

LEGAL NATURE OF SUBJECTIVE CIVIL RIGHTS' RESTRICTIONS

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Abstract. The article is devoted to the analysis of the legal features of restrictions as a legal phenomenon, their purpose, the value of their place and role among other legal phenomena. The relevance of this study is presupposed by the need to develop the optimal limits for intervention in the rights of civil law subjects. The development of a harmonious mechanism for the legal regulation of rights' restrictions, ensuring a balance between the interests of the right holder and those opposing it is of particular importance. Methods: during the study, we used the ascent method from the abstract to the concrete; universal methods of knowledge: genetic method; system-structural. Private scientific methods: legal-dogmatic method and method of interpretation of legal norms. Results: as a result of an analysis of existing opinions about the subjective civil rights' restriction, it has been established that the restrictions imply the deprivation of the right holder of the opportunity to exercise the powers granted to him/her in order to protect the private interests of other persons and public interests. Restrictions allow for the sustainable development of social relations while ensuring the right holder's interests. Conclusions: Restrictions are the most important and inalienable attribute of subjective civil law. The absence of restrictions will lead to an imbalance of existing interests, providing the right holder with ample opportunities for abuse, putting the interests of others at risk. At the same time, the rights' restriction as a concept means the specific measures to narrow the powers of the right holder, the content of which is largely due to the specific nature of the protection object.

Key words: restrictions, limits, subjective civil law, absolute right, property right, exclusive right.

1 INTRODUCTION.

Civil law mediates market relations based on the freedom of economic activity, therefore it is characterized by the principle "everything that is not prohibited by law is allowed", which implies that government regulation should apply only to those relations that cannot be effectively regulated by the market mechanism. In this regard, civil law is characterized by a generally permissible type of regulation with the elements of certain restrictions. The purpose of this article is to determine the legal nature and problems of the civil rights' restrictions. It is necessary to consider the limits of the exercise of subjective civil property rights in its legal sense. At the same time, the legal nature is understood as a legal feature of a legal phenomenon, expressing its structure, place and role among other legal phenomena in accordance with its social nature [1; p 227].

2 METHODS

In the course of this study, we used the ascent method from the abstract to the concrete in analyzing the issue of how the property rights' restrictions and the exclusive rights' restrictions manifest themselves. Among the universal cognition methods, we used a genetic method to determine the origin of legal restrictions; the system-structural method allowed establishing the place of legal restrictions in the civil law system. When studying the legislative base, we used the private scientific methods: legal-dogmatic method and method of interpretation of legal norms.

3 RESULTS AND DISCUSSION

General provisions on the subjective civil rights and their restrictions

To disclose the nature of the restrictions, first of all, one should determine the content of subjective civil rights in order to identify specific legal powers, the impact on which would mean a restriction. The authority means a specific secured legal opportunity.

Subjective right is a measure of permissible behavior owned by an authorized person in order to satisfy his/her interests, secured by the legal responsibilities of others [2; p. 114]. The content of subjective rights has two authorities: own actions and requirements.

To achieve the objectives of this study, it is necessary to bring the classification of civil rights in accordance with the authority value to satisfy the interest in absolute and relative. Absolute rights grant the eligible subject to satisfy his/her interests by influencing the object of rights itself. The interest satisfaction occurs on the basis of authority to own actions. At the same time, the obligated persons shall passively refrain from interfering in the process of satisfying the right holder's interests. The implementation of the absolute right is ensured by the behavior of an indefinite number of obligated persons. It is noteworthy that the foreign authors often differently understand the absolute right in the European legislation, implying human rights, which no one can restrict under any circumstances [3; p. 725]. At the same time, the essence of absolute rights remains the same - third parties are obliged to refrain from actions that impede

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the right implementation. Relative rights are designed to ensure that the interests of a person entitled through the actions of a particular obligated person. In this case, the key authority is the authority to require fulfilling the obligation. The obligated person shall perform a specific action that has a legal effect. In this case, the obligated person will be a strictly defined subject. According to fair opinion of S.S. Alekseev, restriction should be understood as the result of legal regulation, reflecting its scope. This result is achieved with the help of legal regulation methods - by restricting permissions, new prohibitions, and additional positive obligations [1; p. 65].

