a person on the register. Such reasons, in our opinion, should include serious illness of the person himself or his close person, as well as other similar circumstances that make the sale of real estate the only way out of the situation.

Based on the above, Article 53 of the Housing and Communal Housing Code[190] of the Russian Federation should be amended as follows:

"Citizens who, with the intention of acquiring the right to be registered as in need of residential premises, have committed actions as a result of which they may be recognised as in need of residential premises, shall be accepted for registration not earlier than five years from the date of the intentional commission of the said actions, except in cases where such actions were caused by the illness of the person, his relatives or other valid reasons".

This clarification will allow, on the one hand, to protect the constitutional rights of other citizens claiming housing by establishing an effective legal barrier to prevent abuses, and, on the other hand, by increasing the discretionary powers of the decision-making body, to prevent unnecessary and disproportionate restriction of a person's right to his or her own home.

[189] Determination of the Constitutional Court of the Russian Federation dated April 19, 2007 No. 258-O-O "On the refusal to accept for consideration the complaint of citizen Alexander Vladimirovich Kuznetsov about the violation of his constitutional rights by Article 53 of the Housing Code of the Russian Federation"// SPS "Consultant Plus". (In Russian).
[190] Housing Code of the Russian Federation" dated December 29, 2004 N 188-FZ (as amended on April 22, 2024, as amended on April 25, 2024) (as amended and supplemented, entered into force on July 1, 2024)// SPS "ConsultantPlus" (In Russian).

In Syria, in the absence of legal norms limiting the right of disposal of the owner of housing, the Syrian legislator should take into account the Russian experience in order to ensure the realization of the constitutional right of citizens in need of housing.

As an essential condition of the contract of sale of residential premises, the Russian legislator lists the persons who, in accordance with the law, have the right to use the premises after its sale, indicating the type of right to use the sold object (Article 558 of the Civil Code of the Russian Federation).

In the course of the study of the legal provisions of Russia and Syria the following conclusions were made:

- In Russia, the contract of sale and purchase of residential property is regulated by the general norms of civil legislation on sale and purchase provided by the Civil Code of the Russian Federation. The author believes that this issue affects every person at some point in his or her life, since the sale of residential property concerns everyone. Therefore, it would be advisable not to limit ourselves to one article, but to allocate this issue in a separate section of the legislation.

- The essential terms of the contract of sale of housing in the countries differ in that in Russia, in addition to the subject and price of the contract, it is necessary to specify the persons who retain the right to reside in the alienated premises. We consider it necessary to include these requirements in the Syrian civil law.

- The Syrian legislator should include provisions in the Syrian legislation that oblige the seller of residential premises to include in the sale and purchase agreement conditions on the method of management of the apartment building. These terms should contain data that allows identifying the entity responsible for the management. This approach is relevant for both legal orders. In addition, the law should legally define the obligations of the owner of residential premises in relation to his family members.

2.4 Peculiarities of the form and procedure for concluding a contract of sale and purchase of residential premises

The Civil Code of the Russian Federation and the Civil Code of Syria contain similar, in fact, rules that a contract is considered concluded from the moment the parties agree on its essential terms (Article 342 of the Civil Code of the Russian Federation, Article 92 of the Civil Code of Syria).

The purpose of the requirements to the form of the contract is that they allow to make relations between the parties more definite, to eliminate the causes of future conflicts over the fact and content of the transaction[191].

The Civil Code of the Russian Federation establishes special requirements to the form of a contract of sale and purchase of residential real estate (Article 550 of the Civil Code of the Russian Federation): the conclusion of such a contract is carried out in writing by drawing up a single document

The Civil Code of the Syrian Arab Republic does not contain special rules on the conclusion of a contract of sale and purchase of immovable property.

The general rule on the form of the contract is included in Article 93 of the Syrian Civil Code: the expression of will shall be made orally, in writing and by an ordinary sign (sign language for a mute who cannot speak).

We must refer to the position of Fiqh regarding the forms of expression of will.

Islamic jurists define will as an intention towards something and a direction towards it.

The will inherent in the human soul is disregarded by the law unless it is expressed by the person and manifested in the external tangible world. It is known that this will must

[191] Braginsky, M.I., Vitryansky, V.V. Contract law. / M. I. Braginsky, V. V. Vitryansky. - Book 1. M., 2009. - 479 p. (In Russian).

be directed towards the creation of a legal effect, so the law does not pay attention to a will that is not serious, such as a will that is humorous.

In Islamic jurisprudence, there are no specific requirements for the form of contracts, nor are there specific words (formulae). These are considered to be the main features of Islamic jurisprudence. Al-Zuhayli writes that "verbal utterance is the original natural means of expressing the hidden will, and it is most commonly used in contracts between people. Its power, meaning and clarity are clear" [192].

A contract is made orally except in cases where a person cannot express his will orally by being mute, which is the opinion of Imam ash-Shafi'i and the Hanafi school who emphasized the verbal form (orally)[193] .

Muslim jurists were interested in the form of contracts not for the sake of contracts per se or simply to establish certain phrases or their utterances, but rather because the form is the receptacle of the content - the will to perform some legally significant action.

As for the signs, the contract is a clear and comprehensible sign for the mute. The Shafi'i school believes, as Abd al-Razzaq al-Sanhuri explains it: "A clear sign of a mute indicating his intention to make a contract is sufficient. Other Hanafi, Malikite and Hanbali jurists agree with this, but they believe that if the sign of the mute is not clear, there is no contract, even if it is accompanied by a written record"[194].

Sheikh Muhammad Abu Zahra points out in his study on the theory of contracts that "according to the Hanbali and Hanafi schools of law, if a mute contracting party can write, then the contract must be concluded in writing, in addition to its expression by a

[192] Wahba bin Mustafa Al-Zuhayli. Islamic jurisprudence and its evidence. – Damascus University - Sharia College. Damascus: Dar Al-Fikr, 2006. – 735 p. (In Arabic).
[193] Muzaffar Mahmud. Contract theory, legal research in comparison with the provisions of Islamic law. – Jeddah: Al Thaqafa Press, 1999. – 320 p. (In Arabic).
[194] Al-Sanhouri Abdul Razzaq Ahmed. Sources of law in Islamic jurisprudence. – Cairo: League of Arab States, Institute of Higher Arab Studies, 1971. – 258 p. (In Arabic).

sign. The Hanafi school holds that if a contracting party can speak, the use of a sign for a contract is impermissible"[195] .

In Syrian law, there are contracts for which the legislator determines the necessity of a written form, non-compliance with which will lead to the invalidity of the contract. These are the contract of incorporation of a company and the contract of donation of real estate[196]. Accordingly, the Syrian legislator does not require any formalities (written form) when concluding a contract for the sale and purchase of residential property.

In our opinion, the contract of sale of residential property is no less important than the contract of donation of real estate and the contract of incorporation of a company. In the context of considering the importance of writing in a residential property sale and purchase agreement, let us turn to the Syrian Code of Evidence (hereinafter referred to as the Syrian Code of Evidence) [197], the Syrian legislator considers written documents, whether informal, drawn up between the contracting parties, or formal, such as those certified by a notary, as one of the means of proof. "A written document has absolute evidentiary value because it is applicable to prove all material facts and legal acts, irrespective of the value of the law" [198].

The definition of Evidence is included in Article 5 (1) of the Syrian FC: it is a written form in which a public official (e.g. a notary) records, within the limits of his/her authority and jurisdiction, everything that has been done or received by him/her from interested parties.

An official document is of paramount legal importance compared to an unofficial document. The reason for this is as follows: a public official (notary or other officials), when drawing up an official document, has no personal interest in doing so[199].

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[195] Abu Zahra Muhammad. The theory of property and contracts. – Cairo: House of Arabic Thought, 1976. – C 412. (In Arabic).
[196] Saleh Fawaz. Civil law - Sources of obligations. – Damascus: Virtual University Publications, 2018. –p. 14. (In Arabic).
[197] Code of Evidence of the Syrian Arab Republic dated 06/10/1947 No. 359. http://parliament.gov.sy/arabic/index.php?node=201&nid=12365&ref=tree& (date of visit: 03/14/2024). (In Arabic).
[198] Decision of the Court of Cassation in Syria No. 111 based on 511 of 1992. (In Arabic).
[199] Sherba Amal. Syrian Code of Evidence. – Damascus: Publications of Al-Sham Private University, 2019. – 239 p. (In Arabic).

The absence of provisions on the form of the contract of sale and purchase in the Syrian legislation is a serious shortcoming that needs to be eliminated. In connection with the above, we propose to introduce a new article in the Syrian Civil Code with the following content: a contract of sale and purchase of real estate (i.e. a contract of obligation) must be concluded in writing in notarial form, otherwise it is invalid.

Turning to Syrian practice, we can summaries that people are most inclined to conclude a contract of sale and purchase of real estate in writing, despite the fact that Syrian law does not imperatively require it.

In Syria, contracting parties often voluntarily engage the services of lawyers to draft a contract. The seller and the buyer may agree to draw up a formal document certified by a notary or provide for a simple written form[200].

When the parties apply to a notary, the sale and purchase agreement is concluded in consultation at the notary's office in the presence of both parties and is formalized in a notarized document.

The notary then prepares copies of the notarized contract: a copy which he keeps on file, a copy for the seller and another for the buyer. This is indicated in Article 13 of the Syrian Law on Notaries.

In Russia, before the entry into force of the Federal Law No. 122-FZ dated 21 July 1997 "On State Registration of Rights to Immovable Property and Transactions with It"[201], all real estate transactions were subject to mandatory notarial certification. At present, the mandatory participation of a notary in transactions of sale and purchase of residential houses is assumed in cases strictly defined by law, namely: firstly, these are transactions related to alienation of shares in the right of common ownership of immovable property, including in case of alienation by all participants of shared ownership of their shares under one transaction (Article 42 of the Law on Registration of

[200] Saleh Fawaz. Decree. Op. P. 51. (In Arabic).
[201] The law became invalid due to the adoption of Federal Law dated July 13, 2015 N 218-FZ.

Real Estate of the Russian Federation). Secondly, transactions related to the disposal of immovable property under guardianship, as well as alienation of immovable property owned by a minor citizen or a citizen recognised as having limited legal capacity (Article 54 of the Law on Real Estate Registration of the Russian Federation), as well as annuity contracts (Article 584 of the Civil Code of the Russian Federation).

D.F. Bakhitova notes that: "One of the main legal consequences of the application of the notarial form of civil law transactions is that the notarized transaction has, by virtue of the fact of its notarization, an official guarantee of legal validity, which does not need to be proved by other means, as it is public"[202]. E.V. Yakovleva, V.I. Ivankina emphasize that "The notarial form assumes that the process of formation and expression of will takes place in a special way, under the control of an authoritative person - a notary"[203]. M.N. Ilyushina believes that the notarial form of transactions refers to special legal mechanisms aimed at protecting the rights and participants in the turnover of residential real estate[204].

It should be noted that some Russian scientists and practitioners propose to extend the requirement of the notarial form of a sale transaction to all residential premises. Certainly, we should agree with K.A. Korsik that the implementation of such a proposal would significantly reduce the number of illegal transactions with residential premises[205].

However, when formulating such categorical proposals, the possibility and expediency of their application should be investigated at a more fundamental level than a scientific article.

Potentially, the implementation of the proposal to extend the requirement of notarial certification to all transactions with residential premises can entail not only the unloading of the judicial system by reducing the number of cases on invalidation of

[202] Bakhitov, D. F. Notarization and state registration of real estate transactions / D. F. Bakhitov // Bulletin of Omsk University. Series "Law". - 2010. - No. 1 (22). — pp. 77–81. (In Russian).
[203] Yakovleva, E. V., Ivakin V. I. On the issue of notarization of the contract for the sale and purchase of residential premises / E. V. Yakovleva, V. I. Ivakin // ECONOMY AND SOCIETY. - 2018. - No. 6 (49) - P. 1402-1405. (In Russian).
[204] Ilyushina, M. N. Novels of legal regulation of methods of protecting the rights of participants in a contract for the purchase and sale of residential real estate in civil legislation / M. N. Ilyushina // Family and housing law. —2016. —No. 3. — P. 33-36. (In Russian).
[205] Korsik, K. A. Some aspects of the preventive function of the notary / K. A. Korsik // Current problems of Russian law. —2021. —No. 5. — P. 148-154. (In Russian).

contracts with the relevant subject matter, but also a significant increase in the burden on the notaries and a significant "appreciation" of such transactions due to the need for their notarial certification[206].

It is advisable to work on this idea from the point of view of changing or differentiating the cost of notarial services for the certification of transactions of purchase and sale of residential premises between close relatives and in-laws, since the parties to such contracts are in a fiduciary relationship, and therefore the prevention of violation of their interests is less relevant. For example, it is possible to reduce the statutory notarial tariff (Article 22.1 of the Fundamentals) for mandatory certification of such transactions by half, leaving the maximum level of the notarial tariff at the same level. In such a case, the respective tariff for notarization of a residential property sale and purchase transaction between close relatives and in-laws would be 3 thousand + 0.1% of the transaction amount provided that it is less than 10 million rubles and 23 thousand + 0.05% of the transaction amount provided that the latter exceeds 10 million rubles. In such a case, it seems that the implementation of the proposal to extend notarisation to all transactions with residential premises will be perceived by the public less critically, and therefore the effect of the relevant optimization of the legislation will be positive.

The draft law[207] on the extension of notarization to all transactions with property, the transfer of rights to which requires state registration, was introduced to the State Duma in 2017 and rejected in 2019. It is possible to formulate a conclusion about the prospectivity and expediency of further elaboration and scientific and practical substantiation of the extension of the requirement for notarization of the transaction to the purchase and sale of residential premises.

It should be emphasized that the mandatory notarial form provides additional security guarantees to the participants of civil turnover. As part of the trend to accelerate

[206] Lazarenkova, O. G. The trend of increasing the involvement of notaries in real estate transactions / O. G. Lazarenkova // Notary. - 2016. - No. 4. - P. 28-31. (In Russian).
[207] Legislative Bill No. 193850-7 "On Amending Article 8.1 of Part One of the Civil Code of the Russian Federation" (on mandatory notarial certification of a transaction). // URL: https://sozd.duma.gov.ru/bill/193850-7 (accessed on 28.03.2022). (In Russian).

this process, Russian notary, when certifying transactions of purchase and sale of immovable property, immediately, but not later than the end of the working day or within the timeframe determined by the parties to the agreement, submit to federal state register an Electronic Application for Registration of Rights and the documents attached thereto (Article 55 of the Fundamentals).

In our opinion, the notarized form should be mandatory (as a constitutive requirement for the form) for all transactions related to the purchase and sale of residential real estate. Thus, the use of the notarized form for real estate transactions contributes to security, confirms the legal significance of documents, prevents fraud and ensures compliance with the law[208].

The participation of a notary in the purchase and sale of residential property and its functions are mediated by the historical specifics of the development of the institution of Notoriety in the respective state. Taking into account this specificity, legal regulation is developed both in Russia and in Syria[209].

It is important to take into account the fact that the institution of notary's participation in transactions considered in the comparativist aspect is complex, and its legal regulation is not limited to the legislation on notaries in Russia and Syria, respectively. The civil legislation regulating the turnover of immovable things in general and residential premises in particular has a significant impact on the functional load of the notary in the context of sale and purchase of residential premises[210]. At the same time, it should be noted that the institute of notarial is reciprocated by the legal systems of Russia and Syria, which implies the presence of common features in the legal nature of notarial, and therefore in the legal regulation of notarial activity at the stage of both the formation and development of notarial.

[208] Aldgem, B. The role of a notary in the circulation of residential premises under Russian and Syrian legislation / B. Aldgem // Leningrad Law Journal. - 2023. - No. 2 (72). - P. 168. (In Russian).
[209] Makarov, A.P., Meshcheryakov M.A. Development of the notary system in modern Russia: challenges and prospects / A. P. Makarov, M. A. Meshcheryakov // Law. - 2019. - No. 7. - P. 44-48. (In Russian).
[210] Sazonov, M. M. Purchase and sale of real estate with notary support / M. M. Sazonov // Problems of modern science and education. - 2014. - No. 3. - P. 8-12. (In Russian).

Both in Russia and in Syria, the notarial has a rich history, after studying which it seems necessary to focus on the number and content of actions that the modern notary is authorized to perform (professionally)[211]. Obviously, in order to perform these acts, it is necessary to possess special knowledge, which a citizen can obtain in the appropriate volume and at the appropriate level only by undergoing special training, i.e. by obtaining a special profession. As long as there will be a need for a special order of execution of documents and confirmation of facts, the notary will be in demand[212].

In Syria, as in Russia, the main mission of the notarial is to prevent disputes between people. The notarial in Syria, which has existed for more than five centuries, fulfils the need of people for reliable consolidation of rights, stability and predictability of property relations by performing notarial acts stipulated by legislative acts by notaries[213].

With the development of civilization in Syria, the number of transactions increased, as well as the number of disputes, and therefore there was an objective need to certify written contracts as facts of legal validity. This necessitated the formation of an institution that could provide documentary support for transactions. Unlike Russia, where there is a huge base of digitized or digital sources that serve as a doctrinal basis for historically-oriented research, in Syria the vast majority of sources are on paper[214]. These circumstances make a retrospective study much more difficult.

Notarial activities in Syria are regulated by the Syrian Notary Law adopted in 2014[215]. In accordance with this Law, notarial acts in Syria are performed by notaries working in state notary offices, state notary archives (state notaries).

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[211] Kalashnikova, E. B., Kavkaeva, Yu.A. Historical and legal aspect of the formation and development of notaries in the pre-revolutionary period of Russia / E. B. Kalashnikova, Yu. A. Kavkaeva // Scientific interdisciplinary research. - 2020. - No. 6. - P. 172-177. (In Russian).

[212] Archugova, E. A., Rasskazova, N. Yu., Shvarts, M. Z. Notarization of transactions / E. A. Archugova, N. Yu. Rasskazova, M. Z. Shvarts. -Federal Notary Chamber. - Moscow: FRPC, 2012. - 166 p. (In Russian).

[213] Tome S., Stambouli M. Addition to Syrian civil legalization in real estate systems. T. 2. Damascus, 1994. P. 365. (In Arabic).

[214] Mikhailova, I. A. Modernization of legislation on notaries as a factor that increases guarantees for the protection and protection of civil and family rights / I. A. Mikhailova // Notary. —2021. —No. 3. — P. 15-22. (In Russian).

[215] See. Law No. 15 of 2014 regulating the activities of a notary in Syria. // URL: https://www.ilo.org/dyn/natlex/natlex4.detail?p_isn=98929&p_lang=en (date of visit: 05/11/2022). (In Arabic).

The activity of notaries in Russia is regulated by the "Fundamentals of Legislation of the Russian Federation on Notoriety" (hereinafter - the Fundamentals), unlike notaries in Syria, it can be carried out by notaries both in the state notary office and engaged in private practice.

In contrast to the Fundamentals, the Syrian Notary Law is more concise and its provisions focus overwhelmingly on the organizational framework of the notarial, rather than on the legal status or functional burden of the notary. This is because the notary in Syria is a public servant.

The organization of the work of notaries in Syria is generally very similar to that of a Russian notary.

The tasks of a notary when executing sale and purchase transactions with residential premises under Russian and Syrian legislation are similar and concern several aspects: the notary verifies the legal capacity and capacity of the applicants - parties to the sale and purchase agreement and their representatives (in the case of a transaction through a representative), conducts a legal examination of the submitted draft agreement / unilateral transaction or independently drafts such a draft at the request of the applicants, certifies the sale and purchase agreement[216].

According to the provisions of Article 11 of the Law of Syria on Notoriety, before proceeding to draw up or certify a document, the notary, before proceeding to draw up or certify a document, must make sure that the interested persons themselves or their representatives are present before him, establish their identity and the existence of their powers (in the case of the presence of a representative), regardless of whether the parties are natural or legal persons. Identification of the person is carried out by comparing the characteristic features of the holder of the personal document with the information about him/her specified in the personal document. In Syria, the role of a personal document is

[216] Baturina, N.I. Medvedev, I.M. The role of the notary in the sphere of real estate turnover / N.I. Baturina, I.M. Medvedev // Bulletin of the Volgograd Academy of the Ministry of Internal Affairs of Russia. —2017. —No. 1. — P. 40-44. (In Russian).

played by the national identity card, a document that is partly similar to the internal passport of a citizen of the Russian Federation, but contains more detailed information that allows the identification of the citizen not only by photo but also by description. The notary identifies the applicant from the photo in the national identity card, compares the cooler of the eyes and skin indicated in the national identity card with the appearance of the applicant, and determines whether the applicant has the special features listed in the national identity card[217]. The powers of the representative are verified by identifying the representative by means of a national identity card and verifying the power of attorney submitted by the representative (article 15 of the Syrian Notary Public Act).

The notary public ascertains the terms and conditions of the sale and purchase agreed upon by the parties, verifies that they are in accordance with the law, draws up the sale and purchase agreement on the stamped letterhead of the Syrian Ministry of Justice, reads the agreement to the parties and ascertains that the parties understand it (article 21 of the Syrian Notaries Act), taking into account the will of the parties. Once the parties have confirmed that they understand the text of the contract and that its terms have indeed been agreed upon, the parties sign the contract and leave a thumbprint on the contract. The notary certifies the authenticity of the signature and thumbprint with a seal and his signature, making an inscription stating that the certification takes place after the parties have familiarised themselves with the text of the contract and have acknowledged the content of the contract (expressed agreement with it) in his (the notary's) presence[218].

