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ствующей процессуальной деятельности предварительного характера. Исследователь аргументирует, что предварительный характер, требующий специфических процессуальных средств, присущ процессуальной деятельности по установлению субъектного состава лиц, участвующих в деле, и их правовых позиций, требований и возражений. Полагаем, что подготовительный характер имеет и деятельность суда, направленная на примирение сторон. Примирение сторон – цель гражданского судопроизводства.

Концепция правового регулирования подготовительного производства предусматривает и определение его задач. Именно задачи конкретизируют, какие подготовительные действия и в какой последовательности должны быть совершены судом и участниками судебного процесса. С учетом предлагаемых законодателем и доктриной редакций задач подготовительного производства полагаем правомерной постановку вопроса о реальной возможности их осуществления.

Ключевые слова: подготовительное производство, суд, участники судебного процесса, примирение сторон, доказательственная деятельность.

Summary

***Hikmat Javadov*. On the issue of the concept of legal regulation of preparatory proceedings in civil procedure.**

The article covers the study of problematic aspects of legal regulation of the preparation of civil cases for trial. It is substantiated that normative regulation of the staging of civil procedure should include the definition of goals and objectives of a specific stage of civil procedural activity, which will contribute to understanding the place of preparatory judicial procedures in the structure of civil proceedings, identifying all the systemic connections of its elements.

The separation of the preparation stage is due to the need to take into account the features of the corresponding procedural activity of a preliminary nature. The question is the opportunity of using qualitatively unique procedural means, the use of which is acceptable or effective at the preparation stage and is ineffective or unacceptable at the stage of judicial consideration.

Establishing the parties to a dispute, involving all the persons concerned, creating a situation of transparency, of mutual awareness of the requirements, objections, evidence of all persons participating in the dispute, is a qualitatively unique activity of a preliminary nature that must be carried out before the start of the trial. The transfer of procedural activity to the stage of judicial consideration will lead not only to ineffectiveness of the proceedings, but also to the violation of the rights and interests of the participants, and jeopardize the lawfulness of the upcoming judgment.

In addition to the immediate goals of preparation, there is a number of issues that are advisable to consider at the early stages of the procedure. These are the issues related to proving: the discovery of evidence on the motion of the persons participating in the dispute, the appointment of an examination, etc. The expediency of these actions at the preparation stage is dictated by the focus on reducing the duration of the judicial consideration.

We believe that the activity of the court aimed at conciliation of the parties is also of a preparatory nature. All procedural activities should be focused on the search for opportunities for conciliation of the parties. At the moment when the preconditions for conciliation have appeared, the court should resort to the procedural possibilities the law offers.

The concept of legal regulation of preparatory proceedings also provides for the definition of its objectives. It is the objectives which concretize the preparatory actions and their sequence to be performed by the court and the participants in the dispute. Taking into account the objectives of preparatory proceedings proposed by the legislator and the doctrine concerning preparatory proceedings, we consider it legitimate to put the question of the real possibility of their implementation.

Key words: preparatory proceedings, court, participants in the dispute, conciliation of the parties, evidentiary activity.

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RIGHT TO DEFENSE AND SUBJECTIVE CIVIL RIGHT: THEORETICAL ISSUES TO RESEARCH

The axiological nature of law lies in its ability to ensure the realization of equal opportunities in society. Its effectiveness is associated with compliance with relevant regulations. Due to this, law is the most effective regulator of public relations. V. Gribanov once stressed that law, proclaimed in a legal act, but not provided by the state with the necessary measures of protection, can only count on voluntary respect on the part of unauthorized persons, acquiring the status of only a morally secured right, which rests only on the authority of the state and high legal awareness of members of society [1, p. 104].

Adding to the opinion of this prominent civil law scholar, it should be noted that legal protection is the most effective means of ensuring effectiveness in the legal regulation of civil relations, and the effectiveness of its functioning is an important part of the modern problem in civil law.

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The general principles of individual rights defense are declared in Article 8 of the Constitution of Ukraine, according to which appeals to the court in defense of the constitutional human and civil rights and freedoms directly on the grounds of the Constitution of Ukraine are guaranteed. The constitutional and legal norms-principles established by the state require active law-making activities on the part of public authorities of Ukraine, which should be on a proper scientific basis.

