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THE CONCEPT OF THINGS IN THE VIRTUAL WORLD FROM THE THEORY OF HUMAN RIGHTS FOR PROPERTY

Abstract

The subject of the study is an attempt to define the concept of "virtual object" in the context of the human right to property. The human right to property, formed in the 20th century, undergoes far-reaching transformations as a result of the creation of virtual reality, and with it the virtual objects. The aim of the study is to find an answer to the question of how useful the traditional concept of human right to property is in relation to the human right to virtual objects. As a research hypothesis, the author adopted the statement that the category of things defined as *res incorporales* is useful for examining the ownership of virtual objects. The studies use the legal-dogmatic and legal-historical methods. As a result of the research, the author concluded that the usefulness of the traditional concept of human right to property is relatively of little use in the case of human right to a virtual object.

Keywords: *virtual object, res incorporales, human rights, Roman law, property rights.*

Introduction

The right to own property is one of the fundamental human rights. In the article 17, sec. 1 of the Universal Declaration of Human Rights, it was established that everyone has the right to property. Similar solutions were

also found in subsequent legal acts dealing with human rights[1]. In one of the newest legal acts of this type, the article 17, sec. 1 of the Charter of Fundamental Rights states that everyone has the right to possess, use, dispose of and transfer ownership, inheritance or property lawfully acquired. The authors of the charter referred to the basic content of the ownership right which students learn during their law studies. It is to some extent a reflection of the content of the article 140 of the Civil Code.

From the perspective of the above regulations, the right to property is not an absolute right (*ius cogens*) or, as some people want, a sacred right to property. The property right may be subject to statutory limitations, but they may also result from the principles of social coexistence or the socio-economic destination of things.

Although the ownership right is a uniform right, Leon Piniński rightly noticed that the commonly accepted concept of ownership as dominion over a thing must be differentiated when applied to movables and real estate[2]. This distinction of the subject of property by L. Piniński reflects the nineteenth-century discussion between pandectists on the subject of property rights and the formation of a materialistic conception of an object under the influence of the views expressed by Friedrich Carl von Savgni and Immanuel Kant[3].

The distinction between the manner of exercising the right of ownership due to its subject, it is nowadays even more complicated due to the dynamic

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[1] This type of property was the dominant form in Roman law. See: T. Giaro, *Własność w Rzymie republikańskim*, Czasopismo Prawno-Historyczne 25/2(1972), pp. 231-248). In the Middle Ages, the type of feudal property was dominant. See: B. Lesiński, W. Rozwadowski, Historia Prawa, Warszawa-Poznań 1985, pp. 266-269. The return to private property took place as a part of capitalism develops. The right of private property was strongly denied by socialist ideology. This led to far-reaching ideological disputes between the supporters and opponents of private property that took place mainly in the nineteenth century. A significant position on this issue was taken by Pope Leo XIII in the encyclical Rerum Novarum of 1891, who unambiguously supported private property. See: A Wróbel, *Encyklika Rerum novarum—magna charta katolickiej nauki społecznej*, Studia Teologiczno-Historyczne Śląska Opolskiego 33(2013), pp. 313-326.

[2] L. Piniński, *Pojęcie i granice prawa własności według prawa rzymskiego*, Lwów 1900, p. 8.

[3] W. Dajczak, *Dyskusja w zakresie przedmiotu własności. Uwagi z perspektywy tradycji prawa rzymskiego*, pod red. E. Kozerska, P. Sadowski, A. Szymański, *Problemy własności w ujęciu historyczno-prawny*, Opole 2008, p. 29. (26-35).

development of ICT technologies that create virtual reality[4]. It is because to them that the so-called virtual goods are produced, for which the rights of the persons who created them or acquired them through legal actions arise. Therefore, a question arises whether, therefore, in relation to these virtual goods, one can use the traditional concept of a thing, appearing in the Polish Civil Code or in other legal systems? How can the right to virtual goods be protected? Is it possible to use traditional petitionary means in this case? The search for answers to these questions is extremely important precisely because of the new content of the human right to property. In this study, I will limit myself to seek the answers to the first of these questions, namely, is it possible to apply the traditional concept of things to immaterial goods produced in the virtual world with the use of ICT tools?

