

INTEREST AS A LEGAL CATEGORY: ESSENTIAL FEATURES

Guyvan P. D.

INTRODUCTION

The legal toolkit for regulation and protection of a person's civil interest is very similar to that used in the mediation of subjective rights. If the legal interest is satisfied by granting its bearer a certain regulatory right, it is achieved with normal interaction of the participants in the relationship. When the interest is violated, as is inherent in any regulatory subjective right, judicial or non-judicial protection will take place already within the scope of the implementation of the protective right, which arose from the legal fact of the offense. It is accepted that when it is implemented, the protection of not the legal interest, but the corresponding violated subjective right will already take place. Usually it really is. But sometimes the Ukrainian law protects the interest. The thing is that interest – various material, personal and spiritual values, capable of satisfying certain needs of citizens or legal entities, is an independent object of legal protection, and this is precisely the case provided for in Art. 16 Civil Code.

The question of whether a person has an interest and the need to protect it is decided by the court, taking into account the specific circumstances of the case. Judicial protection of interest refers to the protection of honor and dignity, in the case of a separate proceeding, in the case of allocation of a larger part of the property to one of the spouses, etc. Therefore, the object of legal protection can be not only subjective rights, but also legal interests. Similar interests of the subject, which can be the object of legal protection, including in court, have received the name protected by law in civil studies. Therefore, an important feature of the interest protected by law is that it is not provided by a specific material right, but at the same time it is taken under legal protection by legislation.

The specificity of the interest, as well as the differences between the legal interest and the subjective right, are most revealing when studying absolute legal relations, for example, in property law. In this case, the content of the owner's regulatory and protective powers simply cannot coincide: the owner's right of ownership is granted to him in order to satisfy his interest in the possession, use and disposal of the thing. Achieving this interest is ensured by the owner obtaining the appropriate legally established powers to own, use and dispose of the property (that is, by exercising certain subjective rights).

Interest is a multifaceted phenomenon, it can be differentiated by various criteria, including material and spiritual¹. As participants in material civil relations, the subjects try to satisfy their interests. It is civil law that allows a person to implement an initiative based on legal equality and free will, aimed at realizing primarily the private interest². By and large, interest cannot be considered a purely subjective phenomenon. One can agree with V. P. Grybanov, who characterizes interest as the need for certain, including property, benefits to meet personal needs. It does not matter whether the subject is interested in such a need³, certain interests may exist outside the consciousness of the bearer. For example, a minor may not be fully aware of his or her interests, but they still exist objectively, regardless of the circumstances. The form of expression of interest is public relations, and legal interest – legal relations. Moreover, as pointed out by G. F. Shershenevich, it should be recognized that law exists insofar as there is a struggle of interests⁴. Most legal scholars recognize the orientation of interest as such a conscious and desirable result of the subject's realization of the opportunities available to him, which leads to the optimal satisfaction of needs.

The term “interest” (Latin interest – to have meaning) has long been used extensively in the legal literature to describe regulatory and protective legal relations⁵. However, unlike subjective law, the law does not have clear criteria for the concept of interest. We consider this a shortcoming of the existing regulations in this area. After all, as it is convincingly proved in the literature, for legal relations definitions play a more important role than in any other sphere of public relations. The quality of development of this branch of legal science depends on the nature of the definition of relevant legal concepts, legal institutions and legal relations with their elements, and the process of application of current norms in practice largely depends on this. In this state of normative development of the issue, the discussion on this definition and its content in civil doctrine continues. Thus, M. A. Gurvich singled out in the legal interest of the person, mainly procedural features⁶. Some researchers believe that the legal interest of a person may be embodied in a certain

¹ Azimov Ch. N. The concept of civil law. *Вісник університету внутрішніх справ*. 1999. № 6. P. 19.

² Kuznetsova N. S. Development of civil legislation of Ukraine: problems and prospects. Almanac of Civilization: a collection of articles. 2008. Is. 1. Kyiv: «Правова єдність» / ed. R. A. Maidanik, 2008. P. 23.

³ Griabanov V. P. Interest in civil law. *Советское государство и право*. 1967. № 1. P. 53.

⁴ Shershenevich G. F. General theory of law: Lectures by Professor of Moscow University GF Shershenevich, read at the Moscow Commercial Institute in 1909/10, Moscow, 1911. P. 83.

⁵ Klaus N. V. The concept of legally protected interest as a subject of judicial protection in civil proceedings. *Вестник Омского университета*. 2002. № 2. P. 93.

⁶ Gurvich M. A. Civil procedural legal relations and procedural actions. Moscow: БЮЗИ, 1965. Т. 3. P. 86.

subjective law, or may not have such mediation⁷. Nevertheless, the analysis of the existing civil law allows us to draw a categorical conclusion that the concept of interest defined in the law implies its substantive, not procedural content, and regulatory law can not exist if there is no interest of the right holder in its implementation.

1. Legitimate and legally protected interests: object of legal satisfaction or legal protection?

In civilization, there is some controversy about the legal nature of such a legal phenomenon as interest. It is quite obvious that such an important social and legal factor as interest has several significant manifestations, radically different in essence. Substantive legal interests are characterized by their reflection in two aspects. First, it is the interest in the court decision, and secondly, the interest as a goal that the subject seeks to achieve by using the powers enshrined in law. The creditor's interest in the obligation is expressed in his desire that the debtor's performance of the action he must perform would not be indifferent to the creditor, that he attached some importance to the performance of the obligation. First, consider the last manifestation of a person's interest. There is a common concept in the literature that the interest of a subject may or may not be recognized by law. In the first of these cases, it becomes a legitimate interest⁸. This legitimate interest is carried out within the regulatory or protective legal relationship due to the powers provided for in the relevant rules of law. For example, the owner's interest in the possession, use and disposal of property belonging to him is ensured by the normative granting him certain powers.