The conformity of the real situation with the ideal legal model is achieved through the lawful behavior of participants in public relations. Thus, the possibilities established in the norms of objective law are transformed, through legal facts, into individualized legal claims, which give rise to the subjective right of a person. As a result of the exercise of subjective civil rights and the performance of corresponding legal obligations, the realization of legal relations takes place between their participants.

Going beyond the legal regulation of public relations leads to intensifying legal coercion, the purpose of which is to order the legal relations within which the violation occurred. The stabilization is achieved through the exercise of certain powers of the subjective right of an individual, one of which is the right to defense.

The right to defense means the possibility of an authorized person to use the legally permitted means of coercive influence on the violator, to apply measures of operational influence to them, as well as the possibility to apply to the competent governmental or non-governmental authorities to encourage the obliged person to a certain lawful conduct [1, p. 105]. This understanding of this legal institution is traditional for civil legal science.

It should be noted that the legal nature of the right to defense is debatable in modern civil legal science. Diverse scientific opinions make it necessary to search for an answer to this question in the context of the subject of this research.

Thus, for the time being, two opposing views on the legal nature of the right to defense have been formed.

According to the first view, the right to defense is a component of a subjective civil right.

In this aspect, one should cite V. Grybanov's opinion: "There is no doubt that the right to apply to the competent governmental or non-governmental authorities for the defense of a violated right is inextricably linked with the subjective material right in at least two respects: firstly, it arises only in violation of a subjective civil right or its appeal by other persons; and secondly, the nature of the claim for the defense of a right is determined by the nature of the violated or contested material right, the content and purpose of which mainly determine the method for protecting the right. Therefore, from the material and legal point of view, there are no obstacles to regard the right to protection in its material and legal aspect as one of the powers of the subjective civil right itself…" [1, p. 106].

This logic of the scholar gives reason for reaching the following conclusion.

If the power to defense is a component of the subjective civil right as a structural element of a civil relationship, the exercise of the right to defense occurs at a certain stage of development of this single legal relationship. Therefore, it is inappropriate to distinguish another type of civil relationship between the same subjects, concerning the same object, and with the same scope of powers. In case of violation of a subjective civil right, the right to defense as its element becomes specifically tensed, as a result of which the victim has the opportunity to exercise the right to defense [2; 3].

The theoretical position of other scholars (P. Yeliseikin, Ye. Motovilovker, Z. Romovska, P. Krashenynnikov) is that right to defense is independent in relation to subjective civil right. Such a right to defense is exercised within the framework of another type of legal relationship, the content of which is rather not in law enforcement, but in their configuration, which involves actions aimed at restoring the state of relations before the violation. Therefore, such relations are compensatory in nature. From the above, it is obvious to conclude that the right to defense is exercised outside the development of regulatory legal relationship.

Proponents of this view, in particular A. Vlasova, substantiate it in the following way.

Firstly, if we assume that the right to sue is an integral part of a subjective right, it must be recognized that its establishment precedes the existence of a legal obligation corresponding to it. In this case, for example, the vindication claim will be manifested before the obligation of the illegal possessor to return a thing to its owner arises.

Secondly, the consolidation of the right to defense as one of the powers of a subjective civil right indicates that the emergence of the right to sue, and, accordingly, the statute of limitations, is associated with the acquisition of a subjective civil right by a person. In other words, the right to defense exists in the absence of a violation. In view of this, right to defense is not an element of subjective civil right. This right is the independent subjective right [4, p. 123].

Subjective civil right is an extent of the possible behavior of the participants in a civil relationship. This extent of behavior reflects the relevant powers during their exercise. The nature and scope of such powers correspond to the type of legal relations in which they are exercised. In the context of dividing civil relations into regulatory and protective ones, the content of such powers is configured depending on the purpose of particular legal regulation.

Thus, it is characteristic of regulatory legal relations that they arise on the basis of dispositive legal norms, are generated by life circumstances within the relevant legal models of behavior and are aimed at achieving the particular goal of legal regulation of the relations. Ensuring their effectiveness is achieved through the following powers, constituting the content of regulatory relations: the right to one's own action, the right to demand the necessary behavior from the obliged person.

In turn, the nature of protective legal relations is related to the substandard conditions for the exercise of regulatory relations (arising as a response to illegal actions of their participants, aimed at restoring the legal status of participants in a civil relationship prior to the violation (damages, restitution, etc.), connected with active legal activities of the law enforcement body). This is achieved through such a power as the power of defense. Given the nature

of regulatory legal relations, the assignment of the power of defense to the structure of subjective civil rights is inappropriate due to the lack of grounds for its exercise within the relevant legal relationship.