Searching for an answer to the above question also determines the scope of research and research methodology. It is necessary to introduce the concept of things in Roman law and compare it with the concepts of things which occur in selected legal systems. Such activities will allow to define the content of the concept of a thing, and as a consequence it will be easier to define the nature of a virtual good. Subsequently, it will help to indicate the way of legal protection of virtual goods in connection with the human right to property.

The concept of things in roman law

the beginning of the legal discussion and normative solutions in the field of defining the concept of *res* should be found primarily in Roman law. The concept of *res* in Roman law had quite clearly defined content already at the beginning of the classical period. Among the numerous divisions of things carried out by *prudentes* in Roman law, from the point of view of the purpose of

[4] More about the impact of virtual reality on human rights see: Sitek M, Such-Pyrgiel M. *Wpływ cyberkultury na prawa człowieka*, Journal of Modern Science 39(4)(2018), pp 201-215; M. Sitek, *The human right to communicate in the light of the development of IT technology at the turn of the XX and XXI centuries*. In: Sitek M, Florek I, eds, *Human rights between needs and possibilities*. Józefów 2017, s. 257-270; I. Florek, *Right to environment as a human right and Europe 2020 Strategy*. In: M. Sitek, L. Tafaro, M. Indellicato, eds, *From human rights to essential rights*. Józefów 2018, pp. 349-359; I. Florek, S.E. Eroglu, *The need for protection of human rights in cyberspace*. Journal of Modern Science.;42(3)(2019), pp. 27-36.

this study, there is the division of things into *res corporales* and *res incorporales*. Gaius in Inst. 2:12 stated: *Quaedam praeterea res corporales sunt, quaedam incorporales*. According to Wojciech Dajczak, this division has its source in the Stoic philosophy. From there it was re-learned into rhetoric and, consequently, into legal language, which was most likely done by Gaius [5].

According to Gaius, the basis for such a division of things is a material element (*corpus*) or the lack of it, and consequently the possibility of touching a given thing (*quae tangi possunt*) or the lack of such a possibility. Hence, Gaius includes material things: soil, slave, clothing, gold or *res sacrae*[6]. As Gaius rightly points out, the number of tangible things is innumerable – *res innumerabiles*[7]. A characteristic feature of this category of things is because they have *corpus*. Hence Paulus claims that *possideri autem possunt, quae sunt corporalia*[8]. Summing up, it can be said that *res corporales* is such a group of objects that not only exist physically – it means that they can be touched[9] but as it was claimed by Mario Bretone that *res corporales* have a specific length, height, and width. Due to the fact that *res corporales* have *corpus*, they occupy a specific space.

As it was already noticed by some *prudentes*, there is the problem with some material things, such as money, which also has a corpus of gold or silver. For Gaius, there is no doubt that money is a thing, hence, according to him, it can be entered into a debt collection legate[10], it can be usucapted[11] or left as a *fideicomise*12. This view was no longer obvious to other prudentes.

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[5] W. Dajczak, *Rzymska res incorporalis a kształtowanie się pojęć „rzeczy" i „przedmiotu praw rzeczowych" w europejskiej nauce prawa prywatnego*, Poznań 2007, p. 30.

[6] See: A. Dębiński, *Sacrilegium w prawie rzymskim jako kradzież (furtum) rzeczy świętych (res sacrae)*, Roczniki Nauk prawnych 3(1993), pp. 87-110.

[7] G. 2.13: *Corporales hae sunt, quae tangi possunt, uelut fundus, homo, uestis, aurum, argentum et denique aliae res innumerabiles*.

[8] Paul. 54 *ad ed.* (D. 41.2.3 pr.).

[9] P. Lambrini, *Corpo e possessio*, in: L. Garofalo (ed.), *Il corpo in Roma Antica. Ricerche Giuridiche*, II. Ospedaletto-Pisa 2017, p. 9. On other influences of Roman law on contemporary law see: R.T. Mańko, *Roman roots at Plateau du Kirchberg." Recent examples of explicit references to Roman law in the case-law of the Court of Justice of the EU,* In: Z. Benincasa, J. Urbanik (ed.), *Mater Familias:* Scritti romanistici per Maria Zabłocka, Warszawa 2016, pp. 501-526.

