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Київський інститут інтелектуальної власності та права  
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# **БЕЗПЕКА В СФЕРІ ІНТЕЛЕКТУАЛЬНОЇ ВЛАСНОСТІ**

**(ВИСТУПИ УЧАСНИКІВ ВСЕУКРАЇНСЬКОЇ  
НАУКОВО–ПРАКТИЧНОЇ КОНФЕРЕНЦІЇ  
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## **THEORETICAL ASPECTS OF MECHANISM OF INTELLECTUAL PROPERTY RIGHTS REMEDY**

1. The axiological nature of law consists in its ability to ensure legal entities the feasibility of their equal opportunities in the implementation of civil relations. Correspondence of the real-world details to ideal legal model is achieved through the good behavior of participants in public relations. The exercise of legal civil rights and fulfillment of corresponding legal obligations results in the legal relations between their participants.

Going beyond the legal regulation of public relations leads to an intensification of legal coercion. It is aimed to regulate civil relations, within which the infringement took place, by exercising certain legal powers from among legal civil rights of an injured party, particularly the right of defense.

The right of defense is the opportunity of an authorized person to use the legally permitted means of coercive influence on an offender, to apply retaliatory measures, as well as the opportunity to apply to competent state or non-governmental authorities to compel the obligated person to certain good behavior.

2. It should be noted that legal nature of the right of defense is debatable in modern civil science. Thus, two opposing views have been formed thus far regarding the nature of such a structure as the right of defense.

3. According to the first, the right of defense is a component of legal civil rights. Therefore, the implementation of such powers occurs at a certain stage of legal relations development. Separation of another type of civil relations between the same entities, regarding the same object, with the same scope of powers cannot be considered appropriate.

4. The theoretical viewpoint of other scholars is that the right of defense is independent of legal civil rights. Such right can be exercised within the framework of protective legal relations, not regulatory ones.

Proponents of this viewpoint provide the following arguments for their opinion. *Firstly*, supposing that the right to sue is an integral part of the regulatory legal rights, it should be recognized that its civil establishment precedes the emergence of a legal obligation corresponding to it. *Secondly*, consolidation of the right of defense as one of the powers of legal civil rights indicates that the emergence of the right to sue, and, accordingly, the statute of limitations is associated with the acquisition of legal civil rights by a person. In other words, the legal right of defense exists in the absence of an offense.

5. Legal civil rights are means of the possible behavior of the parties to civil relations. These means of behavior are achieved by the exercise of relevant powers constituting the legal civil rights.

The nature of such powers corresponds to the type of legal relations, in which they find their embodiment.

Thus, it is peculiar to regulatory legal relations that they arise on the basis of optional legal provisions, generated by life circumstances within the relevant legal behavior patterns and aimed at achieving the purpose of social relations legal regulation.

Ensuring their effectiveness is achieved through such powers consisting regulatory relations as the right to own actions, the right to demand proper behavior from the obligor.

In its turn, the nature of protective legal relations is associated with the substandard conditions for implementation of regulatory legal relations (arising as a response to wrongful acts of their participants), aimed at restoring the legal status of participants in civil relations preceding the offense (reimbursement, restitution, etc.) and related to the vigorous legal activity of a law enforcement agency, which is achieved through the right of defense.

6. Given the nature of regulatory legal relations, it is inappropriate to include the right of defense within the structure of their legal civil rights due to the lack of grounds for the exercise of this power within the relevant legal relations.

7. Thus, it is arguable that there are bipolar forms of civil rights implementation in the structure of civil relations different in nature.

Legal civil rights and the right of defense are different legal categories, as they have different legal grounds for their origin, structure and direction of action of the parties to legal relations, and their term.

8. The basis for the origin of legal civil rights is a lawful action or an event established by a legal civil relations regulatory institution, which has regulatory legal significance for the parties to civil relations.

In turn, the basis for the right of defense origin is not regulatory legal facts, but those that are illegal.

In their essence, legal civil rights are aimed at satisfying the legal interest of the parties to legal relations in the process of their implementation, while the right of defense is aimed at correcting the defect of civil relations in order to their further proper implementation.

9. Finally, legal civil rights are valid for the period set by the parties from the moment of the relevant expression of the will, while the origin of the right of defense is directly related to the violation of legal civil rights and is valid during the statute of limitations, which expiration is its validity.

10. A certain completeness to the scientific view on the independence of the right of defense from legal civil rights lies in the separation of the following powers in the structure of the right of defense: 1) the right to independent practical action to defend the right (self-defense) or to independent legal actions to restore the right (retaliatory measures); 2) the right to request compulsory restoration of the violated right (means of liability) from the public authorities.

11. In turn, the attribution of the right of defense to the component of legal civil rights narrows the scope of such right within the exercise of the relevant legal civil right, an element of which it is. In such case, legal structures related to legal civil rights as a measure of possible behavior lie outside the legal influence, which existence should provide an appropriate form of civil relations, since legal civil rights may not fully reflect the existing legitimate aspirations of the parties to civil relations.

These include the legal structure of the legal interest, as the attitude of an individual to the subject as to something valuable, attractive, as well as legitimate expectations.

Thus, the interest exists separately from the right, being a prerequisite and purpose of its development and exercise.

The criterion for distinguishing between legal civil rights and legal interest in the civil law of Ukraine is the method of their legal protection. In the first case, the variety of such methods is caused by the structure of legal civil rights (right to own actions, right to demand). The protection of legal civil rights is carried out through both passive and active obligations of other participants in civil relations.

The protection of interests has a different legal nature of its legal support. Without being directly embodied in legal civil rights, the legal interest, as an obvious aspiration of a person, is subject to protection outside the scope of civil relations, which the entity is interest in, thus, creating a threat of possible abuse.

The formula for protecting the legal interest of a person is that the *person's legal interest protection should ensure the protection of the corresponding legal civil rights in related legal relations.*

Thus, any person who, before the date of applying for an invention, utility model, register design or, if priority has been claimed, before the date of priority of the application in the interests of his/her activity, has used the invention, utility model, register design in Ukraine in food faith or has significantly and profoundly prepared for such use, is entitled to free continuation of such use or for the use provided by the specified preparation (the right of prior use).

*Наукове видання*

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