

THE INTERESTS OF THE OWNER AS AN OBJECT OF LEGAL SUPPORT, SECURITY, AND PROTECTION

OS INTERESSES DO PROPRIETÁRIO COMO UM OBJETO DE APOIO, SEGURANÇA E PROTEÇÃO LEGAL

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Abstract: The paper presents the results of the study of the structure and real action of the human rights mechanism concerning the legitimate interests and rights of the owner, the conceptual understanding of the functioning of this mechanism's structural components, and the search for ways to improve its effectiveness. The paper substantiates the need to identify at least five independent, interrelated elements as self-consistent structural parts of the law enforcement mechanism. An attempt is made to analyze these elements in dialectical unity. The study results make it possible to determine the elements of civil law and order aimed at comprehensive security and protection of the interests of the owner. As a result, the main guarantees of civil law and order favorable to the owner are formulated.

Keywords: Mechanism for legal regulation. Protection of the rights of the owner. Protective function of civil law. Law enforcement mechanism. Security and protection of the interests of the owner.

Resumo: O artigo apresenta os resultados do estudo da estrutura e da ação real do mecanismo de direitos humanos relativo aos interesses e direitos legítimos do proprietário, a compreensão conceitual do funcionamento dos componentes estruturais desse mecanismo e a busca de maneiras de melhorar sua eficácia. O documento fundamenta a necessidade de identificar pelo menos cinco elementos independentes e inter-relacionados como partes estruturais autoconsistentes do mecanismo de aplicação da lei. É feita uma tentativa de analisar esses elementos em uma unidade dialética. Os resultados do estudo possibilitam determinar os elementos da lei e da ordem civil que visam à segurança abrangente e à proteção dos interesses do proprietário. Como resultado, são formuladas as principais garantias da lei e da ordem civil favoráveis ao proprietário.

Palavras-chave: Mecanismo de regulamentação legal. Proteção dos direitos do proprietário. Função protetora do direito civil. Mecanismo de aplicação da lei. Segurança e proteção dos interesses do proprietário.

1. Introduction

Holders of subjective property rights realize proprietary interests throughout their lives; legally this process is accompanied by the existence of a right-securing mechanism, consisting of legal means of ensuring, securing, and protecting the right.

As rightly noted by A.V. Ryzhik (2022), the legitimate interests of the owner and, in particular, their effective implementation are directly based on the correct application of the provisions of substantive civil law and the exercise of the subjective civil right of ownership.

Thus, concerning the realization of the subjective rights of the owner, the functional purpose of civil law is to directly protect their interests and provide legal opportunities for the maximum realization of these interests. Considering the four forms of implementation of substantive law – compliance, enforcement, use, and application – there are sufficient grounds to assert that the provisions of civil law fully apply to the multi-component provision of the interests of the owner.

The main purpose of this study is to analyze the mechanism and identify the structural components of the mechanism for the legal protection of the interests of the owner through the disclosure of the tasks of public authorities in the formation and maintenance of civil law and order favorable to the owner.

2. Materials And Methods

Universal (dialectical), general scientific, and special scientific methods of cognition were used in this research.

The analysis of proprietary relations and legal mechanisms of their protection was carried out mainly using a system-structural approach.

Methodological and substantive components were studied to determine objective criteria for the effectiveness of legal cognition.

This work reflects the concepts of such branches of scientific knowledge as the theory of state and law, civil law, philosophy of law, hermeneutics, logic, history, and methodology of legal science, as well as theories and views of B. Wilson, E. Nordtveit, and other researchers.

3. Results

Law enforcement activity at all stages is inextricably linked with ensuring the realization of the interests of the owner. By searching for judicial practice on the issue of interest, establishing the actual circumstances of the dispute, giving them a legal assessment, choosing the norms to be applied, and making an informed decision (act), law enforcement officers carry out this activity to ensure the realization of the proprietary interest.

The state of civil law relations can be either in the regulatory or protective legal field.

Due to the indicated research interest in this article, it is the protective function of civil law that will be subjected to closer attention.

The participants of the regulatory relationship, allowing violations of legal requirements, transfer the legal relationship into a protective field (stage). The purposes of such a transfer are the suppression of the offense and the protection of proprietary interests, expressed in the restoration of the original legal status of the owner. Such restoration, for example, may be expressed in the removal of obstacles for the owner in the use of their property, the return of property from someone else's illegal possession, and similar protective means.

The key actors in the restoration of the original legal status of the owner are the subjects of public authority, endowed with the appropriate imperative-coercive powers – judicial and law enforcement agencies.