[10] G. 2.196.

[11] G. 2. 14.

[12] G. 2.260.

Pomponius considered the issue of paying off the debt[13]. The debtor, mistakenly believed, repays the debt partly with his own coins and partly with coins belonging to someone else. The problem arises in the case of a claim for the return of undue benefit. Pomponius argues that one cannot ask for the same coins, but for the equivalent.

From the point of view of the aim of this studies, the category of *res incorporales*, that is, immaterial objects classified by Gaius as things, is significant. Gaius in Inst. 2.14pr. wrote: *Incorporales sunt, quae tangi non possunt, qualia sunt ea, quae in iure consistunt, sicut hereditas, ususfructus, obligationes quoquo modo contractae*. The quoted fragment of the Institutions shows that the catalog of immaterial things is limited to use, easement, inheritance, and liability. Of course, this Gaius' list of *res incorporales* is not complete. Moreover, the status of this category of things does not reflect the status of *res corporales*. For *res incorporales*, separate ways of acquiring them have been developed, *traditio*, *usucapio* or *mancipatio* are excluded. On the other hand, it is possible to transfer ownership and use them in *iure cessio*., M. Bretone, due to their characteristics, stated that *res incorporales* includes *res nec mancipi*14.

This separation of two categories of things in Roman law, and especially *res incorporales*, became fundamental for the continental, but also in a sense, Anglo-Saxon culture in the dispute over the concept of things in the context of property rights. Nowadays, it is even more important for further considerations on the concept of immaterial things which are currently produced in the virtual world and human concessions to property rights. First, however, it seems necessary to introduce the process of reception of the Roman concept of *res incorporales* in selected contemporary legal systems.

[13] Pomp. 22 ad Sab. (D. 12.6.19.2): *Si falso existimans debere nummos solvero, qui pro parte alieni, pro parte mei fuerunt, eius summae partem dimidiam, non corporum condicam*. M. Bretone, op. cit., p. 129.

[14] M. Bretone, op. cit., p. 148.

The reception of the Roman res incorporales in contemporary legal systems

The dichotomy of things divided into *res corporales* and *res incorporales* by Gaius influenced later consideration on the subject of Roman law and the subject of legal transactions. Wojciech Dajczak noticed that *prudentes* did not know the abstract concept of "the object of property law" or "the object of legal transactions"[15].

A further interpretation of *res corporales* took place in Accursius' gloss to the Gaian division of things. Due to the domination of Christian culture at that time, angels and souls were primarily recognized as *res incorporales*. All other things, even things that cannot be touched, such as smoke, are classified as *res corporales* because the smoke is the product of human action. However, what was significant for our considerations, it was the identification of law (*ius)* with res incorporales, which made it possible to distinguish this category of things as a separate subject of legal transactions. However, in relation to such things, one can speak of a right to something and an object of right[16].

Jacob Cuiacius used the concept of good (*bona*) to cover not only what exists (*quae sunt*) but also "image"[17]. Johann Gottlib Heineccius argued that a material thing may contain an element of immateriality, such as values. Intangible things can be owned (*in bonis*) and one can disposed of them[18]. F. Gluck confirmed the principle of analogous treatment of *res corporales* and *res incorporales*, developed in *ius commune*, as objects of legal transactions[19].

In the process of preparing the French Civil Code, there was also a discussion on the concept of "thing". Ultimately, in the French Civil Code, in the article 537, the legislator used the term "*biens*", it means goods, regardless of whether they have a materialized form or a form, for example, of entitlements.

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15 W. Dajczak, op. cit., pp. 69-70.
16 Ibidem, pp. 96-98.
17 *…sed etiam quae intelleguntur, id est incorporalia, in bonis nostris computantur.* Podaję za W. Dajczak, op. cit., p. 101.
18 W. Dajczak, op. cit., p. 124.
19 Ibidem, p. 127. More about the flow of ideas between legal systems in Europe see: R. T. Mańko, *Legal Transfers in Europe Today: Still Modernisation Through Transfer?* In: P. Bieś-Srokosz, J. Srokosz, E. Żelasko-Makowska (ed.), *Mutual Interactions Between Contemporary Systems and Branches of Law in European Countries*, Częstochowa 2017, pp. 139-155.