A thumbprint shall be understood as a left-hand thumbprint, therefore, if the person concerned does not have a left-hand thumb or the papillary pattern of the thumbprint is damaged directly, which does not allow the thumbprint to be taken, the notary may take a right-hand thumbprint and indicate in the notarial act that the right-hand thumbprint has been taken (with an indication of the relevant reason). If the person concerned does not have both thumbs, the remaining fingers may be fingerprinted, and

[217] Ali Fares. Notary between text and practical application. –Aleppo: Al-Halabi Legal Publications, 2014. – 259 p. (In Arabic).
[218] Al-Zuhayli Muhammad Mustafa. Means of proof. – Syria, Damascus: Dar Al-Bayan Library, 1982. –484 p. (In Arabic).

the notary shall make an appropriate notation in the notarial act, explaining the reasons and indicating which fingerprints were taken. If a person lacks the hands of both hands or fingers on both hands, the person concerned shall provide a medical document confirming such condition, and the notary shall indicate in the power of attorney that he cannot be fingerprinted, which shall be confirmed in writing by two witnesses, after which the transaction shall be certified by the notary[219].

If the notary does not know the language of the applicants or one of them, or if one of them is deaf, mute or blind and therefore unable to express his or her will, notaries must engage an interpreter or an expert duly registered in the register of sworn experts at the Ministry of Justice to perform the notarial act (art. 13 of the Syrian Law on Notaries).

Failure of a notary to comply with the above procedure for certifying a contract of sale and purchase of immovable property entails his liability, which is fixed at the legislative level. Taking into account that the notary is a civil servant, and the law on notaries does not enshrine the responsibility of the notary, to establish the responsibility of the notary as a civil servant, the norms of the Law "On the Fundamentals of Civil Service" No. 50 of 2004 are applied[220].

It should be noted that there are restrictions common to Syria and Russia on the right of a notary to perform a notarial act, including the certification of a contract for the sale of residential property. Such restrictions are set out in Article 36 of the Syrian Law on Notaries and Article 47 of the Fundamentals, respectively. In accordance with these regulations, notaries may not perform notarial acts in their own name and on their own behalf, in the name and on behalf of their spouses, there and their close relatives (parents, children, grandchildren)[221].

[219] Tamimi Firas Sami Hamid Mulla. Notary (His duties and responsibilities - comparative study). – Aleppo: Dar Al-Halabi for legal publications, 2016. – 320 p. (In Arabic).
[220] Syrian Law No. 50 of 2004. “On the fundamentals of public service” // URL: http://tss-est.net/worker/Laws/20/48/Ar (date of visit: 02.24.2023). (In Arabic).
[221] Begichev, A.V. Notary for bachelors: Textbook / A. V. Begichev. – Moscow: Prospekt, 2018. – P. 95. (In Russian).

In addition, "notarization of a transaction is a complex multi-stage procedure, where every step of the notary, from the verification of the submitted documents to a personal conversation with all parties to the transaction, is essential"[222].

Article 34 of the Law of Syria on Notoriety enshrines the exclusive territorial jurisdiction of a notary in relation to the certification of irrevocable power of attorney for the disposal of property located in his district. Similar in content can be considered Article 56 of the Fundamentals, according to which a notary is authorized to certify a contract of sale and purchase in respect of immovable property located in the subject of the Russian Federation, in which his notarial district is located.

Speaking about the differences in the organization of notarial activity, including the certification of sale and purchase transactions, under Russian and Syrian legislation, it is necessary to mention the electronic document flow, which is being introduced into notarial activity in Russia, as well as the possibility of remote certification of transactions, including the sale and purchase of residential property[223]. Syrian law does not provide for such a method of certifying transactions, including transactions involving residential property.

But despite the importance of using electronic document management and remote certification of transactions in authentication activities in any country, this system can face a number of practical and theoretical problems. One of the main difficulties in the use of electronic document management is to ensure the security of transmitted and stored data. There is a risk of unauthorized access, forgery of documents or leakage of confidential information. There are also possible failures of information systems, problems with internet connectivity and software failures that can lead to delays and errors in documentation procedures.

[222] Formakidov, D. A. On the need to introduce notarization of contracts for the alienation of residential premises / D. A. Formakidov // Notary. - 2022. - No. 4. - P. 15. (In Russian).
[223] Tarasova, E. A. Modern notary = electronic notary? (digitalization of notarial activities) / E. A. Tarasova // Perm legal almanac. - 2019. - No. 2. - P. 337-344. (In Russian).

We believe that it is necessary to work on preventing such problems by developing and implementing comprehensive measures aimed at ensuring security, legality, technical reliability, trust and regulation of electronic transactions. This includes the development and adoption of relevant regulations, the introduction of modern information security systems, the establishment of standards to ensure the authenticity of electronic documents, and awareness-raising activities among transaction participants and the public.

Let us dwell more on the peculiarity of Syrian law, which was mentioned above. It is about the norms of Art. 681 of the Syrian Civil Code, by virtue of which an irrevocable power of attorney certified by a notary is in practice equated to a contract of sale. In other words, the traditional formalization of a contract of sale as an agreement between the parties may be replaced by the issuance of an irrevocable power of attorney. It is the responsibility of notaries in Syria to contact the real estate registry. Due to the lack of electronic document management in Syria, it is very problematic for a notary to fulfil this duty. In our opinion, it is not necessary to impose additional duties on the notary in this area. The obligation to make a mark in the register on the issuance of the power of attorney should be assigned to the representative. We believe that this can be done by fixing at the legislative level the obligation of a representative (under an irrevocable power of attorney) to initiate the entry of a mark on the existence of an irrevocable power of attorney in the register of immovable property within five working days from the date of receipt of the irrevocable power of attorney. The implementation of such a proposal in practice will significantly reduce the risk of abuse of powers both transferred and received under an irrevocable power of attorney. Failure to fulfil this obligation may result in the irrevocable power of attorney being declared null and void. When a notation is made in the real estate registry, a notation to that effect should also be made by the real estate registry staff on the power of attorney itself. The proposed measures are capable of streamlining the civil legal turnover of residential premises in Syria and will contribute to the streamlining of law enforcement practice in the relevant area.

The conducted research allows us to formulate the following conclusions.

The importance of the notary's activity is proven in the process of civil turnover, given the need of any society to strengthen and protect property rights, as well as to protect the parties to legal relations.

Due to the economic value of real estate, in Syria as well as in Russia, the notarial written form should be mandatory for all transactions related to the purchase and sale of residential property.

The Syrian legislator should take advantage of the Russian experience of using electronic document flow and remote certification of transactions related to the purchase and sale of real estate. With the need for the legislators of the two countries, Syria and Russia, to work constantly and continuously to avoid problems that may arise as a result of this system.

2.5 Encumbrance of residential premises with third party rights

The right in rem is a right to a thing. The main feature of the proprietary right is the direct possession of a thing by a person, its absolute nature, the presence of proprietary law claims, the specificity of the object of proprietary rights and the list of types of these rights[224]. As noted by I.A. Pokrovsky, the right of ownership "is by no means for mankind original and, so to speak, natural: it was created with labour through a slow historical process. It was one of the first demands of the developing personality, and its creation was, in the real historical situation of the past, the most important victory for the latter"[225], and it constitutes the provision of the material basis for all its activities.

There is no consensus in science on the meaning of the concepts of "restriction" and "encumbrance".

It is necessary to study the concepts of "restriction" and "encumbrance" and their distinction, as the concepts are close in meaning, but not the same. The distinction

[224] Sukhanov, E. A. Civil law: textbook / ed. E. A. Sukhanova. M., 2005. - 274 p. (In Russian).
[225] Pokrovsky I.A. Main problems of civil law/ I.A. Pokrovsky. - Petrograd: ed. legal book skl. "Pravo", 1917. - P. 192. (In Russian).

between the concepts of “restriction” and “encumbrance” is also important for transactions on the sale and purchase of housing, because, for example, the restriction will be an obstacle to the alienation of property, and encumbrance may impose additional difficulties in the transaction.

“In jurisprudence, a comparative analysis of the characteristic features of restrictions and encumbrances as elements of the mechanism of legal regulation has not been carried out, there are no scientifically substantiated systems of criteria for distinguishing restrictions and encumbrances as independent legal phenomena. Attempts of legal scholars to develop a unified theoretical approach and a common point of view to the definition of these concepts have not been practically undertaken. In modern Russian legislation there is no clear concept of “encumbrance” and there is a need not only to formulate it, but also to customize the mechanism of regulation of the relevant legal relations”[226].

What the concepts of “restriction” and “encumbrance” have in common is that they in one way or another relate to the legal possibilities to dispose of property[227].

The Russian legislator has attempted to give a unified definition of these legal concepts. In accordance with Article 1 of the Law on State Registration of Rights to Real Estate and Transactions with It, restrictions (encumbrances) are “the presence of conditions or prohibitions established by law or authorized bodies in the manner prescribed by law, which restrict the right holder in exercising the right of ownership or other proprietary rights to a particular real estate object (easement, mortgage, trust management, lease, concession agreement, seizure of property and others)”[228].

In other words, the law establishes that when an encumbrance appears, third parties who have some kind of relation to the real estate in question also appear.

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[226]Zaitsev, S. Yu. Epistemology of restrictions and encumbrances of civil rights / S. Yu. Zaitsev // “Black holes” in Russian legislation. - 2009. - No. 6. - P. 55-57. (In Russian).

[227] Bibikov A.I. Protection of the rights and legitimate interests of citizens and legal entities as participants in civil legal relations: in 2 hours - / Ivan. state University; edited by A.I. Bibikova. - Ivanovo: IvSU, - 2017. Part 1: textbook - 2017. - 559 p. (In Russian).

[228] Mikryukov V.A. Restrictions and encumbrances of civil rights / V. A. Mikryukov. – M.: Statute, 2007. – 252 p. (In Russian).

Based on the above, the following conclusion can be reached: restriction is a concept applied to a subjective right (e.g., seizure of property by a bailiff), while encumbrance refers to the object (e.g., a pledged object). Accordingly, the one whose object is encumbered by someone else's rights finds himself limited in his right to that object. Thus, the concepts of “encumbrance” and “restriction” are not identical, but are interrelated.

Table 1 shows encumbrances on real estate under Russian law arising by operation of law.

Table 1. Types and features of encumbrances on residential immovable property

Type of encumbrance	**Essence**	**What is encumbered**	**Risks**
Hypothecation	The most popular form of encumbrance is a hypothecation : For example, an apartment and a residential building purchased with a bank loan are pledged to the bank and cannot be pledged to another creditor; if the building or structure acquired or constructed at the expense of credit funds is located on a land plot, such land plot is also pledged to the bank;	the property being purchased.	Having paid the price to the seller, the buyer risks being left without an apartment and without funds.

	if the land plot itself was purchased with borrowed funds, it also becomes the subject of pledge ; Other examples of mortgages can be found in Federal Law No. 102-FZ “On Hypothecation (Pledge of Real Estate)” dated 16.07.1998.		
Encumbrance in the form of rent	The obligation to pay rents encumbers the property, and therefore its owner is obliged to pay them (Article 586 of the Civil Code of the Russian Federation).	encumbers the land plot, building, structure or other immovable property transferred under its payment.	in case of alienation of such property by the annuity payer, his obligations under the annuity contract are transferred to the purchaser of the property.
Encumbrance in the form of an arrest	seizure of real estate does not allow to conduct transactions with it. The arrest is imposed by bailiffs on the basis of court decisions, Article 64 of the Federal Law “On Enforcement Proceedings”.	seizure is placed on real estate, if it is the subject of litigation, can be lifted.	the risk of buying such real estate and later receiving a court decision to lift the seizure and transfer ownership to the primary owner.
Right of use of residential premises by	is retained for the former member of the owner's family for a	the residential property is encumbered.	The court may also oblige the owner of residential

former family members of the owner	certain period of time and on the basis of a court decision in the presence of circumstances listed in article 31 of the Housing and Communal Services of the Russian Federation.		premises to provide other residential premises for the former spouse and other members of his or her family.
Right to use residential premises by the former owner of the seized property	residential premises may be withdrawn from the owner in connection with the withdrawal for state or municipal needs (Art. 32 of the Housing and Utilities Code of the Russian Federation), as well as in connection with the implementation of integrated development of the territory (Art. 32.1 of the Housing and Utilities Code of the Russian Federation), in this case, at the request of the former owner of the residential premises, he retains the right to use the residential premises on	the residential property is encumbered.	the owner bears the risk of bearing the costs and losses associated with the investments made during the period of such use when determining the amount of compensation for the residential premises.

	the terms and conditions defined by law.		
Uncompensated use	a person who refused to participate in the privatization of an apartment, as well as a former family member of a tenant of residential premises under a social rent agreement, have the right to reside in the residential premises a person may receive the right of lifetime residence in an apartment that he or she has inherited.	the residential property is encumbered.	it is often the most difficult to trace the existence of such a person who has the right to gratuitous use, as it is not always listed in the Unified State Register of Legal Entities.
Testamentary disclaimer	a person may receive the right to live for life in an apartment that he or she has inherited.	this right is not lost even if there is a change of ownership of the property.	you cannot be evicted from the apartment or deprived of this right under the law until the time limit set in the will has expired.
Maternity capital and registered minors	children have the right to a share in the apartment purchased at the expense of maternity capital. (Federal Law No. 256-FZ of	The children must be granted ownership in another dwelling not smaller than this one.	if the housing is sold without the consent of the guardian, such a transaction may be recognized as invalid.

	29.12.2006 "On Additional Measures of State Support for Families with Children", Article 10, paragraph 4).		
Encumbrance in the form of a lease	is a type of encumbrance on property at the owner's own request, whereby the property is made available for temporary use for a regular fee. It is the most common restriction of rights to real estate.	the landlord is not entitled to evict the tenants without observing the reasons spelled out in the contract. It can be said that according to Article 675 of the Civil Code of the Russian Federation, the transfer of ownership of residential real estate to a new owner does not entail the termination or amendment of the existing rental contract for residential real estate, as the new owner becomes the owner in accordance with the terms of the previously concluded rental contract.	A tenancy encumbrance places restrictions on the landlord, he cannot use the property, but he can sell it.

The current Syrian Civil Code does not contain the term “encumbrance”. On the other hand, the Syrian legislator often establishes both encumbrances and limitations. And calls them additional rights (rights that limit the right of ownership)[229].

Some examples of encumbrances in Syria are: establishment of easements, leasing of mortgaged property, seizure of real estate and establishment of a lien on real estate (mortgage).

Table 2. Types and characteristics of encumbrances on real property (residential premises) in Syria

Type of encumbrance	**Essence**	**What is encumbered**	**Risks**
1- Hypothecation with transfer of the right of possession	-the housing is purchased encumbered with a debt to a specific person and is pledged to that person. -according to article 1055 of the Civil Code, it is a contract under which the debtor transfers immovable property to his creditor or another person agreed upon by both parties, and under which the creditor has the right to retain the property until he has	-acquired real estate (Acquired property, i.e., the mortgagee's possession of the real estate); -the right of possession is transferred; -registration of the mortgage in the real estate registry (any agreement between two parties to create a right in rem in real estate or to transfer it has no place between the contracting parties and has no effect against third parties until the	-the pledgee's possession of residential real estate may leave the pledgee both without an apartment and without funds; - the pledgee's responsibility is to maintain the property in its possession, service it and make necessary repairs.

[229] Al-Haraki, Ahmed, Ghazal Muhammad Ammar. Property rights. —Damascus: University of Damascus, 2010. — P. 271. (In Arabic).

	paid the full amount of the debt; -the transfer of the real estate refers to the creditor's control and actual possession of the real estate as a basic condition necessary for the completion of the mortgage contract (Syrian Arbitration Court Decision No. 62 Ground No. 20 of 21.05.1975 - Journal of Lawyers, p. 49 of 1976); -this agreement must be made in writing; -the mortgagee (creditor) is not allowed to reside in the immovable property, if it is a house intended for habitation, without paying rent to the mortgagor (debtor). (That is, the operation and use is done with the consent of the mortgagee); - the pledgee may place the property	date of its registration) in accordance with Article 11 of Law 188 on the registration of real estate - judgment of the Court of Cassation 298 of 23.04.1962 GC, published in the Journal of Lawyers 1963; -the debtor or creditor may not dispose of the pledged property except by their mutual consent, and anything else is considered null and void (protection of both parties); -the pledgee has the right to transfer the property into his possession and to agree otherwise if the property was not in his possession, and the right of pre-emption if there are several creditors; - protection of the pledgor's right: it is inadmissible to agree that the pledged property will remain	

	at the disposal of the pledgor (owner) and the property remains intended for payment of the debt (Article 1069 of the Civil Code of Syria).	the property of the pledgee-creditor in case of non-payment of the debt. This is confirmed by Article 1061 of the Civil Code of Syria. The existence of this provision indicates the legislator's desire to protect the debtor from the creditor's influence on him at the time of contracting.	
2 - Hypothecation without possession (conventional hypothec).	-natural right is based on immovable property intended to secure the fulfillment of the obligation. That is, it is a right and a guarantee mechanism aimed at ensuring the fulfillment of the said obligation. This is stated in article 1071 of the Civil Code of Syria. -It can be done in any form, written or oral. The written form is not a mandatory requirement. -does not mean expropriation of	-the debtor cannot harm, the creditor, and reduce the value of the pledged property; -registration of immovable property is necessary for its validity between contracting parties and against third parties; -the creditor has a right of tracing and a right of first refusal; -the tracing of property constitutes a restriction of ownership;	-the debtor is free to dispose of his real property, he can sell it, rent or gift it, and use and exploit it.

	possession from the owner and transferring it to the creditor. -In case of division of property due to inheritance, each part guarantees the payment of the debt.	- the creditor has a direct right not to the property but to the tangible value of the property.	
3 - Encumbrance in the form of rent	- monthly financial maintenance and security must be formalized in the form of a contract; -the right to real estate is transferred to a person only upon the death of the owner.	- a special type of transaction that involves the transfer of real estate in return for material collateral; - a potential contract in which the other party cannot specify that it must pay in full because the payment is linked to the maturity of the receivable.	- rare and not widespread in Syria due to its danger, a special type of transaction that involves the transfer of real estate in return for material collateral. It is not registered or marked in the Register. Therefore, landlords try to sell the housing without the knowledge of their wards.
4-An encumbrance in the form of an arrest	seizure is a prohibition, i.e. no real estate transactions are allowed.	the court order prohibits any form of disposition until the dispute is over. The real estate registry indicates that there is a dispute over the property, an attachment, and a prohibition on its disposition.	the court may seize real estate in payment of a debt or execution of a judgment. The risk of buying such real estate at auction and later receiving a court decision to cancel the seizure.

5- Encumbrance in the form of a lease	-A common type of restriction of the owner's right to his property and encumbrance of the property right.	-under a lease agreement, the landlord transfers the property to the tenant for temporary use; -the rent represents a restriction for the landlord, as he cannot use the property, but he can sell it. However, he will not have the right to evict the tenants without giving reasons specified in the contract or agreeing to terminate the contract in case the landlord wants to sell his property in exchange for the tenant receiving compensation; - the lease agreement is registered with the municipal authorities.	-Taking into account that Article 571 of the Civil Code of Syria provides that if the ownership of the property is transferred to another person, this agreement does not apply to the new owner, unless the lease agreement specifies a fixed date for the transfer of ownership, and if this is the case, the lease agreement remains in force and applies to the new owner.

Analysis of judicial practice allows to identify the essence of encumbrance, as well as to give a legal characterization of this phenomenon (paragraphs 38 and 53 of the Resolution of the Plenum of the Supreme Court of the Russian Federation № 10, Plenum of the Supreme Court of the Russian Federation № 22 of 29.04.2010 (ed. 12.12.2023) “On some issues arising in judicial practice in resolving disputes related

to the protection of ownership and other proprietary rights"; "Review of judicial practice of the Supreme Court of the Russian Federation № 3 (2020)" (approved by the Presidium of the Supreme Court of the Russian Federation 25.11.2020) (approved by the Presidium of the Supreme Court of the Russian Federation on 25.11.2020).

M.T. Sablin notes that "buyers are most afraid of the presence of minors in the apartment, because the principle of the courts in case of disputes involving minors is inviolable - minors should not remain without housing, often regardless of the norms of current legislation. It would seem, what does this have to do with the buyer? He only purchased the apartment and is not obliged to exercise parental custody over the minor members of the seller's family. This is the responsibility of the parents and the guardianship and custody authorities. If after the sale of the apartment the child is not provided with other housing for living, the transaction on the sale of the apartment may be challenged. Therefore, if there is a child at the seller should be asked where he is registered. If the documents on his registration in another place is not presented, then consider that he has the right to use the housing put up for sale, which means that the consent of the guardianship and custody agency is required"[230].

In the contract, if the indication of the encumbrance of the property is a condition agreed upon between the two parties, the absence of a condition in the contract that a certain person retains the right to use the apartment, may be the basis for recognizing this transaction unconcluded, but not invalid.

In accordance with the information letter of the Presidium of the Supreme Arbitration Court of the Russian Federation from 25.02.2014 №165 "Review of judicial practice on disputes related to the recognition of contracts as non-concluded", a contract that is not concluded due to failure to agree on the essential conditions cannot be recognized as invalid, as it not only does not give rise to the consequences to which it was directed, but also is absent in fact due to the failure of the parties to

[230] Sablin M.T. Buying an apartment in Russia: selection techniques, legal verification and implementation / M. T. Sablin. — Ed. 3rd, revised and additional - M.: Prospekt, 2018. - P. 220. (In Russian).

reach any agreement, and therefore, cannot give rise to such consequences in the future[231].

In turn, some researchers of civil law [232] believe that the norm of paragraph 1 of Article 558 of the Civil Code of the Russian Federation does not indicate an essential condition of the contract, as it does not affect the possibility of its fulfillment. And thus, argue that the indication of the list of persons who by virtue of law retain the right to use the residential premises is not a condition of the contract, but information on encumbrances, which a bona fide seller is obliged to inform by virtue of direct law.

This position is also confirmed by court practice: "considering that the retention of the right to use the premises does not depend on the will of the parties, but is mandatory by virtue of the law, paragraph 1 of Article 558 of the Civil Code of the Russian Federation is not an essential condition of the contract in the sense of Article 432 of the Civil Code of the Russian Federation, since no agreement on this matter can be reached by the seller and the buyer. The presence or absence of such an indication cannot affect the rights of persons retaining the right of use, as it does not give rise to it and does not terminate it.