Thus, we can state that there are bipolar forms of exercising subjective civil rights in the structure of civil relationships, different in nature.

Subjective civil right and right to defense are different legal categories, as they have different legal grounds for their arising, different structure and direction of the participants' action, different duration.

The basis for a subjective civil right is a lawful action or event established by the relevant regulator of civil relations and having regulatory legal significance for their participants. In turn, the basis for the right to defense is the existence of unlawful legal facts.

In matter, subjective civil right is aimed at satisfying a legal interest of the participants in a legal relationship during its exercise, while the right to defense is aimed at correcting the defect of a civil relationship in order to further their proper exercise.

After all, subjective civil right remains in effect for a period of its exercise established by the parties from the moment of expressing their will, while the emergence of the right to defense is directly related to the violation of a subjective civil right or a legal interest and remains in effect for a specified period (statute of limitations), the expiration of which terminates the relevant right.

A certain completeness is provided to the theory of the independence of the right to defense from a subjective civil right, with which the author of this research agrees, by distinguishing three powers in the structure of the right to defense, namely: 1) the ability (power) to perform independent factual actions to protect the right (using means of self-defense) or independent legal actions for restoring the right (employing the means of operational influence); 2) the ability (power) to require public authorities to compulsorily restore the violated right (using remedies); 3) the ability (power) to protect the right, to claim (using coercive means in the new protective legal relationship) [5, p. 21].

Thus, we can conclude that subjective civil right ensures the realization of civil relations within the patterns of behavior agreed between their participants. Such realization is achieved through the powers constituting the content of subjective civil right (the power of one's own action and the power of claim).

A possible direction for the development of legal regulation of civil relations is the establishment of objective circumstances of reality, subjective factors of deviant nature or unlawful actions of third parties, due to which there is an emergence of obstacles to the normal development of regulatory relations that hinder or do not allow completely to ensure the exercise of the rights and obligations of the subjects of legal relations (defects of legal fact). Under such conditions, the legal regulation of civil relations cannot ensure the realization of a certain legal pattern agreed by their participants. In this case, there is a structural transformation in the legal regulation of civil relations [6, p. 54].

The emergence of a protective legal relationship is accompanied by the formation of its content, the basis of which is the powers ensuring its proper realization, that is the right to defense of participants in these legal relations.

That is, subjective civil right is expressed in the following forms, depending on the type of civil relations: 1) regulatory subjective civil right, which is the content of regulatory relations with a certain set of functional powers; and 2) compensatory subjective civil right, which is the content of protective relations with a set of defined powers, respectively.

However, this refers to the civil aspect of the structure of the content of a legal relationship.

Considering the structure of legal relations in the general theoretical context, we should note that its content is indeed a subjective civil right as "… extent of possible behavior of a person, ensured by law …" [7, p. 13], which consists of the three powers (the right of one's own action, the right to claim and the right to defense), which S. Bratus was the first to draw attention to.

Depending on the functional meaning of the nature of civil relations, subjective civil right is configured with a variable set of powers. We should note that the above model of civil relations is the subject of scientific debate on the place of right to defense in the structure of subjective civil right.

In our opinion, there is no point in such a debate, because each of the above points of view does not exclude right to defense from the structure of legal relations, as well as from the body of subjective civil right. The question is that the study of this problem takes place in different theoretical dimensions.

If one considers the structure of subjective civil right in the general theoretical context, decidedly the theoretical model of the legal relationship structurally consists of the construction of legal obligation and subjective civil right. In turn, the latter is a synthesis of three powers: the power of claim, the power of one's own action and the power of defense.

In examining the structure of legal relations in the sectoral aspect, from the standpoint of civil law, the same powers are differentiated depending on the protective or regulatory type of civil relations.

Assigning the power of defense to the component of subjective civil right narrows the scope of exercising this power to the exercise of the relevant subjective civil right, an element of which it is. In this case, some legal constructions, related to a subjective civil right, are outside legal influence as a measure of possible behavior. The existence of such constructions should provide for a proper form of exercising civil relations, since subjective civil right may not fully reflect the existing legitimate aspirations of subjects of civil relations because of its specificity. These constructions include the one of legal interest. Thus, the legal possibilities guaranteed by the state are not limited to subjective civil right. Being mediated by natural law, such possibilities include the individual's aspiration to satisfy his or her personal needs as a reflection of the degree of individual freedom that does not have the appropriate physical form of expression.