A completely different concept was adopted in the German Civil Code. According to the paragraph 90 of BGB, only material objects are things. Material things can be solid, liquid, or gaseous. But such things as: light, electricity, computer data, computer programs, and data carriers no longer fall into this category. Therefore, in the light of German law, all creations in the virtual world, such as avatars, are not recognized as things[20].

The concept of "thing" becomes even more complicated in the Anglo-Saxon law. The popular concept of property means nothing else than the right to use and dispose of an item in a specific way, excluding other entities. This concept is irrespective of whether they are material things or not. Hence, the concept of things is of fundamental importance for understanding the concept of property in Anglo-Saxon law. This concept includes both tangible and intangible things. The Anglo-Saxon legal language also uses the term "goods", which corresponds in part to the Roman term "*bona*" often used in the Praetorian Edict. Much of the term "goods" covers all kinds of personal goods, and in the Roman term "*bona*" it referred to all kinds of possessions, including immovable property, tangible items of private property, and also *incorporeal things*. In the latter case, we can speak of "*incorporeal property*", which is defined as a right arising from or attached to a tangible thing and includes the right to own only a certain part of a product or the benefit of tangible property or to exercise a right or to have an easement, a privilege, or an advantage, in relation to it or with it[21].

Further, according to the Anglo-Saxon doctrine, things, in turn, can be tangible and intangible, the latter include for example – *copyrights* or patents[22]. As early as the nineteenth century, the term *chose iaction* began to be applied to the rights of the products of the human mind. As early as the end of the 19th century, copyright gained importance. Julius Binder believes that the creation of property copyright is the result of adopting *actio negatoria* from Roman law in order to protect *res incorporles*[23]. In turn, Károly Visky stated that the author has the exclusive right to dispose of his or her work as

[20] O. Palandt, *Bürgerliches Gesetzbuch*, München 2000, p. 57.
[21] In Anglo-Saxon law, real property versus personal property. See.: W.L. Burdick, *The Principles of Roman Law and their Relation to Modern Law*, New Jersey 2004, p. 300.
[22] W. Dajczak, op. cit., p. 191.
[23] J. Binder, *Der Gegenstand*, Zeitschrift für das gesamte Handelsrecht und Wirtschaftsrecht 57(1907), p. 34.

a property right. As in the case of property rights understood in the context of code regulations in Germany or in Poland, the author of the work has the right to legal protection per analogy *to res incropolares* in Roman law*24*.

The concept and types of virtual good. Discourse between a thing and a virtual object

Nowadays, the ICT devices allow, among others, for the expansion of the economic market with new sectors in which intangible goods are of essential importance It is the concept of "intangible good" which is of fundamental importance in the context of the discourse on the analogous concept of "virtual good". In the article 551 of the Civil Code. the legislator states that the enterprise includes tangible and intangible assets, which together constitute its property. The intangible assets of the enterprise include, among others, receivables, rights from securities, concessions, licenses and exemptions, business secrets and proprietary copyrights. Pietrzykowski rightly notes that the enumeration of intangible assets of the enterprise in the article 551 of the Civil Code is give only as the examples not as a closed list[25]. Thus, there may be other forms of intangible goods.

The concept of intangible goods also appears in other legal acts. In the Act of 6th December 1996 on Registered Pledge and the Register of Sets[26] in in the article 7, sec. 2 points 5, the legislator provides for the possibility of establishing a registered pledge on rights on transferable intangible goods. However, it is not the purpose of this study to thoroughly analyze the use of the concept of intangible goods in Polish legal acts. However, it is important to analyze the concept of a thing in the context of the concept of an object. This is because it will allow to describe the nature and proper qualification of virtual objects. So – what kind of objects are we talking about?

