

Certain Issues of Applying Self-Defense of Civil Rights

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Abstract. *In this scholarly article, the protection of civil rights and legally protected interests is carried out in the manner prescribed by law, that is, through the application of appropriate forms, means and methods of protection.*

Key words: *civil rights, subjective rights, property rights, civil law instruments.*

Objectively, the institution of civil rights protection is an independent legal institution with its own scope of application, a unique set of legal means of influence. The tasks of this institution can be called preventing violations of subjective rights, ensuring the necessary conditions for their implementation, restoring violated rights, but it is related to and dependent on the institution of protection of property rights.

Civil defense has its own characteristics, therefore, in many cases, they are more effective and acceptable to the owner than the means provided for in other areas of law. Therefore, the owner of the property affected by the theft is more interested in recovering the property from the thief than in imposing a criminal penalty on him. Civil law means are primarily aimed at restoring the owner's previous property status, removing obstacles to the exercise of their rights, and so on.

The subject of protection is subjective civil rights and legally protected interests. The concepts of "law" and "interest" are very close in nature, but at the same time they have wonderful features. Subjective civil rights may have interests that are not mediated by them, but exist separately from the rights and should be protected in the event of their violation. Examples include the requirements for the protection of honor and dignity, the photographed image, the interests of the person depicted in the artistic drawing, and others. The protection of an interest protected by law also occurs when the right itself is terminated or restricted, for example, the right to freedom of information may be restricted in connection with the interests of the state or the interests of national security, however, the restriction should also be considered within the framework of the inalienable rights of a private person: life, health and similar personal interests. In this case, we are talking about a protected interest.

Civil law remedies for the protection of civil rights are not uniform in terms of content and conditions of application. Methods of protection of civil rights can be defined as measures established by civil law, which can be applied by a person to protect his civil rights and aimed at eliminating and preventing offenses, as well as restoring violated rights or providing certain compensation to a person whose rights have been violated, if the violated right cannot be restored.

It follows from the content of Article 11 of the Civil Code that the list of methods of protection of civil rights established by law is not exhaustive, as according to the second part of Article 11 of the Civil Code, the court may protect civil legislation or civil interests by another method established by a contract or law.

Analyzing the classification of methods for protecting civil rights according to the criterion of a specific goal orientation, V.D. Andreiso notes that "methods for protecting civil rights according to a specific goal orientation are divided into:

- 1) preventive - that is, aimed at preventing violations of civil rights;
- 2) liquidation - aimed at eliminating violations of civil rights;
- 3) restorative - aimed at restoring violated rights;
- 4) compensatory - aimed at compensating for damages caused by violations of civil rights"¹.

Among the non-jurisdictional methods of protecting civil rights, self-defense occupies a special place in the system of extrajudicial protection. Its distinctive feature is that it is carried out independently by a person or organization whose rights have been violated, without appealing to competent authorities, but within the framework of the law. There is ambiguity in understanding self-defense as a type of legal protection. On the one hand, it restores the violated right; on the other hand, if the restoration of the violated right is carried out by the violator themselves, such restoration can be considered voluntary compensation for harm, but this is not considered legal protection.

Self-defense of civil rights should be understood as the performance by an authorized person of actions permitted by law, aimed at protecting their personal or property rights and interests. However, actual law enforcement measures implemented directly by the authorized individual are not limited to only two cases. It is necessary to distinguish between preventive measures used by an individual to protect their rights and measures of an active defensive nature. Necessary defense and actions, if required, are related to measures of an active defensive nature. Thus, according to I. Zhilinkova, "the method of prevention provides protection of the right in the event that a violation of the right has not yet occurred, but there is reason to believe that it may occur"². Preventive measures include, in particular, measures that the owner uses to protect their property.

The Civil Code provides for the protection of a person's own rights as one of the methods of protection of civil rights without jurisdiction. Article 13 of the Civil Code states that any person has the right to protect his civil rights and the rights of another person from violations and illegal encroachments. Self-defense is the use by an individual of means of resistance that are not prohibited by law and do not contradict the moral foundations of society.

Article 13 of the Civil Code enshrines the right of a person to protect themselves from violations of their rights and illegal encroachments. This article does not specify how self-defence should be exercised, but only that the methods of self-defence should correspond to the content of the violated right and the nature of the violated actions and not contradict the requirements of the law. Therefore, in the Civil Code, self-defense is considered not as one of the means (methods) of protecting civil rights by an authorized individual, but as a mechanism for the independent compulsory elimination of violations of their rights and encroachments on them. At the same time, Article 987 of the Civil Code establishes the limits of the exercise of this right: damage caused when a person exercises the right to self-defense from illegal encroachments, including in the case of necessary defense, if its limits are not exceeded, is not compensated. If a person has exercised the right to self-defense, if he has caused harm to another person, this harm must be compensated by the person who caused it. If such harm is caused by self-defense, which is not prohibited by law and does not contradict the moral principles of society, it shall be compensated by the person who committed the illegal act. The right of the owner or a person who has property on other grounds to take the necessary protective measures in relation to their property is not directly provided for in the current civil legislation. However, such a right exists. This may indirectly stem from a number of civil law norms. Since anti-social phenomena such as theft, robbery and embezzlement have not yet been eliminated in our society,

¹ Андрейцо В. Д. Принудительное исполнение долга в натуре как способ защиты гражданских прав: автореф. дис. ...канд. юрид. науч. – Киев. – 2004. – 6 с.