Thus, Article 558 of the Civil Code of the Russian Federation, taking into account paragraph 1 of Article 460 of the Civil Code of the Russian Federation, does not refer to the list of persons who, in accordance with the law, retain the right to use residential premises as a special independent condition of the contract of sale of residential premises, but to the fact that in the contract of sale of residential premises the buyer must expressly agree to accept from the seller residential premises encumbered by the rights of such persons (which at the same time means the need for mandatory warning the buyer of such rights). Consequently, the list of third parties

[231] Information letter of the Presidium of the Supreme Arbitration Court of the Russian Federation dated February 25, 2014 No. 165 "Review of judicial practice on disputes related to the recognition of contracts as not concluded" // ATP "Consultant-Plus". (In Russian).
[232] See: Tuzov D.O. The theory of invalidity of transactions: the experience of Russian law in the context of the European legal tradition / D. O. Tuzov. - Moscow: Statute, 2007. - 600 p. (In Russian).

referred to in Article 558 of the Civil Code of the Russian Federation should be considered not as an independent essential condition of the contract of sale of residential premises, in the absence of which the contract should be considered unconcluded, but as a necessary element of the description of the subject of such a contract along with other elements specified in Article 554 of the Civil Code of the Russian Federation"[233].

We believe that the indication of the list of persons who by virtue of the law retain the right to use the residential premises is an essential condition of the contract of sale of residential premises. This is supported by the fact that the parties must agree on it, and the buyer must agree to purchase the premises with an encumbrance in the form of the right of residence in it of a third party. The rights of use significantly affect the ability of the future owner to own, use and dispose of the property, respectively, informing about the rights of third parties to the alienated property, in our opinion, is an obligation of the seller. Deliberate concealment of this information should be suppressed in court.

Disputes in the sale of seized apartments are also common. In these situations, there are families with children who have no other real estate suitable for living, as a result of which they continue to live in the apartments even after the sale of housing from the auction. Thus, A. bought a seized apartment at auction with a value of 5,000 thousand rubles. It was inhabited by a family with three children who refused to move out of the apartment. The bailiffs repeatedly tried to evict the family, but the presence of children prevented the realization of this decision. Thus, A. was unable to move into this housing for more than one year, after which he appealed to the court. The defendants appealed that this was their only housing, and the amount of unpaid mortgage was less than 30%, which, in their opinion, indicates the illegality of the earlier court decision. However, the court sided with the plaintiff, giving the bailiffs

[233] Resolution of the Nineteenth Arbitration Court of Appeal dated April 11, 2008 in case No. A08-12529/05-2-14 // URL: https://sudrf.cntd.ru/document/454600410 (date of visit: 08/23/2023). (In Russian).

the obligation to evict the family from the apartment and hand over the keys to its real owner[234].

Syrian jurisprudence has developed the position that "when expropriation of real estate in the public interest provides compensation for the owner, as well as for other right holders, including tenants, since they enjoy personal rights to benefit from the expropriated property, they deserve compensation for the damage caused to their rights to the property as a result of the expropriation"[235].

It is important to note that despite the absolute right of the owner to dispose of his property by sale or in any other way, the rights of his family members living in the dwelling to be alienated must be taken into account.

In order to analyze the relations between the owner of residential premises and the persons living with him within the framework of Russian law (Article 292 of the Civil Code of the Russian Federation, Article 31 of the Housing and Utilities Code of the Russian Federation), it is necessary to define the circle of persons entitled to residential premises together with the owner. These persons are called "family members of the owner of the residential premises" and include the owner's spouse, their children and parents.

"Other relatives, incapacitated dependents, as well as other persons may be recognized as family members of the owner only if they were entered by the owner as members of his family" (paragraph 1 of Article 31 of the Housing and Communal Housing Code of the Russian Federation)[236]. Former family members, whose family relations with the owner have ceased, in some cases may retain the right to use the residential premises (paragraph 4 of Art. 31 of the Housing and Communal Housing Code of the Russian Federation).

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[234] Decision of the Oktyabrsky District Court of Arkhangelsk in civil case No. 2-4846/2019 dated October 8, 2019 // URL: https://ur29.ru/courts-cases/zhilishchnyy-yurist/delo-o-vyselenii-zhiltsov-iz- kvartiry-kuplennoy-s-torgov/ (date of visit: 01/10/2022). (In Russian).

[235] Decision of the Syrian Court of Cassation No. 1772, ground 68 of 2010 (In Arabic).

[236] Mardaliev R.T. Civil law. Tutorial. Third generation standard / R. T. Mardaliev. - Moscow [etc.]: Peter, 2014. - 251 p. (In Russian).

In Russian legislation, the rights of such persons are enshrined in Article 31 of the Housing and Utilities Code of the Russian Federation. This norm implies the exercise of the right to use residential real estate by the owner and a member of his family on an equal basis. It is also allowed to conclude an agreement on move-in, which specifies the scope of rights to use the housing by the citizen. But this right cannot be considered as a right in rem, because when selling housing they are obliged to vacate it. So, the family members have a relative right to use the residential premises, and the obliged is the owner of housing. The family members have the right to make a claim in this regard even against the landlord.

Thus, we can state that the Russian legislator obliges the owner to take into account and respect the right of his family members living with him in the same residential premises.

Nevertheless, the transfer of ownership of a residential building or an apartment to another person as a general rule is the basis for termination of the right to use the residential premises by family members of the former owner, unless otherwise provided by law[237].

According to E.A. Sukhanov, at present “the right of family members of the owner of residential premises (the circle of which is established by paragraph 1 of article 31 of the Housing Code of the Russian Federation) to use it on the conditions provided for by the housing legislation (paragraph 1 of paragraph 1 of article 292 of the Civil Code of the Russian Federation) is not a proprietary right”. E.A. Sukhanov also points to the wording of Article 292 of the Civil Code of the Russian Federation, by virtue of which the transfer of ownership of housing became the basis for the termination of the right to use it by family members of the former owner. In other words, “the ‘right of succession’ was excluded from the content of the said right of use, and this right itself lost its in-rem nature”. Also, the right to use the owner's

[237] Previously, before the introduction of appropriate amendments to the Civil Code of the Russian Federation in 2004, the transfer of ownership of residential premises, as a general rule, was not grounds for termination of the right to use residential premises by family members of the previous owner.

residential premises by members of his family is not preserved when they terminate their family relations with the owner and is generally of a fixed-term nature. As a result, “the right in question is terminated both at the change of the owner of housing, and at the loss of its subjects of family ties with him and by virtue of this cannot be considered in rem”[238]. One cannot but agree with the point of view of E. A. Sukhanov.

Legal scholars note that “such an obvious weakness of this right and the need to increase the protection of social, primarily housing, interests of the owner's family members, including former ones, explains the emergence of proposals to enshrine in civil and housing legislation the construction of ‘housing easement’ as a type of a new limited property right - ‘social usufruct’ (or ‘right of personal use’)”[239].

Such a right should undoubtedly be in rem, including a “right of succession”, i.e., independent of a change in ownership or termination of family relations[240]. One cannot but agree with this view, which emphasizes the importance of protecting the rights of family members to housing regardless of changes in ownership or family relations. It is the duty of any legislator to provide certain legal guarantees and protection of the interests of family members with regard to the use of this housing.

This right is inherently more akin to property rights, because despite the existence of property and personal non-property relations between the owner and his family members, the right of family members to the residential premises they share with the owner cannot be ignored, often treating such premises as a continuation of their family history. To ignore this circumstance means to create a potential threat to the credibility of the institution of the family in general, as well as to the manifestation of attention and care with regard to the property that family members have in common use, in particular.

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[238] Sukhanov, E. A. Property law: scientific and educational essay. / E. A. Sukhanov. - M.: Statute, 2017. - P. 130. // SPS “Consultant Plus”. Electronic resource]: – Access from the reference and legal system “Consultant Plus” (date of access: 03/04/2022). (In Russian).

[239] Concept for the development of civil legislation on real estate. pp. 35 - 38; Concept for the development of civil legislation of the Russian Federation. pp. 93 - 94. (In Russian).

[240] Sukhanov. E. A. Decree. op. P. 130. (In Russian).

Thus, with regard to unprotected groups of persons who have the right to use residential premises, it is advisable to enshrine this right in the legislation as a right in rem. In modern legal orders, the rights of the owner of residential premises should be limited in favor of a number of persons by granting them the right to use the premises as a proprietary right. Such rights should be granted not only on the basis of the principle of family solidarity, but also on the basis of the principle of protection of people who are incapable of working or have limited ability to work (deprived of opportunities to earn an income). These people may be defined differently in different countries. For example, in Syria they are defined in accordance with the norms of Islamic Sharia; in Russia the legislator should gravitate towards the protection of incapacitated persons. In our personal opinion, it is appropriate to define the circle of these people by combining both principles. For this purpose, a comprehensive approach can be developed, taking into account the principles of family solidarity and protection of the weak and infirm. Otherwise, the fair balance of interests of the parties to the turnover, which civil law is designed to establish, is violated.

In Syria, family members of the owner who sells the property do not have special rights with respect to the residential premises they occupy together with the owner. Therefore, the indication of the list of persons entitled to use the residential premises is not an essential condition of the sale and purchase agreement. Syrian law does not contain a requirement to specify the rights of other persons in the contract, accordingly, in Syria, the seller may dispose of the immovable property at his discretion, without providing for the preservation of the rights of the persons living with him to the alienated immovable property. At the same time, the absence of a legal requirement to identify such persons in the contract or real estate registry may cause significant damage to civil turnover and undermine the buyer's confidence in the transparency and security of the contract of sale of residential real estate. For example, according to Russian law, the contract of sale of residential premises must contain a list of persons who, in accordance with the law, have the right to use the premises (Article 558 of the Civil Code of the Russian Federation). “In particular, this may refer

to family members of the owner who are temporarily absent (for example, serving in the army or in prison). In practice, there have been many cases when the owner sold residential property without informing the buyer about the presence of such persons, resulting in conflicts because the new owner did not expect it. In order to avoid such situations, the legislation established the necessity to inform the buyer about such persons, indicating their rights to use the sold residential property"[241]. In connection with the above, we recommend the Syrian legislator to adopt the approach of the Russian law in terms of regulation of this issue.

It is important to note that in family relations in Syria, it is the responsibility of the man to ensure the right of family members to housing. Syrian law defines family members as children, wife and parents. The cost of housing is borne by the husband and not the wife (articles 73 and 76 of the Personal Status Law in Syria)[242]. The parents' housing allowance is compulsory if they are unable to support themselves. The wife is entitled to them from the date of the marriage contract. With regard to children, maintenance by the father begins at birth and continues until the daughter marries and the son reaches the point where he earns money and is able to support himself[243].

It should be noted that Syria has recently issued a special law on the protection of the rights of the child. Article 15 includes the right of every child from the moment of his birth to guardianship, protection, upbringing and care of the society and the state. The child and the mother must be protected and given special care. Protection and custody include the provision of housing for a decent way of life[244]. The law did

[241] Article-by-article commentary to Section IV "Certain types of obligations" of part two of the Civil Code of the Russian Federation / Grishaev S.P., Sweet Yu.P., Bogacheva T.V. "New legal culture", 2021. // Guarantor: reference book. legal system (date of visit 02/06/2021). (In Russian).
[242] Syrian Law No. 59 of 1953 "On Personal Status and Amendments thereto" - // URL: http://parliament.gov.sy/arabic/index.php?node=201&nid=11333&ref=tree& (date of visit: 21.08 .2023). (In Arabic).
[243] CM. Obaid Ihab. Legal regulation of personal and property relations of spouses arising as a result of marriage and divorce in Syria: diss. ... Cand. of Law. Sciences / Obaid Ihab. - Moscow: RUDN, 2022. - 195 p.
[244] Syrian Law "On the Rights of the Child" No. 21 of August 15, 2021 // URL: https://sana.sy/?p=1453862 (date of visit: 08/21/2023) (In Arabic).

not explicitly refer to the right of the child to housing, but only to the protection and care of the child. Naturally, protection and care include the provision of housing.

With regard to family relations in the area of housing and the provision of this right to family members, it must be said that some seven decades have passed since the enactment of the Syrian Personal Status Act No. 59 of 1953, which deals with marriage, divorce, wills, inheritance and other family-related matters. Over the last decade, some amendments have been made to this law, but most of them did not make significant changes to the existing provisions of the law, nor did they make a qualitative leap in line with the system of values and concepts that have emerged in society. We are talking, first of all, about the values of human rights and concepts of equality, the change in the social role of women, whose activity is no longer limited to the creation of family life and upbringing of children, her role rather "went beyond the walls" of her home and became involved in the labor market, a woman became a full-fledged economic subject, contributing to the income and expenses of the family.

All this obliges the legislator to approach this issue in accordance with the realities of modern life, and to ensure that women are protected as much as children and any member of the family.

The truth is that there is much in this law that needs to be revised and repealed. The legislator needs to work towards an entirely new law based on the values of freedom, equality and the free will of the people.

The Syrian Personal Status Law generally regulated family relations from a purely Shariah perspective, that is, based on the opinions of religious jurists. The provisions specified in that law have been in force in Syrian society for more than seven centuries without significant changes.

One of the most important problems today is that the wife and children do not enjoy the same rights as the husband, especially those related to housing.

As mentioned above, the Syrian Personal Status Law generally regulates family relations from a purely religious point of view, without taking into account the increasing trend of development of attitudes, ideas and values, as well as major changes in concepts and knowledge about modern family life, including equality of spouses in marriage. We can say that such subjects of law as "wife" and "child" even today are not full-fledged subjects in the legal sense, and this is due to the granting of absolute freedom to the husband, the owner of the house registered in the real estate register, to dispose of his property without taking into account the interests of his wife and children. This is what makes us believe that the issues mentioned should be approached from a different point of view than that which has prevailed for a long time, because a woman does not need someone to accompany her (husband, father or brother) if she wants to travel, a woman is now a completely independent subject of law, she has been given full control over herself and her property. Furthermore, there is no justification for her to be put "out on the street" and have no right to a home if her husband has arbitrarily divorced her or if he is responsible for the divorce. These and other issues are imperative for all of us lawyers to analyze this and suggest alternatives.

Many Arab countries (Iraq, Kuwait and others) have taken a step towards recognizing the right of the wife and children to housing if the husband sells the house in which they live, if the husband divorces her, and in other cases where the husband leaves his family on legal grounds.

In Iraq, for example, the right to housing for a divorced wife was established by Special Law No. 77 of 1983[245], which obliges husbands in the event of divorce to provide suitable housing for their ex-wives within three years, a temporary period to protect the divorced woman from homelessness. However, the right to housing can be lost by women for a variety of reasons. Including the reason for divorce was adultery, home ownership, and relinquishment of her rights. The term of such "right to housing"

[245] Law of the Republic of Iraq No. (77) of 1983 "On the right of a divorced wife to housing in Iraq" // URL: http://wiki.dorar-aliraq.net/iraqilaws/law/19106.html (date of visit: 08/21/2023). (In Arabic).

is three years from the date of the divorce decree, from the date of execution of the decree, thereafter the wife receives the property and is free from property obligations to her husband. The same law provides that the husband's dispositive actions with respect to the housing (such as sale, renting, donation and other transactions) cannot be carried out without the wife's consent. Of course, a woman's right to a dwelling is not absolute, but has some limitations, she has no right to rent the house or part of it, she must live in the dwelling only with her children and also maintain the dwelling, also she must maintain the dwelling so as not to cause serious damage to the dwelling.

In Kuwait, the issue is regulated by the Housing Welfare Act No. 47 of 1993[246], which establishes the right of a family to apply to the State for suitable family housing after the conclusion of a marriage contract (provided that the head of the family is not the owner of the dwelling or joint owner of the dwelling - art. 16). To exercise this right, the husband submits an application to the local authorities together with a copy of the marriage certificate.

It is important to note that the resolution of the issue is partly related to the regime of property acquired during the marriage. In the Russian Federation, such housing belongs to both spouses (Article 34 of the Family Code of the Russian Federation). Therefore, the woman will not remain on the street. And children have the right to live with their parents (Art. 54 of the Family Code of the Russian Federation), and they do not need the right of ownership, they have the right of residence. But in Syria, where a woman and her children are kicked out of the house immediately after a divorce, or if her husband sells the house they live in, so she and her children are in a very vulnerable position. In Syria, unlike Russian law, there is no concept of “jointly acquired property”, so everything depends on in whose name the property is acquired. Thus, each spouse retains the real estate registered in his or her name in the registry. In Islamic law, there is respect for individual property and the rights of spouses to control their finances and property. However, in Islamic law there

[246] Law of Kuwait No. 47 of 1993 “On Housing Welfare” // URL: https://mesferlaw.com/archives/1972 (date visited: 08/21/2023. (In Arabic).

is the concept of Mahr (المهر)[247], the Muslim dowry. Disagreement that property should not be considered jointly owned by the spouses after marriage can be justified on the basis that each spouse should be entitled to individual autonomy and control over their assets, including property acquired during the marriage. This may result in maintaining financial independence and reducing the risk of conflicts in the division of property in a divorce. In addition, some spouses may want to preserve inheritances for their heirs or other family members, which can be difficult with joint ownership of property.

The appropriateness of such laws we condemn. We believe that the protection of women and children requires that their right to housing be guaranteed, especially if the woman is a housewife and the house is acquired after marriage. A woman should have the right to occupy a house even after divorce for a certain period to ensure her rights and those of her children.

In this sense, it is very important to utilize the experience of other legal orders where the position of women children in society is already in line with international principles of developed countries.

The absence in Syrian legislation of special norms regulating these relations, in turn, leads to obstacles in the realization of the constitutional right of citizens to housing, especially for socially unprotected persons (disabled, minors, sick, etc.).

On the basis of the foregoing, we conclude that any legislator, including the Syrian legislator, is obliged to strike a fair balance between the interests of the owner, who claims absolute freedom to dispose of his or her living quarters, and to restrict the right of ownership in order to protect individuals (to protect the right of those who live in the living quarters in the event of sale or transfer of the right to the living quarters by inheritance), on the one hand, and members of his or her family, on the other hand,

[247] Mahr (المهر): In Islamic marriage, it is usually obligatory to pay mahr, which is a sum of money or other valuables that the groom undertakes to give to the bride as a gift. The mahr is the property of the bride and she is entitled to it in case of divorce or death of her husband.

taking into account the degree of their need for housing. The Syrian legislator should enshrine in law that children have the right to live where their parents will live. Another way of finding a balance would be to provide these persons with a suitable housing alternative in the event that ownership of the house in which they live is transferred to a third party.

To summarize. The goal of any legislator in regulating relations of civil turnover is to protect the rights of participants in civil turnover. The issue of encumbrances is of great importance for the contract of sale and purchase of residential real estate, as it is directly related to the security of the transaction, protection of the rights of the seller and the buyer, ensuring that the residential real estate sold is not encumbered by any negative circumstances that may affect its use or its real value. In Russian and Syrian law, issues related to encumbrances on residential properties, as we noted above, can be varied and can affect ownership rights.

After the sale of housing in Russia and Syria, encumbrances usually pass to the new owner in accordance with the law. In practice, there are always difficulties in concluding a contract, as the presence of encumbrances, such as mortgages or liens, may complicate or even prevent the sale of a home due to the need to repay creditors or other interested parties. In addition, some encumbrances, such as the existence of a right of use, may reduce the value of the property and make it difficult to sell.

In our opinion, to solve these problems, it is necessary to improve legislation both in Russia and Syria, where it is proposed to include provisions in the Civil Code obliging the seller to notify the buyer of all encumbrances imposed on residential buildings prior to the conclusion of the contract, if they exist. Failure to do so would amount to deception and fraud. In addition, the legislation could include provisions providing for fines or other penalties in case of deception and willful concealment of information on the existence of encumbrances. Of course, this would help to reduce conflicts and serve as a deterrent to those who are negligent in civil litigation to act honestly and build trust.

CHAPTER 3. Execution of the contract of sale and purchase of residential Premises

3.1. Transfer of residential premises

The seller's transfer of the thing sold by the seller to the buyer is the seller's main obligation under the contract of sale.

In Russia, according to paragraph 2 of Art. 8.1 of the Civil Code of the Russian Federation and clause 3 of Art. 1 of the Law of the Russian Federation "On State Registration of Real Estate"[248], ownership and other proprietary rights to residential premises arise only after completing the mandatory procedure in a specialized institution that carries out state registration of rights to immovable property.

Taking into account the norm of Article 556 of the Civil Code of the Russian Federation, the legal composition on the basis of which the obligation of the seller to transfer real estate is considered to be fulfilled includes:

-transfer of the premises into the possession of the buyer;

- signing a document on the transfer of the property.

Analyzing the law enforcement practice in terms of correlation between the transfer of property under the contract of sale and purchase and registration of the transfer of ownership, there is a point of view that the transfer of real estate is not identified neither in practice, nor in normative legal acts with the transfer of ownership, and by virtue of the provisions of the Law on Registration of Real Estate of the Russian Federation the transfer is not required for registration of the transfer of ownership of real estate[249]. The act of transfer only testifies to the fact of fulfillment of the obligation, but the transfer of ownership occurs only from the moment of its registration in the registry (paragraph 2 of Art. 223 and paragraph 1 of Art. 551 of the Civil Code).

[248] Federal Law of July 13, 2015 No. 218-FZ (as amended on December 30, 2021) "On State Registration of Real Estate" // SPS "ConsultantPlus" (In Russian).
[249] Emelkina I.A. On the issue of the security function of property law / I.A. Emelkina // Civil law. —2019. —No. 3. — P. 39-43. (In Russian).

There are no independent lawsuits to compel a party to a contract of sale of residential premises to sign a transfer deed in law enforcement practice. This is due to the fact that for the registration of the transfer of ownership is not required to submit a transfer act, but for the execution of the contract is required.