Contract, as a legal category provides for the presence of not one specific interest, but several. They belong to different participants in the relationship, may not occur simultaneously and are counterproductive⁹. For example, when concluding and implementing civil law agreements, a specific property result is achieved, related to the possession or use of the thing, etc. However, such a result is not an end in itself, it serves as a means of satisfying certain needs, interests that have a material or spiritual meaning. Meaningful interest determines the purpose and motive of behavior. For example, the purchase of a computer results not only in the exercise of a person's property rights in

⁷ Chechot D. M. Subjective law and forms of its implementation. Leningrad : Издательство ЛГУ, 1968. P. 39.

⁸ Krashenninnikov E. A. Interest and subjective civil law. *Правоведение*. 2000. № 3. P. 133; Krashenninnikov E. A. The legal nature of the legally protected interest. *Bulletin of the Supreme Arbitration Court of the Russian Federation*. 2010. № 5. P. 72.

⁹ Guzhva A. M. The role and place of the category of interest in contractual obligations. *Актуальні проблеми держави і права*. 2010. Vip. 53. P. 268.

possession, use and disposal, but also in the satisfaction of his non-property interests related to obtaining information and so on.

If the satisfaction of a legitimate interest occurs by giving its bearer a certain regulatory right, it is achieved through the normal interaction of the parties. Therefore, as is the case with any regulatory subjective right, its violation and lack of interest is devoid of coercive protection and cannot be its subject. Judicial or non-judicial protection will take place within the framework of the implementation of the protection law, which arose from the legal fact of the offense. However, its implementation will already protect not the legal interest, but the corresponding violated subjective right¹⁰.

As we can see, for those civil relations where the satisfaction of the legitimate interest is facilitated by the relevant regulatory powers of the bearer, the categories of “legitimate interest” and “subjective right” are closely related. By exercising the subjective right, which ensures the necessary behavior of obligated persons and the possibility of their own behavior, the commissioner thus satisfies his certain interest. This is recognized by almost all researchers, and there are almost no differences on this issue. These differences begin when comparing the role and place of interest with subjective substantive law. Thus, G. F. Shershenevich believed that subjective law is an order of magnitude higher. He pointed out that the subjective right is the power to exercise their interest, instead, the presence of interest does not create a right¹¹.

Other researchers have taken a more serious interest in the legitimate interests of civil parties, given that subjective rights reflect vital interests of public importance. Therefore, according to the theory of interest, first developed by the German scientist R. Yeering, interest is classified as a substance of subjective law and its essential element¹². It was this question of the legitimate interest in substantive law that became the stumbling block that led to the long-running and ongoing scientific debates in civil law. The question of whether subjective civil law is of interest in the doctrine differed. Some scholars have ruled out its existence in subjective law, pointing out that interest is only the goal, not the essence of law, in turn, law is only a means of ensuring the realization and protection of interests. From the point of view of other researchers, the content of subjective law covers not only certain behavior of entitled and obligated persons, but also the interest, the satisfaction of which occurs in the case of its implementation.

¹⁰ Krasheninnikov E. A. Interests protected by law. Teaching notes of the University of Tartu. Tartu, 1988. P. 235.

¹¹ Shershenevich G. F. General theory of law. in 4 issues. Moscow, 1910–1912. P. 607–608.

¹² Ihering R. Geist des römischen Rechts auf den verschiedenen Stufen seiner Entwicklung, 2. Aufl. Teil III. Leipzig, 1971. P. 328.

A number of scientists, such as O. S. Ioffe, A. V. Venediktov, Y. K. Tolstoy, S. S. Alekseev supported the above theory of R. Yeering. They note that along with the powers to the content of subjective law should include an indication of the interest in order to satisfy which the person is given a measure of possible behavior¹³. In particular, S. S. Alekseev points out that taking into account the moment of interest in the concept of subjective law will more fully reveal the importance of law in the system of public relations, its role as a legal means of ensuring vital interests, and thus link the analysis of subjective rights with real relationships, and ultimately – with the economic basis of society¹⁴. Yu.K. Tolstoy also postulates interest as a necessary and leading element of the content of subjective law¹⁵. O. S. Ioffe also proceeded from the position that subjective law provides legal protection of the interests of the commissioner, and it is in the interest, which is aimed at the behavior of obligated persons, and not in the authority of the person entitled to this behavior, is according to the author, the main meaning of subjective law. Therefore, interest is an integral part of subjective law, and its exclusion would lead to the fact that the latter would remain meaningless from the point of view of its bearer¹⁶.

The second group of scientists, among whom we find well-known names: S. N. Bratus, V. P. Grybanov, V. O. Tarkhov, E. A. Krasheninnikov, holds the opposite view. Developing the main theses of their opponents that the subjective right belongs to its holder in order to satisfy its interests and it is a legal means to achieve this result, these scientists come to a seemingly convincing conclusion. It consists in the following: the interest and the subjective right that ensures its satisfaction are interrelated as the goal and means of achieving it; the goal can never be an integral part of the tool, they remain external to each other¹⁷.

However, the concept outlined in the previous paragraph, despite all its external persuasiveness, cannot be accepted. Her well-founded criticism has already been heard in civilization. A rather interesting attempt to resolve these contradictions and gain a common understanding for the legal significance of the legitimate interest was made by E.Ya. Motovilovker. In particular, he rightly points out that the interest of a certain person in a regulatory legal relationship is not achieved due to the fact that he has certain powers that are

¹³ Venediktov A. V. State socialist property. Moscow-Leningrad : USSR Academy of Sciences, 1948. P. 37-39.

¹⁴ Alekseev S. S. Problems of the theory of law. Sverdlovsk : Издательство Уральского университета, 1972. Vol. 1. P. 218.

¹⁵ Tolstoy Yu. K. On the theory of legal relations. Leningrad : Издательство Ленинградского Университета, 1959. P. 45.

¹⁶ Ioffe O. S. Selected works on civil law. Moscow : Статут, 2000. P. 556.