The etymological meaning of the word "interest" includes: a) attention to someone or something, involvement with someone, something; curiosity, engagement; b) weight; value; c) something that interests someone the most, which is the content of one's thoughts and worries; d) aspirations, needs; e) something that benefits someone or something, meets one's aspirations, needs, gives advantage, benefit, profit. In the general sociological sense, the category of "interest" is perceived as an objectively existing and subjectively understood social need, as a motive, stimulus, inducement, prod; in psychology it is perceived as the individual's attitude to the matter as to something valuable, attracting [8].

This position of the Constitutional Court of Ukraine is based on the general approach to understanding the category of "interest" as a form of expression of the selective individual's attitude to the object, determined by its vital importance and emotional attractiveness [9, p. 24]. Thus, the individual's interest lies in the possibility of the realization of its meaning, ensured by legal means of influence. On the other hand, a legal norm forms the "legality" of interest as a form of expression of unlawful aspiration, reflected in the pattern of behavior of a person.

Thus, in legal acts, taking into account its etymological, general sociological, and psychological meanings, the term "interest" is used in the broad or narrow sense as an independent object of legal relations, the realization of which is satisfied or blocked with regulatory means. An example of the use of the term "interest" in the broad sense is the Constitution of Ukraine, many articles of which (Articles 18, 32, 34, 35, 36, 39, 41, 44, 79, 89, 104, 121, 127, 140) emphasize national interests; interests of national security; interests of economic well-being, territorial integrity, public order, health and morality of people; political, economic, social, cultural interests; interests of society; interests of all fellow citizens; interests of a citizen; interests of the state; common interests of territorial communities of villages, towns and cities, etc. [8]. Pointing at the existence of such interests, the Constitution of Ukraine emphasizes the need to ensure them (Article 18), to serve them (Article 36) or to protect them (Articles 44, 127).

In the literature, the legal essence of the legitimate interest is well-researched by I. Venediktova, who, on the basis of the analysis conducted, limits this category to the following aspects:

a) the existence of the legitimate interest is not possible without the urge to possess a benefit that can meet the need of the person;

b) such an urge may not contradict the law;

c) the benefit to which a person urges cannot be unlawful;

d) it is necessary that the bearer of interest should carry out deliberate actions in order to obtain the benefit;

e) the legitimate interest is a prerequisite for exercising a subjective civil right, is out of it, but is in the structure of social relations. Subjective civil right is a means of realizing a legitimate interest, consisting of the social need for such behavior. Through the realization of subjective civil rights, the interest is embodied in legal relations governed by private law;

f) is an independent object of legal protection;

g) the legitimate interest belongs to an individual, due to his individual qualities, efforts, motives, goals, needs [9, p. 109–114].

It should be noted that the problem of the relationship between legal interest and subjective civil right has a different vector of research. The eclecticism of these two phenomena in law inspires scientists to combine them. Thus, Rudolf von Jhering believed that interest is a component of right. Examining the right as a protected interest, he argues that its exercise is ensured by aligning the interests of social groups. Interest forms the substance of subjective right, is its essential moment. This idea is unexpectedly developed in the works of O. Ioffe, A. Venediktov, Yu. Tolstoy, who argue that interest is an integral part of subjective civil right. "Just as class interest determines the content of the will of the ruling class, which has been enshrined in law, so the individual interest of the authorized person determines the content of his will, filling it with the real social content, without which the concept of will would be an empty abstraction. If it is true that the nature of right manifests itself primarily in the nature of interest satisfied by the right, that the loss of the socially significant interest leads to the loss of the right, then there is every reason to include interest in the definition of subjective right…" [10, p. 45; 11, p. 49; 12, p. 38].

The general sense of the given position of scholars is systematized by Ye. Motovilovker in the following statement. "…Any subjective right is a person's right of his or another person's action aimed at serving the interest of the authorized subject. The meaning, content, purpose of the behavioral act in exercising the subjective right, is clearly determined by the certainty of the interest of the authorized person. And we will get a completely poor abstraction if we define the subjective right, looking aside the interest of the right holder" [13, p. 52–62].

This position has been reasonably criticized by other scholars, including the author of this research.