And so, the transfer document is that which confirms the transfer of the property to the buyer, after which the obligation can be considered fulfilled. The transfer of the keys to the premises to the buyer is not sufficient to recognize the obligation as fulfilled. In view of the above, it is quite difficult to consider signing the act of transfer of residential premises as an independent obligation of a party to the contract of sale.

In Russia, the parties may agree to a different procedure for the transfer of real estate. For example, arbitration courts have upheld the seller's fulfillment of its obligations to transfer real estate to the buyer, even if the actual transfer of real estate occurred earlier in the lease relationship and the sale and purchase agreement contained a provision that the agreement had the force of a transfer deed (Article 224 of the Civil Code of the Russian Federation)[250].

Evasion of one of the parties to the contract from signing the transfer act is considered as a refusal to fulfill the contract, and may entail various negative consequences. Thus, the buyer has the right to demand the transfer of the thing to him (Clause 2 of Article 463, as well as Article 398 of the Civil Code) or reimbursement of losses incurred, and the seller may demand the buyer to accept the thing, or may itself refuse to fulfill the contract. The transfer of real estate may take place before or after the registration of the transfer of ownership in the real estate registry, and this does not contradict the provisions of the law[251].

The buyer's claims may be, firstly, claims for state registration of the transfer of rights, and, secondly, claims for the transfer of residential premises. In accordance with the Resolution of the Plenum of the Supreme Court of the Russian Federation № 10,

[250] Decree of the Federal Antimonopoly Service of the East Siberian District dated June 15, 2006 N A33-16897/05-Ф02-2778/06-С2. (In Russian).
[251] Decree of the Federal Antimonopoly Service of the Moscow District dated March 6, 2006 N KG-A40/1082-06-P. (In Russian).

Plenum of the Supreme Court of the Russian Federation № 22 of 29.04.2010 (ed. 12.12.2023) "On some issues arising in judicial practice in resolving disputes related to the protection of ownership and other proprietary rights" in each of these cases in the subject of proof in the case includes the existence of obligations between the parties arising from the contract, as well as in the second case - the fact of evasion of the seller of the transfer of residential premises.

In view of the above, there is a perception that the transfer of residential property is a formal requirement and is exhausted by signing a transfer deed (or making an entry in the sale and purchase agreement, which is essentially a transfer deed). However, such an understanding of the institution of transfer of residential premises does not meet either the requirements of Russian legislation or the actual state of affairs.

In 2020, the Supreme Court of the Russian Federation issued a decision allowing to judge the priority of the actual transfer of the residential property to the buyer, in which it stated not only the impossibility of registering the transfer of ownership without the actual transfer of property, but also the impossibility of taking into account the formal transfer of residential premises without the actual transfer of such property. The Supreme Court of the Russian Federation concretized the above, specifying that the transfer deed drawn up without the actual transfer of property is knowingly unreliable, since the actual transfer of residential premises under the sale and purchase agreement is artificially excluded from the relevant legal composition[252].

Thus, the above allows us to formulate the following conclusions.

First, the transfer of a residential property includes the actual and formal transfer of property. The former represents the transfer of the residential object into the possession of the buyer, and the latter means the confirmation of the transfer of property by the parties in writing.

[252] Determination of the Judicial Collegium for Economic Disputes of the Supreme Court of the Russian Federation No. 305-ES19-3996 (6) dated 08.20.2020 in case No. A40-109856/2017 // URL: https://kad.arbitr.ru/Document/Pdf/b5823780 - 46FF-4E09-8E09-70767E94927B/4A54E2BA-FCF5-4894-AB1E-09C8AC015C94/A40-109856-2017_20200820_OPREDELENI.pdf? ISADDSTAMP = TRUE (Visiting Date: 08.03.2012022). (In Russian).

Secondly, the Russian legislator does not set a specific deadline for completing the transfer of a residential property to a buyer. And so, the registration of the transfer of title is possible without the transfer of possession. It is advisable to establish at the legislative level that the transfer of the residential object is a prerequisite for registration of the transfer of ownership of the relevant residential premises, that the transfer will be carried out at the time of registration of the transfer of ownership, in order to avoid situations where the legal title is transferred, but the actual transfer is not, unless the parties have agreed otherwise in the contract.

Thirdly, a formal transfer of residential property (either by deed of transfer or by a corresponding entry in the contract of sale of residential property) in the absence of an actual transfer of the property is knowingly misleading.

In Syrian doctrine, the parties may specify in the contract the seller's obligation to transfer the property, but in practice the transfer occurs as a result of the contract. Thus, unless the parties have agreed otherwise, it is presumed that the conclusion of the contract means that the thing has been transferred. The law itself does not say anything about this and therefore in practice it is recommended to include this condition in the contract, otherwise it is difficult to prove the fact of transfer/non-transfer of the property later.

The regulation of transfer of residential premises in Russian and Syrian legislation is similar. In both legislations, from the moment the contract is concluded, an obligation arises between the parties, by virtue of which the seller is obliged to transfer the object into the possession of the buyer (Art. 556 of the Russian Civil Code, Art. 205 of the Syrian Civil Code) and transfer the title to it (Art. 549 of the Russian Civil Code, Art. 205 of the Syrian Civil Code, Art. 825.1 of the Syrian Civil Code). The buyer is obliged to pay the contract price (Art. 486 of the Russian Civil Code, Art. 386 of the Syrian Civil Code). The obligation between the parties terminates after the fulfilment of their contractual obligations (Art. 408 of the Civil Code of the Russian Federation, Art. 322 of the Syrian Civil Code). And the sequence of fulfilment is established by the parties.

If the seller fails to transfer the property without valid reasons, or if the seller prevents the transfer of ownership of the thing sold, this gives the buyer the right to demand performance in court, and he can also demand compensation for the value of the thing sold, property with the right to compensation (Art. 206 of the Syrian Civil Code) .

As far as Islamic law is concerned, the concept of "completed sale" etymologically refers to the transfer of property from one owner to another for a known consideration. This is confirmed by the Journal of Judicial Decisions (Majalla), which states in article 369 that the definition of sale of property by contract means that the buyer becomes the owner of the thing being sold and the seller becomes the owner of the price paid for the thing.

A literal analysis of the Majella allows us to formulate the conclusion that a valid contract, which is executed by the parties, mediates the transfer of ownership directly by virtue of the contract, without requiring, in addition to the transfer (of both chattels and real estate), a public confirmation of this (in a register, a separate deed, etc.).

The transfer of the thing sold thus plays a special role, emphasizing the specificity of Islamic jurisprudence. And the buyer is restricted in disposing of the thing only until he takes actual possession of it. In Islamic law, the ability to dispose begins with actual receipt, not registration. This specificity is further elaborated on below.

In Islamic law, there is a concept (al-qabid -القبض) it means delivery and taking: you took the thing, you handed over the money, the thing remained in your hands, that is, it became your property. So, we can say that it is a transfer of physical possession, which plays an important role in the context of transferring ownership of the thing being sold .

According to Islamic law, (al-qabid- القبض) is considered one of the key points in the transaction of sale and purchase. After (al-qabid- القبض) becomes the owner of the thing sold and can dispose of it[253]. This is the general rule of Islamic law, but private

[253] Amira Ahmed bin Abdul Aziz. Real estate problems - legal research. – dis. ...cand. Law, Imam Muhammad bin Saud Islamic University. Riyadh, Saudi Arabia, 2010. – 608 p. (In Arabic).

matters (such as the issue of registration) depend on the specific laws and practices in a particular country or region.

By the transfer of al-qabid (الـقـبـض) according to Muslim law is meant the following. According to the Hanafi's, the seller releases his rights and transfers the thing sold to the buyer so that the buyer can dispose of it. Accordingly, taking possession (al-qabid - القبض) in the Hanafi view is accomplished by relinquishing possession, which allows the buyer to dispose of the sold property, regardless of whether the thing sold is immovable or movable[254]. In the Maliki Shafi'i school, the transfer of real estate is also accomplished by the seller relinquishing it and by the buyer appropriating the thing and being able to dispose of it[255].

Thus, taking possession) al-qabid (القبض - means that the seller has relinquished possession .

The Levantine jurist Ibn Abidin confirms: “The transfer is accomplished by abandonment in a manner that allows possession of the property without obstacles or barriers”[256] .

In the context of talking about the transfer of sold immovable property (al-qabid - القبض) under a contract of sale, Islamic law contains the following two rules[257]:

1. the transfer of property is one of the consequences of a valid contract, similar to the transfer of ownership (thus, the sale is made by a simple offer and its acceptance, and this leads to the obligation to deliver the sold goods by delivery (al-qabid - القبض);

2. transfer of the sold property and symbolic handing over of the key in contracts of sale of real estate (al-qabid - القبض) simultaneously with the execution of the contract; if the transfer has not taken place, the contract is null and void.

[254] Hanafi Abu Bakr bin Masud al-Kasani. Crafts delicacies in order of canons (بدائع الصنائع في ترتيب الشرائع). –Egypt: Publishing House of Scientific Books, 1327–1328 Hijri, – 244 p. (In Arabic).
[255] Ibn Rushd. A hard-working start. Part 2 – Beirut: Dar al-Marifa. 500 s. (In Arabic).
[256] Muhammad Amin ibn Abdin. Explanation of visual illumination in humans. – Beirut: Dar al-Fikr, 1252 Hijri, –400 p. (In Arabic).
[257] Sahih Muslim Hadith of Imam Abi Al-Hussein Muslim bin Al-Hajjaj Al-Qushayri Al-Nisaburi. Invalidity of the sale of an item sold before taking possession. // URL: https://muslim.lna.io/1463/ (date of visit: 01/30/2022). (In Arabic).

Thus, it follows from the above that, based on the interpretation of Muslim law, the buyer may exercise the rights of the owner immediately after signing the contract. The conclusion of the contract creates a presumption of transfer before the registration of the transfer of ownership. That is, the very conclusion of the contract creates a legal fact in the form of renunciation of the rights of the owner by the seller and their acceptance by the buyer. Muslim law does not make the moment of transfer of rights to property dependent on the state registration of such transfer.

At the same time, the parties may establish a different procedure in the contract. For example, the buyer may start exercising the rights of the owner after the state registration of the transfer of ownership, or exercise the rights of a tenant (to own and use the property) before the state registration.

The Law of Muslims is essentially the law of custom. Custom in transactions is binding in contractual relations as if it were expressly prescribed. Thus, there are habits and customs found between people in their conduct which indicate the permitting or prohibiting of something. Moreover, a custom can be invoked in a court of law in case of any disagreement. Such regulation can be observed, for example, in private international law.

When a contract is made, the seller transfers the property to the buyer and receives the price agreed upon by the parties. According to the Hanafi school, the buyer has to pay the price in order to take back the sold item from the seller. The Maliki school of thought also says that the seller has the right to withhold the thing sold until he receives the price. While the Shafi'i school of thought holds that the seller is obliged to hand over the sold item to the buyer and then obliges the buyer to pay the agreed price[258].

Under current Syrian law, the transfer of real estate is inherent in the nature of the contract of sale and there is no need to specifically mention this obligation in the contract. The civil law imposes a duty on the seller to do everything necessary to affect the transfer of the property, since the mere conclusion of a contract is not sufficient in itself. The

[258] Abu al-Qasim, Muhammad bin Ahmad bin Muhammad bin Abdullah, Ibn Jazi al-Kalbi al-Gharnati. Legal laws of four schools of thought / Dar Ibn Hazm // URL: https://waqfeya.net/book.php?bid=10830 (date of visit 03/22/2023). (In Arabic).

implication of transfer of possession (al-qabid - القبض) by virtue of Article 438 of the Syrian Civil Code states that the transfer takes place by putting the thing sold under the control of the buyer so that he can possess and benefit from it without hindrance. The provisions of Article 207 of the Syrian Civil Code establish that the obligation to transfer ownership includes not only the obligation to transfer the thing, but also to maintain it before transfer, if the parties have agreed to postpone the transfer from the time of contracting. One of the prevailing customary rules is that if the object sold is real estate, the transfer is carried out by relinquishing it and handing over the keys to it, if necessary. This is consistent with the nature of the object sold, as confirmed by Article 403 of the Syrian Civil Code. provided that the buyer does not encounter anything preventing him from possessing the object sold.

If previously, according to the rules of Shariah, the right of ownership of anything in the sale and purchase could pass by itself, automatically by virtue of the conclusion of the contract because the sale was initially created for the transfer of ownership, then in the Civil Code of Syria the essence of the contractual construction in question appears in a different form: the transfer of ownership has turned into an independent obligation of the seller, which he must fulfill after the conclusion of the contract[259].

This evolution has led to the fact that legal experts hold two fundamentally different positions.

The first group of scholars believes that the transfer of ownership does not occur simply by concluding a contract of sale. These scholars believe that “the transfer of ownership in the sale of real estate occurs only after the registration of the transfer of ownership in the real estate registry, which indicates that ownership does not transfer after the conclusion of the contract”[260]. The modern legal trend allows two contracting parties to agree to postpone the transfer of ownership until a later time after the conclusion of the contract (for example, to agree to postpone the transfer of ownership until the seller has paid the entire price of the postponement or installment), and this argument is also used

[259] Saleh Fawaz. Decree. op. P. 51. (In Arabic).
[260] Al-Zuhayli Muhammad, Decree. op. P. 556. (In Arabic).

by the first group of authors as an indication that ownership is not transferred by the very fact of the conclusion of the contract.

The second group of scholars believes that the essence of the sale remains the same. The transfer of ownership is made directly from the moment of conclusion of the contract of sale, and if in some cases the transfer takes place later, since it is still carried out by virtue of the law, it should not be considered as the fulfillment of the seller's obligation[261].

The analysis of the stated positions allows us to assert that the origins of the latter are closer to the Islamic legal tradition, while the former position goes back to the Roman law and the Roman-German legal doctrine, since the obligation to transfer the right of ownership acts as a consequence of contracts. It is difficult to disagree with the fact that the transfer of the right can be mediated only by registration of the title to real estate. After all, even under Roman law the transfer of a thing was a publicly obvious fact.

In Syria, by contract, title does not pass between the contracting parties except from the moment of registration, but the buyer acquires by contract the right to demand registration. (Article 11 of the Syrian real estate registration law).

In modern Syrian law, the legislator has established that the transfer of ownership of real estate after the conclusion of the contract is an unknown to everyone, i.e. a non-public fact, since the surrounding people have no way to determine who is the owner of the real estate at a particular moment.

The legislator eliminated the disadvantage of “non-publicity” of the transfer of the subject matter of the sale and purchase agreement by introducing state registration as a mandatory condition for the transfer of title to real estate.

On this basis, we come to the natural conclusion that the seller's obligation to transfer the title should be understood as its obligation to perform the necessary preliminary actions, the completion of which entails the transfer of ownership. For

[261]Muhammad Adib Shahab. Explanation of the provisions of the purchase and sale agreement. – Damascus: House of Arab Renaissance, 1975. –370 p. (In Arabic).

example, the provisions of Article 399 of the Civil Code of Syria stipulate that the seller is obliged to transfer the thing being sold in the form and condition in which he had it at the time of conclusion of the contract of sale, hence the seller's obligation to preserve and maintain the thing being sold until the moment of its transfer, as mentioned earlier. In addition, the seller is obliged to perform all necessary actions to transfer the sold property to the buyer and to refrain from any actions that could make the transfer of the right impossible or difficult (Article 396 of the Civil Code of Syria).

The Court of Cassation recognized the right of the buyer to apply to the court for registration of the transfer of ownership in the real estate register. The Court issued Decision No. 3 of 07.01.1949[262], according to which a contract of sale of immovable property, concluded outside the secretariat of the immovable property register and complying with its basic and legal elements and elements for its conclusion, is considered a valid contract and is suitable as a basis for filing a lawsuit in court to demand the fulfillment of the contractual obligation to register the transfer of ownership in the immovable property register on the basis of the determination of the judicial authority, if the seller refrains from registering the transfer of ownership in the immovable property register. Thus, the courts proceed from the fact that contracts are considered binding on the parties and obligations must be fulfilled voluntarily or with recourse to the judicial authorities. Failure to perform voluntarily entitles the buyer to request compulsory registration.

Therefore, the Real Estate Registry Law of Syria has established special procedures and many safeguards for the transfer of ownership of real estate in a manner that protects buyers and third parties, so that the buyer can inspect and familiarize himself with the status of the property he wishes to purchase, as well as know his legal status and the existence of encumbrances on the property.

[262] Decision of the Syrian Court of Cassation No. 3 of 17.01.1949, published in the Journal of the Bar for 1949, P. 123. (In Arabic).

The Syrian Civil Code was then adopted, confirming that "rights in rem are acquired over immovable property and ownership is transferred by registering it in the immovable property registry" (Article 825 of the Syrian Civil Code).

In addition, the provisions of Article 205 of the Syrian Civil Code enshrine the following: "unless otherwise agreed by the parties, the obligation to transfer immovable property shall be performed immediately after the conclusion of the contract, without violating the rules of registration".

The transfer of ownership of the sold thing is in itself insufficient for the buyer to receive the benefit that he intended to receive from the execution of the contract of sale, which is why the legal requirement of the actual transfer of the subject of the contract of sale for the realization by the buyer (new owner) of the powers in respect of such thing is reasonable.

The obligation of the seller to transfer the thing sold theoretically ranks second in importance after the obligation to enter the transfer of ownership into the real estate register[263].

The actual transfer is accomplished by freely transferring the property into the possession of the buyer and informing him that the property is under his control, (the notification can be either verbal or written, or in the form of an official warning - the official warning is executed by a notary public in Syria in accordance with Article 13, paragraph 9 of Law No. 15 of 2014. On the profession of public notary)[264].

The transfer requires the seller to vacate the sold premises from his personal belongings, including furniture and other property, and to hand over to the buyer not only the residential premises itself, but also all the necessary papers and documents related to the ownership right[265] (first of all, we are talking about documents of title). In addition, as a general rule, the new owner of the apartment is not liable for the debts of the previous

[263] Al-Haraki Ahmed, Ghazal Muhammad Ammar. Decree. op. P. 325. (In Arabic).
[264] See. Law No. 15 on Notaries of 2014, which regulates the activities of notaries in Syria. // URL: https://www.ilo.org/dyn/natlex/natlex4.detail?p_isn=98929&p_lang=en (date of visit: 04/11/2024). (In Arabic).
[265] Abd al-Razzaq al-Sanhuri. Decree. op. P.514. (In Arabic).

owner, such as electricity, water and other bills. The Syrian legislator does not address this case in the civil law, but the custom is that the previous owner of the apartment transfers the ownership of the electricity subscription and water meters to the new buyer at the competent departments when the ownership of the apartment is transferred (substitution of the party to the relevant contracts).

The essence is that the debt on utility payments is attributable to the owner, not to the apartment (or other residential premises); accordingly, the obligation to pay the debt on utility payments is attributable to the person who was the owner at the time the debt arose, not to the property. This circumstance is similar to the regulation in Russian law. It is mentioned in the Housing and Communal Services Code of the Russian Federation (clause 5 of Article 153 “Obligation to pay for housing and communal services”).

The transfer occurs either by agreement of the contracting parties, as if two parties agreed to hand over the key to a residential premises at a certain place and at a certain time, or it is done on the basis of law, so that the buyer is considered to be the legal recipient of the property in certain cases, even if he actually did not receive it, for example, if the property was in the buyer's possession before the purchase agreement was concluded for a valid reason, such as possession of the property under a previous lease or transfer of possession under a mortgage[266]. In Russian law, Clause 2 of Article 224 of the Civil Code of the Russian Federation establishes a similar condition: if by the time a contract on alienation of a thing is concluded, it is already in the possession of the acquirer, the thing is recognized as transferred to him from that moment .

In accordance with the provisions of Article 405 of the Civil Code of Syria, in a similar way, it is considered that the buyer has received the property if the seller has notified him of the need to accept it, but the buyer has not received it. Also, the regulation is implemented in Russian civil law. According to Article 458(1) of the Civil Code of the Russian Federation, goods are deemed to be placed at the disposal of the buyer when the goods are ready for delivery at the proper place by the time stipulated in the contract and

[266] Al-Zarqa Mustafa Ahmad. Explaining civil law. Contract of Sale and Purchase, 3rd edition. – Damascus: Syrian University Press, 1957. – 309 p. (In Arabic).

the buyer is aware of the readiness of the goods for delivery in accordance with the terms of the contract.

The time of transfer of property shall be determined in accordance with the agreement of the two contracting parties. If there is no agreement, it is necessary to refer to custom to find out the time of transfer. If the time of transfer is not agreed upon in the contract and there is no relevant custom, it is necessary to refer to the provisions of the law, and the law in relation to residential premises (immovable property) determines the time of transfer of the thing being sold at the time of conclusion of the contract (Article 421 of the Syrian Civil Code). The place of transfer of immovable property is determined by the location of such property (Article 345 of the Syrian Civil Code).

Despite the fact that the requirements for the transfer of immovable property are quite clearly defined in the Syrian Civil Code, it should be noted that the approach to the legal nature of the transfer of the subject matter of the contract of sale in the Syrian doctrine and practice is not uniform. Thus, the Syrian Court of Cassation in its judgment No. 1216 stated that the seller's obligation to transfer the sold item is an obligation to achieve the goal of placing the sold item in the hands of the buyer. In the same judgment, the court drew the parties' attention to the fact that, given the addition of the obligation to transfer ownership to the obligation to transfer the property, the seller was obliged to do everything necessary to transfer the sold right to the buyer, which in turn entailed the removal of all material and legal obstacles preventing the buyer from obtaining and using the acquired thing. This is a separate warranty obligation[267]. In Decision No. 534, the Syrian Court of Cassation noted that the seller's obligation to transfer the thing sold is an offshoot of his obligation to transfer ownership and is a duty of accomplishment. The buyer may demand performance or rescission of the contract, and in both cases, he may claim compensation for the seller's breach of his obligation to transfer[268].

