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**ТЕОРЕТИЧНЕ РОЗУМІННЯ СИСТЕМИ ПРАВОВИХ ФОРМ ЗАХИСТУ КОРПОРАТИВНИХ ВІДНОСИН**

**Анотація*.*** *В роботі представлені правові конструкти, які визначають можливість формування якісно нових розумінь перспектив розвитку корпоративних відносин. Автором доведено, що на сьогодні існує дві протилежні точки зору в питанні природи конструкції права на захист. Відповідно до першої, право на захист є складовою суб’єктивного цивільного права. Теоретична позиція інших вчених полягає в тому, що право на захист є самостійним по відношенню до суб’єктивного цивільного права. Аргументовано, що таке право може бути реалізовано в межах охоронних правовідносин, тому право на захист знаходить свій прояв виключно за межами розвитку регулятивного правовідношення. Віднесення правомочності на захист до складової суб’єктивного цивільного права звужує сферу реалізації такої правомочності межами здійснення відповідного суб’єктивного цивільного права, елементом якого воно є. Правові можливості, гарантовані державою, не обмежується суб’єктивним цивільним правом. Останні, будучи опосередкованим природним правом, включають в себе правовий інтерес як форму прагнення людини в задоволенні потреб особистості. Механізм реалізації правового інтересу в цивільних правовідносинах, в структурі яких активна особа не має суб’єктивних цивільних прав, не обмежує здатність забезпечити захист суб’єктивних цивільних прав такої особи в інших, пов’язаних із ним цивільних правовідносинах. Формування правового інтересу особи генерується із наявного суб’єктивного цивільного права цієї особи в суміжних правовідносинах, охорона яких забезпечується за посередництвом захисту правового інтересу.*

**Ключові слова:** корпоративні правовідносини, захист цивільних прав, правовий інтерес, цивільні правовідносини, зміст правовідносин.

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**THEORETICAL UNDERSTANDING OF THE SYSTEM OF LEGAL FORMS OF PROTECTION OF CORPORATE RELATIONS**

**Abstract***. The work presents legal constructs that determine the possibility of forming brand new understandings of the prospects for the development of corporate relations. The author has proved that there are two opposing views about the nature of construction of the right to protection today. According to the first view, the right to protection is an integral part of subjective civil law. The theoretical position of other scholars is that the right to protection is independent in relation to subjective civil law. It is argued that such a right can be implemented within the framework of a guarding legal relationship; therefore, the right to defense is manifested solely outside the development of a regulatory legal relationship. Assigning the right to protection to the component of subjective civil law reduces the scope of the realization of such right within the boundaries of the implementation of the relevant subjective civil law, which is its element. Legal opportunities, which are guaranteed by the state, are not limited to subjective civil law. As an indirect natural law, the latter include legal interest as a form of human desire to satisfy the needs of the individual. The mechanism of realization of legal interest in civil legal relations, in the structure of which an active person does not have subjective civil rights, does not limit the ability to provide protection of subjective civil rights of such person in other related civil legal relations. Formation of legal interest of a person is generated from the existing subjective civil law of this person in contiguous legal relations, defence of which is provided through the protection of legal interest.*

**Keywords**: corporate legal relations, protection of civil rights, legal interest, civil legal relations, content of legal relations.

**INRODUCTION**

Continuing the thought of the prominent civilian, it is important to mention that the legal protection is the most powerful method to achieve effectiveness in civil legal relations, provision of effectiveness of which in the legal regulation of social relations in Ukraine constitutes the significant layer of the modern civil problem.

General framework of human rights protection is declared in article 8 of the Constitution of Ukraine, according to which the appeal to the Court for the constitutional rights and freedoms of human and citizen protection, is guaranteed on the basis on the Constitution of Ukraine; also in article 13, which provides the rights protection of all the subjects of property and management rights; under article 32, everyone is guaranteed to get the trial protection of the right to refute unreliable information about themselves and their family members and the right to demand the exemption of any information and also a right for reparation of substantive and moral harm caused by gathering, saving, using and spreading this unreliable information etc [1]. In turn, established with the government constitutional-legal norms and principles demand active law-making activity from the bodies of the governmental power of Ukraine, which should occur on the appropriate scientific ground.

The criterion of the division of subjective civil law and legal interest in the civil law of Ukraine is the method of their legal protect. In the first case, the variety of these methods is conditioned with the structure of subjective civil law (competence in own actions, competence of the demand). Protection of the subjective civil right is implemented with the help of passive, active obligation of other participants of civil legal relations [2; 3].

The development of corporate legal relations has resulted in the provision of the realization of subjective civil rights and interests of participants of such legal relations, as well as as the protection of direct and indirect participants of corporate legal relations [4; 5].

**1. LITERATURE REVIEW**

*1.1 Views of private character*

Nowadays, there have formed two opposite points of view concerning the issue about the nature of such a construction as a right for protection. According to the first, the right for the protection is the component of subjective civil law.