¹⁷ Krasheninnikov E. A. Interest and subjective civil law. *Правоведение*. 2000. № 3. P. 139.

part of subjective substantive law. Rather, these powers can be seen as prerequisites for the legitimate interest. Interest is achieved as a result of certain behavior to which the carrier is entitled. This is the power to take action on one's own or to require a specific obligation from the debtor. But it is the commission of a certain act, and not the right to it, will ensure the satisfaction of the real interests of the person. Therefore, the existence of the right to satisfy a certain interest does not mean the actual realization of this interest. Having the right to satisfy his interest, a person actually has a real opportunity to achieve this interest, which arose from a certain legal factor (for example, a transaction), by committing conduct, the implementation of which is the realization of the right¹⁸.

For example, the satisfaction of the lessor's interest in obtaining his property after the expiration of the contract is achieved not due to the expiration of the prescribed period, but as a result of certain actions by the counterparty. And only in this sense can we use the common definition in the literature of subjective civil law as a means of realizing a certain interest of the person.

Thus, the civil law regulation of social relations is aimed not only at the exercise of subjective law, but also to satisfy the interests of the authorized person. Therefore, interest, regardless of the content of the legal relationship, arises earlier and regardless of subjective law and is a prerequisite for the acquisition of the latter. But only through the entry of a person into a specific legal relationship regarding the realization of the need is the satisfaction of interest. It is through certain civil relationships that the process of achieving the goal, obtaining the good, the mechanism of choice begins to work effectively¹⁹. The relationship between interest and subjective civil law is precisely that interest is a prerequisite for the emergence, realization of subjective civil rights, and the latter, in turn, is a legal means of satisfying interest, because it is through subjective law interest is realized²⁰.

As we can see, the satisfaction of a legitimate interest in those cases where the interest is a prerequisite for the emergence of normatively established substantive law, is carried out in a regulatory manner by committing acts of active conduct by the creditor or debtor. However, we can often find the assertion that the subjective right is granted to a person not for the purpose of

¹⁸ Motovilovker E.Ya. Interest as an essential moment of subjective law (civilist aspect). *Известия ВУЗов: Правоведение*. Scientific and Theoretical Journal. St. Petersburg : St. Petersburg Publishing House. University, 2003. № 4. P. 53–54.

¹⁹ Saitgalina Zh.R. Interest as a prerequisite for the emergence of subjective civil rights. *Problems of jurisprudence and law enforcement*. Collection of scientific articles. *Donetsk Institute of Internal Affairs at DNU*. № 2. 2001. P. 378.

²⁰ Gribanov V. P. Interest in civil law. *Советское государство и право*. 1967. № 1. P. 53–54.

satisfaction, but to protect his legitimate interest, which appeared in public life and is recognized by the legislator²¹. This legal position is erroneous. After all, as we have shown in previous sections of this paper, regulatory legal relations, in essence, can not be aimed at protecting subjective law, such authority is not part of their content. Thus, we should agree with the position of those researchers who point out that all regulatory subjective civil rights are a means of satisfying the legitimate interests of the bearer²².

Meanwhile, in Art. 16 of the Civil Code of Ukraine, the interest is specified as an independent object of legal protection. In other words, the legislation provides for such a case when the interest is not realized through a certain subjective right, but is subject to judicial protection²³. By the decision of the Constitutional Court of Ukraine № 18-пн / 2004 of December 1, 2004 the interests protected by law are interpreted as the desire to use specific tangible or intangible property, as conditioned by the general content of objective law and not directly mediated in subjective law simple legitimate permission, which is an independent object of judicial protection and other means of legal protection in order to meet individual and collective needs that do not contradict the Constitution and laws of Ukraine, public interests, justice, fairness, reasonableness and other general legal principles²⁴.

Let's analyze this question in more detail. Socially regulated social interests take the form of subjective rights and legal obligations, or legal interests. In case of their violation, the person's interest in judicial protection arises, which is realized through the protection of subjective rights. So, as follows from the provisions of Art. 16 of the Civil Code of Ukraine, a person may apply to the court for protection of his violated right and interest: these are two independent objects of legal protection. We will give a separate description of these objects. Subjective law is a measure of a person's possible conduct provided by law. It consists in the possibility of committing certain actions by the right holder and requiring adequate behavior from the obligated person (persons). The need to protect subjective rights arises from any deviation from the statutory rules of possible or obligatory conduct.

This thesis does not contradict the generally accepted statement that the element of interest exists in any subjective right, because the implementation

²¹ Chechot D. M. The problem of protection of subjective rights and interests in the order of non-claim proceedings of the Soviet civil process : Abstract. diss. ... Doct. jurid. Science. Leningrad, 1969. P. 10.

²² Krashennikov E. A. Interest and subjective civil law. *Правоведение*. 2000. № 3. P. 140.

²³ Shishka R. B. Approaches to the concept of "protection of subjective rights". Problems of protection of the rights of participants of civil legal relations. Collection of reports and abstracts. Makeyevka-Kharkiv, 2007. P. 14.

²⁴ Judgment of the Constitutional Court of Ukraine № 18-пн / 2004 (case of interest protected by law) of 1 December 2004. URL: <http://zakon5.rada.gov.ua/laws/show/v018p710-04>

or protection of subjective law always ensures the exercise and protection of the interest underlying the law. However, sometimes the interest – various material, personal and spiritual values that can meet the needs of citizens or legal entities, is an independent object of legal protection, and this is the case provided for in Art. 16 CC. The question of whether a person has an interest and the need to protect it is decided by the court taking into account the specific circumstances of the case. Judicial protection of interests is involved in the protection of honor and dignity, in cases of separate proceedings, in the allocation of one of the spouses of most of the property, and so on.

As we can see, not only subjective rights but also legal interests can be the subject of judicial protection. Such interests of the subject, which can be the object of legal protection, including in court, are called in civil law protected by law. Regarding the legal nature of the interest protected by law, there are various legal qualifications of this phenomenon in the literature. Thus, at one time the thesis was expressed, according to which the protected interest is understood as a social interest, not mediated by regulatory subjective law, but one that has received recognition by law by providing its subject of protective subjective civil law as protection of this interest²⁵. In other words, a sign of the interest protected by law is that it is not provided with a specific substantive law, and yet still taken by law under legal protection. Thus, this interest is reflected in the rules of law or one that follows from the general sense of law, “simple legal permissibility”, which is manifested in the desire of the subject to enjoy a certain social good, although it is not provided with a specific legal obligation, but taken legislator under protection.