[267] Decision of the Syrian Court of Cassation No. 1216, Ground 2478, 27.12.75 - Journal of Lawyers, p. 276/1076. (In Arabic).
[268] Decision of the Syrian Court of Cassation No. 534 based on No. 570 of May 17, 1976, Paper materials of the Court of Cassation. (In Arabic).

Given the importance of the obligation of transfer, the legislator has linked liability for the loss of property to the actual transfer rather than the transfer of ownership in the registry. Amal Sharba writes that "the buyer is the one who is liable for the loss of property that occurs after the transfer, even if the property has not actually passed to him from the seller and has not been registered in the registry"[269].

As for the method of transfer, this aspect is addressed by the provisions of Article 403 of the Civil Code of Syria, according to which:

1. The transfer shall be performed by placing the thing sold (sold real estate) in the possession of the buyer so that the buyer may freely possess, use and dispose of it. The disposal shall be in accordance with the nature (specificity) of the thing sold;
2. The transfer may take place before or after the parties enter into a contract of sale. Hence, it is clear that the transfer can be real or conditional (not real), conditional, in turn, is divided into two types: contractual and legal. A real transfer occurs when the seller physically transfers the goods to the buyer, allowing the latter to receive them without obstacles.

A conditional transfer involves an agreement between the parties that the goods are deemed to have been transferred to the buyer in certain circumstances, even if actual transfer has not occurred[270].

A conditional transfer can be:

1. legal, where both parties agree that the buyer will be deemed to have received the goods when certain conditions occur (e.g. when the keys are handed over to the buyer). If this condition is met, the transfer is deemed to have occurred.
2. The second form of conditional transfer, contractual transfer, occurs when the goods were in the possession of the buyer before the contract was

[269] Amal Sharba. Real estate system in the main legal systems (Athenian-Germanic and Anglo-Saxon). – diss. for the job application uch. step. Ph.D. ... legal Sciences: 12.00.03., Damascus University, 2002. – P. 227. (In Arabic).
[270] Al-Hakim Jacques Youssef. Decree. op. P. 221. (In Arabic).

concluded for any reason, such as loan, trust or lease, and the sale is made afterwards. In this case, the buyer's possession is deemed to complete the transfer because the buyer was already in possession of the goods, unless otherwise agreed[271].

In Syria, it is suggested that the Syrian Civil Code should set a general time limit for the transfer of property (e.g. five days), unless the parties have set a different period of time. In addition, in the author's opinion, it is necessary to link the moment of transfer of ownership in the real estate registry with the moment of transfer of property.

It is also suggested that when registering the transfer of ownership in the real estate registry, it should be confirmed to the competent officer that the process of transferring the sold property to the buyer has been completed. It could, for example, specify that the registry officer witnesses a symbolic “handover of the keys” when the documents are submitted.

It would be appropriate to introduce the following provision into Syrian law: “For the sale and purchase of residential property, a document signed by both parties to the contract confirming the transfer of the property sold from the seller to the buyer and confirming the buyer's acceptance, without treating it as an independent and new transaction or agreement, must be attached to the contract for the sale and purchase of immovable property. This mechanism will guarantee the rights of both parties and legitimize civil law transactions, given that the transfer of the property into the possession of the buyer is the main obligation in the contract of sale and purchase of residential real estate.

[271] Decision of the Syrian Court of Cassation No. 378 on ground 840 of March 22, 2002, published in the Journal of Lawyers 2002, p. 175. (In Arabic).

3.2. State registration of transfer of the right to residential premises

In Russia, according to cl. 2 of Art. 8.1 of the Civil Code of the Russian Federation and cl. 3, Article 1, Clause 3 of the Law on Registration of Real Estate of the Russian Federation, ownership and other proprietary rights to residential premises arise only after completing the mandatory procedure in a specialized institution that carries out state registration of rights to real estate.

The above principle is referred to in Russian civil law as the "principle of 'making entry': without making an entry in the register, there is no right. Exceptions to this principle may be provided for in the law. For the transfer of rights on the basis of a contract of sale and purchase, such an exception is the transfer of rights before February 31, 1998, when the Federal Law N 122-FZ came into force.

According to part 3 of Article 1 of the Law on Real Estate Registration of the Russian Federation, state registration of rights to immovable property is a legal act of recognition, confirmation, emergence, change, transfer and termination of the right of a certain person to immovable property or restriction of such right and encumbrance of immovable property.

According to Art. 825 of the Civil Code of Syria, ownership and other real rights to real estate are acquired and transferred by registration in the Land Registry. Article 826 sets out the means of acquisition: the right to registration in the Land Registry is acquired by inheritance, including by will, by statute of limitations or by contract, such as by gift.

It is important to note that the real estate registry in Syria is a fundamental element, the so-called cornerstone, for real estate transactions. For a long time, the ownership of real estate was transferred exclusively by contracts, i.e. there was no registration in the real estate registry, which, in turn, contributed to the emergence of a large number of disputes among the subjects of civil legal relations. This situation prompted the legislative bodies of the country to legalize the system of registration of immovable property in a special register.

It is noteworthy that similarities can be found in the housing legislation of Russia and Syria regarding the registration of housing rights. According to Article 8.1 of the Russian Civil Code and the Russian Real Estate Registration Law)[272] as well as in accordance with the Syrian Law on Real Estate Registration of Syria, ownership and other proprietary rights to residential premises arise only as a result of legalization of the legal fact of the transaction - state registration of rights to real estate. This imperative procedure is considered to be a guarantee of realization and protection of ownership and other proprietary rights in real estate, which reflects the desire of the Syrian and Russian legislators to protect these rights and remove obstacles to their realization.

With respect to the registration of real property rights (rights in rem), one of two methods is used worldwide:

- A personal system in which the person-owner of the right is the key element in the registration of ownership and other rights to real estate. The registry is searched by the name of the owner. This system is used only in some countries, such as France and Egypt, but as practice shows, it is far from ideal (for example, due to misprints or errors in the register). In addition, there is an acute issue of personal data preservation when accessing the information of a real estate object by the name of the owner;

- natural system, which considers the real estate object itself as the basis for determining ownership rights to real estate. In our opinion and in the opinion of the professional community, this system is more efficient, which is why it is used in many countries of the world. Interested parties search the real estate register by the real estate object (by its address or cadastral number). This system is widespread, for example, in Syria, Iraq, Lebanon, as well as in the United Arab Emirates. The same system is in place in the Russian Federation.

Under Syrian and Russian law, the only proof of the existence of a registered right is state registration. But this is refutable, as a registered right to real estate can be challenged in court.

[272] Federal Law “On State Registration of Real Estate” dated July 13, 2015 No. 218-FZ // SPS “Consultant Plus.”

In accordance with Articles 8.1, 210, 211 of the Civil Code of the Russian Federation, the transferee obtains the title to real estate from the moment of state registration, and in case of execution of the agreement before this moment (if the documents are transferred, evicted, moved in, etc.) there will be no transfer of the title, the burden of maintenance of the property, as well as the risk of its accidental destruction to the transferee.

However, if one of the parties evades state registration of the transfer of ownership of real estate, the court may, if requested by the other party, decide on the state registration of the transfer of ownership.

In this case, as a general rule, it is not the contract itself, the subject of which is real estate, but the transfer of the right to it that is registered.

According to paragraph 38 of the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 10, Plenum of the Supreme Arbitration Court of the Russian Federation No. 22 of 29.04.2010 "On some issues arising in judicial practice in resolving disputes related to the protection of property rights and other proprietary rights", the acquirer cannot be recognized as bona fide, if at the time of the transaction to acquire the property title in the Unified State Register of Rights was registered not for the alienator or in the Unified State Register of Rights there was a note of a legal dispute in respect of this property.

As of March 1, 2023, data from the Unified State Register of Immovable Property will be available only with the consent of the owners of real estate[273]. The full name and date of birth of the owner of the property will be shown only to him/herself, his/her spouse, as well as to certain employees of state bodies and notaries. At the same time, the owner is given the opportunity to "allow" third parties to obtain this information, but by approving the public disclosure of such information at the request of third parties. To do so, he/she needs to submit a corresponding application to the federal state register.

[273] Federal Law No. 266-FZ of July 14, 2022 "On Amendments to the Federal Law "On Personal Data", certain legislative acts of the Russian Federation and the recognition as invalid of part fourteen of Article 30 of the Federal Law "On Banks and Banking Activities".

As for the expediency of the innovation, it is obvious that its main purpose is to increase the protection of personal data of citizens from unrestricted access of unlimited number of persons. This objective is certainly realized to the fullest extent; however, one cannot ignore the downside of the reform. Firstly, the first negative consequence is organizational costs. In particular, if earlier a home buyer could independently verify information about the owner of real estate through an ordinary procedure of obtaining information from Federal Register, now he has to apply for it to the alleged owner. Accordingly, the speed of work of Federal Register services will be affected by the second circumstance - the human factor, which may slow down the process of concluding a transaction and, as a consequence, lead to the loss of interest of the buyer in the given object, if the latter is interested in a prompt purchase.

The second factor is procedural. In the framework of judicial disputes, all participants could confirm the fact of belonging of this or that property to the person concerned. Now the court can obtain any information itself. Here, because of the routine, the terms of consideration of the case may unreasonably increase due to lengthy procedures, which, in turn, will affect the principle of reasonableness of the terms of legal proceedings.

The third factor is that a number of organizations such as banks, insurance companies and others cannot now directly check the transparency of transactions. It seems that the publicity and reliability of Federal Register, which are, in our opinion, its main features and advantages, are obviously undermined and partially levelled here.

The fourth factor is bureaucratization of the process of obtaining information from Federal Register. In particular, a mechanism of obtaining information without the consent of the owner, but at the request of a notary is envisaged. As a consequence, the notary receives additional powers, and clients are forced to incur additional costs for the relevant notary services. Thus, new bureaucratic elements unnecessarily arise within the transaction, which will eventually affect the client, by imposing additional organizational and financial costs - legal support fees, a possible increase in the mortgage rate, and so on.

In our opinion, this points to the need to work on reducing and overcoming the negative features of the innovation, moving away from bureaucracy in the work as much as possible, and at the same time ensuring the protection of personal data.

The Law on Real Estate Registration of Russia defines the legal basis for state cadastral registration and state registration of rights to real estate. The body that performs the functions of state registration of rights to real estate and transactions with it is the Federal Service for State Registration, Cadastre and Cartography (Federal Register)[274].

In Russia, the procedure for registration of real estate in accordance with Article 29 of the Russian Real Estate Registration Law includes the following stages:

- accepting an application for state registration of rights and the documents attached thereto or returning such documents without consideration if there are grounds established by law;

- conducting a legal examination of the submitted documents to determine whether or not there are grounds for suspension or refusal of state registration of rights;

- entering into the Unified State Register of Real Estate the necessary information to carry out state registration or to suspend or refuse to carry out state registration of rights;

- issuance of documents as a result of state registration, or in case of refusal of registration or after termination of state registration of rights.

The Russian legislator has established a time limit for the registration of rights to real estate. Thus, Article 16 of the Russian Law on Real Estate Registration provides for a closed list of deadlines, which are established with various conditions. For example, in accordance with clause 1 part 1 of Art. 1 part 1 of Article 16 of the Law on Registration of Immovable Property of Russia establishes a seven-day term for state registration of rights with registration authorities. The calculation of this term starts from the date of

[274] See. Decree of the Government of the Russian Federation dated June 1, 2009 No. 457 (as amended on December 28, 2020) “On the Federal Service for State Registration, Cadaster and Cartography” // SPS “Consultant Plus”.

receipt by the registration authority of the relevant application and the documents attached thereto.

It should be noted that with the adoption of the Russian Law on Real Estate Registration in Russia, the registration system has acquired more advanced features, which include, first of all, the introduction of a system of remote registration without being tied to a region and the formation of a unified state real estate register (USRN).

However, the Russian system of registration of rights to real estate also has shortcomings. As Evgeny Petelin, Deputy Chairman of the Federation Council Committee on Economic Policy, noted: "There are unresolved problems of state registration of title to residential premises in apartment buildings under construction. Developers incur significant losses in case of suspension of registration of title to residential premises for any technical reasons.

In order to formalize the transfer of ownership of a certain number of apartments by one contract from one legal entity to another, some offices of the federal state register Department accept only five apartments each, while others accept all apartments specified in the contract"[275].

Having considered the procedure for state registration of rights to immovable property in the Russian Federation, it is necessary to explain the registration procedure in Syria.

Article 825 of the Syrian Civil Code states that ownership and other rights in rem to real estate must be registered in the Registry. If the ownership right is not registered in the Real Estate Registry, it is a "non-existent right" and has no evidentiary value.

The Syrian legislator, in establishing the Real Estate Registry system by introducing "compulsory registration", aimed to create a system that would allow all

[275] See. Petelin. E. [Electronic resource] // URL: http://council.gov.ru/events/news/60228/ (date visited 01/02/2023).

interested parties to determine the legal status of each piece of real estate and verify all rights contained therein.

Also, as in Russia, the Syrian Real Estate Registration Law contains a provision that ownership of real estate must be registered with the location, boundaries, area and number of the object of rights, noting that the sale of property must be legal, as there are objects that cannot be sold. These include:

- inherited property - inherited immovable property cannot be alienated until the shares of all owners who inherited the immovable property have been allocated and registered in the immovable property registry (Articles 39 to 40 of the Syrian Real Estate Registration Act);

- immovable property that is the subject of legal proceedings (e.g. any transaction involving the property is disputed);

- religious properties;

- State-owned properties.

In turn, in Syria, the procedure for state registration of immovable property under articles 51 and 56 of the Syrian Real Estate Registration Law includes the following steps:

Stage 1: filing an application for state registration of the right;

Stage 2: execution of the owner's consent to the alienation of the property; identity documents of the parties to the transaction are also required;

Stage 3: obtaining a receipt or other document confirming payment of all necessary taxes and fees, including real estate registration fees, except sales tax, including stamp duties, etc.;

Stage 4: submission of a financial report on the property (appraisal report), which is prepared by the financial department and contains the appraised value of the property

(it is worth noting that this is by no means the real market value, but a much smaller amount);

Stage 5: receipt by the new owner of a document of title to the residential property;

Stage 6: receipt by the new owner of a registration document for the transfer of property, which is drawn up in three copies.

On the basis of the application and the submitted documents, an inventory of the documents received for state registration is drawn up, indicating the date of receipt, which is signed by the applicant and the assistant.

The Syrian legislation does not set a specific imperative term for registration of ownership, but as practice shows the registration process usually takes from 5 to 10 working days. It has been observed that recently, due to the Syrian crisis, the registration period may take one to three months.

In Syria, registration of the contract for the sale of real estate with the financial authorities is required. Once concluded, the contract is registered with the financial authorities in order to determine the type of property to be sold and to calculate the amount of tax. After such registration and payment of the tax, the contracting parties can go to the real estate registry and apply for registration of the transfer of ownership. It is prohibited to register the transfer of ownership if the parties fail to submit a document confirming the payment of the tax levied upon the conclusion of the sale and purchase agreement[276].

In Syria, there is a problem with the registration of immovable property located in the territories of certain Syrian regions, where the registration of ownership rights was once halted due to the Syrian crisis of 2011. The stoppage of this process has led to a number of negative consequences: the cessation of purchase and sale transactions, donations and other actions to transfer ownership of real estate, including residential

[276] Article 13 of the Sale of Real Estate Law No. 15 of 2021, which determines the tax based on the current value of the property.

premises. Also, the significance of the registration procedure is confirmed by the fact that it is one of the indicators of the revival of customary order and legal turnover. There is an incentive to invest in real estate, which entails a real increase in the volume of transactions. In addition, given that real estate transactions are subject to financial charges and taxes, it affects the increase of state fees in Favor of the treasury[277].

It is worth noting that there are individuals who, taking advantage of the fact that some property owners live outside the country or have emigrated and moved from the areas where they live to another region, illegally seize real estate, subsequently destroying it, or acting under forged contracts or forged powers of attorney, pretending to be the owners and proprietors of the properties. At the same time, a large number of lawsuits have been registered from people whose real estate was seized in hot spots and their property was illegally sold[278].

The General Directorate of Real Estate has taken the necessary decision to close some registry offices in dangerous areas, due to the non-recognition of registrations made by others in the real estate registry, in order to protect property rights from fraud and forgery.

In such cases, Article 5 of the Executive Instructions of Legislative Decree No. 11 of 2016[279] applies, which provides: “Any registration or entry made in the Real Estate Registry during the period of suspension of registration work shall not be subject to examination or recognition”. Every registration action that took place after the date on which the real estate departments ceased operations is null and void and of no legal effect. As for the provision of the remaining real estate services, such as inquiries, applications for an extract from the register or other document confirming a person's right to real estate, etc., they are valid as long as the documents are valid”.

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[277] See. Aldgem B. Legal methods of protecting property rights to real estate during the Syrian crisis / B. I. Aldgem // Bulletin of the Russian State University for the Humanities. Series "Economics. Management. Law". - 2022. - No. 3. -S. 116–132. (In Russian).

[278] Al-Watan Newspaper, Issue No. 2392, dated 1-5-2016 (In Arabic).

[279] Legislative Decree No. 11 “On the creation of an additional daily register dated May 5, 2016.” // URL: http://gdca.gov.sy/?q=gdca/news/shownewsdetails&id=274 (date of visit: 12/13/2021). (In Arabic).

Syrian Law No. 33 "On the Recovery of Damaged Real Estate Documents" dated October 26, 2017[280], governing the recovery of partially or completely lost or damaged real estate documents, defined: "Real estate documents that have been lost or completely (partially) damaged are recognized as damaged if their loss has been confirmed and proven to be the result of accidents".

The quoted fragment of the law notes that the legislator does not limit the case to documents damaged by security-damaging events that have occurred in Syria since 2011. It uses the term "accidents" to extend the scope of the law to all incidents that can damage real estate documents, be they wars, earthquakes, fires, floods, etc.

Damage to real estate documents can be caused by their damage or loss. Damage to paper documents causes legal problems, such as the inability to transfer ownership and the absence of an entry in the Real Estate Register. In some cases, the damage is such that no information about the owner, owners and other right holders remains in the Real Estate Register, and there is no description of the objects registered in the Register. Cases have also been identified where only some elements of these documents have been damaged, while others have remained intact and clean.

The question arises as to the fate of agreements on the disposal of real estate objects that were legally impossible to register in the register.

To answer this question, it is necessary to refer to judicial practice. For example, in one of the cases, a person purchased a house located near the city of Aleppo. The buyer paid the seller approximately half of the value of the property. Due to damage to the registry building when the contract was concluded, it was not possible to record the transfer of ownership in the real estate registry. The warehouse where the real estate registry documents were stored was flooded, which, due to the dissolution of ink, resulted in the complete destruction of the ownership information in the real estate registry.

[280] Article 1 of Law No. 33 "On the restoration of damaged real estate documents" dated October 26, 2017 // URL: http://www.mola.gov.sy/mola/index.php/plans-and-laws-4/item /6189-33(date of visit: 12/13/2021). (In Arabic).

As a result, the seller offered the buyer to cancel the sale and refund the amount paid to him, but the buyer refused and both parties exchanged legal warnings (claims). In 2014, the buyer filed a lawsuit to confirm the sale. The claim failed due to the fact that, as a result of the loss of information, the party to the transaction was unable to show proof of the real estate record.

In April 2016, the seller filed a statement of claim with the court. He requested the annulment of the sale and declared his willingness to deposit the amount received into the court's fund on the basis of Article 371 of the Syrian Civil Code, which states that "an obligation expires and is terminated if the debtor proves that its fulfillment has become impossible for him due to a cause independent of him".

The buyer argued that there was no absolute legal impossibility to fulfill the obligation. In support of its position, the party referred to Legislative Decree No. 11 of 2016[281], which obliges the creation of an additional register that can be used to finalize the sale registration procedures. The buyer also filed a counterclaim in the case. He demanded that the sale be confirmed, the registration be suspended until the situation is resolved by law. He also stated that he was willing to pay the remainder of the price.

After the court examined the case, it was found that the buyer was unable to provide a record of ownership from the real estate registry, resulting in the impossibility of proving the contract between the two parties and subsequently transferring ownership. Accordingly, the court (the Second Civil Court of First Instance of Aleppo) decided to accept the seller's claim to cancel the sale due to the impossibility of realization, and the buyer's claim was rejected with the impossibility of confirming the sale[282].

Both parties appealed the above-mentioned decision to the Court of Appeal, which held that the legal status of the two parties had not changed since the first case was dismissed in form, thus requiring dismissal and appeal proceedings.

[281] Legislative Decree No. 11 "On the creation of an additional daily register" dated May 5, 2016 // URL: http://gdca.gov.sy/?q=gdca/news/shownewsdetails&id=274 (date of visit: 12/13/2021). (In Arabic).
[282] Decision No. 30 of February 2, 2017, issued by the Aleppo Second Civil Court of First Instance. (In Arabic).

In 2017, the buyer appealed the aforementioned decision to the Court of Cassation, in which the Real Estate Chamber took into account the public interest principle. Its decision stated, “It is not necessary to dismiss a case by form if it is impossible to provide a record due to damage to the register, and that fairness, preservation of rights and respect for exceptional circumstances require that the case be considered postponed until the Real Estate Register is restored”[283].

Commenting on the above-mentioned case, it should be noted that this casus belli is not an ordinary dispute between two parties. We are confronted with one of the exceptional cases that have arisen as a result of the difficult situation in the country. Its example illustrates most clearly the problem that confronts the judiciary: the protection of both the private interest of the parties to the litigation and the public interest at the same time. This latter interest consists in maintaining, in such difficult conditions, public confidence in the real estate turnover and in the fact that the court protects good faith.

A decision by the trial court to void the sale because of damage to the Register of Deeds, if it were to be given its general meaning, would cause a complete paralysis of circulation and would prevent any process of transfer of title to real estate, whether by sale or otherwise, if the deeds were destroyed. This would constitute a direct violation of the right to property, which is protected by the Constitution.