[24] K. Visky, K. Sándor, *Geistige Arbeit und die" artes liberales" in den Quellen des römischen Rechts*, Budapest 1977, p. 121 and following.
[25] See: K. Pietrzykowski, *Kodeks cywilny*. T.I. *Komentarz*. art. 1-44910, C.H. Beck, Warszawa 2020, komentarz do art. 551 kc. Legalis III.1.
[26] consolidated text – Dz.U. z 2018 r. poz. 2017

In the process of determining the nature of virtual things, the theory developed by Martin Heideger, who distinguished between things and objects, is of great importance. According to this philosopher, a thing is a form of the presence of matter which acquires its own subjectivity and agency. Therefore, a thing may be the subject of legal relations, as well as affect other objects or entities of civil law. In turn, the object appears as a transparent being, subordinate to human being. Heidegger also said that with the development of the natural sciences, the distinction between things and objects acquires a new possibility of interpretation. Nowadays, it can be added that along with the development of ICT technologies, this development continues[27]. Undoubtedly, products created in the virtual world can be included in the category of objects[28].

Online games are an area with great potential for the production of intangible goods in the virtual world. The fundamental question is the nature or the character of these goods. To which categories should they be included? In addition to games, we deal with other forms of virtual items, such as virtual money (bitcoin), music, websites, social networks, online stores, electronic works of art, and organizations whose natural environment is the Internet[29].

Undoubtedly, the intangible goods are a product of the human mind and exist in human consciousness. They appear as a certain set of objectified and specific ideas, concepts, and images. A measurable designation of intangible goods may be the company, know-how, advertising slogan or, in the case of virtual items, a digital record. These goods are undoubtedly an expression of work, extraordinary mental faculties, and even the cleverness of the one who produced them[30]. Often, these types of goods are created by people who perceive reality in a different way than others.

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[27] see modre M. Such-Pyrgiel, Człowiek w dobie cyfrowej transformacji. Studium socjologiczne, Wyd. Adam Marszałek, Toruń 2019, p. 85-87

[28] M. Heidegger, *Pytanie o rzecz*, translated J. Mizera, Warszawa 2001.

[29] See: P. Stacewicz, B. Skowron (ed.*), Przedmioty wirtualne*. III seria: *Informatyka a filozofia*, Warszawa 2019, p. 4; P. Polak, *Przedmioty wirtualne–składnik naszego świata*, Zagadnienia Filozoficzne w Nauce 68(2020), p. 306-310; M. Nitti, et al. *The virtual object as a major element of the internet of things: a survey*, IEEE Communications Surveys & Tutorials 18.2(2015), pp. 1228-1240.

[30] F. Zoll, *Prawo cywilne*. T II. *Prawa rzeczowe i rzeczowym podobne*, Poznań 1931.

Virtual objects in the light of normative regulations

In the article 2, points 5 of the Act of 30th May 2014 on consumer rights[31], the legislator introduces the concept of "digital content". These are data produced and delivered in digital form. This next term has not been defined by the legislator. Konrad Osajda, referring to the point 19 of Directive 2011/83 / EU[32] indicates the following forms of digital content: computer programs, applications, games, music, visual recordings, or texts accessible by downloading or receiving streaming data, on a durable medium or by any other means[33].

Another point which helps to define this content, it is the term "durable medium". It is assumed that it allows for the storage of information, its reproduction in an unchanged form, and provides uninterrupted access to its content at least for the appropriate time for the purposes of the information collected on it[34]. This definition is the result of the implementation of the provisions of the article 4, point 25 of Directive 2007/64 / EC on payment services in the internal market[35], which implementation is based on the principle of full harmonization. However, the question of whether a durable medium is a tool, or a material has not been resolved[36].

The various objects produced as part of computer games are a special kind of virtual objects. As Daniel Karkut rightly points out, participation in mass online games does not always come down to non-commercial entertainment. Very often, this type of game allows you to earn real money. Hence, virtual economies have become a real and significant sector of modern economics[37].