A similar position was put forward by the Constitutional Court of Ukraine, which in 2004 interpreted the concept of “legally protected interest” used in Part 1 of Art. 4 of the CPC and other laws of Ukraine. This term in the logical and semantic connection with the concept of “law” should be understood as the desire to use specific tangible or intangible goods, as due to the general sense of objective and not directly mediated in subjective law simple legitimate permission, which is independent of object of judicial protection and other means of legal protection in order to meet individual and collective needs that do not contradict the Constitution and laws of Ukraine, public interests, justice, fairness, good faith, reasonableness and other general legal principles²⁶.

We support this doctrinal and law enforcement concept, according to which the right to protection have only those interests of the person who are

²⁵ Krashenninikov E. A., Lisova T. N. Notes on legally protected interests. Questions of the theory of interests protected by law. Abstracts of reports. Yaroslavl, 1990. P. 3–5.

²⁶ Judgment of the Constitutional Court of Ukraine № 18-пп / 2004 (case of interest protected by law) of 1 December 2004. URL: <http://zakon5.rada.gov.ua/laws/show/v018p710-04>

not directly recognized by law and are not provided by the normatively appropriate regulatory mechanism²⁷. They may arise in the implementation of the protection relationship and do not coincide with the direction of the violated regulatory law. An example of such a protected interest is the interest in the division of marital property with a departure from the principles of equality of shares of the spouses, based on those that deserve attention, the interests of one of them or the interests of children. Such interests can influence a court decision, so it is subject to judicial protection. Some researchers point out that the interest protected by law is always included in the legal basis of negative claims for recognition, as well as some types of conversion claims²⁸.

However, we have to hear such scientific assumptions that the protection of the relevant legal interest occurs every time the judicial implementation of the substantive protection of substantive law. Because, they say, in most cases, the protection of subjective rights satisfies the interests of the individual, and the protection of subjective rights is also the protection of legitimate interests²⁹. In our opinion, such a thesis deserves critical evaluation. The fact is that there is an actual mixing of the concepts of “protection” and “protection”. Meanwhile, the legal position that these two phenomena are different legal categories has long been generally accepted. Protection is a common law phenomenon. Unlike protection, it not only ensures the restoration of violated rights and interests, but also creates the preconditions for the development of civil relations in a normal, intact state. Therefore, we must support the prevailing view in science that protection is the establishment of a general legal regime, while protection is a measure applied in cases where civil rights are violated or challenged.

Legal protection requires an appropriate object of protection. In civil law, such an object is a subjective right. As already mentioned, it is through the implementation of subjective rights that the interests of the individual are primarily satisfied, and the protection of subjective rights is at the same time the protection of legitimate interests. However, in addition to the protected interest enshrined in subjective law, protection may be provided for interests that are not regulated by law. According to researchers on this issue, the most optimal form of protection of the interests of the person protected by law is a

²⁷ Butnev V. V. The interest protected by law: the concept and mechanism of protection. Questions of the theory of legally protected interests. Yaroslavl, 1990. P. 11.

²⁸ Osokina G. L. Course of civil proceedings in Russia. The general part. Textbook. Tomsk: Tomsk University Press, 2002. P. 420.

²⁹ Kozukhar A.N. Judicial protection of interests protected by law. Problems of improving the legislation on the protection of subjective civil rights: Collection of scientific works. Yaroslavl: Yaroslavl Publishing House. University, 1988. P. 110.

separate proceeding³⁰. However, in some cases, a subjective right cannot be protected in a separate proceeding. In particular, this is due to the fact that in cases of separate proceedings there is no dispute about the right, but only the establishment of facts that have a certain legal significance, and such cases can not be resolved by lawsuit. When the relative protection and legal obligation is realized in court, the interests are an independent subject of judicial protection in such cases.

Thus, by exercising the substantive right to sue, the violated regulatory substantive right or interest is judicially protected. As already mentioned, the direct object of the legitimate interest in the judicial implementation of the protection relationship are only those interests that have not been provided by regulatory subjective law. We have already pointed out that quite often the content of regulatory law and the protection law that protects it do not coincide: the right to sue is realized through a requirement that is not part of the protected civil law. There is an opinion that in this case we cannot talk about the protection of subjective rights, but only about the protection of the legally protected interest. Thus, satisfying the requirement to terminate the contract due to its breach, the court terminates the regulatory rights and obligations of counterparties, while protecting not the subjective right, but the applicant's interest in terminating the contractual obligation³¹. Moreover, the author points out that as a result of the court's enforcement of a claim, the court protects either regulatory civil law or the interest of the individual, as the content of the claim for protection of rights and the content of the claim for protection of interests necessarily differ. In particular, in the process of releasing property from seizure, the legally protected interest is protected by recognizing the ownership of the seized property, and the regulatory right – by implementing the requirement to release property from seizure³².

However, in our opinion, this rule is not of general importance, it should be considered only in the context of its application to cases where the protection of regulatory law through the implementation of the relevant requirement is impossible due to its termination as a result of violation or impractical. Thus, in the example commented above, the court's satisfaction of the owner's request to release the property from seizure also means protection of property rights, regardless of whether the claim for recognition of ownership of the seized property was the subject of the claim. In addition, the protection of subjective rights and interests is not always mediated through

³⁰ Gerus V. I. The relationship between the concepts of “defense” and “protection” of property rights. *Science Time*. 2014. № 11. P. 37.

³¹ Krashennnikov E. A. The subject of judicial protection and the subject of implementation in the claim proceedings. Mechanisms for the protection of subjective civil rights. Collection of scientific works. Edited by V. V. Butnev, Yaroslavl. 1990. YarSU. P. 18.

³² *Ibid.* Pp. 20–21.

claims of different content. Thus, a tort claim can be a means of protecting both the property rights while the thing exists and the way to protect the interests of the former owner when the thing is destroyed.