On the other hand, damage to the Real Estate Registry, even if caused by extraordinary events, does not make the fulfillment of the obligation to sell real estate impossible if the object of the obligation (real estate) still exists in nature.

Finally, it is necessary to distinguish between unregistered property, on the one hand, and registered property whose record has been damaged or lost, on the other. Otherwise, under the conditions that Syria has experienced, chaos will spread and

[283] Decision of the Court of Cassation No. 2014 based on 2147 of 2017 (In Arabic).

contracting parties will resort to abdication and breach their obligations on the pretext of incorrect recording[284].

Today, it is becoming increasingly important to implement an electronic document management system, as modern methods of ensuring the security of cyber data storage reduce the likelihood of data loss. And it also seems to the author expedient to adopt from the Russian legislation the norms on remote registration of ownership of real estate without reference to the region.

At the same time, it can be concluded that the real estate registration system in Syria is based on the following principles[285].

1. Entries in the Real Estate Register are undisputable (Art. 31 of the Syrian Real Estate Registration Act). The entries in the Registry are absolutely authentic and the entry cannot be challenged in court.

2. The registration entry refers to the real estate object and not to the name of the owner due to the fact that the Registry contains documents that make it possible to know the physical and legal status of the property, existing limited rights to the property or restrictions and prohibitions imposed on the property. The register may also include notes on emergency situations (e.g. loss of documents due to military actions) (Art. 1 of the Syrian Real Estate Registration Act).

3. An entry in the Real Estate Registry determines the moment of transfer of rights to real estate.

4. In case of registration of immovable property (residential premises) in the Registry, the principle of acquisition limitation does not apply to such property in Syria.

It is also necessary to refer to cases of refusal of State registration.

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[284] See. Aldgem B. Legal methods of protecting property rights to real estate during the Syrian crisis / B. I. Aldgem // Bulletin of the Russian State University for the Humanities. Series "Economics. Management. Law". - 2022. - No. 3. -S. 116–132. (In Russian).

[285] Shams ad-Din Muhammad. Decree. Op. P. 225.

The Syrian legislator empowers the head of the Real Estate Registry to refuse registration. If the head of the Immovable Property Registry finds an obstacle to the registration procedure, he may give the parties time to remove the obstacle or refuse registration. The application for registration of the right shall be rejected after the expiry of the time limit set for the removal of obstacles (submission of documents) in accordance with Article 74 of the Real Estate Registration Law of Syria, unless the applicants prove that the circumstances preventing registration have been removed.

The decision of rejection may be appealed against in the court where the real estate is located. The court shall determine on the basis of the documents submitted to it whether the reasons why the head of the real estate register rejected the application for registration comply with the applicable legal provisions. The court shall confirm the rejection if it is based on legal provisions, otherwise it shall instruct the head of the registry to carry out the registration. The decision of the court is final.

The law does not specify which cases prevent the completion of the registration process, but the registrar checks whether the transactions have been duly executed and examines the legality and validity of the documents submitted with the application, whether in form or content.

In Russian law, refusal of state registration is regulated by Art. 26, 27 of the Russian Law on Real Estate Registration. As in Syrian law, the state registrar may refuse to register real estate if the person who applied for registration has not eliminated the circumstances preventing registration.

Among such circumstances, the law defines a list of 65 items. Let us note those points that relate to the state registration of residential premises:

- the application is submitted by an improper person who has no rights to the property to be registered, or there are contradictions between the rights to be registered and the rights already registered in the register;

- the documents required for registration of the right are not submitted, or they are unreliable or forged; the form of the documents does not comply with the legislation of the Russian Federation; the documents are signed by unauthorized persons;

- legal facts that are the basis for state registration (a transaction, an act of a state or local government body, a judicial act) have lost force (recognized as invalid or null and void and cancelled);

- the object is not subject to state registration for various reasons, such as the fact that residential premises are not isolated and separate or non-residential premises are not separated from other premises in the building or structure;

- the property to be registered has been seized, interim measures prohibiting state registration and alienation of property have been imposed.

Thus, the Syrian and Russian law have similar reasons for refusal to register rights to real estate. However, the issue of reasons in Syria is left to the discretion of the law enforcer, while in Russia the law prescribes an imperative list of grounds for refusal of state registration of rights.

Let us now turn to the issue of the entry into force of a registration record of title to immovable property.

As noted above, in Russia the transfer of title to immovable property under a real estate sale and purchase agreement is subject to state registration. However, the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 10 contains the following explanation: “The absence of state registration of the transfer of title to immovable property to the buyer is not a basis for invalidating the real estate sale agreement concluded between this buyer and the seller.

After the transfer of possession of real estate to the buyer, but before the state registration of ownership, the buyer is the legal owner of this property and has the right to protect his possession on the basis of Article 305 of the Civil Code of the Russian

Federation. At the same time, the buyer has no right to dispose of the property received by him in possession, since the ownership of this property until the moment of state registration is retained by the seller"[286].

In Syrian and so in Russian law, the immediate effect of registration of the transfer of ownership of immovable property (residential premises) under a contract plays a special role.

Registration has immediate effect and is a legal condition that depends on the will of the parties, and as such, cannot be a separate condition in the description of obligations[287].

"Failure to register the property in the registry in the name of the buyer for any reason results in the termination of the contract of sale and there is no way to speak of the legality of the contract between its two parties"[288].

As for the completeness of the register, Russian legislation "provides for a number of cases when the right of ownership arises without making an entry about it in the register, the danger of which is particularly acute when buying real estate. For example, the registration of rights is not required when acquiring ownership of property by way of inheritance (paragraph 4 of Article 1152 of the Civil Code of the Russian Federation), in the case of universal legal succession in the reorganization of legal entities. These exceptions are explained by the impossibility of a "legal pause" between the termination of the rights of one person and the emergence of the rights of another person"[289]. Therefore, the register cannot be considered a complete source of information on real estate rights, and purchasers have only part of the information on real estate rights. But, for example, according to R.S. Bevzenko, the existence of "off-register" rights in itself cannot refute the existence of the principle of public trustworthiness, since the

[286] Resolution of the Plenum of the Supreme Court of the Russian Federation № 10, Plenum of the Supreme Court of the Russian Federation № 22 of 29.04.2010 (ed. of 23.06.2015) "On some issues arising in judicial practice in resolving disputes related to the protection of ownership and other proprietary rights" // JPS "Consultant Plus". (In Russian).
[287] Decision of the Syrian Court of Cassation dated 8/05/2004 in case No. 135 - 128/2004. (In Arabic).
[288] Syrian Court of Cassation Decision No. 9 Ground 301 of 1979 (In Arabic).
[289] Public reliability in the acquisition of real estate: dissertation. ...cand. legal Sciences / E. Yu. Samoilov. - Moscow: MSU, 2010. - P. 30 (In Russian).

trustworthiness of the register is not objective, establishing that the right of ownership belongs to the person specified in the register, but subjective, i.e. it is assumed to be true only for persons who voluntarily relied on the entry in the register[290]. Different from Russian law, Syrian law does not allow for the existence of off-register rights.

When concluding a contract for the sale and purchase of residential real estate and referring to the registry for this purpose, the main requirements necessary to recognize its public authenticity are correctness, publicity, availability of a way to correct an incorrect entry and completeness. With regard to correctness, it is ensured by the mandatory verification of the legal basis for the entry of the right.

In Russia and Syria, the registration authority independently carries out legal examination of documents, checks the correctness and legality of the transaction - the basis for registration, but cannot control, for example, such issues as the legal capacity of the parties to the transaction, compliance with family and corporate law, etc., which are frequent reasons for challenging the title of the purchaser of real estate. But if the transaction is certified by a notary, in the Russian Federation the registrar does not check its legality (Article 59 of the Law on Registration). This rule is rational, as it eliminates excessive control over transactions of two public-law bodies. In Syria, the same thing happens, notarized transactions have a special status and are considered official, and the notarial act confirming the fact of the transaction has executive and evidentiary force, and the registrar does not check its legality (Article 21 of the Notary Law, and Article 20 of the Syrian Real Estate Registration Law).

Problems are inevitable if the seller has transferred immovable property to the buyer under a sale and purchase agreement, the two parties have recorded the transfer in an acceptance certificate, but have not taken measures to register the transfer of property in the registry.

[290] Bevzenko, R.S. New concept of legislation on state registration of rights to real estate: research report / R. S. Bevzenko. - M.: National Research University Higher School of Economics, 2011. -196 p. (In Russian).

The Supreme Court of the Russian Federation considered such a case: an object was transferred to a purchaser but the transfer of title to it was not registered. In the meantime, the seller went bankrupt. A fair question arises as to who owns the property, whether the buyer is the new owner (the right is not reflected in the register, but actually owns the property) or the bankrupt seller (the ownership right is reflected in the register, but the seller does not actually own the property)?

Case background: “A seller sold five non-residential buildings to a buyer under a sale and purchase agreement and the buyer's title was registered. However, after the buyer failed to pay for the property, the seller applied to the court with a demand to terminate the contract. The court granted the claim and ordered the buyer to return the property. The buyer returned the property, but the transfer of title back to the seller was not registered .

More than a year later, the buyer was declared bankrupt, and the procedure for the realization of his property began. The arbitration courts of the first and appellate instances ruled that the limitation period had been missed and the property remained with the actual owner, despite the absence of a record of his right in the register. and the district court upheld their decision, noting that the action to return the property was not intended to harm creditors. However, the Supreme Court of the Russian Federation issued a final decision that differed from the decisions of the lower courts”[291].

Thus, according to paragraph 1 of Article 213.25 of the Federal Law of 26.10.2002 № 127-FZ On Insolvency (Bankruptcy) “all the property of a citizen, available on the day of the decision to declare him bankrupt and identified or acquired after this day, constitutes the bankruptcy estate, except for property that cannot be foreclosed in accordance with the civil procedure legislation (Article 446 of the Civil Code of the Russian Federation)”[292]. Since the right to the real estate had not been transferred at the time of the opening of the procedure for realization of the debtor's property (due to the

[291] See. Definition of the Judicial Collegium for Economic Disputes of the Supreme Court of the Russian Federation No. 310-ES21-1061 dated 05/27/2021 // SPS "Consultant Plus"
[292] On insolvency (bankruptcy): federal law of Russia. Federation of October 26, 2002 N 127-FZ // SPS "ConsultantPlus" (In Russian).

absence of a corresponding entry in the state register on the transfer of the right to the property), the real estate objects are included in the debtor's bankruptcy estate on the basis of the above provision. The Supreme Court of the Russian Federation obliged the actual owner to transfer all five real estate objects to the debtor's financial manager for their subsequent realization and settlements with creditors. Accordingly, the property remains in the debtor's possession, and the actual owner, in whose possession the real estate was held for 1 year and 4 months, loses the opportunity to regain ownership of the real estate in the debtor's bankruptcy proceedings. The claim for the return of the property is transformed into a monetary claim and is satisfied on a par with the claims of other creditors in the general order[293].

Thus, the Supreme Court upheld the Russian law enforcement opinion on the constitutional effect (giving rise to a right) of state registration of a law.

However, despite the special norms of bankruptcy law, in our opinion, it is worth considering the possibility of indemnification of the buyer in case of his actual possession of the property on the basis of the contract and acceptance certificate. Or consider the possibility of granting a bona fide purchaser a pre-emptive right to repay the debt to him in the event of the creditor's bankruptcy. Due to the heightened requirements for the good faith of both debtor and creditors in bankruptcy proceedings, in this case, the heightened standard of proof of good faith "beyond a reasonable doubt" should be applied when including a buyer's claims in the creditor's claims register. This protects the interests of the parties and preserves trust in real estate transactions by preventing potential losses to the buyer due to the seller's financial difficulties. This approach promotes fairness and protects the rights of the parties in the event of unforeseen circumstances.

The Syrian legislator took a position similar to that of the Russian legislator, reflecting it in the text of Article 825 of the Syrian Civil Code on the emergence of a right

[293] Roy Anastasia: The Supreme Court of the Russian Federation reminded of the importance of timely registration of rights to real estate // First House of Consulting "What to do Consult" [Electronic resource]. - Access mode: https:// https://www.4dk.ru/content/art/9777-d-verkhovnyy-sud-rf-napomnil-o-vazhnosti-svoevremennoy-registratsii-prav-na-nedvizhimoe-imushchestvo-20210616 (date of access: 07/17/2023).

and its transfer by registration. The text of article 82 of the Syrian Real Estate Registration Law establishes that until the withdrawal of property is marked in the register, no action can be taken against the property until the registration is completed. Sivar Wahid El Di also notes that "ownership under Syrian law does not pass to the buyer, even if the buyer agrees to take the place of the seller (transfers the obligation to the buyer and accepts it in place of the seller), knowing that doing so threatens the creditor-debtor relationship of the seller. For example, if the property becomes a class of real estate that cannot be taken by seizure (especially if it is an apartment building) " [294].

One result of the crisis hitting Syria is that it has prompted many property owners to migrate or abandon their properties, and this in turn has prompted fraudsters to take possession of properties illegally using forged documents and then sell what they have acquired to bona fide buyers (they may also be interested in abusing the law).

In the case of a bona fide purchaser to whom the property is transferred by contract, the transfer of ownership is recorded in the real estate registry, where, from the moment of registration, he enjoys absolute power over the property, as well as the protection of the provisions of the Real Estate Registration Act.

However, based on the conflicting jurisprudence related to the sale of real estate and the implementation of the principle “what is based on a lie is false”, the Syrian Court of Cassation's decision No. 6 based on 38 dated 09.03.2022 came out, which ruled that no person can claim to be acting in good faith if he or she is in possession of a property that was lost by the original owner as a result of wrongful acts. In other words, if a person acquired the property legally and in good faith, but prior to that, for example, the present seller acquired it by forgery, fraud or some other wrongful act, then here the bona fide purchaser cannot claim ownership of the property on the basis of good faith, and here is a court which by its decision sought to protect the rights of the original owner.

[294] Siwar Mohamed Wahid El Din. Decree. Op. P. 254. (In Arabic).

So, even if the subsequent purchaser is a bona fide purchaser but the original transaction was fraudulent, the purchaser returns the property.

Removing the protection of the bona fide purchaser who made the purchase based on the real estate registry data results in less confidence in an important agency of the State of Syria, the Department of Real Estate Registry, and this is detrimental to the public interest. It is in the interest of the bona fide purchaser on the one hand and the public interest on the other, and where the private interest of individuals conflicts with the public interest of the State, the public interest must prevail over the private interest. We also note that the decision rendered by the Court of Cassation, in our opinion, does not contradict the provisions of the Law on the Real Estate Register, and a bona fide buyer should apply to the seller for recovery of the price and compensation (having proved his good faith)[295].

On the other hand, contradictory jurisprudence has weakened the value of real estate records, so that a bona fide purchaser whose title is registered is likely to lose his property because the previous owner acquired the property fraudulently or fraudulently. As a consequence of this practice, when purchasing real estate, it has become mandatory to examine the sequence of owners and the validity of each owner's title and the documents and regulations under which the registration was made.

In our opinion, the liability for fraud or forgery here does not lie with the bona fide purchaser. A bona fide buyer relied on the documents of the real estate registry and bought from the owner registered in the registry, so can his title be expropriated? In addition, cases of fraud began to arise, in which the owner colludes with a person who allegedly fraudulently acquires property from the original owner, and then the property is sold to a bona fide buyer who pays for the purchase so that the original owner can later recover his property, since the alienation allegedly occurred on illegal grounds. The intermediary-seller disappears and the bona fide buyer loses his money.

[295] Decision of the Syrian Court of Cassation No. 6 based on 38 of 03/09/2022 (In Arabic).

Given the existence of such cases, it would be unfair to leave a bona fide buyer without protection of his right. It would also reduce the confidence of participants in civil turnover in the information contained in the real estate register, which in turn would complicate the conclusion of real estate transactions for all participants in this market.

It should be noted that in Russia the legislator considers the issue of reclamation of property from a bona fide purchaser and ways to confirm his good faith in Article 302 of the Civil Code of the Russian Federation. This article stipulates the conditions for reclaiming property from a bona fide purchaser, such as ignorance or the need to know about the existence of third-party rights to the property, acquisition of property from a person who has no right to dispose of this property, and the absence of special procedures for acquisition at auction or by other means provided for by law. If a person's rights have been violated, he or she has the right to reclaim the property from a bona fide purchaser. It is important to note that the court may refuse to satisfy the claim to reclaim residential premises from a bona fide purchaser if three years have passed after the premises have been removed from the plaintiff's possession and an entry on the ownership right of the first bona fide purchaser has been made in the state register. In this case, the burden of proving the bad faith of the purchaser or the circumstances of the withdrawal of the premises from the possession of the plaintiff lies on the person whose rights have been violated.

Thus, the legislation of Syria and the Russian Federation provide for similar approaches:

- to the determination of the moment of transfer of title to immovable property (residential premises) - a constitutive rather than declarative approach;

- to the issue of securing the rights and obligations of the seller and the buyer in a transaction in respect of immovable property (residential premises).

It should be noted that in practice in Syria, the buyer can independently obtain this information from the real estate registry. This circumstance is due to the principle of publicity, according to which access to the Real Estate Registry in Syria is open to all.

Thus, since the Real Estate Registry is a unified register of information (unified information database on territories and real estate objects, as well as on the rights to them), all interested parties can access the various resources of the registry for a fee (nominal fee), when applying to the appropriate authority in Syria.

As mentioned above, now in Russia the register is closed, only the owner will be able to obtain the specified information from the register, and for all third parties (other than the state and other persons expressly listed in the law) it is possible with the consent of the owner.

For our part, we propose to make access to the Registry in Syria closed. This means that access to the information contained in the Real Estate Registry can be obtained only by persons with a "justified interest". Such persons should include the owners themselves, other right holders (tenants, trustees), notaries, law enforcement and other public authorities (including the judiciary), as well as a number of organizations such as (banks, insurance companies). In this field, it seems necessary to respect and observe the right of every citizen to personal data protection.

This approach will certainly complicate real estate transactions, however, the legislator can develop a system of access to information on the rights to the real estate object, refer to persons with "reasonable interest" also, for example, potential buyers of real estate.

Syria and Russia use a similar approach to the issue of registration of title to immovable property (residential premises) - the constitutive approach, as well as to the issue of ensuring the rights and obligations of the seller and the buyer in the

implementation of a transaction in respect of an immovable object (residential premises)[296].

The following can be said about the legislation of Syria and Russia regulating the issues of real estate (residential premises) registration: the Russian legislation is quite modern in spirit, as it was created in the 1990s and is being developed taking into account the latest world trends. As for the Syrian legislation, it should be noted that although it is effective, it is not modern enough, as it was ideologically formed from the times of the Ottoman rule and, later, the French mandate over Syria. Syrian laws have not been substantially updated and amended.

Thus, we make the following conclusions:

1. Syrian and Russian legislators have established the social function of the right of ownership and other real rights to real estate in order to protect these rights to achieve stability in civil relations.

2. Registration of legal actions related to the transfer of ownership and other real property rights to real estate is necessary for their recognition.

3. In Syria and Russia, state registration of real estate is, on the one hand, a technical process aimed at informing third parties and, on the other hand, protects the owner from any illegal encroachments. The registration of rights in the real estate registry provides real estate transactions with stability, the guarantor of which is the State Register.

4. Registration of the transfer of rights plays a fiscal role, as the state collects fees associated with the registration of ownership and other real rights to real estate, which provides an additional inflow of funds to the state budget.

5. Registration of the transfer of a right has evidentiary value.

[296] See. Aldgem, B. I. Guarantees of the right to housing: a comparison of Syrian and Russian legislation / B. I. Aldgem // Actual problems of Russian law. - 2022. - Vol. 17, No. 1 (134). - P. 162. (In Russian).

In connection with the identified problems, the following is proposed.

1. Syrian legislation on the right of ownership of residential premises should be supplemented. It seems reasonable to borrow from the Russian legislation the norm on remote registration of the transfer of rights to real estate without reference to the region in which it is located[297]. It is also necessary to introduce support measures for a bona fide purchaser of housing to protect him/her from the possibility of losing the acquired residential property due to a claim of the previous owner. Namely, if the purchaser (as a bona fide participant of civil turnover) acquired residential premises from a third party, relying on the data of the real estate register, and legally registered his title, this residential premises should not be at risk of being seized by a claim of the previous owner. In Russia, this step was taken by the Constitutional Court of the Russian Federation in Resolution No. 35-P and Article 302 of the Civil Code of the Russian Federation[298].

The author also proposes to limit access to the real estate register, as it is in this area that the need to respect and comply with the right of every citizen to the protection of personal data arises.

3. In Syria, it is necessary to simplify the registration process, including by setting a deadline for the registration of real estate (residential premises).

[297] See. Aldgem B.I. Guarantees of the right to housing: a comparison of Syrian and Russian legislation / B.I. Aldgem // Current problems of Russian law. - 2022. - T. 17. - No. 1. - P. 162-163. (In Russian).
[298] Decision of the Constitutional Court of the Russian Federation dated July 13, 2021 N 35-P “In the case of verifying the constitutionality of paragraph 1 of Article 302 of the Civil Code of the Russian Federation in connection with the complaint of citizen E.V. Mokeev" https://www.consultant.ru/document/cons_doc_LAW_390332/ . (In Russian).

Conclusions

In planning and structuring the content of the study, the author proceeded with the hypothesis that a comparativist analysis would allow for the formulation of specific proposals regarding the regulation of the sale and purchase of residential property in Syria. For this reason, proposals for the optimization of Syrian civil legislation, in general, were expected, especially given the insufficient detailing of Syrian legislation in terms of real estate objects and the sale and purchase of residential premises in particular. Meanwhile, the study allowed us to formulate some proposals oriented toward the improvement of Russian legislation.

The methodology chosen by the author helped to understand that the contract of sale and purchase of residential premises in its retrospective has passed a very long and difficult path of development from ancient times to the present. The formation of the Institute of Real Estate and ensuring legal regulation of transactions with it in Russia and Syria was carried out over a long time.