When the disputed issues between the owner and the entity that violated the proprietary interests are settled through the imperative intervention of the authorities, the legal relationship returns to the regulatory legal field again. If there is a legal relationship with third parties who have not violated proprietary interests, the legal relationship with such persons remains at the regulatory stage; protective measures do not apply to these third parties and they are not subject to the imperative influence of public authorities who have acted to protect the interests of the owner.

The thought expressed gives reason to share the opinion of V.N. Protasov, who believes that as such, there is no independent protective stage in the law-enforcement mechanism. At the moment of violation of proprietary interest, a new (protective) legal relationship is not formed; the existing legal relationship simply passes into an abnormal stage of regulation (Protasov, 1991), remaining in the regulatory stage.

In this regard, we propose to depart from the canonical foundations of civil knowledge and to subdivide legal relations related to ensuring the interests of the owner as legal relations

that are at one of two stages: either at the normal regulatory stage or at the abnormal regulatory stage. This proposal is justified by the following provision: subjects of public authority (in particular, judicial or law enforcement agencies), by their imperative and authoritative influence, contributing to the protection and restoration of violated proprietary interests, nevertheless, do not become direct participants in the basic civil law relationship. Therefore, this influence cannot be perceived otherwise than as a means of the legal support mechanism.

From the moment of violation of proprietary interests and the emergence of an objective need to ensure them in connection with this fact, the owner's legal claim is activated – the right to protection, immanently accompanying the right of ownership, but not realized until the moment of direct encroachment on proprietary interests.

The right to protection presupposes the realization of a wide list of its constituent rights: – the right to demand the termination of actions that violate proprietary interests; – the right to demand the elimination of the negative consequences of illegal actions; – the right to demand the restoration of the original position of the owner, etc.

Thus, it is the effective and exhaustive realization of the right to protection that returns the legal relationship from the abnormal regulatory stage to the normal regulatory stage.

Civil law regulation differs from the regulation of other branches of law in that entities with legal equality and property independence exercise their proprietary interests following their discretion, which significantly limits the impact on the provision of emerging legal relations on the part of public authorities. It is the legally established equality and independence in the implementation of proprietary interests that have predetermined that disputes about the violation of the interests of the owner in the vast majority of cases are considered only by one subject of state power – the court, other public entities – law enforcement agencies are not involved in the legal orbit of ensuring and implementing proprietary interests.

However, the situation radically changes in other cases, and they need a separate mention. Thus, the owner is fully entitled to extract useful properties from their property to satisfy their material and spiritual needs by performing actual and legal actions, but such extraction of useful properties must be carried out by legal means and using legal means, that is: – following the procedure established by law; – in compliance with the restrictions and prohibitions established in the legislation; – in compliance with the general principle of good faith, which applies to all subjects of civil law relations. Non-compliance with these conditions is the basis for interference in the implementation of the proprietary interests of subjects of public-

governmental legal relations, the formation of negative consequences for the owner of their actual and legal actions.

Thus, owners in the realization of their interests, firstly, must act in a limited field of application of the principles of reasonableness and good faith, and secondly, strictly comply with legal requirements, prohibitions, and restrictions. This is the only and sufficient condition for the owner to expect and in certain cases demand legal protection of their interests. Consequently, failure to comply with this two-part condition will automatically deprive the interests of the owner of proper legal protection.

The right-securing mechanism for protected legitimate interests is a consolidated mechanism for the exercise of subjective civil rights. This mechanism is not a static list of legal tools, it is the activity of each independent link, which determines the effectiveness of the subsequent activity, and such predestination, and as E.V. Vavilin (2016) rightly points out in his work on the protection of civil rights, it is both natural and logical.

However, it does not seem important to the owner to represent the entire interdependence of the operation of the right-securing mechanism, the result is important to the bearer of proprietary interests – ensuring and protecting their property rights, achieving proprietary goals – the socio-legal result obtained in the event of a civil dispute being resolved in their interests.

This state of affairs seems fair, it is completely unnecessary to represent and understand the legal essence of the functioning of the right-securing mechanism by the carriers of proprietary interests; it is enough that such a mechanism will be effective – to ensure the protection and realization of the interests of the owner.

From an academic point of view, a detailed consideration of the legal mechanism for the realization of legitimate interests is undoubtedly of some scientific interest. In a broad sense, this mechanism consists of the following five independent legal mechanisms:

1. The mechanism for implementation of general material industry standards;
2. The mechanism for regulation of civil law relations;
3. The mechanism for realization of the rights and interests of the owner and performance of the duties of the owner by them;
4. The mechanism for civil protection of proprietary interests;
5. The mechanism for law enforcement of public authorities.