Massive Multiplayer Online Role Playing Games (MMORPG) is a system that allows thousands of people from different parts of the world to participate in the game. Participants of such games enter a virtual world, which is created similar to the real world by means of electronic content. It has a three-dimensional character. Hence, people participating in such a game can see the

[31] consolidated text – Dz.U. z 2020 r. poz. 287.
[32] OJ L 304, 22.11.2011, pp. 64–88.
[33] K. Osajda, *Ustawa o prawach konsumenta. Komentarz*, CH Beck, Warszawa 2021. Legalis 36.
[34] J.M. Szczygieł, *Trwały nośnik w obrocie konsumenckim*, IKAR 3/2017. Legalis.
[35] *OJ L 319, 5.12.2007, pp. 1–36*
[36] Ibidem.
[37] D. Karkut, *Własność wirtualna w prawie polskim. Zagadnienia wybrane*, Wrocław 2018, p. 11.

environment on a computer screen in the form of a graphic representation of the world, events, or characters[38].

Participants in computer games may produce, sell, or lend virtual goods or objects which do not exist in the real world. At most, they are their mapping. Hence, we can talk about the existence of virtual objects, virtual objects, or virtual characters[39]. The category of virtual goods produced for the purposes of games includes artifacts, it means virtual characters' equipment, such as armor, elements of clothing (hat, pants, armor), virtual spaces – for examples islands, and finally virtual characters – it is avatars. Only artifacts and virtual spaces can be considered as the virtual objects. There is a consensus in the doctrine as to the nature of avatars that because they personify a human being, they are not objects. Quite commonly, the avatar gives the player the position of the subject in a simulated environment. It is a kind of surrogate body through which the player can act as an agent in a fictional world. This surrogate body is not only a kind of mediator of the player's agency or "interactivity", but his or her embodiment in the virtual world[40]. The avatar's creator can give the product of his or her imagination recorded by electronic record a name and surname, a nickname, he or she can model its appearance all the time by changing the color of hair, eyes, weight, elements of clothes, and he can even change the gender. It can also give him some psychophysical features characteristic of a particular avatar character.

Ownership of virtual items

The so far considerations allowed to define what a virtual object is and what its characteristics are. It remains, therefore, to clarify the issue of ownership, namely whether the traditional concept of ownership, which results from the provisions of the Polish or German civil code, can be easily related to a virtual object? As a consequence, a question arises about the human right to ownership of virtual objects.

[38] Ibidem, s. 17.
[39] Ibidem, s. 25.
[40] R. Klevjer, *What is the avatar? Fiction and embodiment in avatar-based singleplayer computer games*, Bergen 2006, p. 10.

Juliet Moringiello argues that the concept of ownership of virtual objects is similar to that of the real world, but that the basic principles of law are different. The main difference between real-world ownership of virtual property is its dependence on the platform in exercising the ownership rights of the owner of the content recorded on the medium[41]. Hence, in the doctrine one can meet with the view that the existence of virtual property cannot be recognized[42].

According to Michael Zhou, Mark A. Leenders, Ling Mei Cong, ownership of a virtual world is primarily a form of ownership. This approach to virtual property is due to the fact that it falls into two separate categories. The first is the property of the entire virtual world which belongs to the platform, and users on the basis of a license can use the virtual property. The second category of ownership is that the user is granted some virtual ownership. Mere possession in this case gives rise to a presumption of some form of ownership. An example is the terms of service provided by Blizzard, the owner of the popular World Warcraft computer game: "All rights and title in and to the Program and the Service (including without limitation any user accounts, titles, computer code, themes, objects, characters, character names)… are owned by Blizzard or its licensors " [43]. In this optics, the Platform remains the owner, and the user has the right to use the virtual object to the extent specified by the license. Some Platform owners respect the intellectual property rights of the creators of individual virtual items. An example of this is the terms of service provided by Second Life: "Linden Lab acknowledges and agrees that… you will retain any and all applicable copyright and other intellectual property rights with respect to any Content you create using the Service"[44].

An essential feature of the ownership right is the control and collection of benefits by the owner from the subject of this right. The exercise of ownership rights is not subject to control by third parties. This fundamental principle of

[41] J.M. Moringiello, *What Virtual Worlds Can Do for property law*, Florida Law Review, 62 (2010), pp. 159-202.

[42] See: R. Vacca, *Viewing Virtual Property Ownership Through the Lens of Innovation*, Tennessee Law Review 76(2008), p. 26 and following.