Absolute right gives the right holder the greatest possible degree of freedom in meeting his/her interests, therefore the restrictions are stipulated, first of all, in relation to absolute rights. The ownership rights that are of an absolute nature include the property right and exclusive right, and therefore, it is necessary to consider how these two types of subjective civil rights are restricted in further describing this work.

Property rights' restrictions

The property right gives its holder the opportunity to determine the order and nature of using a thing with complete domination over it. The content of the property right highlights the right to own, use, and dispose of the property, which constitutes the authority to own actions. At the same time, the owner has the right to prohibit all third parties from exercising similar powers over his/her property.

D.I. Meyer noted that the property rights' restrictions imply constraints on the owner, which are expressed in depriving him/her of the opportunity to perform a particular action on a thing or imposing a duty to undergo on the part of other persons' actions on a thing [4; p. 22].

First of all, restrictions are imposed on the property owner, since this resource is limited and important for the society as a whole.

According to R. Bennett, legal restrictions on land were developed as the state assumed the responsibility for land-related activities and created the opportunities for land policy and land management [5, p. 35]. It is the state regulation of land resources that is the main source of various property rights' restrictions, in connection with which a number of public law restrictions are imposed on the property owners, imposing the administrative obligations, which are expressed, as a rule, in restricting the authority to own actions.

So, the real estate should be used for strictly intended purpose, otherwise there is a risk of losing the owner's title. For example, a certain category of land is established for land plots - for agricultural purposes, forest and water funds, etc. There is a division into residential and non-residential for the premises.

An important restriction of property rights is the need to comply with the environmental rules (rational land use, environmental protection, etc.), since some of them may be very detrimental to the environment.

Forced property seizure from the owner does not apply to the rights' restrictions in the literature, since the property becomes an object of another person's right, whereas if it is restricted, the subject retains the ownership of his/her property upon termination of the ownership right [6; p. 71]. However, it seems that this case should also relate to the restrictions, since in case of a forced seizure, the owner is deprived of the opportunity to dispose of his/her property in his/her interest.

There is a problem of blurring the boundaries between the consolidation of the targeted use of a land plot and its compulsory seizure in the foreign law and order. This occurs in cases of consolidation for privately owned lands of this type of intended use in which the owner will be unable to make economically advantageous uses, but at the same time a direct seizure of a plot with compensation will not take place [7, p. 78].

These restrictions are general in their nature, that is, established in order to protect the whole society. Along with general restrictions, there are also private ones - those that are set in favor of a particular person, for example, do not throw garbage on a neighboring site.

Another restriction is the owner's deprivation of the authority to prohibit the use of his/her property by third parties in the specified cases. Servitude refers to such restrictions, when a third party is entitled to use someone else's land, and the right holder does not have the right to prohibit such use.

Thus, despite the absolute nature of the property right, there are significant restrictions for it both in the process of using the property and in disposing of one's own right, which is caused by the need to respect the private interests of third parties or the interests of society as a whole.

Limitations of the exclusive right

In contrast to the property right that extends to a material object, the exclusive right applies to the ideal object, which means that it becomes more difficult to prevent its use by others by actual actions. In addition, the ideal object is of an informational nature and is distributed to an unlimited circle of persons. These features gave rise to the specific nature of the exclusive rights' restrictions.

In the field of intellectual property, the clash of private and public interests is reduced to the desire of the right holder to prohibit the unauthorized use of the result of his/her intellectual activity and the desire of society to freely use such a result. To achieve a balance between these interests, the law provides for a corresponding restriction in the form of the possibility of free use of intellectual property.