Thus, based on the opinion of S.S. Alekseev (2010), a recognized authority on the functioning of the mechanism for legal regulation, in a broad sense, the mechanism for ensuring

the interests of the owner can, by analogy with the proposed scientific opinion, be considered a mechanism for "the impact of the norms of positive law on the actual behavior of subjects following the will of the legislator and the right holder" (p. 271).

The mechanism for the realization of proprietary interests is a dynamic and rather broad system. In addition to the direct process of satisfying proprietary interests aimed at obtaining personal and social benefits, this system, according to some experts, should include such elements as a favorable legal environment represented by the relevant legal doctrine, principles, and norms of law, legal customs, as well as legal facts (Ryzhik, 2022).

According to E.V. Vavilin (2018), the mechanism for protecting proprietary interests is "a procedure authorized by law for organizing the actual and legal actions of subjects of legal relations to suppress offenses and restore the original position" (p. 92).

Let us assume that the mechanism for protecting proprietary interests is not exhausted only by the legal organizational order, it can safely include the opportunities provided by law for the realization of proprietary interests, legal ways to protect their interests provided for by human rights activities, as well as established liability measures for entities that violated the interests of the owner. It is necessary to emphasize once again that the general organization of the mechanism for protecting the interests of the owner is carried out exclusively in compliance with the norms and principles of civil law.

The protection of proprietary interests can occur both by the owner in the form of self-defense and by state (most often judicial) bodies. The purpose of this protection is not only to restore the original position of the owner but also to maintain general civil law and order, implying respect for both private and public interests.

Thus, the civil law and order that ensures the implementation, security, and protection of proprietary interests is a whole ensemble of legal definitions formed in the national system of law, among which the following can be confidently named:

1. Proper legal regulation of legal relations in the sphere of realization of proprietary interests.

The following criteria are proposed that can form a reasonable idea of the proper or improper state of legal regulation of civil law relations: – through legal norms, social relations between subjects (citizens, legal entities, the state) in a separate sphere of realization of proprietary interests are regulated; – the technique of constructing legal norms excludes the possibility of their ambiguous interpretation, evaluative terms rarely appear in the legal norm or are not used by the legislator at all; – the ethical basis for protecting the interests of the owner is

preserved in the legal norm, the inviolability and priority of the institution of property rights is emphasized even against the background of ensuring public interests.

Objective reality constantly creates new challenges to the proper quality of legal regulation of civil law relations. M.A. Rozhkova (2020) rightly notes that the coming era of "technologies for combining a network of physical objects ("things"), the technical and software equipment of which allows them to interact with each other and the external environment" cannot but force to rethink approaches to the legal regulation of legal relations arising in connection with the communication of these systems with physical subjects of public relations. This rethinking should be accompanied by the widest discussion by the scientific public.

Such new challenges are also actively discussed in foreign civilistic literature. B.J. Wilson (2020) writes the following on this matter: "Even though property and property rights appear to be an almost universal phenomenon, deeply rooted in human nature and permeating society and everyday life, ownership and property rights are among the legal realities that change along with the change in society". E. Nordtveit (2023) rightly points out that "few other legal concepts, if any, have caused such intense and often emotional debates in legal science, political science, economics, and philosophy" (p. 67). E. Kadys, E. van der Sijde, C. Ducuing, J. Fairfield, and other researchers should be named among other modern foreign researchers, in whose works attempts are being made to rethink such traditional legal institutions as the institution of property law, the interests of the owner and others, considering the digital, information transformation of society.

In turn, it seems necessary to note that the legal regulation of legal relations complicated by the processes of digitalization in the sphere of the emergence and realization of the interests of the owner should still strictly comply with the criteria for proper settlement formulated by us above. The result of regulation should be the streamlining of legal relations, such regulation should be formalized considering the highest standards of legal technology, and settlement should ensure the immanent relationship of ethics and law.

2. Legally immaculate legal procedures.

The institution of law is inextricably linked with many aspects of the emergence, maintenance, and protection of proprietary interests, reflected in various sub-branches of civil law.

The provisions of civil legislation should be progressively brought to such a state in which the subject, who in good faith intends to commit actions related to legal ownership, will be protected as much as possible from the unlawful intent of persons capable of harming their

proprietary interests (for example, imaginary representatives or persons who knowingly withhold information important for decision-making, etc.).