[43] M. Zhou, M.A. Leenders, L.M. Cong, *Ownership in the virtual world and the implications for long-term user innovation success*, Technovation 78(2018), pp. 56-65.

[44] Ibidem.

civil law is not reflected in the case of virtual objects or possible ownership. The creator of virtual content may have his or her creations, but the possibility of making these spices and the control over the way they are made is performed by the platform[45].

In view of the above considerations, Moringiello argues that virtual property should be divided into ownership of the platform and the ownership of content. The ownership of the platform includes: the right to a broad definition of terms of service, the right to unilaterally amend the regulations and the right to close user accounts and confiscate virtual property. In turn, the ownership of content includes control of behavior and actions in the world and control of dispute resolution mechanisms[46].

It should also be noted that the legal turnover of virtual items is no longer subject to the same control as the legal turnover of real items in the real world. The legal or fiscal sovereignty of state bodies as well as international organizations, including the European Union, is decreasing. State authorities, especially courts, may exercise their control mainly in the scope of settling disputes arising from license agreements allowing the use of virtual objects existing on platforms. The situation is even more complicated by the fact that these platforms are most often located in the United States of America. This undoubtedly makes it difficult to pursue claims between the user and the operator of the platform.

[45] See.: D. Gebert, S. Boerner, R. Lanwehr, *The more situation control, the more innovation?– Putting the linearity thesis to the test*, International Journal of Entrepreneurship and Innovation Management 4.1(2004), pp. 98-114.

[46] J. M. Moringiello, op. cit., pp. 161 n.

Human right to virtual objects – final conclusions

The division of things into *res corporales* and *res incorporales*, developed in Roman law, and the further interpretation of the latter category of things, starting with glossers, allowed for the treatment of immaterial items in the same way as material items, it means – they could become the subject of law and legal transactions.

This separation, done by Gaius, of the category of *res incorporales* and their further interpretation became particularly important in the times of dynamic development of the virtual world built on the basis of ICT devices. Virtual reality not only facilitates interpersonal contacts, fast flow of information from one end of the earth to the other, but also allows us to create virtual objects which can be subject to legal transactions. Trading of virtual objects today creates a significant sector of the economy of many countries in the world, and consequently in the world economy.

The above considerations on virtual property show that it is only apparently similar to the concept of property developed in private law. When referring to the virtual object, one should rather talk about their possession and the use or use of devices offered by the platform. In this context, we can only talk about respecting the copyrights of the products of the minds of users, most often, however, under the conditions specified by the operators of the platforms. Moreover, it is difficult to enforce copyright protection for the creators of virtual objects. Such goods are, in principle, protected by the copyright of the state of the creator of the virtual object. This is the same situation as in the case of the so-called smart contracts, which, unlike traditional contracts, are subject to automation and they are subject to execution without the participation of public authorities[47].

From this perspective, it should be stated that the human right to ownership of a virtual object is completely different than in the case of material objects or the rights existing on them. The solutions adopted so far in the Constitution of the Republic of Poland as well as in the constitutions of other countries or

[47] See: J. Szczerbowski, *Lex cryptographia. Znaczenie prawne umów i jednostek rozliczeniowych opartych na technologii blockchainu*, Warszawa 2018, p. 11; Idem, *Legalizacja kryptowaluty Bitcoin. Aspekty cywilnoprawne*, Journal of Modern Science 35(4)(2017), pp. 91-104.

in legal acts of statutory rank are useless for the protection of the human right to property. Moreover, there are far-reaching differences in the normative regulations in individual countries regarding this matter[48].

The human right to ownership of a virtual object includes primarily its copyright, and it is in a relatively narrow scope. This right can only theoretically pass to the heirs of the creator of a particular virtual object because the existence of this object depends not on its creator, but on the administrator of the platform. The creative rights to dispose of a virtual object – it means: to make it available to other users against payment is similarly limited. It depends again on the regulations of the platform created by its administrator.

[48] There is therefore a dilemma whether the law on the protection of the rights of users and creators of virtual objects should be unified. B. Sitek, *Unifikować czy synchronizować prawo w Europie? Studium przypadku od prawa rzymskiego do prawa europejskiego*, Journal of Modern Science 29(2)(2016), pp.109-130.

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