From the above we see one important feature inherent in the legal mechanism of protection of legally protected interests: the latter arises simultaneously with the offense, ie from the time of the emergence of subjective protection law and is implemented in the process of judicial protection. This means the absence of this interest in the regulatory state, it arose from the violation and does not necessarily coincide with the content of the violated substantive law. Therefore, when filing, for example, a request to terminate the lease agreement in connection with the improper use of property by the lessee is not protection of the lessee's right to return the thing, and enforcement of the relevant security requirements aimed at satisfying the legitimate interest in restoring legal status, which existed before the agreement. As we can see, the protection of the legally protected interest, as well as the protection of violated regulatory rights is achieved through the judicial implementation of protective subjective substantive law.

2. Interest of a person in obtaining protection of his subjective right

The court enforces the protection of subjective rights, and, if established by law, protects the legally protected interest that arises after the violation and its content does not coincide with the violated right. But you should be very careful. Because the protection of legal interest occurs, firstly, if it is directly regulated by law, and secondly, if the envisaged method of protection is not aimed directly at protecting subjective rights. Thus, it would be wrong to claim that a law enforcement authority, in pursuing, for example, claims for compensation for damage to health, does not protect health as a material good, but a person's interest in compensating him for property consequences caused by damage to health. After all, the right to health care in this way is directly provided by law. With this approach, there is a substitution of concepts, artificially changing places of protected and protective powers of the person. Therefore, it is possible to come to the wrong conclusion about the judicial protection of a protective (protective) right or interest. In fact, it is clear from the definition that infringement (ie, regulatory) is protected in court. Such protection consists in the exercise of subjective protection law through state coercion – claims.

The most revealing legal situation, illustrating the legal mechanism of protection of legitimate interests, in the literature is the order of protection of honor and dignity of the person. For example, according to the law, the dissemination of information that does not correspond to reality and also insults the honor and dignity of the citizen gives the latter a subjective right to

demand refutation of such information and also to compensate for material and moral damage. Thus, a person is endowed with a protection right, which is enforced by a law enforcement body, and thus the legally protected interest is satisfied by refuting this information. Everything here would seem transparent. However, one caveat arises: the general rule is that protection is provided only to those interests that have been deprived of legal support in the regulatory regime.

In our case, legal (including judicial) protection is provided, it would seem, therefore to the socially significant interest of a particular person who has regulatory regulation within the relevant absolute legal relationship. After all, the subjective substantive right to honor and dignity is undoubtedly part of the regulatory substantive right of a person. An understanding of the legal nature of the relevant rule is achieved in this case by realizing the fact that the protected good specified in the law should not always be perceived in a straightforward manner as an object of protection. In our situation, the right holder has a subjective right to protection from the time of the violation. It consists in demanding the cessation and compensation of the consequences of illegal dissemination of information that discredits the honor and dignity of the citizen. All this is called in the literature the protection of honor and dignity. But, in fact, these factors are elements of the regulatory legal relationship, and their protection is manifested in the implementation of the relevant protection requirement. In turn, its implementation protects the legally protected interest, which is to restore the proper conditions for the formation of his public or personal appreciation by refuting information that would tarnish his honor and dignity³³.

It should be noted that the definition of a legally significant interest is not limited only to the satisfaction of specific private goals or the receipt of certain benefits by its bearer, it in a broad sense represents the interest of a person in achieving various economic goals in social relations with the help of opportunities provided by legal means. In view of the above, it is necessary to distinguish the concept of interest as the goal of exercising a subjective right or the object of protection from another guise of interest as an interest in obtaining a human rights result, which takes place during the concretization of civil-law relations.

The content of interest reveals the need of a person through certain actions. In this sense, interest is a reflected need that passed through consciousness and took the form of a meaningful motivation. It is through the volitional exercise of subjective rights that interest is realized. If the interest is absent

³³ Fikentscher W. Schuldrecht. 9 Aufl. Berlin ; New York : Walter de Gruyter, 1997. P. 759; Schwab D. Einführung in das Zivilrecht:einschließlich BGB – allgemeiner Teil. 13neubearb, Aufl. Heidelberg, Müller. 1997. P. 133.

for any reason, the material right may remain unrealized, despite the powers inherent in it. This also applies to the possibility of exercising a subjective right, which is in the state of the right to sue, that is, exercising a subjective right forcibly through the mediation of a competent state body or by other means. Sometimes the need for the same goods gives rise to different interests. Therefore, it is the individual's interest that largely determines the method of protection.

Among the different orientations of such interests, a legally significant interest can be distinguished, which consists in achieving a certain goal with the help of the involvement of judicial authorities³⁴. In particular, Art. 4 of the Civil Code of Ukraine states that any interested person has the right, in accordance with the procedure established by law, to apply to the court for the protection of a violated or disputed right or an interest protected by law. There is an ongoing discussion in the literature about the content of this interest. Some scientists point to the procedural and legal nature of a person's interest in the outcome of a judicial review of a dispute. That is why a person's interest is a prerequisite for the right to appeal to the court. Others point out that it will be determined during the trial whether the plaintiff has an interest in the court decision.

According to some researchers, the right to sue can be exercised, and legal proceedings make sense when the plaintiff has a certain interest in the legality of the court decision. Otherwise, the court terminates the proceedings in the case, since the plaintiff does not have the right to sue. Is this statement true? If we consider the person's procedural interest in the resolution of the dispute, then this assumption is quite correct: the presence of the subject's procedural interest before the start and movement of the process determines the very possibility and expediency of the judicial body taking appropriate actions.

It should be noted that until very recently, legal science recognized the existence of only two, albeit related, but different elements of law: a civil-law material relationship and a public-law relationship regarding the protection of material law by an authorized body (court)³⁵. The latter consisted of the authorized person having the right to apply to the authorized body and the duty of this body to take certain actions that ensure such protection. Based on this, in V. M. Gordon's opinion, the right to a lawsuit consists in submitting, regardless of the content of the material obligation, a demand to the state law enforcement body to issue an objectively correct and legally binding

³⁴ Chechot D. M. Subjective law and forms of its implementation. Leningrad: Издательство ЛГУ, 1968. P. 35–42.