3. The effectiveness of the protective stage of legal relations subordinated to the principle of procedural economy.

This element of civil law and order, which ensures the implementation, security, and protection of proprietary interests, is based on general legal ideas about the proper protection of a violated right or interest. The protection of the proprietary interest should be considered valid and effective only if the interests of the owner are restored, and if such restoration is impossible – if the owner receives adequate and timely compensation.

The proposal made by A.V. Milkov (2015) about the need to form a separate theory of protection in the protective subsystem of civil law regulation requires special attention. The scholar grades civil law relations into relations developing under normal conditions and relations that have turned into conflict conditions. This coincides with the classification approach in our study. However, Milkov's proposal on the formation of a full-fledged private theory of defense is faced with the lack of a sufficient methodological foundation and this circumstance is reasonably indicated by the author in his dissertation study.

In our opinion, the indicated circumstance acts as a fundamental obstacle to the functioning of an effective protective stage of legal relations in which a violated proprietary interest appears, especially in such conditions it is not necessary to talk about the application of the principle of procedural economy in its protection.

The conclusion in this situation seems obvious: there is an acute and objective need for doctrinal scientific research on the role of protection in the mechanism for civil law regulation, the ratio of security and protection of the interests of the owner, as well as the ratio of protection and civil liability for violation of proprietary interests.

The security and protection of the violated interests of the owner are practically identical in their legal content since the civil law relationship enters the protective stage in cases when the right is violated or disputed.

The protective stage of the legal relationship is characterized by the following signs: – they are aimed at restoring proprietary interests; – their legal regulation is quite specific, as it is represented by the norms originally provided for the restoration of the violated interest of the owner; – a mandatory mechanism for restoring the violated interest of the owner is provided for; – a mechanism for bringing the violator to the appropriate type of legal responsibility is provided for.

Regarding the implementation of the principle of procedural economy, we would like to note that unsatisfactory attempts to comply with it are the Achilles' heel of the Russian civil process, which it significantly loses, for example, to criminal proceedings. The statement that the considered element of civil law and order, ensuring the implementation, security, and protection of proprietary interests, should be based primarily on the implementation of the principle of procedural economy, is system-forming.

Some issues of the implementation of the procedural economy principle in civil proceedings as a subject of scientific research are considered on the pages of the Russian scientific press. We would also like to note the coverage of the application of procedural economy in the works of A.T. Bonner, T.A. Sokhnova, and M.A. Fokina. However, it should be recognized that these issues urgently need to be transferred from the field of sporadic reasoning to the field of fundamental scientific research.

Proper implementation of the principle of the procedural economy will ensure the following: – promptly and, as a result, effectively use the means of procedural protection of the violated interest of the owner; – reduce time, economic and labor resources in protecting and restoring the legitimate interest of the owner; – maintain the level of procedural guarantees; – comply with high standards and requirements for a court decision.

Concluding the consideration of this element of civil law, it should be noted that the effectiveness of the existence and functioning of the protective stage of legal relations is influenced not only by the Russian civil doctrine and principles of civil law but also by the generally recognized principles and norms of international law that form the legal boundaries and semantic content of such an institution as subjective civil rights.

4. The use of all legal opportunities provided by the subjective right of ownership.
5. The presence in the legislation of a wide range of ways of civil protection of the interests of the owner and measures of civil liability for violation of proprietary interests.

4. Conclusion

The article attempts to comprehend the operation of the mechanism for the legal protection of the interests of the owner, which consists of the following five independent legal mechanisms:

1. The mechanism for implementation of general material industry standards;
2. The mechanism for regulation of civil law relations;
3. The mechanism for realization of the rights and interests of the owner and performance of the duties of the owner by them;
4. The mechanism for civil protection of proprietary interests;
5. The mechanism for law enforcement of public authorities.

The analysis allows us to conclude that the provision of proprietary interests is a dynamic process of satisfying the property interests of the owner, which develops in conditions of favorable or unfavorable civil law and order.

The task of public authorities is to form and maintain civil law and order favorable to the owner, the constituent elements (signs, conditions) of which are:

1. Proper legal regulation of legal relations in the sphere of realization of proprietary interests.
2. Legally immaculate legal procedures.
3. The effectiveness of the protective stage of legal relations subordinated to the principle of procedural economy.
4. The use of all legal opportunities provided by the subjective right of ownership.
5. The presence in the legislation of a wide range of methods for civil protection of the interests of the owner and measures of civil liability for violation of proprietary interests.

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