In this aspect, the argumentation from the V. P. Gribanov should be provided: “There is no doubt that the right to apply to competent governmental or civil bodies for the protection of a violated right is inseparably connected with subjective substantive law in at least two relations: first, it appears only with the violation of subjective civil law or with its appeal by other individuals; second, the character of a demand itself about the right protection is defined with the character of the violated or disputed substantive law, content and appointment of which determine the way of its protection. That is why, from the substantive-legal point of view, there are no barriers to view the right for protection in its substantive-legal aspect as one of the competences of subjective civil law” [6, p. 106].

The scientists’ logic gives the grounds for such a conclusion. If the competence for protection is part of subjective civil law as an element of the structure of civil legal relations, than the realization of the right for protection occurs on the specific stage of development of such unique legal relation. That is why it is inappropriate to allocate another type of civil legal relations between the same subjects and in relation to the same object with an identical amount of competences. In case of violation, the right for protection as an element of subjective civil law obtains the special status of tension, as a result of which the victim has an opportunity to realize the corresponding right for protection. [7, p. 104-107; 8, p. 532].

Theoretical position of the other scientists (P. F. Yeliseykin, Ye. Ya. Motovilovker, Z. V. Romovska, P. Ye. Krashenynnikov etc) is that the right for protection is independent in relation to subjective civil law. Such a right may be realized within protective legal relations, as a result the right for protection finds its manifestation only beyond the regulatory legal relations development.

The adherents of this point of view give the following argumentation to their position.

First, if it is assumed that the right for the appeal is part of regulative subjective law, it is necessary to acknowledge that its establishment precedes the appearance of the juridical obligation, that corresponds to it (vindictive demand manifests before the appearance of the obligation of illegal owner to transfer the property to its owner)

Second, the establishment of the right for protection as one of the competences of subjective civil law indicates that the appearance of the right for claim and, correspondingly, its statute of limitation are connected with the moment of attainment of subjective civil law by an individual. In other words, the subjective right for protection exists in the absence of a violation. Taking into consideration everything proved, the adherents of this point of view think that the right for protection is not an element of subjective civil law, rather it is the independent subjective law [9, p. 123].

*1.2 Private protection in corporate relations*

Legal essence of legal interest is thoroughly researched in the literature by I. V. Venediktova, who on the basis of the conducted analysis narrows this theory to the following aspects:

* existence of legal interest is impossible without commitment to possess the goods, which are able to satisfy the person’s need;
* this commitment can not contradict the law;
* desirable goods can not be illegal;
* it is necessary for a person, who has an interest aimed at attainment of goods, to conduct conscious actions;
* legal interest is a prerequisite of realization of subjective civil law, is beyond its boundaries, but is in the structure of social relations. Subjective civil law is the method for realization of a legal interest, which consists of a social need for such a behavior. Interest is implemented in legal relations, regulated by private law, through the realization of subjective civil rights;
* is an independent object of legal protection;
* legal interest belongs to a separate person, associated with their individual qualities, aspirations, motives and goals, needs of such a subject [10, p. 109-114].

It is necessary to mention that the problem of the correspondence of legal interest and subjective civil law has the different vector of research. Eclecticism of these two phenomena in law imbues scientists to combine them. Rudolf von Jhering thinks that the interest is the law’s constituent. Investigating the right as a protected interest, he proves that its realization is provided by the interest coordination of social groups. Interest creates the substance of subjective law and is its essential moment. Development of this idea has an unpredictable implementation in the papers of O. S. Ioffe, A. V. Venediktov, Yu. K. Tolstoy, who are adherents of the idea that the interest is the constituent element of subjective civil law. “Similar to how the class interest defines the content of will of the predominant class, which was implemented into law, the individual interest of a designated person defines the content of their will, filling it with its real social content, without which the notion of freedom – is a useless abstraction. If it is correct that the nature of law shows itself first of all in the character of the interest satisfied by law, that the loss of a socially important interest leads to the loss of a right, then there are enough grounds to include interest in the definition of subjective law…” [11, p. 45; 12, p. 49; 13, p. 38].

General sense of the scientists’ position given is systematized by Ye. Ya. Motovilovker in the following: “Any subjective right is the right of a person for their own or someone else's behavior, is aimed at the interest fulfillment of a designated subject. Sense, meaningfulness, targeted direction of the behavioral act, which implements subjective law, clearly depends on the determinacy of an interest of a designated person. And we will receive an absolutely poor abstraction if we define subjective law while being distracted from an interest of a legal owner [14, p. 52-62].

Other scientists have reasonably criticized the position mentioned above. The author of this paper agrees with their opinion.

Interest is not a part or a component of subjective civil law, it is not included into its structure, exists separately, being a prerequisite and the aim of this objective civil law. R. O. Stefanchuk remarks in support of this position. He points out that if subjective civil law would contain an interest in itself, the formation in law cannot be referred to as “civil rights and interests”, because the first category would absorb the other one and remove its juridical sense , deprive of the necessity for juridical self-identification [2, p. 109].

It is important to add that the division criterion of subjective civil law and legal interest in the civil law of Ukraine is the method of its legal protection. In the first case, the variety of such methods is attributed to the structure of subjective civil law (competence for own actions, competence of demand). Protection of subjective civil law is implemented through the passive and active obligation of other participants of a civil legal relations (invalidation of an agreement, termination of an effect that violates the law, restoration of a position that existed before the violation, specific performance, alteration of legal relations, termination of a legal relation, compensation of losses and other ways of property damages restitution, compensation of moral damages etc). In such a way the rights protection occurs of the participant of regulatory legal relations within the boundaries of its content.