The exclusive rights' restriction in the form of free use, which is inherent only to intellectual property rights, is similar to servitude in the ownership right. With regard to copyright, R.I. Sitdikova indicates that: "Copyright restrictions, in contrast to Art. 10 of the Civil Code of the Russian Federation, do not prohibit any actions of the authors,

but allow other persons to perform certain actions without the author's permission. These actions consist in using the work, that is, in the implementation of the actions included in the exclusive copyright. For the author himself/herself, the restriction is expressed in the impossibility of prohibiting such use, if it is carried out in accordance with the rules established by law" [8, p. 127]. Free use is not a limit to the exercise of exclusive rights, but the allocation of certain powers in favor of third parties [9, p. 168]. In this meaning, restrictions are the exceptions from the author's rights [10, p. 48]. Based on the above opinions, it can be concluded that free use refers to the use of the intellectual property item without the copyright holder's permission.

The intellectual property rights should not impede technical and social progress, and therefore the restrictions are imposed on the exclusive rights that include the non-restraining of the development of culture, education, science and technology. Free use in the copyright law is established in order to protect public interests, develop science and education, and ensure the free information exchange [8; p. 126]. In the patent law - in order to ensure access of an unlimited number of persons to the scientific and cultural achievements, the cumulative accumulation of relevant knowledge [11; p. 60]. The conditions for the admissibility of the exclusive rights' limitation for the copyright objects and related rights are established on the basis of a "three-step test" provided for by the Bern Convention for the Protection of Literary and Artistic Works and that the third party can only use the intellectual activity result not being a detriment to the normal use of such a result and not infringing the legitimate interests of the right holder. Moreover, such special cases are established by the states themselves. In some cases, disputes arise regarding the interpretation of the notion "special cases" [12; p. 3]. For example, in accordance with the US copyright law, a wide range of retail and restaurant establishments were exempted from responsibility for the public performance of musical works through radio and television transmissions in the digital age, which caused dissatisfaction on the part of copyright owners.

For the objects of patent law, a "two-step test" stipulated by the Agreement on Trade-Related Aspects of Intellectual Property Rights has been established. The two-step test, in contrast to the three-level, applies to any use of the intellectual activity result.

The idea of the possibility of free use of the intellectual activity result with payment of the compensation to the right holder has been widely spread in foreign literature [13; p. 30], which makes the work accessible to the user and at the same time brings income to the copyright holder.

The exclusive rights' restriction is also due to the need to respect the principle of freedom of speech, and therefore the right holder cannot be prohibited from using his/her work for educational, scientific, informational purposes, for example, when creating parodies, which is due to the requirements of international legal acts. Similar provisions are contained in the legislation of foreign countries [14; p. 73].

4 SUMMARY

The right's restrictions within the subjective civil law mean fixing the boundaries of its implementation. Restrictions reflect the scope of legal regulation expressed in the restriction of permissions, the establishment of prohibitions and the introduction of new responsibilities. Restrictions affect the authorities constituting the subjective civil law: restriction to perform certain actions that constitute a subjective right; deprivation of the possibility to prohibit third parties to use the object of law. Restrictions are imposed for the purpose of protecting private interests of other persons or public interests expressed in the interests of an indefinite circle of people (quantitative criterion) or interests relevant to the whole society, such as morality, public order, general welfare, state security (qualitative criterion).

5 CONCLUSIONS

The subjective civil rights' restrictions are aimed at achieving a balance between the interests of rights holders and those opposing them. Initially, the society was interested in maximally protecting the right holder's interests, preventing encroachment on his/her property by others. Later, with the development of public relations, it has arisen a new need to restrict the rights of right holders, if necessary in order to protect the interests of other persons or society. The practical need to consolidate the subjective rights' restrictions has led to an increase in the scientific interest in their research and requires further study, taking into account the specific features of the objects of law themselves.

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