² Жилинковой И. Превентивный способ защиты права собственности. // Вестник академии правовых наук Украины. №3(42). – 2005. – С. 130-131.

recognizing the right of a citizen or organization to own, operate, and use it, the law also recognizes the right to take the necessary measures to protect this property³.

Article 987 of the Civil Code states that "damage caused when a person exercises the right to self-defense from illegal encroachments, including in a state of necessary defense, if its limits do not exceed, is not compensated."

One of the ways of protecting the right itself is the necessary protection. According to Article 13 of the Civil Code, self-defense of the law means forms of protection of civil rights.

Unlike the latter necessity (defined in Article 988 of the Civil Code), the content of the necessary defense is not fully disclosed. The necessary defense marks are listed in Article 37 of the Criminal Code. Therefore, actions taken to protect the rights and interests of a protected person or other person protected by law, as well as the public interests of the state from socially dangerous encroachments, are considered not to have gone beyond the boundaries of necessary defense if they were carried out by causing harm to a person necessary and sufficient to immediately prevent or stop an encroachment in this situation.

The essence of necessary defense lies in the lawful infliction of harm to the person carrying out a socially dangerous offense, by the person exercising the right to protect protected interests from socially dangerous encroachments, therefore, the issue of liability is not considered on its own.

In the case of necessary defense, both civil and criminal liability are excluded. Criminal liability is excluded as a last resort. However, civil law does not provide for an automatic exemption of the perpetrator from property liability. In this case, the issue of compensation for harm can be resolved in three ways: a) as a general rule, harm caused to a person in connection with the commission of actions aimed at eliminating a threat to the civil rights or interests of another individual or legal entity should be compensated by the threat, if in this situation it is impossible to eliminate this threat by other means (last necessity). The person who compensated for the damage has the right to file a lawsuit against a person who acted in their own interests (Part One of Article 988 of the Civil Code); b) Paragraph 2 of Article 988 of the Civil Code gives the court the right to impose on the person who caused the damage, taking into account the circumstances of the damage in the event of a final necessity, the obligation to pay compensation to the person who intended to compensate for the damage; c) the court has the right to impose on the person who caused the damage an obligation, as well as

A distinctive feature of defensive actions in the context of necessary defense is that they must be directed directly against the threat. A person's actions in response to an attack that caused harm to other people, for example, their loved ones or relatives, are not considered necessary defense. Finally, one of the most important conditions of defense is to avoid going beyond the limits of necessary defense.

Excessions beyond the boundaries of necessary defences may also occur in relation to defences that are not protected in a timely manner. Defense actions are recognized as being carried out in a state of necessary defense only at the onset of aggression or when there is a threat of immediate attack. If a person takes protective measures after the attack ends, various consequences may arise. If the actions of a protected person were committed after the prevention of an aggression in the use of obviously unnecessary means of protection, then such actions should be considered as an act of retaliation - arbitrariness. In such cases, there is no reason to speak of a necessary defense, and the liability of the perpetrator arises on a general basis.

Necessary defense must be distinguished from extreme necessity. If a person inflicts minor harm to prevent significant harm that threatens the interests of the state or society, the rights of an individual or an individual acting or another person, and it is not possible to eliminate the threat to these interests and rights by other means and means (for example, if the driver who is moving causes damage to another car to avoid hitting a pedestrian). Therefore, one of the ways in which a person can protect

³ Грибанов В. П. Осуществление и защита гражданских прав. Изд. 2-е, стереотип. – М.: – Статут, 2001. –С.116.

their civil rights is the actions taken by the authorized person in the event of extreme necessity. The latter necessity has common features with the necessary defense, but at the same time it is significantly different from the latter.

A characteristic feature of the so-called state of ultimate necessity in the law is that in these cases, the elimination of danger is not carried out by traditional means, and the person acting in the state of ultimate necessity is forced to use methods related to causing harm⁴.

At the same time, in some cases, the infliction of harm can be a necessary measure to prevent the risk, while in other cases, the damage manifests itself as a likely event. However, in the event of extreme necessity, the risk of causing harm is prevented by the person who took one measure or another. In other words, from a subjective perspective, damage in the event of ultimate necessity can be intentional or careless. However, in any situation, one condition is required: the damage caused must be less significant than the damage previously received. The ultimate necessity is significantly different from the necessary defense used by both the perpetrator and the victim⁵.

It is precisely in these cases, when causing harm in the event of extreme necessity is committed in the interests of a third party, that the factual relationship between the parties takes on a different character. Three participants in these relationships are Naomyan: the perpetrator, the victim, and the third party acting in the interests of the perpetrator. On the surface, the situation is similar to acting without a task in the interests of a stranger, but there is a situation of causing harm to another person⁶.

Overall, the following conclusions can be drawn about the fact that the enshrinement of fundamental personal rights in legislation, although this is one of their guarantees, is at the same time insufficient for the exercise of these rights. Until the internal need for the right to conduct, awareness of its social significance, and at the same time awareness of the social harmfulness of failure to fulfill a legal duty become a value for everyone, the problem of guaranteeing rights and freedoms remains relevant, especially when it comes to the inalienable rights of the individual. Article 11 of the Civil Code lists only the most common methods of defense used by the court. At the same time, this article and Article 100 of the Civil Code state that civil rights can be protected in other ways provided for by law or contract. Therefore, the choice of method of ensuring subjective law depends on many factors determined by the competent authority, taking into account the specifics of the protected right. Therefore, I believe it is one of the most effective ways of self-defense, and it is positive that it is used with less coercion from the positions of the parties.

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