Interest is not a part or component of subjective civil right, it is not included in its structure, but exists separately, as a prerequisite and purpose of this subjective civil right. In furtherance of this position, there is a reasonable R. Stefanchuk's opinion, who points out that if subjective civil right contained interest, the law couldn't state, for example, "civil rights and interests", as the first category would absorb the second one and would erode its legal sense and eliminate the need for legal self-identification [14, p. 109].

In addition, it should be added that in Ukrainian civil law the criterion for distinguishing between subjective civil right and legal interest is the method of their legal protection. In the first case, the scope of such methods is due to the structure of subjective civil right (the power of one's own action and the power of claim). The subjective civil right is protected by both passive and active obligations of other participants in civil relations (deal invalidation, suspension of the action violating the right, restoration of the situation having existed before the violation, enforcement in kind, change in the legal relationship, termination of the legal relationship, compensation for damages and

other methods of compensation for pecuniary damage, compensation for moral (non-pecuniary) damage, etc.). In the same way and within its content, the rights of the participant in a regulatory legal relationship are protected.

The legal safeguarding of the protection of a legal interest has a different legal nature. Without being embodied in a subjective civil right, legal interest as an obvious individual's aspiration is subject to protection without being limited to the content of the civil relationship in which the subject has an interest. The category of interest has a greater degree of theoretical abstraction than subjective civil right. Interest is a subjective value of a person's aspiration, while subjective civil right is an extent of a person's behavior coordinated with the will of another participant in the relationship. That is, subjective civil right is a specific subjective value of the aspirations of all participants in the legal relationship, laid down in the appropriate legal form.

While a person's affiliation with his or her subjective civil right, which is protected within the protective relationship is obvious, determining the nature of a person's legal interest in relation to the range of civil relations, the protection of which is required, requires further clarification. The application of methods of protecting the legal interest of a person, whose subjective civil right is absent within the specific regulatory legal relationship, must have its limits. Due to the abstractness of legal interest in relation to a particular subjective civil right, the need to protect such an interest requires its justification in the obvious violation of the relevant right. Otherwise, the presumed protection of the interest will lead to the abuse of the relevant right, in particular the procedural one. At the same time, it should be recognized that research on the problems of the legal nature of legitimate interest and forms of its protection of the Soviet and post-Soviet periods, do not resolve the issue of establishing the optimal model of the interrelationship between "possibility" and "potency" of protecting the person's interest in the absence of the person's subjective civil right.

Thus, considering the legal interest as the aspiration to make use of a particular value, as simple legitimate permission being due to the general content of the objective and not directly mediated in a subjective right, the person concerned has the opportunity of turning to court to satisfy individual and collective needs even when their actual affiliation with that person is reasonably doubted. Thus, the criterion of the degree of indirectness in the subjective right of such individual's aspiration is not established in Ukrainian legislation and is a discretion of the court.

For example, a *mala fide* person, subjectively considering themselves interested in receiving some material benefit, or in another person's not receiving them, has a procedural ability to appeal against the adopted law enforcement acts without objective legal motivation. But the court's reaching the appropriate conclusion and confirming its position on the case by adopting the relevant judicial act may take a lot of time, which will not benefit a *bona fide* party in the civil relationship. Therefore, the doctrinal definition of the limits of a person's legal interest in legal relations is essential for its potential protection in the field of law enforcement.

We believe that the mechanism for the realization of legal interest in civil relations, in the structure of which the active person has no subjective civil rights, is determined by this person's potential ability to ensure the protection of their own subjective civil rights in other legal relations, corresponding to the first ones. That is, the formula is that *the protection of a person's legal interest not mediated in a subjective right should ensure the protection of the corresponding subjective civil right in related legal relations*. The formation of a person's legal interest is generated from the existing subjective civil right in related legal relations, the protection of which is ensured through the relevant interest.

The above is confirmed in the legal position of the Supreme Court, set out in the decision of the Commercial Court of Cassation in case № 923/20/17 of 02 May 2018. "… The conclusion of contracts, the sum of which is above the sum prescribed in the statute, without the consent of the general meeting of participants, by the director of the company violates the plaintiff's corporate rights to manage the affairs of such a company, which consist in the consent of the company members in the form of the decision of the general meeting of participants, to enter into such agreements…" [15].

In a similar situation, while reviewing the case № 5015/3721/12 in cassation, the Supreme Court of Ukraine concluded that there were grounds to satisfy the LLC participant's claim to invalidate the disputed sales contract of immovable property, entered into by the defendants. The Court also agreed with the conclusions of the lower courts that ***the plaintiff as a company member has the right to protect his corporate rights and the right to sue for invalidation of the disputed contract, and that his chosen method of protecting his violated right and legally protected interest is in compliance with the methods for protecting a right established by Article 16 of the Civil Code of Ukraine, and the right to choose it is provided by Article 215 of the Civil Code of Ukraine*** [16].