Protection of legal interest has another juridical nature of its legal provision. Not being implemented directly in subjective civil law, legal interest as an evident desire of a person is under the protection unrestricted by the content of civil legal regulations, regarding which the subject has an interest.

In such a way, right to the protection provides the realization of subjective civil law and legal interest in the framework of the secure legal regulations.

**2. MATERIALS AND METHODS**

*2.1 The legal regulation of corporate legal relations*

In the paper were the methods of comparative legal investigation used. Predominantly, methods that regulate the corporate legal relations – are comparative. They are grounded in that the corporate relations are of not only the private character, but also are also the ground for the regulation of social processes, often they replace the general social environment for the implementation of the life-sustaining activity. In addition, this allows to speak about that the comparative method gives an opportunity to regulate the inner legal relations in the environment, where the formation of corporate relations take place. This method is used in the paper to form the general picture of understanding of the possibilities, for the interests realization of corporation and society in their combined development.

Additionally is the method of the alternative regulation of legal relations in the sphere of corporate relations used. Each of the participants of corporate interrelation must cover the part of the functions, which the corporation delegate to them. In the paper is the method implied, with which each of the participants understand their place in the social environment and in such a way regulate the participation in social sphere.

*2.2 Bipolar regulation of corporate legal relations*

Investigating the essence of the corporate legal relations, the authors use the method of analytical structure, because the participants of the corporations transmit their property in order to get actions (parts of participation), lose the right to possess it. We can observe, that the authors recognize their rights, based on the itemized concept of property. Right to an action (rate) is behind their attention. In other words, the problem lies in the methodology of the investigation of the action (rate) place in the system of corporate legal relation. In connection with this, in the article is the issue concerning the corporate method while analyzing not only participants of civil-legal relations, but also in the environment of the exact definition of the structure and qualitative fulfillment and coordination of them with the corporate relations is disclosed. For the prediction of the legal regulation is the predictive method used, which defines structure and the format of the interrelation with the society. Additionally is the method of the legal prediction used, which form the possibility of international standardization methods establishment and implementation to the legislation.

**3. RESULTS AND DUSCUSSION**

*3.1 Ratio of corporate law and civil legal relations*

Correspondence between real and ideal legal model is achieved with the help of lawful behavior of social relations’ participants. Thus, settled in the norms of objective law possibilities with the help of juridical facts are transformed in individualized legal requirements, which produce the subjective right of the person [15]. As result of implementation of subjective civil rights and fulfillment of corresponding legal obligations, the realization of legal relations between their participants occurs [9].

Acting out legal regulations of social relations leads to the activation of the law enforcement. Its aim lies in the regulation of legal relations, within which the violation of a right has occurred, through the realization of separate competences from the structure of the subjective civil law of the victim, particularly, the right to their protection.

The right to protection is the opportunity of the designated person to use allowed by law methods of own enforcement influence on the offender, to apply actions of operative influence, and the opportunity to take legal action to qualified governmental or non-governmental bodies with the demand to of inducement of obliged person to exact legal behavior [6, p. 105]. It is necessary to mention, that the legal essence of the right to protection is disputed in the modern civil science. Variety of the scientific thoughts leads to the necessity to search an answer on this question in the context of the subject of actual scientific research.

Subjective civil law is the measure of the possible behavior of the civil relations participants. This measure of the behavior reflex the mediation of correspondent competence in the process of their realization in the structure of civil relations. Character of these competences is corresponding with the kind of legal relations, where they find a personal implementation. In the context of the division according to the functional purpose is regulatory and protective civil legal relations, their content is configured depending on those peculiarities which they have according to definite set of competences.

Thus, it is characteristic of regulatory legal relations that they appear on the ground on the dispositive legal norms, are generated with the life circumstances within correspondent legal patterns of behavior and are directed on the goal achievement of legal regulation of social relations. Provision of their effectiveness is achieved with the help of competences, which constitute the content of regulatory legal relations – such the competence on own actions, competence of necessary behavior from obligatory person requirement.

In its turn, the essence of the protective legal relations is connected with the substandard requirements of realization of regulatory relations (appears as an response on the unlawful action of their participants), directed at the resumption of legal position of the participates of civil relations, which precede the offence (compensation of loses, restitution of the deals etc.), and connected with active juridical activity of an legal implementation body. Mentioned is achieved with the help of the protection competence. Taking into consideration the character of regulative legal relations is labeling to the structure of the subjective civil rights, the right to protection (because of the absence of the grounding for the realization of this competence in the measures of the corresponding relations) is inappropriate.

The adherents of this point of view state the following: “Yes, there is no doubt, that the violation of the legal relations influences the further existence of subjective civil law, which constitute its content, because it loses its own real juridical and actual pressure. That means, that regulative legal relations do not have any opportunity for its own realization”.

Consequently, we may speak about the bipolar forms of civil rights implementation in the structure of civil legal regulations of different nature. Subjective civil law and the right to protection are different law categories, because they have different legal grounds of their appearance, structure and the direction of the participants of the legal relations, its terms.

