

## THE DEFENCE OF CIVIL LEGAL INTERESTS

The category of interest is becoming more and more significant and important to civil law every year. This is due to the fact that the legal regulation is the area of social life, consisting of a combination of unstable social systems. This instability creates a special dynamics in the law, legal relations, sense of justice, legal culture and the legal system in general and at the legislative level it reflects existing social objective interests.

Legal interests in civil law should be understood as a conscious claim of a legal subject to get a certain property (non-property) benefits or change their legal status, which impel legal subjects to perform specific actions, or conversely, to refrain from them. This claim, being in the legal field, is implemented with the state, which is realized in the form of permission, represented in a particular relationship. The legally protected interest can be either fixed or not in the subjective right. However, the lack of transformation into the legal right does not mean the lack of protection of the interest by using existing legal ways and means. The only thing that distinguishes a non-fixed interest in the subjective right from the subjective right itself is the lack of another person's demand for certain actions with a possibility to use coercion to a particular behaviour by the state.

It must be emphasized that the protection of private interests by the law provides that interest bearer the right to defence. The conclusion that the protection of a legally protected interest is implemented through the right to protection logically follows from the rules of civil law. This position is set in the Article 15 of the Civil Code of Ukraine: every person has the right to protect their interest if it is not contrary to the general principles of civil law. It is the right to defence that starts the mechanism to protect interests themselves and even more than that:

sometimes the realization of interests is possible only due to their defence. The right to protection is a complex category, which has several sections for consideration: 1) as a constitutional and interbranch institution, 2) as an institution of civil law, 3) as a separate legal right, as a competence within civil subjective right. The mechanism of protection of legally protected interests is supported by state coercion system of interdependent legal means, their implementation being aimed at restoring the violated capacity to implement legitimate interests. The elements of this mechanism of protection of legally protected interests are: 1) the object of protection is a concrete legitimate interest; 2) protection subjects authorized a person whose interest has been broken, competent state authorities and representatives of the executive bodies, public institutions, a notary, a court; 3) the presence of the right to protection of a legally protected interest; 4) the use of forms and ways of protection.

Here are some considerations of the aspects of protection of legally protected interests in various legal relationships.

*Protection of interests in proprietary legal relationships.* Analysing the norms of the Civil Code of Ukraine regarding property rights, it is necessary to pay attention to certain regularities and the logic of forming and ordering the norms to secure the opportunities to implement legally protected interests. According to Art. 319 of the Civil Code of Ukraine, the owner possesses, uses, manages their property at their own discretion.

Guaranteeing the public interest in the property legal relationships is secured in Art. 13 of the Constitution, which states that owning the property has some requirements. This has been further developed in the rules of the Civil Code: in Art. 319, which provides for the responsibilities for maintaining property and not using it to the detriment of other persons; Art. 322, which states that the owner shall maintain the property, which belongs to them; Art. 360, in which the expenses spent on management, maintenance and preservation of the common property, paying taxes and fees are laid on all the owners according to the size of their share the common property.

As far as protection of proprietary interests in legal relations, is concerned, titles (cause of acquisition) of property rights are noteworthy. For instance, a person who finds a lost thing has the right to keep it, and if this thing does not last for long, or the cost of its storage is disproportionately large compared to its value, the thing may be sold (Art. 337, Art. 340 of the Civil Code of Ukraine). Thus, a person holds the property legally, but does not acquire ownership rights to it, having only a legally protected interest. And it is this interest, that makes a person keep the property over statutory six months. This article fixing the notion of acquisitive prescription, is aimed at protecting the legitimate interests of bona fide purchasers of property that are actually nontitle property owners, and who own them uninterruptedly for fix periods and maintain them in a good practical way: not only do they benefit from its use, but also maintain in a good condition and take the burden of its keeping. The factual legal possession has some legal significance and should be protected in the same way as the title corporeal possession by special title suits. However, recognizing the right of ownership of ownerless property is not a way to protect property rights, but like in the case of restoration of rights of the bearer of lost securities or promissory notes, as well as in the case of heirless legacy, these are carried out in non-action court proceedings, in which civil cases are considered to confirm the presence or absence of legal facts (during special proceedings). It should be noted that there are some competing articles in the Civil Code: Art. 335 indicates that after the expiration of one year since the date of taking on account ownerless immovable property claimed by the authority competent to manage the property of the respective territorial community, this thing can be assigned by the court to the municipal property, while ownerless movable things can acquire ownership by acquisitive prescription; Art. 344 provides that a person, who has owned real estate in good faith for the past ten years, and movable property - for five years, gets ownership of the property. But, based on the priorities of private civil law and protection of private interests, the preference should be given to the application of Art. 344 of

the Civil Code of Ukraine to protect legitimate interests in proprietary legal relationships.

