

The Concept and Features of Self-Defense of Civil Rights

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Abstract: In this scientific article, the author presents the concept of self-protection of civil rights by individuals.

Keywords: subjective civil rights, behavior, legal act, legal relationship, civil law.

Introduction

The axiological nature of law is clearly manifested in its ability to ensure equal opportunities in society. Its effectiveness depends on compliance with relevant laws and regulations. Therefore, law is the most effective regulator of social relations. As V.P. Gribanov once noted, the right, proclaimed in a legal act, but not provided with the necessary protective measures by the state, can only hope for voluntary respect by unauthorized persons and acquires the status of a morally guaranteed right, relying only on the authority of the state and the high legal consciousness of members of society².

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

General Principles of Protection of Individual Rights On the basis of the Constitution, it is directly guaranteed to apply to the court for the protection of the constitutional rights and freedoms of man and citizen. Constitutional and legal norms and principles established by the state require active lawmaking activity by state authorities, which must be based on appropriate scientific foundations.

Methodology

The correspondence of the real situation to the ideal legal model is achieved through the lawful behavior of the participants in social relations. Thus, the possibilities established by the norms of objective law are transformed into legal requirements individualized through legal facts, which gives rise to the subjective right of the individual. As a result of the exercise of subjective civil rights and the fulfillment of corresponding legal obligations, the implementation of legal relations between their participants occurs.

Exceeding the boundaries of legal regulation of social relations leads to the strengthening of legal coercion, the purpose of which is to regulate the legal relations in which the offense was committed. Stabilization is achieved through the exercise of certain powers of a person's subjective right, one of which is the right to protection.

The right to defense means the ability of an authorized person to apply legally permitted compulsory means of influence to the offender, to apply operational measures against them, as well as to apply to authorized state or non-state bodies to incite the obligated person to certain lawful behavior³. Such an understanding of this legal institution is traditional for civil law.

It should be noted that the legal nature of the right to defense is a controversial issue in modern civil law. Various scientific opinions require the search for an answer to this question within the framework

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² Грибанов В.П. Осуществление и защита гражданских прав. – М.: Статут, 2000. – 104 с.

³ Ўша жойда, - 105 б.



of the subject of this research. Thus, currently, two opposing views have formed regarding the legal nature of the right to defense. At first glance, the right to defense is an integral part of subjective civil law.

In this regard, it is necessary to cite the opinion of V. Griбанov: "The right to appeal to authorized state or non-state bodies for the protection of a violated right is inextricably linked with subjective substantive law in at least two respects: firstly, it arises only as a result of the violation of a subjective civil right or objection to it by other persons; secondly, the essence of the demand for protection of a right is determined by the nature of the violated or disputed substantive right, the content and purpose of which largely determine the method of protection of the right. Therefore, from a material and legal point of view, there are no obstacles to considering the right to defense in its material and legal aspect as one of the powers of subjective civil law itself..."⁴.

This logic of the scientist gives grounds for the following conclusion.

Results and Discussion

If the right to defense, as an integral element of a civil legal relationship, is an integral part of subjective civil law, then the exercise of the right to defense occurs at a certain stage in the development of this single legal relationship. Therefore, it is inappropriate to distinguish another type of civil legal relationship between the same subjects, in relation to the same object, and with the same scope of authority. In the case of violation of subjective civil law, the right to defense, as its element, is specifically strengthened, as a result of which the victim has the opportunity to exercise the right to defense⁵.

The theoretical position of other scholars (P. Yeliseykin, E. Motovilovker, Z. Romovskaya, P. Krashennnikov) is that the right to defense is independent of subjective civil law. Such a right of defense is exercised within the framework of other types of legal relations, the content of which is not in the application of law, but in their configuration, which includes actions aimed at restoring the state of relations that existed before the offense. Therefore, such relationships have a compensatory nature. As can be seen from the foregoing, the right to protection is exercised outside the development of regulatory legal relations.

Proponents of this view, in particular A. Vlasova, substantiate it as follows:

Firstly, if we consider the right to claim to be an integral part of a subjective right, it must be recognized that its establishment precedes the existence of a corresponding legal obligation. In this case, for example, a vindication claim appears before the unlawful possessor's obligation to return the item to its owner arises.

Secondly, the consolidation of the right to defense as one of the powers of subjective civil law indicates that the emergence of the right to claim and, accordingly, the statute of limitations is connected with the acquisition by a person of subjective civil rights. In other words, the right to defense exists even in the absence of an offense. From this point of view, the right to defense is not an element of subjective civil law. This right is an independent subjective right⁶.

Subjective civil law is the scope of possible behavior of participants in civil legal relations. The scope of this behavior reflects the corresponding powers at the time of their implementation. 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 relations, the content of such powers is formed depending on the specific purpose of legal regulation.

Thus, for regulatory legal relations, it is characteristic that they arise on the basis of dispositive legal norms, are created by life circumstances within the framework of corresponding models of legal

⁴ Ўша жойда, - 106 б.

⁵ Братусь Н.С. Юридическая ответственность и законность (очерк теории). – М.: Юрид. лит., 1976. – С. 104-107\$
Чеговадзе Л.А. Структура и состояние гражданского правоотношения: моногр. – М. : Статут, 2004. – С. 532.

⁶ Власова А.В. Структура субъективного гражданского права: дисс. ... канд. юрид. наук. – Ярославль. 1998. – 123 с.



behavior, and are aimed at achieving a certain goal of legal regulation of relations. Ensuring their effectiveness is achieved through the following powers that constitute the content of regulatory relations: the right to act, the right to demand the necessary behavior from the obligated person.

Conclusion

In turn, the nature of protective legal relations is related to the non-standard conditions for the implementation of regulatory relations (appearing in response to the unlawful actions of their participants, aimed at restoring the legal status of participants in civil legal relations before the offense (compensation for damages, restitution, etc.), related to the active legal activity of the law enforcement agency). This is achieved through a power of attorney, such as a protection power. Considering the nature of regulatory legal relations, it is inappropriate to include the right to defense in the structure of subjective civil rights due to the lack of grounds for its implementation within the framework of the relevant legal relations.

Thus, it can be noted that in the structure of civil legal relations, there are bipolar forms of exercising subjective civil rights, differing in their nature.

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