The ground for the appearance of subjective civil law is a legal action or an event, prescribed by the legal regulator of civil legal relations, which has the regulatory juridical meaning for the participants of civil legal relations. In its turn, the ground for the appearance of the right to protection are not the regulatory legal facts but illegal ones. According to its content, subjective civil law is directed at the fulfillment of a legal interest of the participants of legal relations in the process of their realization, when the right to protection has on its aim the correction of the defect of civil relations with the aim of its further appropriate realization.

Finally, subjective civil law acts during the established by parties terms of its realizations from the moment of corresponding free will manifestation, in that time when the appearance of the right to protection is directly connected with the violation of subjective law or the legal interest and acts during the regulatory settled time (complaint period), expiration of which terminates the corresponding right without influencing subjective civil law.

Subjective civil law is the precondition of the realization of the right to protection. The necessity of legal protection is not always preconditioned with the realization of subjective civil law. Right to protection appears as a reverse action of an inappropriate implementation of subjective civil law and exists during the exact term.

Certain entire of the scientific view about independence of the law to protect subjective civil law gives a separation in the structure of the law to protect three competences:

1. Competence for the independent actual actions for the law protection (to implement the methods of self-protection) or on the independent juridical actions concerning the law renewal (to implement the methods of operative influence).
2. Competence of the demand from the governmental bodies of enforced renewal of the violated right (to implement the protection and responsibility methods)
3. Competence of the law protection, claim (to implement the methods of enforcement in the new protective legal relation). According to the point of many scientists’ view, which the author of this research shares, attests about the independence of the protection right [16, p. 21].

Therefore, it may be a conclusion made, that subjective civil law provides the realization of civil relations within the agreed models of behavior with their participants. This realization is achieved with the help of competences, which constitute the content of subjective civil law (competence to own actions and competence of the demand).

A separate possible direction of the development of legal regulation of civil relations is the establishment of the objective circumstances of reality, subjective factors of deviant character or legal actions of the third person, in connection to what the obstacles appeared on the way of normal development of regulatory legal relations, which complicate or even do not give an opportunity to provide the realization of the rights and obligations of legal relations subjects (defects of the juridical facts). In such conditions, the legal regulation of civil relations cannot provide the realization of the definite legal model, agreed with the parties of legal relations. In this case, the structural transformation in the legal regulation of civil legal relations takes place [16, p. 54]. The appearance of the new protective legal relation is accompanied with its content formation with the help of competences, which provide its appropriate realization – the right to protection of the participants of these legal relations. That means, that as a basis of the differentiation is the conflict of interest of the participants of the correspondent legal relations is taken. Yu. M. Zhornokui points out, that “taking into consideration that the law implementation and the achievement of a legal interest have the continuing character, manifests in the interrelation of the variety of subjects, corresponding categories feel the influence of the numerous facts – the same as positive and negative, which in their turn exaggerate or blockade the process of the legal opportunities. In the sphere of corporate relations the defined problem demands the regulation of the mechanisms of the subjective corporate rights and interests of their participants implementation…”And next: “Such an interrelation and, in separate cases, violation (creation of the violation threat), corresponding rights and interests causes corporate conflicts” [17, p. 52].

Considering the structure of the legal relations in the general theoretic context we will point, that its content constitute subjective civil law as “provided with the law measure of possible person’s behavior” [18, p. 13], which contains of the competences (right for own actions, right for demand and protection), to what paid attention at first S. N. Bratus, the ideas of whom were further developed with V. P. Gribanov. Depending on the functional meaning of civil legal relations in the legal regulations, this right is configured with the changeable set of competences. Exactly this model of the civil legal regulations is the subject of the scientific dispute about place of the right to protection in the structure of subjective civil law. That is why, in our opinion, such a discussion has no sense, because each of given points of view do not exclude the right to protection not from the structure of legal relations, and not from subjective civil law. Researches are taking place in different theoretical area. If to take into consideration the structure of subjective civil law in the general theoretical context, such a theoretical model of legal relation consists in it structure of juridical obligation, and subjective civil law. Last one is the synthesis of the three competences: competence of demand, competence on the own actions and competence of protection. Investigating the structure of legal relations in civil law taking into account the type of legal relations, the same competences are differentiated depending on either the protective or regulatory type of civil legal relations.

It is necessary to mention also, that the essence of the interdisciplinary method of research in the science constitute the usage of the unspecific for the jurisprudence terminology to point out the character of the objective reality phenomenon in their interrelation between unbalanced systems on the basis of the self-organization principle. Research of the sociological notion “conflict” in the context of legal relations, undoubtedly, has its positive features, because it allows to view the genesis of the social relations in the cognitive context in the manageability in different vectors, to set the preconditions of the deviant person’s behavior, to solve the methodological questions in the sociological law in general

However, according to our point of view, the analysis of the applied problems of civil science to which belong the mechanism of law operation and its structure, lace of such elements, as the legal relations should be realized with the help of the corresponding juridical instruments, which includes the usage of the less abstract legal constructions (as subjective civil law, juridical obligation, legal interest etc.).