*Protection of interests in the hereditary relationship.* Like each person's life is individual and unique, that is true about what they leave after his or her death, which is also individual. What is meant is the amount of inheritance and those considered the heirs. It is impossible to establish full all the links in the "testator - legacy - heirs" chain. Legal techniques have proposed a single denominator, which results in a universal algorithm of inheritance: either according to the law or testamentary succession, availability of the right to a compulsory share of inheritance, the procedures of opening, acceptance and renunciation of the inheritance registration of inheritance rights, etc. In order to protect stability of civil circulation in the succession law there exist rules that allow in a certain way to predict transfer of ownership to other persons: for example, universal succession has been introduced, the essence of which lies in the simultaneous transfer of assets, rights and obligations to the heirs in the whole and without alteration directly from the testator, as well as in the rules of absolute and unconditional acceptance of the inheritance or withdrawal; various constructions of protection legally protected interests: hereditary transmission, the increment hereditary shares etc.

Interests of third party in the legal relationship of hereditary are protected by:

a) p. 2 of Art. 1229 of the Civil Code of Ukraine regarding inheritance of the rights to receive insurance payments, according to which, if the policyholder has appointed a person in the contract of personal insurance who will have the right to get insurance compensation in the event of his or her death, this right is not included in the estate;

b) the norm of Art. 1237 of the Civil Code of Ukraine on testamentary refusal which proxies that a legatee may be a person who, might or might not be considered as legal heirs. A legatee defends their legitimate interests by the right to bring a lawsuit against the heir demanding to fulfil the obligation after the adoption

of the inheritance. To maintain the balance of interests protection of property interests of an heir is envisaged, he or she refuses the inheritance only within the real value of his hereditary share;

c) the norm of Art. 1246 of the Civil Code of Ukraine, according to which the testator has the right to establish an easement concerning the land plot, other natural resources or real estate to satisfy the interests of other persons;

d) elimination of the inheritance by parents after the child if they have been deprived of their parental rights, and their rights have not been renewed at the time of opening the inheritance ( p. 3 of Art. 1224 of the Civil Code of Ukraine);

e) provision p. 2 Art. 1219 of the Civil Code of Ukraine, which specifies that the right to participate in companies and the right of membership in associations of citizens, as a general rule, is not included in the estate to protect the legitimate interests of other members of the company;

f) institute of heirless legacy that reflects public civil interests of the state in preservation of the property and its use for general purposes.

Legitimate interests are secured by hereditary claims, which include both claims of inheritance and claims arising from the obligations of the testator. These lawsuits are similar to vindication claims, because they relate to a specific property, but by the legal nature are different from it by the subject, the limits of civil relations and the subject of the claim.

*Protection of legal interests in the legal relationship in the field of intellectual property.* The system of intellectual property law is designed to ensure, firstly, the economic interests of right owners, creators of intellectual property, secondly, the political goals of economically developed countries, and finally – the interests of society. In the latter case, the interests of creators of intellectual property are used only as a public argument to further strengthen the mechanisms of state regulation in the sphere of intellectual property. In the field of related rights, disregarding the rights of creators is also a common situation. Interests of music, cinema, video business prevail over the interests of specific authors, and in many cases - the performer's. The same thing happens in patent law.

The measures to protect lawful interests in legal intellectual property are follows: 1) in the case of a legally protected interest in using already registered intellectual property rights the person concerned shall have the right to judicially recognize the conservative document invalid (under the condition that the right owner has not used the object for three years, or due to the lack of novelty in the patented object); 2) use of the right of the previous use or the possibility to use and dissemination of intellectual property to everybody after the recognition of a patent or certificate invalid in law by establishing limits of the use of the object; 3) in the case of temporary monopoly established to have a balance between private interests of the right holder and the public interest and its individual members, the law provides limited exceptions to this monopoly, provided such limitations and exceptions do not create significant obstacles for normal implementation of intellectual property rights and implementation of protected legitimate interests of the subjects of these rights. Self-limitation of the rights of their right owners is allowed in the form of entitlement (providing a free license, renunciation of property rights, etc.). In this case, the protection of lawful interests is done by making a request or through the execution of a specific action, if the rights owner opposes actions of the person concerned, the author must prove wrongful actions of the person concerned, and the latter - only oppose illegal claims of the right holder. In the event of litigation the document, certifying legally protected interest of a particular person, is a court order which establishes the method of securing thus protected interest; 4) cancellation of the certificate of trademark registration or well-known brand (on the grounds of its non-use for more than three years from the date of registration); 5) when there exist competing rights and the conflict of interests of right owners of industrial designs and trademarks the protection of legally protected interests is provided through the application of the rule of priority of the industrial design over the registration of commercial designations (thus, a legally protected interest is protected by giving a priority to a creative result); 6) by filing lawsuits to cancel the controversial law documents (for example, a suit for cancellation of the state registration and invalidation of the patent in the absence of