Thus, the existence of a legitimate interest of a company member, the protection of which is exercised by filing a relevant lawsuit, is due to the protection of their subjective civil right in the corporate relationship between the member and the company. Thus, the deal invalidation, which may affect the financial condition of the enterprise, guarantees protection of the company member's rights to get dividends from the results of business activities of the company.

In this case, the plaintiff's legitimate interest in challenging the deals entered into arises from their subjective corporate right as a company member.

In this context the legal position of the European Court of Human Rights in *Vatan v. Russia* is illustrative. In considering the case, the Court found that the identity of the organization (within the meaning of Article 34 of the Convention) may extend beyond its own legal personality so as to comprise several legal persons. The Court noted that the term "victim" used in Article 34 of the Convention denotes the person directly affected by the act or omission which is at issue (see *Eckle v. Germany*, judgment of 15 July 1982, § 66). The Court further recalls that accep-

ting an application from a "person" indirectly affected by the alleged violation will be justified only in exceptional circumstances, in particular where it is clearly established that it is impossible for the direct victim to apply to the Court through the organs set up under its articles of incorporation (see *Agrotexim and Others v. Greece*, judgment of 24 October 1995, § 66) [17]. In such a case, the court proceeds from the procedural expediency of granting legal protection to a person who considers themselves a victim within the meaning of Article 34 of the Convention.

The above allows us to reach the following conclusions. Ordering of public relations is ensured by means of an appropriate mechanism of legal regulation of public relations. The factor of their effectiveness is the effectiveness of the mechanism of protecting subjective civil rights and legal obligations of the participants in a relationship. This depends not only on a set of legal actions within the relevant legal norm, the purpose of which is to restore the violated state of the subject of law. The object of legal protection is essential, which, in addition to a subjective civil right, is also the person's legal interest. Thus, the legal abilities guaranteed by the state are not limited to subjective civil right. Being mediated by natural law, such abilities include the individual's aspiration to satisfy their personal needs as a reflection of the degree of individual freedom, that is *legal interest*.

Legal interest is not a component of subjective civil right. As its prerequisite and purpose, it exists separately, as a result of which it has an independent meaning. In particular, in Ukrainian civil law the criterion for distinguishing between subjective civil right and legal interest is the method of their legal protection.

The mechanism for the realization of legal interest in civil relations, in the structure of which the active person has no subjective civil rights, is determined by this person's potential ability to ensure the protection of their subjective civil rights in other related legal relations corresponding to the first ones. That is, the formula is that the protection of a person's legal interest not mediated in a subjective right should ensure the protection of the corresponding subjective civil right in related legal relations. Thus, the formation of a person's legal interest is generated from the existing subjective civil right, but in related legal relations, the protection of which is ensured through the protection of the legal interest.

The right to defense ensures the proper exercise of a subjective civil right and a legal interest of participants in a civil relationship. Subjective civil right and legal interest arise from the legitimate and have regulatory significance in the dynamics of civil relations.

The right to defense is actualized from the unlawful and has the purpose of correcting a defect in structure of civil relations for the purpose of their proper realization.

Subjective civil right and legal interest reflect the extent of possible behavior of participants in civil relations. This behavior reflects the powers of the participants in civil relations. Thus, in case of regulatory legal relations, ensuring their effectiveness is achieved through such powers as the power to one's own action and the power to demand the necessary behavior from the obliged person. In case of protective legal relations, aimed at restoring the legal status of participants in civil relations, this is achieved through the power of defense. Given the above, subjective civil right and right to defense are not interrelated as the general and the partial.

The right to defense ensures the exercise of subjective civil right and legal interest within the framework of protective legal relations.

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Резюме

Кострyба А.В. **Право захист і суб'єктивне цивільне право: теоретичні питання дослідження.**

У статті проведено аналіз понять «суб'єктивне цивільне право» і «право на захист». Набула подальшого розвитку теорія права на захист як самостійного суб'єктивного цивільного права особи. Автором з позиції науки цивільного права розмежовані вказані правові інституції. Надається аргументація стосовно самостійності права на захист щодо суб'єктивного цивільного права. Проте зазначається про загальнотеоретичні особливості у співвідношенні наведених категорій. З позиції теорії права право на захист є однією з правомочностей суб'єктивного цивільного права, яка не має самостійного юридичного значення.