In the theory of civil law the legal construction of the legacy violation exists, which fully shows the content of that legal phenomena, which some scientists define as the notion of conflict. It is necessary to add, that in the case of the several logical not controversial explanation of any phenomena, which explain it the same meaningfully, with the other equal conditions should be considered as a correct the simplest one of them (lex parsimoniae).

Thus, professor Yu. M. Zhornokui points, that the definition of the basic category, able to be the basis of the definition of the legal conflict, must be grounded on the essential characteristics of the phenomena given. However, in the legal science there is no unified criteria made for relation this or those legal connection to the conflict situation, which has the juridical characteristics. [17, p. 56]. The author’s attempt to compare the notion of the of the protective corporate relation and corporate conflict, has the arguing conflict, because for the first is the peculiar objective availability of a violated subjective civil right or a legal interest of the participant of regulatory civil legal relations, and in the other is the marginal behaviour of the person inherent – externally not defined, but subjectively formulated.

Subjective civil law depending on the type of the civil legal relations are presented in the two forms of their manifestation:

1. Regulatory subjective civil law, which is the content of regulative legal relations;

2. Compensatory subjective civil law, which is the part of the protective legal relations correspondingly.

In the same time, it is necessary to prove, that the competence relation to the protection to the constituent of subjective civil law, the element of which it is, which are defined as an object of the concrete civil legal relation. In this case, behind the legal influence the related to subjective civil law (as a measures of the possible behavior) juridical constructions, existence of which is made to provide the appropriate form of the realization of civil legal relations, because the subjective civil legal relations.

The juridical construction of legal interest should be regarded as such. Therefore, legal opportunities, guaranteed by the government, are not restricted with subjective civil law. Being the indirect natural right, they include the desire of a man to fulfill the personal needs as a reflection of the individual freedom, which has no correspondent physical form of manifestation.

Etymological content of the word “interest” includes:

* attention to someone or something, an interest in someone or something; a concern, an occupation
* weight, meaning;
* something that holds the most interest for someone, comprises their thoughts and ;
* desires, needs;
* something, that is useful for someone or something, meets their desires, needs; advantage, benefit, gain.

In the general and sociological meaning – category “interest” is understood as a social need, which exists objectively and is subjectively understood, as a motive, stimuli, inducement to the action, in the psychology – as an attitude of the person to the subject, as for something valuable for her, something, what attracts [19].

This position of the Constitutional Court of Ukraine is based on the general approach to the understanding of the category “interest” as a form of the identification of selected attitude of the person to the subject, what is defined with its life importance and emotional attraction [20, p. 24]. In this way, the interest of the person lies in the possibility to realize its sense, which is provided with the legal methods of an influence. From the other point of view, the norm of right forms the legacy of interest as form of the manifestation of not illegal desire, which found its reflection on the model of the person’s behavior.

In the legal acts, the term “interest” (taking into consideration its etymological, general-social, psychological meaning) is used in the broad sense, as an independent object of legal relations, realization of which is fulfilled or blocked with the normative methods. Example for the term “interest” application in the broad sense is the Constitution of Ukraine, numerous articles of which (articles 18, 32, 34, 35, 36, 39, 41, 44, 79, 89, 104, 121, 127, 140) emphasize on the national interests, interests of national security, economic wealth, territorial values, citizen’s order, health and moral level of the population, political, economical, social, cultural interests, interests of the society, interests of all compatriots, interests of a citizen, interest of a government, common interests of territorial communities, villages, cities etc [19]. Pointing to the presence of such interests, Constitution of Ukraine underlines the necessity of their provision (article 18), fulfillment (article 36) or protection (articles 44,127).

If the connection between a person and subjective civil law inherent to this person, whose protection is carried out within the framework of a legal relation, is obvious, the definition of the essence of a legal interest of a person concerning a circle of civil legal relations, the protection of which is required, requires its further elucidation. Thus, it is logical that the protection of a legal interest of a person whose subjective civil law is not within the limits of specific regulatory relations should have a limit of reasonable admissibility. Otherwise, the probable protection of the person's interest will be the abuse of the right by him, in particular, procedural. It should be recognized that the scientific researches of the Soviet and post-Soviet period of the legal essence problems of a legitimate interest and the forms of the realization of its protection do not solve the problem of establishing the optimal model of the relation of "opportunity" and "reality" to protect an interest of the individual in the absence of his corresponding subjective civil law in the structure of controversial legal relations, which, in turn, complicates the effectiveness of the mechanism of human rights protection of civil relations.

Considering the legal interest as a desire to use a particular good, as a result of the general content of an objective and directly non-indirectly mediated in subjective right by a simple legitimate permission, the person concerned receives the opportunity to appeal to the court in order to meet individual and collective needs, and in the event that their real belonging to this person raises reasonable doubts. Consequently, the criterion of the mediation degree of such a person's aspiration in subjective law is not established in the legislation of Ukraine and is discretionary of the court.

For example, a dishonest person, subjectively considering himself interested in obtaining certain material goods or not being received by another person, has a procedural possibility to appeal the adopted acts of law enforcement in the absence of objective legal motivation. However, as long as the court reaches the appropriate conclusion and confirms its position on the case by adopting the relevant judicial act, it may take a long time to "play" not in favor of a fair participant in civil legal relations. Therefore, the doctrinal definition of legal interest limits of a person in legal relations for its possible protection has a significant meaning in the field of law enforcement.