the criteria for eligibility to acquire the ability to use a certain result); 7) proving the fact of previous use without registering, in this case a permitted activity is allowed until the court rules a prohibition in the judicial act.

*Legal protection of interest in the implementation of moral rights.* The issue of protecting interests in the implementation of moral rights is raised when a certain part of the personal non-property sphere is not covered by the content of the fixed subjective rights and does not contradict the general principles of civil law and is in need of legal protection.

Adequate protection of the lawful interests in relationships concerning implementation of moral rights is possible only through a balance between the conflicting interests in each particular case, taking into account the moral foundations of society, the principles of rationality, conscientiousness and justice. The legally protected personal non-property interest is a system forming factor in relation to the fixed moral rights because it determines their internal differentiation into groups and captures prospects of normative securing new moral rights, and hence – the further improvement of their system as a whole.

*Legal protection of interests in obligations.* The contractual form is an ideal form of implementation of legally protected interests, which harmonizes with the dispositive method of the control of civil relations. Legitimate interests of the parties of the contract relation are protected by granting them the status of the material terms or by fixing them in the appropriate contractual form. Upon termination of a default by the will of subjects protection of legally protected interests of individuals going through a compensation, novation or remittance of debts.

In tort law relations the balance of interests of the person, who has suffered property and non-property losses, and interests of law enforcement results primarily in a compensation and right restoration function, the punitive function fades into the background. Thus, the important influence of interests is observed in the implementation of tort liability. To protect the legitimate interests of legal relations in tort law relations, regulatory rules the following are laid down: the

regression, inflicting injury during the elimination of the danger to life, health, individual's or company's property, of causing injury in a state of emergency; cases of increase or decrease in the size of redress; insurance.

Legally protected interests are permissions, claims, imbued with the spirit of optionality that have arisen in tort law relations and develop on condition that imperative norms are working. Tort liability is a responsibility for the violation of legal prohibitions, and the legal interest is an unspecified permission in the law. This particular dichotomy "ban - permission" acts as a guarantor of a harmonious and balanced development of civil law.

Preservation of property without a sufficient legal basis, acting in a property another person interests without his or her instructions, a public promise to give a reward, commitments resulting from rescue of life and health of an individual, personal property or entity from creating threats of such acts, of course, results in a number of subjective rights, but the specific features of civil regulation provide ample opportunities for the realization and protection of unspecified, but not explicitly forbidden permissions in the law which are implemented by every single person individually in the form of implementing legally protected interests.

**Summary:** the article is devoted to the analysis of the defence of civil legal interests in proprietary legal relationships, hereditary relationships, legal relationships in the field of intellectual property, obligations, legal protection of interest in the implementation of moral rights. The author has made her own conclusions and generalizations.

**Key words:** civil legal interests, proprietary legal relationships, hereditary relationships, intellectual property, obligations, moral rights.

**Анотація:** стаття присвячена аналізу захисту охоронюваних законом інтересів у речових, спадкових правовідносинах, правовідносинах в сфері інтелектуальної діяльності, зобов'язальних правовідносинах, правовідносинах з реалізації немайнових прав. Автор робить власні висновки і узагальнення.



**Ключові слова:** цивільні охоронювані законом інтереси, речові правовідносини, спадкові правовідносини, інтелектуальна власність, зобов'язання, немайнові права.

**Анотація:** стаття посвящена аналізу охороняемых законом интересов в вещных, наследственных правоотношениях, правоотношениях в сфере интеллектуальной деятельности, обязательственных правоотношениях, правоотношениях по реализации неимущественных прав. Автор делает собственные выводы и обобщения.

**Ключевые слова:** гражданские охраняемые законом интересы, вещные правоотношения, наследственные правоотношения, интеллектуальная собственность, обязательства, неимущественные права.