³⁵ Muther T. Zur Lehre von der romischen Actio, dem heutigen Klagerecht, der Litiscontestation und der heutigen Singularsuccession in Obligationen: eine Kritik des Windscheidschen Buches Die action des romischen Zivilrechts, vom Standpunkte de heutigen Rechts. Erlangen : Deichert, 185. VIII. 198 S. 10–12.

decision³⁶. As we can see, in the annotated works, the right to sue was considered as the ability to go to court in case of violation of material law.

Indeed, the procedural right to a claim does not depend on the content of the material legal relationship, the presence of facts indicating a violation or danger of violation of a material right cannot be a prerequisite for the right to file a claim. But, as we found out in the previous chapters of this work, the presence of procedural prerequisites (interest) is far from exhausting the concept of a person's interest in judicial protection of his violated subjective right. Therefore, the issue must be considered comprehensively, taking into account the impact of material legal interest on the validity of the process. Therefore, there is no doubt that the legal grounds for such an appeal (interest in legal protection) must be substantiated not only by procedural factors (which, of course, is an essential element of such interest), but also by civil law circumstances: the existence of the right itself, its violation etc. That is, the right to a lawsuit in the procedural sense (the right to take protective actions) is based not only on the procedural, but also on the civil law basis. The right to start the process undoubtedly follows from the procedural and legal prerequisites, but the absence of a violation of the right established during the process leads to the impossibility of obtaining protection. It is precisely as the interest of the exercise of civil law that the material legal interest in legal protection should be understood, otherwise the right to a lawsuit does not contain a specific content.

The doctrine and separate legislative acts of foreign countries support the thesis that in some cases only the existence of a material and legal interest of the plaintiff in the court's decision can give grounds for a lawsuit. In particular, such a situation is typical for the presentation of claims for recognition (for example, a claim for recognition of the right of ownership). It is about the fact that when filing a lawsuit for recognition, the plaintiff's legal interest in the court decision can only take place when the right, the recognition of which he claims, is disputed or not recognized by the defendant. In the event that the latter does not take such actions, we can say that both the plaintiff and the defendant have no interest in the court's decision: any decision will not eliminate the uncertainty between the plaintiff and the defendant due to the absence of any contradictions between them regarding the subject of dispute.

What does modern Ukrainian civil law say about this? Unfortunately, it is not consistent and contains certain contradictions in the determination of the material grounds for legal protection: on the one hand, the right to judicial enforcement of a protective legal claim arises only when the plaintiff's right

³⁶ Gordon V. M. *Lawsuits for recognition*. Yaroslavl : Тип. губ. земск. правл., 1906. P. 92, 109, 110, 113–115, 196–198, 205, 258, 356.

is violated by the defendant, that is, if the plaintiff has a material legal interest to a court decision (For example, Part 2 of Article 389 of the Civil Code of Ukraine provides an opportunity to protect the right in the event that the plaintiff subjectively foresees the possibility of a violation of his right by another person. At the same time, the reality of such a possibility of violation of the right and its physical possibility (that is, the existence of grounds for a lawsuit) will be evaluated already during the consideration of the dispute on its merits.), on the other hand, the legislation indicates the possibility of legal proceedings without any violation of rights by the defendant (for example, Article 393 of the Civil Code provides for legal proceedings if the plaintiff loses, without the participation of other persons, a document certifying his property right). The defendant in such a process can be any person who, in the opinion of the plaintiff, may violate his right in the future. Therefore, modern Ukrainian legislation does not provide an answer to the question of whether the existence of a plaintiff's material interest in a court decision is a necessary prerequisite for a court proceeding (that is, whether the fact of violation or threat of violation by the defendant of the right belonging to the plaintiff must be established before the start of the trial).

However, despite the obvious ambiguity of individual normative prescriptions, this issue has been resolved in the doctrine and law enforcement practice, and such resolution occurs as follows. Unlike the right to legal protection, which is realized only if the plaintiff has a material legal interest in the court decision, the procedural right to a lawsuit does not depend on the presence or absence of a material reason for the lawsuit. This is due to the fact that the establishment of facts that give rise to a legal interest in a court decision itself takes place in an already started process, and necessarily with the participation of the defendant. Therefore, the court is forced to start the process, and already during it to establish the existence of a material interest of the participants

Therefore, the plaintiff's civil-law interest in a court decision cannot be considered a necessary prerequisite for filing a lawsuit, it can be qualified as a prerequisite for legal protection, that is, as a prerequisite for the realization of the substantive right to a lawsuit and the exercise of protective authority. The presence or absence of such an interest of the plaintiff, and therefore the right to legal protection, will be established upon consideration of the dispute. It happens that during the review of the dispute, it turns out that the right does not belong to the plaintiff or it was not violated by the defendant. In this case, it is established that the plaintiff has no material and legal interest in the court decision. However, since he continues to be among the participants in the process, his procedural interest in the outcome of the process continues to exist at all stages.

If we consider the issue of the possibility of realizing the material right to a lawsuit depending on the legal interest of the person, which is the objective state of the law, then it is obvious that only in the case of the existence of the right itself and its violation by a certain subject (threat of violation), judicial protection will take place. It is the interest of the authorized person in the forced exercise of the subjective right that forms the basis for the application of judicial coercion. Thus, the specified facts that determine the legal interest of a person are the basis for a material right to a lawsuit. Moreover, the law calculates the term of validity of such a right from the moment of the violation.

Is the legal material interest in the court decision, the plaintiff's subjective right violated by the defendant, lost with the expiration of the statute of limitations for the corresponding claim? This question can be answered as follows. Although the legal category of legal interest is a subjectively inherent aspiration of a person, it must be ensured by some legal regulators that transfer interest from the category of desired to realized phenomena. The statute of limitations is the period of existence of a material protective right, which consists in the possibility of obtaining compulsory protection of regulatory law. With its expiration, as a general rule, the possibility of legal protection ceases, therefore, during the consideration of the dispute, it will be established that even if the plaintiff has a civil right and it is violated by the defendant, he has lost his material interest (or, in other words, his interest has lost the ability to satisfy) in the court decision, because he missed the ancient deadline for defense without valid reasons.