We believe that the mechanism of realization of legitimate interest in civil legal relations, in the structure of which the active person does not have subjective civil rights, is conditioned by the potential ability of a person to ensure the protection of their own already subjective civil rights in other correspondents in the first legal relation. That is, the formula for protecting a legitimate interest of a person is that the protection of a legitimate interest of a person not mediated by subjective law must ensure the protection of the corresponding subjective civil law in related legal relations, that is, where it takes place. Formation of a legitimate interest of a person is generated from existing subjective civil law of related legal relations, the protection of which is provided through the relevant interest.

*3.2 Judicial practice of corporate relations regulation*

Application of judicial practice to regulate corporate relations should be explained through the following example.

The member of an entrepreneurial partnership files a petition in court to render ineffective an agreement (made between a partnership and a third party) on the grounds established in article 227, 229-235 of the Civil Code of Ukraine [3].

The existence of a legal interest of a partnership’s member, which is protected through filing an appropriate lawsuit, is predicated on the protection of their subjective civil law in corporate legal relations between a member and an entrepreneurial partnership. Rendering agreements ineffective, which if executed may influence the financial status of an enterprise, provides protection of the member’s rights to receive dividends from their entrepreneurial activity. In that case, legal interest emerges from subjective civil law, a proper realization of which is sought by a person − a direct participant of corporate legal relations.

The foregoing is confirmed by the legal stance of the Supreme Court of Ukraine, which is explained in the court decision of 1 July 2015 in the case No 3-327gs15 [21].

During the review of the case, the court of cassation has reached an erroneous conclusion that law does not provide a stockholder (a member) with the right to file a petition for protection of rights or legally protected interests of a partnership beyond agency relations; a participant of a partnership does not have a subjective right to exercise their power over partnership’s property, therefore, a plaintiff is not a subject who has the right to dispute specified contracts; participants of an economic partnership cannot file a lawsuit for protection of rights or legally protected interests of other participants of an entrepreneurial partnership and and the partnership itself beyond agency relations and validate their demands on the grounds of rights violation of other members of a partnership.

When overturning the decision of the Supreme Economic Court of Ukraine of 19 November 2014 in the case No 911/2435/14 on the claim of Fedorov V. F. against the limited liability partnership “Agrokom” and the private company “Beta-Konsalting” to declare the agreement invalid, the Supreme Court of Ukraine decided that under provisions in article 16, parts 1 and 2, of the Civil Code of Ukraine every person has a right to appeal to court to protect their personal non-property and property rights and interests. Invalidation of an agreement can be a way to protect civil rights and interests.

Under article 203, parts 1 and 2, of the Civil Code of Ukraine, the content of an agreement cannot contradict this Code, other acts of civil law, and interests of the state and society, its moral foundation. A person who enters into agreement must have the necessary civil capacity.

The ground for invalidation of an agreement is a non-compliance with the requirements established in article 203, parts 1, 2, 3, 5 and 6, of the Civil Code. If the invalidity of an agreement is not directly established by law, but one party or another interested person denies its validity on the grounds established by law, such an agreement can be invalidated by court (a questioned transaction) (article 215 of the Civil Code of Ukraine).

Under article 167 of the Commercial Code of Ukraine, corporate rights – are the rights of a person whose share is determined in the authorised fund (property) of an economic organisation, which include competences concerning this person’s participation in management of an economic organisation, the receipt of a certain share of profits (dividends) of this organisation and assets in the event of liquidation of the latter according to law, and also other competences prescribed by law and statutory documents. Corporate legal relations are defined as relations that emerge, change and get terminated regarding corporate rights.

Under article 12, part 1, paragraph 4, of the Commercial Code of Ukraine, cases concerning corporate relations in disputes between a corporate entity and its participants (promoters, shareholders, members), including outgoing participants, and also between participants (promoters, shareholders, members) of a legal entity connected to creation, operation, management and termination of an activity of such entity, except labour disputes, are under the jurisdiction of economic courts.

The main thesis of the legal stance of the Supreme Court of Ukraine: “Meaning, regardless of the parties, if a participant (shareholder) of an economic partnership justifies corresponding claims with violation of their corporate rights such dispute is under jurisdiction of economic courts...”

The analysis of the given substantive law taking into account provisions of parts 18.1, 18.5.7 of the statute of TOV “Agrokom” taking into account the share of a plaintiff in an authorized fund of a partnership (70%), gives grounds to conclude that the shareholder (participant) of a partnership can contest a contract, concluded by an economic partnership, if they justify the corresponding claims with violation of their corporate rights.

Therefore, courts of first and second instance have determined about invalidation of the specified contracts, since their conclusion by a head of the partnership with TOV “Agrokom” indicates the violation of corporate rights of the plaintiff regarding management over the partnership, distribution of profits of the partnership (including receiving their share) from economic activity and deterioration of perpetuity of the partnership, which influences the rights of the plaintiff as a participant, with the share in stature capital of 70% [21].

Similar legal stance is stated in the decision of the Supreme Court of Ukraine of 21 January 2015 in the case No 3-327gs14.