Within the framework of the study of the construction of the contract of sale, the procedure for its execution, and the registration of ownership rights, the study also reveals similarities and differences between the Russian and Syrian legal orders. Moreover, doctrinal and law enforcement approaches are studied, which in some aspects differ significantly from each other.

In general, the study is based on the identification of similarities and differences between the legal orders under study. It is the comparativist approach that led to the formation of recommendations in terms of differentiation of Syrian legal regulation of the institute of sale and purchase agreement for residential premises; inclusion in the Syrian civil legislation of the rules on the obligation of the seller of residential premises to provide in the sale and purchase agreement a condition on the method of management of the apartment building (if such a subject exists), as well as provisions on property rights and obligations, the author has formulated proposals to optimize the regulation of the legislative barrier preventing abuses related to the alienation of residential real estate and

the reacquisition of residential real estate from the state, as well as to prevent abuses related to the alienation of residential real estate and the reacquisition of residential real estate from the state; the author has formulated proposals to optimize the regulation of the legislative barrier preventing abuses related to the alienation of residential real estate and the reacquisition of residential real estate from the state. With regard to Russian legislation, the author has formulated proposals to optimize the regulation of the legislative barrier preventing abuses related to the alienation of residential real estate and reacquisition of residential real estate from the state.

In the context of Syrian law, there is a significant difference between the concept of an irrevocable power of attorney and its interpretation under Russian law. Despite the same name, such a power of attorney differs in its legal nature and consequences, which makes the term “irrevocable power of attorney” inapplicable as a synonym in both legal systems.

The study has touched not only on its immediate subject matter. For example, the analysis of approaches to the definition of premises as residential allowed the author to formulate a proposal for the formation of committees in the Syrian Arab Republic, operating on a permanent and periodic basis, which would be responsible for the security of residential real estate.

I would also like to hope that the experience described by the author in regulating housing issues in Syria during the emergency situation will benefit the Russian legal order, which is often faced with situations of threat and uncertainty.

The author hopes that this study and these proposals will indeed help the Syrian legislators to benefit from them and make the necessary adjustments to the current legislation. The formation of a system of special norms regulating the use of residential premises and their turnover is conditioned by the special social and economic significance of these objects of civil rights.

Therefore, we can say that the study of the Russian legislation confirms that the Syrian legislator should pay attention to the formation of a system of special rules aimed at regulating the relations arising in the framework of the disposal of residential premises. It is necessary to draw the attention of the legislator, specialists, lawyers, and other interested parties to the need for constant work to improve civil legislation.

The work carried out not only solved the tasks set for the author but also helped to identify some problems that could potentially become the subject of future research. It should be noted that the institute of sale and purchase of residential premises in Syrian and Russian law needs further doctrinal understanding.

Comparison of the legislation of the two countries in the studied area, comparison of individual norms, as well as the study of law enforcement practice allowed the author to formulate conclusions and proposals aimed at optimizing the current legislation.

In the future, the results obtained in the course of this study can be subjected to further development, taking into account both the dynamics of society's needs in the relevant area and the undergoing changes in the legislation. Thus, the conducted research will not lose its relevance over time.

In the aggregate, the above indicates the achievement of the goals set in the performance of this work.

Proposals to amend the Syrian Legislation

Summarizing the results of the current study, the author proposes the author's draft law to amend the Syrian Civil Code to resolve problematic issues and gaps in the Syrian civil legislation concerning the turnover of residential properties.

The bill to amend and supplement some legal articles of the Syrian Civil Code concerning the regulation of contracts of sale and purchase of real estate in general and residential real estate in particular.

1- Residential real estate

Residential premises (dwelling) as an object of law should be understood as a structurally separate object suitable for permanent or temporary residence (irrespective of the fact that it is part of another), having an independent entrance, provided that the requirements regarding the minimum level of improvement of such premises and its compliance with sanitary-epidemiological and other imperative criteria are met.

Residential premises include a residential house, including a summer house, or a part thereof, an apartment, and a room.

2- Contract of sale and purchase of residential premises

Under the contract of sale of residential premises, the seller undertakes to transfer to the buyer the title to the residential premises, and the buyer undertakes to pay a sum of money agreed by the parties as the price of the residential premises.

3- Essential conditions of the contract of sale and purchase of residential premises the contract of sale and purchase of residential premises shall contain the following conditions:

a) Indication of legal capacity and legal capacity of the parties to the contract, their powers to conclude the contract;

b) Condition on the subject of the contract (individualizing features of the residential premises;(

c) Condition on the price;

d) Before concluding the contract, the seller must provide the buyer with information on the availability of encumbrances on the residential premises in the form of mortgages, etc.;

e) Persons who retain the right to reside in the alienated premises must be specified in the contract.

f) Form and procedure for concluding a real estate sale and purchase agreement.

The contract of sale and purchase of residential real estate shall be concluded in writing and notarized under the insurance of nullity.

5- Protection of the rights of individuals.

Freedom to dispose of real estate owned by a person is limited by the rights of use of the owner's family members. If the owner's family members (spouse, children) have no other property suitable for living, they retain the right to use the residential premises.

After the divorce of the spouses, the ex-wife and her children have the right to use the residential premises if they have no other property suitable for living.

6- Preferential right to purchase residential premises.

The following persons have the priority right to purchase residential premises or a share in the right to such premises: 1. A co-owner who owns a share in the ownership right, if the share in the right is sold to another person; 2. Anyone who has the right to use the premises or is a family member of the seller of the premises.

- A person who wishes to exercise the right of first refusal in respect of residential real estate must declare his/her wish to purchase it to both the seller and the potential

buyer within one month from the date of the official notice given to him/her by the seller or the buyer, otherwise, his/her right will be forfeited.

7- Transfer of the residential premises

The transfer of the residential premises is carried out by signing a transfer deed by the parties.

Upon state registration of the transfer of ownership, the transfer of the residential premises to the buyer is confirmed by a symbolic transfer of keys by an employee of the state real estate registry. Or through a notarized contract.

8- Good faith purchaser

- A person who did not know and could not have known with due care and diligence about the defects of the contract is a bona fide purchaser.

- The ownership right of a bona fide purchaser (first registered in the real estate register) is subject to legal protection.

9- Term of state registration.

The term of state registration shall not exceed 10 working days from the date of submission of documents to the real estate registry.

In addition, the author proposes to amend Article 304 of the CPC of Syria, establishing the possibility of recovery of the only residential premises, in the simultaneous presence of three conditions:

- Provision of replacement housing on the right of social rent or housing from the maneuver fund with the further provision of premises on the right of social rent;
- The value of the alienated property exceeds 1000 minimum wages in the region where the property is located;

- The area of the property exceeds more than twice the area of the social norm by the number of persons living in the given premises.

These changes will create a reasonable balance between the civil law interests of creditors and the constitutional right to the debtor's home.

Also, we believe it is necessary to provide all citizens with a clear algorithm for obtaining information from the unified real estate register.

In the Law on the Real Estate Register of Syria No. 188, it is necessary to introduce the following new article: based on the need to respect and take into account the right of every citizen to the protection of personal data, the right of access to the information of the Register is possible only for persons who have a "justified interest". The list of such persons should include the owners themselves, other right holders (tenants, trustees), notaries, law enforcement, and other public authorities (including the judiciary), as well as some organizations such as (banks, and insurance companies).

The Syrian Real Estate Registry Act No. 188 should be amended to regulate the relationship regarding slums. This should be done in collaboration between the Real Estate Registry Authority and the Ministry of Housing.

"Slums" (residential properties built with irregularities) should be included in the Urban Development Authority to properly restructure the buildings to prevent damage that may be caused by possible natural disasters, as well as to solve the problem of proving ownership of them and registering them in the real estate registry, registering them after complying with the necessary standards and permits.

As mentioned in the course of the study, we believe it is necessary to form committees in Syria, operating on a permanent and periodic basis, which will be responsible for the safety of residential real estate, especially in light of the ongoing crisis and its main consequence in this area - the emergence of a large number of uninhabitable houses; providing the necessary financial state support to victims of natural disasters and wars in terms of housing in such a way as to guarantee the safety and security of

residential properties; and providing the necessary financial support to the victims of natural disasters and wars in order to ensure that they have access to the necessary financial resources to ensure their safety and security.

Translation of part of the articles of the Syrian Civil Code.

The contract as the source of the obligation.

Article 92

A contract shall be concluded as soon as the parties exchange expressions of two concurring wills, subject to the conditions defined by law for its conclusion.

Article 93

1. The expression of will shall be made orally, in writing or by means of gestures recognized as generally accepted, as well as by adopting such conduct that leaves no doubt about its intentions, taking into account the circumstances.
2. The expression of will may be implicit if the law or the parties do not require explicit expression.

Article 94

1. If a time limit has been set for the acceptance of a proposal, the proposing party shall be obliged to maintain its proposal until the expiration of the time limit.
2. The time limit may arise from the circumstances or the nature of the transaction.

Article 95

1. If the offer was issued at a place, (at a meeting to conclude a contract) without setting a time limit for acceptance (acceptance), the offering party shall be released from its offer if acceptance did not immediately follow. The same applies if the offer was issued from one person to another by telephone or any similar means.
2. However, a contract shall be deemed to have been concluded even if acceptance is not immediate if there is no indication that the offering party

withdrew its offer between the offer and acceptance, and acceptance was made before the end of the meeting to conclude the contract.

Article 96

If the parties have agreed on all essential matters of the contract and have left certain details that have been previously determined for subsequent agreement, without stipulating that the contract will not be considered concluded without agreement on these details, the contract shall be considered concluded. In the event of a dispute on matters on which no agreement has been reached, the court shall decide in accordance with the nature of the transaction, law, custom and justice.

Article 97

If acceptance is accompanied by additions, restrictions or modifications to an offer, it shall be deemed to be a rejection containing a new offer.

Article 98

A contract between absent parties shall be deemed to have been concluded at the place and time when the acceptance was made, unless there is an agreement or legal provision stipulating otherwise.

Article 99

1. If the nature of the transaction, trade custom or other circumstances indicate that the proposing party did not expect explicit acceptance, the contract shall be deemed to have been concluded if the offer was not rejected within a reasonable time.

2. Silence shall be deemed acceptance if there have been previous transactions between the parties to which the offer relates, or if the offer has entailed the benefit of the person to whom it was addressed.

Article 100

In bidding, a contract shall be deemed to be concluded only after the final acceptance of the offer. A bid shall be null and void if the offer exceeds it, even if it is invalid.

Article 101

Acceptance in treaties of adhesion shall be limited to agreement to predetermined conditions that are determined by the proposing party and which are non-negotiable .

Article 102

1. An agreement in which both parties or one of them promises to conclude a certain contract in the future shall be concluded only if all the essential conditions of the proposed contract and the term of its conclusion are specified.

2. If the law requires a certain form for the conclusion of a contract, this form shall also be observed in the agreement promising to conclude this contract .

Article 103

If someone promised to conclude a contract and then reneged on his promise and the other party sued to enforce the promise, and all the necessary conditions for the conclusion of the contract, especially concerning the form, have been observed, the enforceable judgment of the court shall supersede the contract .

Article 104

1. Pledging a bond at the conclusion of a contract means that each of the parties has the right to repudiate the contract, unless otherwise stipulated by agreement .

2. If the one who has posted the bond refuses, he shall forfeit it. If the one who received the bond refuses, he shall return it doubly, even if the refusal does not cause damage.

Article 105

1. When a contract is concluded through a representative, the person of the representative, and not the person of the principal, shall be considered in assessing the defects of the will or the effect of knowledge of particular circumstances or presumed knowledge.

2. Nevertheless, if the representative has acted in accordance with specific instructions given to him by the principal, the latter cannot invoke the representative's ignorance of circumstances of which the principal knew or ought to have known .

Article 106

If the representative, within the scope of his powers, concludes a contract on behalf of the principal, all rights and obligations arising from that contract shall be attributed to the principal .

Article 107

If at the time of the conclusion of the contract a party has not indicated that he is acting as a representative, the effects of the contract shall not be attributed to the principal, either as creditor or debtor, unless it is considered obvious that the other party was aware of the existence of the representation, or where it did not matter to him (it was tantamount to dealing with him) whether to deal with the principal or with the representative.

Article 108

If the representative and the person who concluded the contract with him at the time of conclusion of the contract both were unaware of the termination of the representative's powers (expiration of the term of representation), the effects of the contract, whether rights or obligations, shall be attributed to the principal or his successors in title.

Article 109

A person shall not be permitted to enter into a contract with himself on behalf of the represented, whether for his own benefit or for the benefit of another person, without the authorization of the principal. However, the principal may approve such a contract. This provision shall be subject to other statutory provisions or commercial rules .

Article 110

Everyone shall be deemed to have the capacity to contract, unless his capacity is restricted or deprived in accordance with the law .

Article 111

A minor who has not reached the age of distinction (a minor from 1 day to 7 years of age) shall not have the right to dispose of his property. All his actions shall be deemed null and void .

Article 112

1.If a minor has reached the age of distinction (minor from 7 years old to 18 years old), his financial transactions shall be deemed valid if they are of clear benefit and invalid if they cause clear damage .

2.Financial transactions that cause both benefit and damage may be invalidated for the benefit of the minor. The right to request the invalidation of a transaction shall cease if the minor has approved the transaction after reaching the age of majority, or if the approval has been given by his guardian or the court in accordance with the circumstances and the law.

Article 113

If a reasonable minor capable of reaching the age of 15 and has obtained authorization to manage his property or has obtained it by law, his actions in managing the property shall be deemed valid within the limits defined by law .

Article 114

The insane, feeble-minded, imprudent and wasteful shall be subject to restriction of capacity by the court, which may also lift their restrictions in accordance with the rules and procedures prescribed by law.

Article 115

1. Any act of an insane or feeble-minded person shall be deemed null and void if it was committed after the announcement of the decision on the restriction of legal capacity .

2. However, if the act was committed before the announcement of the decision to restrict, it shall be deemed invalid only if the state of insanity or feeblemindedness was generally known at the time of the conclusion of the contract or if the other party was aware of it.

Article 116

1. If an act was committed by a person in a state of insanity or wasting after the announcement of the decision on restriction, the same rules as for the acts of a reasonable able-bodied minor shall apply to such act .

2. An act committed before the announcement of the decision to restrain is considered a void or voidable act unless it was the result of exploitation or collusion.

Article 117

1. Actions of a person under guardianship due to waste or negligence with regard to wills or waqfs shall be deemed valid if authorized by the court .

2. Managerial acts performed by a person under guardianship due to waste who has been authorized to manage his property shall be deemed valid to the extent prescribed by law .

Article 118

1. If a person is deaf-mute, deaf-blind or blind, and for this reason he cannot express his will, the court may appoint a judicial assistant for him to assist him in acts requiring his interest .

2. All acts for which judicial assistance has been appointed and performed by the person for whom such assistance is granted without the participation of the assistant may be null and void if they were performed after the announcement of the decision on the appointment of the assistant .

Article 119

Acts performed by guardians, trustees and administrators shall be deemed valid to the extent prescribed by law .

Article 120

A person with diminished capacity may demand the termination of a contract without affecting his obligation to indemnify if he resorts to fraudulent means of concealing his incapacity.

Article 121

If one of the parties has made a material (fundamental) mistake, it may demand the invalidation of the contract if the other party has also made the same mistake, was aware of it or could have easily discovered it.

Article 122

1. An error shall be deemed to be material if it reaches a degree of significance whereby the party would have refused to conclude the contract had it known of the error.

2. In particular, an error shall be deemed material if :

a) If the error concerns the quality of a thing which is essential to the parties or which must be essential because of the circumstances surrounding the contract or because of good faith behavior.

b) If the error concerns the identity of the party or one of its essential characteristics, which was the main reason for entering into the contract.

Article 123

A contract may be recognized as null and void due to an error in law if the conditions of the error are met in reality, in accordance with the two preceding articles, unless otherwise provided by law.

Article 124

A mere calculation error or a typo shall not affect the validity of a contract, but the error shall be corrected .

Article 125

1. A person who has made a mistake may not invoke it contrary to the requirements of good faith. Tho, may not invoke the mistake if he has acted contrary to the principle of good faith. (Wrongfully availed himself of a circumstance).

2. Especially a person remains bound by a contract which he intended to enter into, if the other party has shown willingness to perform that contract.

Article 126

1. A contract may be declared invalid because of deception if the tricks resorted to by one of the parties to the contract or his representative are so serious that without them the other party would not have concluded the contract.

2. Deceit shall include willful concealment of a fact or circumstance, if it is proved that the other party would not have concluded the contract knowing about this fact or circumstance

Article 127

If the deception occurred on the part of third parties, the party deceived in the contract (the deceived party) shall not have the right to claim its invalidation unless it proves that the other party to the contract knew or should have inevitably known about the deception .

Article 128

1. A contract may be invalidated due to coercion if a person concluded it under the influence of fear aroused by the other party, without reason, and this fear was justified.

2. The fear shall be deemed well-founded if the circumstances of the case suggest to the party who claims coercion that there is a serious danger threatening him or others in his person, body, honor or property

3. In assessing coercion, the sex, age and social and health status of the person on whom the coercion is imposed, as well as any other circumstances that may affect the seriousness of the coercion, shall be taken into account.

Article 129

If the coercion occurred on the part of third parties, the person forced to conclude the contract shall not have the right to claim its invalidation unless he proves that the other party to the contract knew or ought inevitably to have known of this coercion.

Article 130

1. If the obligations of one of the parties to a contract are totally disproportionate to the benefit received by it under the contract or to the obligations of the other party, and it is found out that the aggrieved party entered into the contract only because of a clear abuse by the other party of its frivolity (indiscretion) or passion, the court may, at the request of the aggrieved party, declare the contract null and void or reduce its obligations .

2. An action to this effect must be brought within one year from the date of the contract, otherwise it shall be deemed inadmissible.

3. In mutual exchange contracts, the other is allowed to avoid a suit to invalidate the contract if it submits what the judge considers sufficient to remedy the injustice (disproportionality of obligations).

Article 131

In applying the preceding article, special provisions concerning deception in certain contracts or the level of interest rate shall be taken into account.

Subject matter of the obligation

Article 132

1. The subject of an obligation may be an independent object .

2. However, a transaction on the inheritance of a living person shall be invalid even if it is made with his consent, except in cases expressly provided for by law .

Article 133

If the subject of the obligation is impossible in itself, the contract shall be null and void .

Article 134

1. If the subject matter of the obligation is not specifically defined, it shall be defined in kind and quantity, otherwise the contract shall be null and void .

2. It is sufficient for the subject matter to be defined by kind if the contract provides how the quantity may be defined. If the parties have not agreed on the quality of the object and this cannot be deduced by customary norms or any other circumstances, the debtor shall be obliged to deliver goods of average quality .

Article 135

If the object of the obligation is money, the debtor shall be obliged to pay the amount specified in the contract without regard to the appreciation or depreciation of the value of that money by the time of performance, unless the law provides for special conditions regarding the conversion of foreign currency.

Article 136

If the subject matter of the obligation is contrary to public order or morality, the contract shall be null and void.

Basis of obligation

Article 137

If the obligation has no basis, or its basis is contrary to public order or morality, the contract shall be null and void .

Article 138

1. All obligations for which no basis is specified in the contract shall be presumed to have a legal basis until the contrary is proved .
2. The basis specified in the contract shall be presumed to be valid until proven otherwise. If it is proved that the basis is fictitious, he who asserts the existence of another legitimate basis for the obligation shall prove his assertions.

Invalidity

Article 139

If the law grants one of the contracting parties the right to invalidate a contract, the party has no right to insist on that right (cannot invoke that right) .

Article 140

1. The right to claim invalidation of a contract shall be forfeited in the case of express or implied approval .

2. Approval shall be based on the date of conclusion of the contract, without violating the rights of third parties.

Article 141

1. The right to demand invalidation of a contract shall be forfeited if it is not exercised within one year .

2. The term shall begin to run: in the case of incapacity, from the date of removal of this cause; in the case of delusion or deceit, from the date of its discovery; in the case of duress, from the date of its cessation. In any case, it is inadmissible to invoke the right to claim the invalidation of a contract due to misrepresentation, deceit or duress after the expiration of fifteen years from the conclusion of the contract .

Article 142

1. If a contract is invalid, any interested person may invoke the invalidity and the court may recognize it on its own initiative. The invalidity shall not be removed by subsequent approval .

2. A claim of invalidity disappears fifteen years after the conclusion of the contract.

Article 143

1. If the contract is declared null and void and voidable, the parties shall return to their original position. If this is not possible, fair compensation may be awarded .

2. However, if the contract is declared invalid because of incapacity, the person with limited capacity shall be obliged to return only what has benefited him as a result of the performance of the contract.

Article 144

If a contract is partially void and voidable, only that part of the contract shall be deemed void. If it appears that the contract would not have been concluded without the null and void or voidable part, the entire contract shall be deemed null and void

Article 145

If a contract is void or voidable but contains elements of another contract, it shall be deemed valid as the latter if it can be established that the parties intended to conclude that particular contract.

Consequences of the contract

Article 146

The effects of a contract shall extend to the parties and their common successors in title without affecting the rules relating to inheritance, unless it follows from the contract, the nature of the case or the law that those effects do not extend to the common successors in title .

Article 147

Where a contract creates obligations and personal rights associated with a thing which then passes to a particular heir, those obligations and rights shall pass to that heir at the time of the transfer of the thing, if they are an integral part of that thing and if the particular heir knew of them at the time the thing was transferred to him.

Article 148

1.Contracts shall be honored; modification and termination shall be possible only with the consent of both parties or for reasons provided for by law.

2.Nevertheless, if exceptional general events arise which the parties could not have foreseen and as a result of which the fulfillment of contractual obligations, although not impossible, becomes excessively burdensome for the debtor in such a way as to threaten him with significant losses, the judge may, taking into account the circumstances and after balancing the interests of the

parties, limit the fulfillment of the contract to reasonable limits and declare null and void any agreement contrary thereto.