The possibility of protecting the violated right is determined not only by the duration of the lawsuit, but also by the period of existence of the interest of the right holder, provided with the possibility of exercising the protected right. For example, after the delivery deadline is missed, the buyer may lose interest in the morally outdated product, and, in fact, in the seller's performance of the corresponding duty. This means that regardless of the expiration of the statute of limitations, the authorized person has no interest in protecting the violated right. Thus, the time factor affects the possibility of protecting a subjective right a) due to the statute of limitations, b) due to the presence of an interest in protection, which in turn depends on the existence of an interest in the violated material right itself.

The right to appeal to the court is not subject to statute of limitations, which is another proof that it is unrelated to the specified objective prerequisites of the lawsuit. In the event that the lack of procedural prerequisites or the proper implementation of the procedural interest in judicial protection is discovered in the initiated process, the law enforcement body must stop the proceedings. But the theory according to which the same consequences occur if the absence of the specified objective material prerequisites is discovered is obviously

erroneous. As noted, their presence or absence can only be established during the case review, taking into account the procedural capabilities of the participants in the process. When it is established during the court proceedings that the plaintiff has no material legal interest (she has a subjective material right and its violation by the defendant)³⁷, the law enforcement body must not stop the proceedings, but refuse to satisfy the claim on the grounds that the plaintiff has no right at all to the lawsuit.

Thus, the presence or absence of the specified legal interest of the parties to the dispute can be determined only after a court decision is rendered. At the same time, not only the plaintiff, but also the defendant are the interested subjects regarding the legality of the court decision. Thus, when the claim is rejected due to its groundlessness, it actually turns out that the defendant's interest was satisfied as a result of the case consideration. Therefore, it is precisely the refusal of the claim, and not the termination of the proceedings in the case, that will satisfy his interest and protect the material right from the groundless demands of the plaintiff. For example, the claim was not brought against the person obligated under the contract, or during the consideration of the case it turned out that the violation of the material right specified in the claim did not occur. In such a case, there is no right to sue in the material sense, the statute of limitations has not begun, although the plaintiff has exercised the right to appeal to the court (the right to sue in the procedural sense). Termination of the proceedings in the case does not provide an answer to the question of the protection of the right. On the other hand, the denial of a lawsuit motivated by the lack of the right to defense clearly defines the legal position of the parties to the relationship: the court provides protection to the interests of this particular defendant.

So the following conclusion can be drawn from the above. In order to activate the legal mechanism of judicial protection of the subjective right, it is necessary to have a legal interest of the person who needs such protection. This interest of a person in the judicial protection of his violated rights, in contrast to the interest protected by law, which has an exclusively material-legal nature, contains both a procedural component and a material one. Procedural interest consists in obtaining the necessary decision from the court³⁸. However, this interest in obtaining a decision must be based on a specific material and legal basis, which can be characterized as a person's material interest in legal protection. The material interest is personified in the subjective protective civil law and its enforcement, while the procedural interest of a person in applying to the court is the interest in violation of

³⁷ Gordon V. M. *Lawsuits for recognition*. Yaroslavl : Тип. губ. земск. правл., 1906. P. 326.

³⁸ By the way, the procedural interest in the court decision is inherent not only to the plaintiff, but also to the defendant: the latter's interest consists in obtaining a refusal to satisfy the claim.

judicial activity as a means of realization of the corresponding material benefit. And the existence of a person's material interest in legal protection can be established only during the judicial review of the dispute on the merits, therefore the point of view about the need for pre-procedural clarification of this interest is erroneous.

It may turn out that the person who appealed to the court to protect his right and interest does not have such a right and interest. In this case, the person does not have the right to defense, that is, he does not have the right to sue in the material sense. However, as already indicated, this does not in any way affect a person's ability to go to court or exercise his procedural right to sue. When filing a lawsuit, the participants in the process always have an interest in a court decision: the plaintiff has an interest in meeting his demands (which, however, may not be based on legal prerequisites), the defendant has an interest in rejecting the lawsuit. At the same time, let's repeat, the indicated interest in the court decision should not be confused with the civil-law interest of a person protected by law, in our opinion, it should rather be defined as the interest of the participant in the process in its outcome. Moreover, the specified interests (interests) of the parties always exist in the process, regardless of the legal validity of the stated demands.

The point of view according to which the plaintiff has a legal interest in the court decision only if there are legal prerequisites for the claim, and the defendant – if the claim is groundless, should be considered erroneous. In this case, there is an unjustified identification of material legal interest and procedural interest in the decision of the law enforcement body. The legal interest of both parties to the court decision always exists and it is not connected with the existence of a civil-legal interest. Another thing is that satisfaction of such an interest can only take place on certain legal grounds. Protection in the judicial procedure is subject only to the actually existing civil law, the presence or absence of which, in fact, is revealed as a result of activities for the administration of justice. And only the satisfaction of the claim or its refusal leads to the satisfaction of the civil interest of the participants in the process, the interest in the court decision (the procedural interest that every participant in the process always has) is not realized by the court, but can be satisfied or not (However, the legislation contains certain exceptions to this rule, when the lack of legal interest in the court process and the decision in the case of the plaintiff (failure to appear at the court session without valid reasons or his failure to comply with the court's requirements lead to the abandonment of the claim without consideration).

On the other hand, the closing of the proceedings in the case cannot always be considered as judicial protection of the defendant's interests. For example, if the plaintiff refuses the claim and the court accepts such refusal, the proceedings in

the case are closed. However, this does not provide certainty about the content of the material legal relationship itself: the court decision cannot be considered as an act of justice that confirms or denies the existence of the material right of the parties to the dispute. Thus, in a claim for recognition of ownership of property, the closing of the proceedings in connection with the rejection of the claim does not make it possible to establish the valid owner, and a repeated dispute on this issue between the same parties becomes impossible. In turn, this leads to the uncertainty of the legal status of the property, its balance sheet ownership or the possibility of its further disposal.