“...Under article 12, part 1, paragraph 12, of the Commercial Code of Ukraine, cases concerning corporate relations in disputes between a corporate entity and its participants (promoters, shareholders, members), including outgoing participants, and also between participants (promoters, shareholders, members) of a legal entity connected to creation, operation, management and termination of an activity of such entity, except labour disputes, are under the jurisdiction of economic courts.

Meaning, regardless of their parties, if a participant (shareholder) of an economic partnership justifies corresponding claims with violation of their corporate rights such dispute is under jurisdiction of economic courts...” [22].

In a similar situation, when reviewing the case No. 5015/3721/12 in cassation, the Supreme Court of Ukraine has determined that there is grounds for the satisfaction of the claim of the participant of TOV “Try Oskara” to invalidate the disputed real estate purchase and sale agreement concluded by defendants. The cassation court has agreed on the decision of the lower courts regarding the fact that the plaintiff has the right to protect their corporate rights and the right to file a lawsuit to invalidate the disputed agreement, and that their chosen remedy for the violated rights and their legally protected interests corresponds with remedies established in article 16 of the Civil Code of Ukraine and the right to choose prescribed by article 215 of the Civil Code of Ukraine.

However, in the cassation court decisions in the cases No 2-23/4600-2009 and No 18/3627/11, provided for comparison, according to the appellant, the cassation court, when reviewing disputes with similar claims and similar circumstances of the case, has reached an opposite conclusion − about the lack of grounds to satisfy the claim of the participant of the partnership regarding invalidating real estate purchase and sale agreement. This demonstrates the instability of the judicial practice on the specified problems, which can be explained by the lack of “solid support” (in the form of a sufficient normative regulation on the issue of protection of legal interests of a participant of corporate legal relations) in courts and immaturity of the judicial system in Ukraine in comparison to the authority of judicial powers in countries with Common law.

To eliminate divergences in application of the specified norm of substantive law by cassation courts, Chamber of Commerce in Economic Affairs of the Supreme Court of Ukraine formed the following legal stance in the decision of 21 January 2015 in the case No 3-214gs14.

According to article 115 of the Civil Code of Ukraine (the version which was in effect during creation of the disputed legal relations), an economic partnership is an owner of property that was transferred by participants of a partnership as a contribution into an authorized (compiled) fund.

Article 10 of the Law of Ukraine “On Economic Partnerships” (the version that was in effect during creation of the disputed legal relations) defines the rights of economic partnership’s participants. However, a participant does not have a subjective right regarding the exercise of power of an owner of partnership’s property, since the owner of a property is a partnership, whose rights are realized through of participants.

Although, when filing the specified claim with court, the plaintiff argued that the disputed contract violated their corporate rights, since disposal of capital assets of the partnership, which included the disputed office, rendered this property unusable in the partnership’s economic activity, and as a result it was impossible to receive the corresponding share of partnership’s profit [23].

It should be noted that this legal stance is stated in paragraph 51 of the decision of the Plenum of the Supreme Court of Ukraine of 24 October 2008 No 13 “On the practice of examination of corporate disputes by courts“, which states that law does not prescribe the right of a shareholder (participant) of an economic partnership to file a lawsuit to protect partnership’s rights or legally protected interests beyond the agency relation. On this basis, economic courts are required to refuse shareholders (participants) of an economic partnership to satisfy their claim for conclusion, alteration, termination or invalidation of contracts and other agreements made by an economic partnership. Disputes of this category are under the jurisdiction of economic courts regardless of their parties on the ground of article 12, part 1, paragraph 4, of the Commercial Code of Ukraine if a shareholder (participant) of an economic partnership justifies corresponding claims with violation of their corporate rights [24].

Thereby, the formation of the legal stance of the Supreme Court of Ukraine concerning this issue lacks uniformity. In the decision of 18 April 2011 in the case No. 3-29gs11, the Supreme Court of Ukraine, having reviewed in open court the claim of PAT “OTP Bank” for examination by the Supreme Court of Ukraine of the decision of the Higher Economic Court of Ukraine of 12 December 2010 in the case No 8/219 pn-k on the claim of Kyrylov V. D. Against TOV “Lyganska firma ‘Syluet’”, PAT “OTP BANK” to invalidate contract, has determined that under the requirements of the current legislation of Ukraine the partnership is the owner of the property transferred to them by founders and participants as shares, while the management of the partnership is conducted by their bodies.

Article 10 of the Law of Ukraine “On Economic Partnerships” defines rights of participants of an economic partnership. Consequently, a participant of a partnership does not have a subjective right to perform duties of an owner of partnership’s property, therefore, the decision of the court of the first instance, with which the Supreme Court of Ukraine has agreed (that the disputed contracts violate the rights of a plaintiff), is not based on law. Therefore, the plaintiff is not a subject that has the right to dispute specified contracts.

Furthermore, participants of an economic partnership do not have the right to file a lawsuit to protect rights and interests of other participants of an economic partnership and of a partnership itself beyond agency relations, and to justify their demands with violation of rights of other participants. [25].

A similar legal stance of the Supreme Court of Ukraine was delivered to the legal community in the court decision of 6 October 2009 in the case No 3-4111k09. [26].