Article 149

1. A contract shall be performed in accordance with its content and in a manner consistent with good faith .

2. A treaty shall not be limited to what is contained in it, but shall also include what is an integral part of it according to law, custom and equity, depending on the nature of the obligation .

Article 150

If the contract was concluded by subordination and contained oppressive terms, the judge may modify these terms or release the party from them in accordance with the requirements of justice. Any agreement to the contrary shall be null and void.

Article 151

1. If the text of the contract is clear, it is not possible to deviate from its interpretation to determine the will of the parties .

2. If an interpretation of the contract is necessary, the general intention of the parties should be sought, without being limited to the literal meaning of the words, taking into account the nature of the transaction and good faith and trust between the parties, in accordance with generally accepted custom .

Article 152

1. Doubts shall be interpreted in favor of the debtor .

2. Nevertheless, the interpretation of ambiguous expressions in subordination contracts shall not prejudice the interests of the party agreeing to the terms .

Article 153

A contract may not impose obligations on third parties, but may bring rights to them.

Article 154

1.If someone undertakes to force a third person to accept an obligation, that person shall not be bound by his promise. If the third person refuses to accept the obligation, the oblige shall compensate the other party for the loss, but may avoid compensation by fulfilling the obligation himself .

2.If the third person accepts the obligation, his acceptance shall be valid only from the moment of its expression, unless it is stated that it is retroactive .

Article 155

1.A person has the right to contract in his own name for the performance of obligations which he has conditioned for the benefit of another person, if he has a personal pecuniary or moral interest from the performance of these obligations .

2.In consequence of the stipulation, the other person acquires a direct right of acceptance of the obligation on the part of the person who has stipulated to fulfill the stipulation, and he may demand its fulfillment unless otherwise stipulated .

3.Also, a person who has stipulated a condition for the benefit of the beneficiary is entitled to demand the fulfillment of the condition for the benefit of the beneficiary, unless it follows from the contract that only the beneficiary is entitled to do so.

Article 156

1.Only the party who imposed the condition, without its creditors or heirs, may cancel the condition until the beneficiary declares to the oblige or the party that it wishes to exercise the right (to benefit from it)، unless it is contrary to what is required by the contract .

2. Cancellation of a condition does not release the oblige from its obligations to the party, unless otherwise agreed. A party may replace the beneficiary with another person or take the right for himself .

Article 157

In a condition in favor of a third party, the beneficiary may be a person arising in the future or undetermined at the time of the conclusion of the contract, provided that it can be determined by the time the effects of the contract occur in accordance with the terms of the agreement.

Termination of contract

Article 158

1. In contracts binding both parties, if one of the parties fails to fulfill its obligation, the other party shall have the right, after notifying the obligor, to demand the fulfillment of the contract or its termination with compensation for damages in both cases .

2. The court may grant the debtor a reprieve if circumstances so require, and may also refuse termination if the debtor's non-performance is of little importance for the fulfillment of the obligation as a whole .

Article 159

It is possible to agree that the contract shall be deemed terminated upon non-performance of the obligations arising from it, without the need for a court decision. This agreement does not exempt from notice unless there has been an express agreement by the parties to repudiate it .

Article 160

In contracts binding both parties, if the obligation has become impossible to fulfill, the obligations related to it shall automatically cease and the contract shall be terminated by itself .

Article 161

Upon termination of the contract, the parties shall return to the state in which they were before the conclusion of the contract (restitution). If this is not possible, compensation may be awarded.

Article 162

In contracts binding both parties, if mutual obligations are to be fulfilled, each party shall have the right to refuse to fulfill its obligation if the other party has not fulfilled its obligation.

Named contracts

Section first

Contracts relating to property

Chapter one: sale

1 -sale in general

Article 386

A sale is a contract by which the seller undertakes to transfer to the buyer the ownership of a thing or other property right in exchange for a monetary price.

Article 387

1. The buyer shall have sufficient knowledge of the object of sale. The knowledge shall be deemed sufficient if the contract contains a description of the object of sale and its key characteristics that enable to establish its identity .
2. If the contract of sale specifies that the buyer has knowledge of the object of sale, he loses the right to demand the annulment of the sale on the ground of insufficient knowledge of it, unless he proves deception on the part of the seller.

Article 388

1. In the case of a sale “according to a sample” (the thing sold) the goods must conform to that sample .

2. If the “sample” has been damaged or lost through the fault of one of the parties to the contract, whether the seller or the buyer, that party has the burden of proving that the goods conform to the sample or do not conform to it.

Article 389

1. In a sale subject to pre-testing, the buyer shall be given the right to accept or refuse the purchase. The seller is obliged to provide the possibility of testing. If the buyer refuses the purchase, he shall notify the buyer within a specified period of time. If no time limit has been set, the seller shall set a reasonable time limit. The expiration of this period without any notification from the buyer, provided that testing is possible, shall be considered as consent to the purchase. his silence shall be considered as consent.

2. A sale subject to testing shall be deemed conditional, contingent upon acceptance of the goods, unless the contract or circumstances otherwise indicate a condition that renders the sale void.

Article 390

If the goods are sold with the condition of tasting, the buyer has the right to accept or reject the purchase at his discretion, but is obliged to notify his decision within the time limit set by the contract or common practice. The sale shall be deemed to have been concluded only after such notification.

Article 391

1. The price may be determined by specifying the grounds on the basis of which it will be determined subsequently .

2. If it has been agreed that the price is equal to the market price, in case of doubt, it shall be assumed that the price corresponds to the market price at

the place and time when the goods are to be delivered to the buyer (at the place of transfer). If there is no market at the place of transfer, the market price at the place that is customarily accepted as the guide for determining prices should be relied upon .

Article 392

If the parties have not determined the price of the thing sold, this shall not invalidate the sale if it is clear from the circumstances that the parties intended to rely on the market price or on the price at which they had previously made sales between themselves.

Article 393

1. If real estate owned by a person lacking full legal capacity is sold with a price deficiency exceeding one-fifth, the seller shall have the right to demand an additional payment of up to four-fifths of the market value of a similar object.

2. In order to determine whether the price deficiency exceeds one-fifth, the property should be appraised at its value at the time of sale.

Article 394

1. A claim for extra payment of the price due to deceit shall become invalid after three years (that is, the claim is barred by the statute of limitations) from the date of full legal capacity or from the date of death of the seller of the property sold.

2. This action does not prejudice the interests of bona fide third parties who have acquired any right in rem in the real estate.

Article 395.

There shall be no challenge of bad faith or fraud in a sale conducted in accordance with the law by public auction.

Duties of the seller

Article 396

The seller undertakes to provide all the information necessary for the transfer of the right to the buyer, and to refrain from any action that may make the transfer of the right impossible or difficult.

Article 397

If the sale is Al-jazāf (بيع الجزاف) (that is, if the sale is for a total amount, regardless of the quantity), the title passes to the buyer in the manner in which it passes in respect of a specifically defined property. The sale is considered al-jazāf (made for a total amount) even if the determination of the price depends on the seller's valuation.

Article 398

1. If the sale is made with deferred payment of the price, the seller has the right to stipulate the condition that the transfer of ownership to the buyer is conditional upon payment of the full price, even if the thing sold has already been transferred.

2. If the price is paid in installments, the parties may agree that the seller will retain a portion of the price as compensation for the termination of the sale in case of incomplete payment of all installments (all payments). However, the court may reduce the agreed compensation according to the circumstances pursuant to Article 225, paragraph 2 .

3. If all payments have been made, the transfer of ownership to the buyer shall be deemed to be based on the moment of conclusion of the contract of sale.

4. The provisions of the preceding three paragraphs shall apply even if the parties have called the sale a lease.

Article 399

The seller is obliged to deliver the sold thing to the buyer in the condition in which it was at the time of sale.

Article 400

The transfer of the thing sold shall include all accessories of the thing sold and everything that was permanently intended for the use of the thing, in accordance with the nature of the thing, local custom and the intentions of the parties.

Article 401

1. If the contract specifies the quantity sold, the seller shall be liable for any reduction or deficiency in that quantity in accordance with local customs, unless otherwise agreed. In this case, the buyer shall not have the right to demand termination of the contract because of a deficiency in the quantity sold, unless he proves that the deficiency is of serious importance, so that if he had known about it, he would not have concluded the contract.

2. If it appears that the quantity of the sale exceeds that stated in the contract, and the price has been fixed by the unit, the buyer shall be obliged to pay the price in addition, unless the goods are not to be divided, unless the increase is substantial, in which case he shall be entitled to demand the rescission of the contract. And all this unless there is a different agreement .

Article 402

If a defect or excess is found in the goods sold, the buyer's right to demand a reduction in price or rescission of the contract, as well as the seller's right to demand additional payment, shall be rendered null and void by the statute of limitations upon the expiration of one year from the actual delivery of the thing sold.

Article 403

1. The transfer shall be affected by placing the thing sold at the disposal of the buyer in such a way that he may possess and use it without hindrance, even if he has not physically taken possession of it, provided that the seller has notified him thereof. The transfer must be in accordance with the nature of the thing sold .

2. Transfer may be affected by mutual consent of the parties if the goods were already in the possession of the buyer before the sale or if the seller left

the goods in his possession after the sale for another reason not related to the ownership .

Article 404

If the thing sold has to be removed to the buyer, the transfer shall be deemed completed only upon its delivery, unless the agreement provides otherwise.

Article 405

If the thing sold is destroyed before the transfer for a reason for which the seller is not responsible, the contract of sale shall be terminated and the buyer shall refund the price, unless the loss occurred after the buyer was notified to accept the thing sold.

Article 406

If the value of the thing sold has decreased before the transfer due to damage, the buyer shall have the right either to demand termination of the contract if the decrease in value is significant to such an extent that if it had occurred before the contract, the sale would not have taken place, or to abandon the sale and demand a reduction in the price.

Article 407

The seller warrants that the buyer will be able to use the goods sold in whole or in part without interference, whether that interference comes from the seller's own action or from a third party who, at the time of the sale, had at the time of the sale a right that can be asserted against the buyer. The seller is obliged to provide a warranty, even if the third party's right was established after the sale, if this right has passed to him from the seller himself.

Article 408

1.If the buyer is sued for the right to the thing sold and the seller is notified thereof, the seller shall, in view of the circumstances and in accordance with the Code of Civil Procedure, be obliged to intervene on the side of the buyer or substitute for him in the case.

2. If notice is given at the proper time and the seller fails to intervene, he will have to be held liable unless he proves that the judgment rendered in the case was the result of the buyer's fraud or serious mistake.

3. If the buyer did not notify the seller of the claim within the prescribed time limit and a judgment has been rendered against him with the force of an enforceable judicial act, he loses the right to claim warranty indemnity if the seller proves that his participation in the case could have led to the rejection of the claim.

Article 409

The buyer's right to warranty shall be preserved even if he, in good faith, has recognized before the third party his right or has reached an agreement with him about this right (reconciles with him about this right) without waiting for a court decision, provided that he has timely notified the seller of the claim and invited him to replace him in the process, but the seller has not done so. All this until the seller proves that the third party was wrong in his claim (had no rights in his claims).

Article 410

If the buyer has prevented the buyer from claiming ownership of the intervening sold or part thereof by paying a sum of money or fulfilling another obligation (to provide something in return), the seller may avoid the consequences of the warranties by returning to the buyer the amount paid or the value of what was provided, including lawful interest and all costs.

Article 411

If all the property sold has been alienated, the buyer has the right to claim from the seller:

1. The value of the property sold at the time of foreclosure with lawful interest from the same .

2.The number of fruits which the purchaser is obliged to return to the person entitled to the property sold .

3.Reasonable expenses which the buyer cannot claim from the person entitled to the property sold, and compensation for additional expenses if the seller is in bad faith .

4.All costs of litigation and suit for title, except those that could have been avoided had the buyer notified the seller under section 408 .

5.Generally, compensation to the buyer for damages or lost profits in connection with the foreclosure of the property sold. All of this is unless the buyer bases its claim on rescission or invalidation of the contract.

Article 412

1.If part of the sold property has been alienated or encumbered, if a third person has a right to part of the sold property or has placed an encumbrance on it (is burdened with a burden), and the buyer's losses from this have reached such a level that he would not have entered into the contract knowing about it, he has the right to claim from the seller the amounts specified in the preceding Article, subject to the return of the sold property and everything received from it .

2.If the buyer decides to retain the property sold or the losses incurred by him have not reached the specified level, he shall only be entitled to compensation for the damages incurred due to the alienation.

Article 413

1.Since the seller guarantees that no third person has a right to the thing sold, the parties to the contract may, by special agreement, modify the terms of the guarantee of the thing sold by increasing, decreasing it or completely excluding it .

2.It shall be presumed that the seller does not warrant easement rights if such right is obvious or has been expressly indicated by the seller to the buyer .

3. Any condition excluding or reducing the warranty if the seller has intentionally concealed third party rights shall be null and void .

Article 414

1. Even if an exclusion of warranty has been agreed upon, the seller is still liable for any right resulting from his actions. Any agreement providing otherwise shall be null and void.

2. If the right of a third party to purchase the property sold has arisen through the fault of another person, the seller shall be liable for the return of the sale price at the time of the third party's right, unless he proves that the buyer knew of the cause of the right at the time of contracting, or that he purchased and knowingly waived the right to choose.

Article 415

1. The seller is obliged to provide a warranty if the property sold does not have the characteristics promised to the buyer or if there are defects that reduce its value or usefulness according to the purpose defined in the contract, its nature or its intended use. The seller warrants that it will be free from such defects even without knowledge of them.

2. However, the seller does not warrant defects which the buyer knew at the time of purchase or which the buyer could have discovered on his own by a careful inspection of the goods made by an ordinary person, unless the buyer proves that the seller confirmed the absence of such defects in the goods sold or deliberately concealed them with intent to deceive.

Article 416

The seller does not guarantee defects which are generally accepted without objection according to local custom (custom is allowed).

Article 417

1. After the buyer has received what has been sold he shall inspect its condition as soon as it is possible according to customary practice. If a defect guaranteed by the seller is found, the buyer shall notify the seller within a reasonable time, otherwise the buyer shall be deemed to have accepted the sold thing.

2. If the defect could not have been discovered during normal inspection and the buyer discovers it later, he must notify the seller of the defect as soon as it is discovered, otherwise the thing sold shall be deemed to have been accepted with all its defects.

Article 418

If the buyer has notified the seller of the defect in a timely manner, the buyer has the right to claim fulfillment of the warranty in accordance with the conditions set forth in Article 412.

Article 419

The claim for warranty remains possible even if the thing sold is destroyed (damaged) for any reason.

Article 420

1. The warranty claim shall lapse by virtue of the expiration of the limitation period of one year from the date of handing over the sold item, even if the buyer has discovered the defect after the expiration of this period, unless the seller has agreed to a longer warranty .

2. The seller may not invoke the one-year period to exclude the possibility of a claim if it is proven that he intentionally concealed the defect by deception.

Article 421

The parties may by agreement increase, reduce or waive the warranty. However, any clause waiving or reducing the warranty shall be deemed null and void if the seller has willfully concealed a defect in the goods sold with intent to defraud .

Article 422

There is no warranty for defects in judicial sales and administrative sales if they are made at public auction.

Article 423

If the seller guarantees the usability of the sold item for a certain period of time and then a defect appears in the sold item, the buyer shall notify the seller of such defect within one month of its discovery and file a lawsuit within six months of such notification, otherwise his right to the guarantee shall be forfeited. All this, unless otherwise provided.

Obligations of the buyer

Article 424

1. The price must be paid at the place of transfer of what has been sold, unless there has been another agreement or local custom providing for a different procedure .

2. If the price is not payable at the time of transfer of the thing sold, it shall be payable at the place of residence of the buyer at the time of the due date.

Article 425

1. The price shall be payable at the time of transfer of the thing sold, unless there is an agreement or custom providing otherwise.

2. If there is a claim against the buyer based on a right arising before the sale or transferred from the seller, or if there is a risk of taking the sold thing from the buyer, the buyer may, unless the contract provides otherwise, withhold payment until the claim is removed or the risk disappears. However, in such a situation, the seller may demand payment by providing a guarantor .

3. The provisions of the preceding paragraph shall apply if the buyer discovers a defect in what has been sold.

Article 426

1. The seller shall not be entitled to charge interest on the payment if the buyer has not been notified thereof, or if what has been sold has been transferred and that what has been sold may generate income or other benefits. This rule applies unless otherwise provided by agreement or local custom .

2. The purchaser shall receive the income and benefit of the thing sold from the time the sale is completed, and he shall bear the expenses of the thing sold from that time. This is unless otherwise provided by agreement or custom .

Article 427

1. If all or part of the price is payable immediately, the seller has the right to withhold what has been sold the seller has the right to withhold the goods until full payment has been made, even if the buyer has provided a deposit or guarantee. This is unless the seller has granted the buyer a grace period after the sale.

2. The seller is also entitled to withhold what has been sold even if the due date for payment of the price has not arrived, if the buyer's right to the due date is forfeited in accordance with the provisions of Article 273 .

Article 428

If the thing sold is lost in the hands of the seller during his retention, the loss shall be borne by the buyer, unless the loss is due to the fault of the seller .

Article 429

In the case of the sale of goods and other movable things, if there has been an agreement on the time limit for payment of the price and delivery of the sold goods, the sale shall be deemed automatically terminated without the need for notice if the price is

not paid within the prescribed time limit if the seller so desires, except where the agreement provides otherwise.

Article 430

The costs of concluding a contract of sale, including taxes, stamps, registration fees and other expenses, shall be borne by the purchaser, unless otherwise agreed or local custom .

Article 431

If the agreement or custom has not determined the place or time of transfer of what has been sold, the buyer shall be obliged to accept it at the place where it is located at the time of sale, and transfer it without delay, except for what requires a certain time.

Article 432

The cost of delivery (for transfer) of the sold thing shall be borne by the buyer, unless otherwise provided by custom or agreement.

2 .Certain types of sales

Sale with the right of repurchase

Article 433

If the seller at a sale reserves the right to repurchase the sold property within a certain period of time, such sale shall be deemed invalid .

Sale of another person's property (sale of property not belonging to the seller).

Article 434

1.If a person sells a particular object and he is not its owner, the buyer may demand that the sale be declared invalid.

2.In any case, this sale shall not be valid with respect to the present owner of the object sold.

Article 435

1.If the owner has confirmed the sale, the contract shall be effective with respect to him and shall become valid with respect to the buyer.

2. The contract shall also become valid against the buyer if, after the conclusion of the contract, the ownership of what has been sold is transferred to the seller.

Article 436

The buyer is entitled to compensation, even if the seller acted in good faith, if the seller did not know that the sale was invalid.

Sale of disputed rights

Article 437

1.If the right in dispute has been transferred from its owner to another person for a fee, the seller may dispose of the claim by returning to the buyer the actual amount paid by him, together with costs and interest from the time of payment.

2.A right shall be deemed disputed if a claim has been filed or a dispute has arisen in respect thereof.

Article 438

The provisions of the preceding Article shall not apply in the following cases :

1.If the disputed right is part of a property that was sold holistically (Jazaf) at one price (for a total amount).

2.If the disputed right is the object of a common inheritance or belongs to several owners and one of them has sold his share to another.

3.If the debtor relinquishes the disputed right to the creditor as payment for the debt he owes.

Article 439

Judges, judicial assistants, clerks of courts and judicial precincts, and lawyers, neither under their own names nor under an assumed name, shall buy a disputed right, in whole or in part, if the adjudication of the dispute falls within the competence of the court or judicial precinct where they exercise their activity, otherwise such sale shall be null and void.

Article 440

Lawyers are prohibited from dealing with their clients concerning disputed rights if they represent these rights in court, whether they act in their own name or under an assumed name. Otherwise, the contract shall be deemed void.

Sale of inheritance (Tarka التركة).

Article 441

Whoever sells an inheritance without specifying its contents shall only guarantee the confirmation of his right to the inheritance, unless otherwise agreed upon.

Article 442

If an inheritance is sold, the sale shall not extend to the rights of third parties until the buyer has performed the necessary procedures for the transfer of each right included in the inheritance. If the law provides for special procedures for the transfer of the right between the parties to the contract, these procedures shall also be performed .

Article 443

If the seller has already received part of the debts of the inheritance or has sold any object thereof, he shall be obliged to return to the buyer what he has received, unless the contract of sale explicitly states otherwise .

Article 444

The buyer shall return to the seller the amounts of the debts of the inheritance that he has repaid, and the seller's accounting shall include all that the seller owes to the inheritance, unless there is an agreement stipulating otherwise.

Sale during an illness threatening death (terminal illness)

Article 445

1. If a sick person, during an illness foreshadowing death, sells property to an heir or non-heir at a price lower than the market value of the property at the time of death, the sale shall be valid against the heirs if the difference in the value of the property and the sale price does not exceed one-third of the inheritance, including the sold property itself .

2. However, if this difference exceeds one-third of the inheritance, the sale to the extent that it exceeds one-third shall be effective against the heirs only if they approve it or the purchaser returns to the estate a sum sufficient to supplement up to two-thirds .

3. A sale made by a sick person during an illness foreshadowing death shall be subject to the provisions of Article 877 .

Article 446

The provisions of the preceding Article shall not apply to the detriment of a third party in good faith if such third party has acquired for a certain amount the ownership rights to the property sold.

Sale by a representative for himself

Article 447

A person acting on behalf of another person by virtue of an agreement, legal provision or order of the competent authority shall not be entitled to buy for himself directly or through an intermediary, even at public auctions, the property whose sale has been entrusted to him under that representation, without the authorization of the court. This provision shall be without prejudice to the rules laid down in other laws.

Article 448

Brokers, agents and experts shall not be allowed to buy property entrusted to them for sale or assessment of its value, whether the purchase is made in their name or under an assumed name .

Article 449

A contract in the cases provided for in the preceding two articles shall be deemed valid if it is approved by the person in whose name the sale was made.

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