CONCLUSION

Given the above, we can reach the following conclusion. Legal interest is a legal category, which, along with subjective substantive law, is recognized by law as an immanent component of the legal status of the managed person. In this case, such interests can be satisfied within the regulatory interactions of the subjects, if they are provided by the authorized subjective civil law. Such interests, being realized through the proper conduct of the parties, have no protective properties and are not subject to protection. Another interest group (legally protected interests), on the other hand, has no regulatory mediation. They arise from the fact of the offense and do not coincide in content with the requirements arising from the protection and legal relationship. To protect them, it is also necessary that the implementation of the protection requirement was directed in this direction and such direction was provided by law. Thus, awareness of the private interest alone is not enough to satisfy an interest or obtain its legitimate protection. Its bearer needs to perform certain actions of a fairly wide range, starting from the actions of realization of opportunities provided by subjective substantive law, and ending with actions to protect³⁹.

The most obvious difference between legitimate interests, which are realized within the framework of regulatory relations and protected by the implementation of protective relations is manifested in the study of absolute legal relations. Let's illustrate this by analyzing property rights. In this case, the content of the regulatory and protective powers of the owner simply can not match, and this is just good enough for research. Thus, the property right of the holder is granted to him in order to satisfy his interest in the possession, use and disposal of the thing. The achievement of this interest is ensured by obtaining the owner of the relevant statutory powers – to own, use and dispose of property. Now consider the legal situation where the owner's right is violated by the wrongful acts of another person.

³⁹ Venediktova I. Category of interest protected by law in the civil law of Ukraine. *Частное право*. 2013. № 1. P. 158.

For example, in the case of a breach of possession, any claim of a person aimed at eliminating the violation or terminating its consequences will not be identical to the regulatory requirement, which is known to require passive behavior from an indefinite number of persons. Therefore, under any circumstances, a court decision on the claim of the Commissioner cannot be used to enforce the violated right. It is difficult to imagine how it is possible to enforce non-actions that have already taken place. For example, it is impossible to force a person to refrain from illegal possession of another's property when such untitled possession occurs. But this, in the end, is impractical. On the contrary, state coercion in such a situation is always aimed at fulfilling the protection claim of the right holder stated in the lawsuit. In case of violation of the right to own the thing, the court realizes not the right of ownership, but the vindication requirement, which arose from the violation. And this is the protection and legal authority of a person capable of enforcement by a jurisdictional body. But is the judicial exercise of this protective subjective substantive right a means of protecting a legitimate interest?

Let us turn to the most popular statements about the protection of the protected interest in violation of the property rights of the individual, although in civil works there are other opinions on this issue. In particular, E. A. Krashennikov points out that since the relevant provisions of the Civil Code (Articles 301, 304 of the Civil Code, Articles 388, 391 of the CCU) postulate the relevant protective vindication and negative powers as ways to protect property rights, their implementation is not aimed at protection of the legally protected interest in the restoration of property ownership⁴⁰. Other researchers believe that the interest protected by law is protected in any exercise of the right to protection. They point out that, regardless of whether such an interest is enshrined or not in subjective law, it does not affect the ability to protect or defend the existing interest by legal means and means⁴¹. Of course, if we consider that this issue is not regulated by a positive provision of the law, it is possible to apply different approaches, which in fact will be a surrogate for the right decision.

Some conclusions can be drawn from the study. The above position can be supported: the protection of a legally protected interest through the implementation of a judicial or other protective process will take place only when it is provided normatively, and not implemented directly through the protection of violated subjective substantive law. For property relations, such protection will be inherent in certain legal interests of the person, if the method

⁴⁰ Krashennikov E. A. The legal nature of the legally protected interest. *Bulletin of the Supreme Arbitration Court of the Russian Federation*. 2010. № 5. P. 80.

⁴¹ Venediktova I. Category of interest protected by law in the civil law of Ukraine. *Часное право*. 2013. № 1. P. 164.

of its implementation will be different from the real thing. Property interest is protected mainly by binding means. For a certain situation, the protection of the legitimate interests of the owner, who, say, lost the thing against his will, is provided in Art. 390 of the CCU by compensating for various property losses associated with the seizure of property. Also a manifestation of such protection can be considered the provisions of Part 3 of Art. 386 of the CCU: if the vindication protection turns out that the plaintiff's property right ceased in connection with the destruction of the thing, then, demanding compensation for damage, the former owner will protect not the property right, which no longer exists, but his interest in restoration of their material condition.

SUMMARY

This scientific article is devoted to the study of the topical issue of the relationship between two phenomena protected by law: private subjective right and individual interest. The work proves the close relationship between law and interest. Because civil law allows a person to implement an initiative based on legal equality and free expression of will, aimed at realizing a private interest. So the interest is also protected by civil law and protected. It should be considered as the subject's interest in obtaining certain material goods to satisfy personal needs. At the same time, such a need, being within the limits of interest, does not necessarily and does not always form part of a specific authority guaranteed by law. Therefore, it is not for nothing that the thesis about the legal nature of the protected interest has been advocated in civil literature for a long time. This position found its reproduction in the main acts of Ukrainian private law (Article 4 of the Civil Procedure Code, Articles 15, 16 of the Civil Code). Nevertheless, in contrast to subjective law, the legislation does not yet have clear criteria for the concept of interest. We consider this to be a shortcoming of the existing regulatory framework in this area. The work also analyzes in detail the difference between legitimate interests that are realized within the framework of regulatory relations and those that are protected by the implementation of protective relations.

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Information about the authors:

Guyvan Petro Dmytrovich,

Cand. jurid. Sciences, Honored Lawyer of Ukraine,
Doctoral Student of the Institute of State and Law named
after V. M. Koretsky National Academy of Sciences of Ukraine
4, Tryokhsviatitelska str., Kyiv, 01601, Ukraine
<https://orcid.org/0000-0003-3058-4767>