У цивільному праві для регулятивних правовідносин забезпечення їх результативності досягається за допомогою таких конструкцій, як правомочності на власні дії, правомочності вимоги необхідної поведінки від зобов'язаної особи. Для охоронних правовідносин, які скеровані на відновлення правового становища учасників цивільних правовідносин – правомочностей на захист. З огляду на зазначене, суб'єктивне цивільне право і право на захист не співвідносяться між собою за формулою «загальне – часткове». Право на захист забезпечує реалізацію суб'єктивного цивільного права і правового інтересу в межах охоронних правовідносин.

Проведено співвіднесення категорії суб'єктивного цивільного права з категорією правового інтересу. Досліджено механізм реалізації правового інтересу в цивільних правовідносинах, у структурі яких особа не має суб'єктивних цивільних прав. Формування правового інтересу особи генерується з наявного суб'єктивного цивільного права цієї особи, але в суміжних правовідносинах, охорона яких забезпечується за посередництвом захисту правового інтересу.

Ключові слова: правовий інтерес, суб'єктивне цивільне право, право на захист, цивільні правовідносини, правомочності.

Резюме

Кострyба А.В. **Право на защиту и субъективное гражданское право: теоретические вопросы исследования.**

В статье проведен анализ понятий «субъективное гражданское право» и «право на защиту». Получила дальнейшее развитие теория права на защиту в качестве самостоятельного субъективного гражданского права человека. Автором с позиции науки гражданского права разграничены указанные правовые институты. Предоставляется аргументация относительно самостоятельности права на защиту касаемо субъективного гражданского права. Однако отмечаются общетеоретические особенности в соотношении приведенных категорий. С позиции теории права право на защиту является одним из правомочий субъективного гражданского права, которая не имеет самостоятельного юридического значения.

Проведено соотнесение категории субъективного гражданского права с категорией правового интереса. Исследован механизм реализации правового интереса в гражданских правоотношениях, в структуре которых лицо не имеет субъективных гражданских прав. Формирование правового интереса лица генерируется из имеющегося субъективного гражданского права этого лица, но в смежных правоотношениях, охрана которых обеспечивается посредством защиты правового интереса.

Ключевые слова: правовой интерес, субъективное гражданское право, право на защиту, гражданские правоотношения, правомочия.

Summary

Anatolii Kostruba**. Right to defense and subjective civil right: theoretical issues to research.**

The article analyzes the concepts of subjective civil right and the right to protection. The argument for the independence of the right to protection in relation to subjective civil right is given. However, from the standpoint of the theory of law, the right to protection is one of the powers of subjective civil right, which has no independent legal meaning.

In civil law, in case of regulatory legal relations, ensuring their effectiveness is achieved through such constructions as the power to one's own action and the power to demand the necessary behavior from the obliged person. In case of protective legal relations, aimed at restoring the legal status of participants in civil relations, this is achieved through the power of defense. The right to defense ensures the exercise of subjective civil right and legal interest within the framework of protective legal relations.

The mechanism for the realization of legal interest in civil relations, in the structure of which the active person has no subjective civil rights, is researched. The formation of a person's legal interest is generated from the existing subjective civil right, but in related legal relations, the protection of which is ensured through the protection of the legal interest.

Key words: legal interest, subjective civil right, right to defense, civil relations, powers.

До відома авторів

Просимо вас дотримуватися правил підготовки, комплектації та оформлення рукописів для «Часопису Київського університету права». Авторські рукописи мають бути оформленими відповідно до державних стандартів і відповідати вимогам Постанови ВАК України № 7-05/1 від 15.01.2003 р.: «*…приймати до друку… лише наукові статті, які мають такі необхідні елементи: постановка проблеми у загальному вигляді та її зв'язок із важливими науковими чи практичними завданнями; аналіз останніх досліджень і публікацій, в яких започатковано розв'язання даної проблеми і на які спирається автор; виділення невиділених раніше частин загальної проблеми, котрим присвячується означена стаття; формулювання цілей статті (постановка завдання); виклад основного матеріалу дослідження з повним обґрунтуванням отриманих наукових результатів; висновки з даного дослідження і перспективи подальших розвідок у даному напрямі»* (Бюлетень ВАК України, № 1, 2003).

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