However, in our opinion, the dynamics of the legal stance of the Supreme Court of Ukraine on the described issue do not have a conjunctural nature, but is determined by the modern tendency of development of the civil society, founded on the principles of intelligence, decency and justice in the plane of realisation of article 6, paragraph 1, of the Convention for the Protection of Human Rights and Fundamental Freedoms (rights to a fair trial), and also by the corresponding tradition in Continental law, which is based not on a legal precedent, but on the source of law.

European Court of Human Rights in the case “Credit and Industrial Bank v. Czech Republic” of 21 October 2003 expressed the position that subjective law cannot be theoretical and elusive as a result of application of a needlessly formalised procedure. Meanwhile, procedural grounds for withholding justice that do not account for the specified violate article 6 of the Convention [5].

The legal stance of the European Court of Human Rights in the case “Vatan (People's democratic party) v. Russian Federation” (court decision of 7 October 2004, complaint No 47978/99) is illustrative in this context. The Court declared that the “identity” of the organisation (in the meaning of article 34 of the Convention) can be more extensive than its legal status and can include several entities. The Court considered that the term “victim”, used in article 34 of the Convention, means an individual that are directly affected by an action or omission under consideration (court decision in the case “Eckle v. Germany” of 15 July 1982, § 66). It was noted that a complaint from an “individual” who is only indirectly affected by a possible violation can be accepted on the grounds of exceptional circumstance, − specifically if it is established that the direct victim cannot file a complaint through bodies prescribed in provisions of the statute (court decision in the case “Agrotexim and others v. Greece” of 24 October 1995, § 66). [5].

In that case, the Court proceeds from the procedural expediency of providing legal protection for an individual who considers themselves a victim in the meaning of the Convention. However, to achieve settlement of disputes on an equal level, the European Court of Human Rights applies the concept “piercing the corporate veil”.

We agree with scientists who determined that the European Court of Human Rights has changed the focus of this concept in their practice and has since applied it not to impose liabilities on a shareholder (participant), but to confer their rights to protect company’s interests. In this case, the Court has decided that the rights of a company and the rights of their shareholders (participants) should be regarded as indivisible and equal in content.

According to the European Court of Human Rights, the specified entities have a right to file a claim with court for protection of rights and interests of a legal entity, since their violation influences the rights of a claimant, but only in case there is no conflict of interest between shareholders (participants) [4, p. 51], which is quite reasonable. In conclusion, law – is a “living organism” that evolves in proportion to the development of civil society and changes in the worldview of its members. Therefore, the development of corporate relations is induces constant advancement of forms and methods of their protection, which manifests in support of realization of subjective civil rights and interests of participants in such relations, as well as protection of direct and indirect participants of corporate relations.

Mentioned above allows to make the following conclusions. Regulation of social relations is provided with the help of corresponding mechanisms of the legal regulation of social relations. Effectiveness of mechanisms functioning of subjective civil law protection and juridical obligations of legal relations participants is a factor its efficiency. This depends not only on the complex of the juridical actions in the measures of the correspondent legal norm, the aim of which lies in the renewal of the violated position of the right’s subject. Essential meaning has the object of the legal protection, which, except subjective civil law, is also the legal interest of a person. Consequently, legal possibilities guaranteed with the government are not restricted by subjective civil law. Being intermediate essential right, the last one includes the desire of a person to fulfill the needs of the personality as a reflection of the individual freedom level – legal interest.

Legal interest is not the constitute part of subjective civil law. As its precondition and the aim, it exists separately, because of what gets the independent juridical caseload. Besides, the criterion of the division of subjective civil law and legal interest in the civil law of Ukraine is the way of protection. Legal interest as an evident aspiration of a person may be protected without restrictions with the content of civil legal relations, to which the right’s subject has the rational interest.

**CONCLUSIONS**

Right to protection ensures the validity of the implementation of subjective civil law and a legal interest of participants in civil legal relations. Subjective civil law and legal interest arise from the lawful, has a regulatory significance in the dynamics of civil legal relations. Right to protection is actualized from the unlawful, has the purpose of correcting the defect in the structure of civil legal relations with a view to their proper implementation.

Subjective civil law and legal interest reflect the extent of possible behavior of participants in civil legal relations. It (behavior) is reflected from the competences of the participants of civil legal relations. Thus, ensuring the effectiveness of regulatory legal relations is achieved through such constructions as the competence to own actions, the competence to the requirement for necessary behavior from the obligated person. For the protective legal relations, which are aimed at the restoration of the legal status of participants in civil legal relations – the competence to protection. Taking into consideration, everything mentioned, subjective civil law and right to protection do not correlate among themselves by the formula "general – partial".

Right to protection ensures the realization of subjective civil law and legal interest within the framework of protective law. If the protection of a person’s subjective civil rights is evident, the determination of an interest of a person in relation to civil legal relations, the protection of which is required, requires the establishment of a legal algorithm for its provision.

The mechanism of realization of legal interest in civil legal relations, in the structure of which an active person does not have subjective civil rights, is determined by the ability to provide protection of subjective civil rights of such person in other related civil legal relations. Thus, the formation of the legal interest of a person is generated from a existing subjective civil right of this person, but in related legal relations, the protection of which is provided through the protection of the legal interest.

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