

ALEKSANDR MAKAROV

Second-year Master's student of the
Faculty of Law of the TISBI University of
Management

KARINA AYNUTDINOVA

Candidate of Legal Sciences, Associate
Professor of the Department of Criminal
Law and Procedure of the Faculty of Law
of the TISBI University of Management

LEVERS FOR REALIZATION THE MECHANISM OF SUBJECTIVE CIVIL LAW

DOI: 10.30729/2541-8823-2024-9-3-165-169

Abstract. *The authors of this article consider subjective civil rights through the prism of elements of the content of civil-law relations. It is pointed out that the right is not intended to be the starting point for granting subjects their civil rights. Such rights, the researchers note, are acquired or established through the performance by the subject or other persons of certain actions. In the context of the study, the functional component of subjective right in relation to objective right is named. The objective right is presented as a vector of models of possible behavior — permissible, while the subjective right directly determines the model of permissible behavior, actually realized within the framework of a particular legal relationship. The study presents the concept of mechanisms and levers for the realization of subjective civil rights. Intermediate conclusions about the legal character and purpose of the subjective civil right as a phenomenon are drawn.*

Keywords: *subjective civil right, objective civil right, mechanism of realization of rights, realization of rights by the subject, leverages of realization.*

At the present time in legal science and practice there is an opinion that subjective civil right, acting as one of the elements of the content of civil-law relations, does not have a single definition. Formally, the subjective right is

understood as that sphere of external freedom, which is provided to the subject in accordance with the norms of law; the possibility of self-determination and realization of these rights.

The law as such is not intended to be the starting point for granting subjects their civil rights: such rights are *a priori* acquired or established through the execution of specific actions by the subject or other persons. In this context, the functional component of the subjective right in relation to the objective right is the behavioral capabilities of the subject. It is about the fact that the objective right determines the model of possible behavior — permissible, while the subjective right directly determines the model of permissible behavior that actually takes in the framework of a particular legal relationship.

It is logically reasonable to point out that this or that model of behavior is always based on a common result — obtaining a social good. As K. Kärger¹ notes, subjective right is the power to exercise the will directed to a certain object (footnote 5 of the article), which is communicated to a person by objective law (legal order)².

Objective civil right is a system of norms regulating property and personal non-property relations between legally equal subjects. It is appropriate to recall this concept to understand that subjective civil right is derived from it. That is, we can assert that subjective civil right brings objective action into action — objective. Being such a reference point, the subjective civil right is a type and measure of the possible behavior of a particular authorized person, which, of course, is defined in normative legal acts. In the opinion of Yu. S. Gambarov, who presented the approach mentioned by us in the scientific research, the fundamental position inherent in the science of civil law in the pre-revolutionary period is traced: “In the subjective sense, by right is meant everything that is given to us or, more precisely, provided by the action of this or that objective right”³.

We believe that it is quite appropriate to make the intermediate conclusion that subjective right is a cradle of possibilities and variants of permissible behavior, provided by legislative norms.

However, the subjective right cannot be considered only from the point of view of “permissibility of behavior” of the subject: it is more about the requirement to

¹ *Kärger K. Zwangsrechte: Ein Beitrag zur Systematisierung der Rechte* [Coercive rights: A contribution to the suspension of rights]. Berlin, 1882. 549 p.

² *Vavilin E. V. Osushchestvlenie i zashchita grazhdanskikh prav* [The realization and protection of civil rights]. M.: Volters Kluver, 2009. 338 p.

³ *Kurs grazhdanskogo prava: Chast obshchaya. T. 1* [The course of civil law: Part general. V. 1] / Gambarov Yu. S. S.-Pb.: Tip. M.M. Stasyulevicha, 1911. 793 p.

behave in a certain way from other participants of the legal relationship; and about the legal background of such requirements (for example, to make reductions, changes, and additions to another author's work, because otherwise there is a violation of the author's right to inviolability of the work).

Within the framework of the topic of our research, we will consider the lever of realization as the legal character of the absolute and relative civil rights of subjects and the correlation of objective and subjective civil right.

Thus, the relevance of research aimed at studying the mechanism and levers of realization of subjective civil rights is due to the collisions of procedures of voluntary and forced implementation of subjective rights; there is no doubt the idea that the subjective civil right is related to the mechanism of civil law regulation, which is understood as the whole complex of legal means taken in unity, through which the legal impact on social relations is ensured¹.

Of course, without defining the subjective civil right in the framework of a particular legal relationship, it is impossible to regulate social relations in the sense that the behavior of the parties is ordered exclusively by the acquisition of subjective rights and the establishment of civil-law obligations. One way or another, the subject under study itself needs the definition of the mechanism — a complex of means that provides subjects with the achievement of social aims (goods), provided that their actions do not go beyond the legal field.

To date, in legal science and practice, the question is open regarding the implementation of subjective civil rights, as well as related problems associated with the provision of this process with a legal mechanism².

A number of scientists believe that the leverage of the implementation of subjective civil rights is nothing but a consistent, regular complex organization of legal means and provision of conditions aimed at achieving the ultimate goal inherent in the content of the right and obligation.

It should be noted that until today in science has not formed a well-established consensus in the view of the essence and legal nature of both the mechanism itself and its individual levers of implementation in the process of realization of subjective civil rights³. We believe that the way to overcome such open questions, which grow

¹ Andreev Yu. N. Subektivnye grazhdanskie prava: ponyatie, vidy, osushchestvlenie i sudebnaya zashchita. 2-e izd. [The subjective civil rights: concept, types, realization and judicial protection. 2nd ed.]. Sankt-Peterburg: Yuridicheskiy tsentr Press, 2022. 408 p.

² Belov V. A. Grazhdanskoe pravo. Aktualnye problemy teorii i praktiki v 2 t. Tom 2 [Civil Law. Actual problems of theory and practice in 2 vols. Volume 2] / otvetstvennyy redaktor V. A. Belov. 2-e izd., ster. Moskva: Izdatelstvo Yurayt, 2024. 525 p.

³ Volkov A. V. Zlupotreblenie grazhdanskimi pravami. Problemy teorii i praktiki: monografiya [The abuse of civil rights. Problems of theory and practice: monograph]. Moskva: Volters Kluver, 2009. 341 p.

into problems and the subject of discussions, is to focus on the mechanism and levers of realization of subjective civil rights as the main subject, rather than on its constituent and similar elements.

The authors of this study, under the mechanism and levers of realization of the subjective civil right, understand a complex system of internally arranged order of certain actions or complexes of such behavioral processes, resulting in a special phenomenon of rights and obligations within the framework of each specific civil legal relationship. At the same time, it is a legislatively determined order of organization of legal ways, means, and actions of participants in civil turnover that ensures the actual achievement by the subject of the legal goal (obtaining a good, including social).

References

Andreev Yu. N. Subektivnye grazhdanskie prava: ponyatie, vidy, osushchestvlenie i sudebnaya zashchita. 2-e izd. [The subjective civil rights: concept, types, realization and judicial protection. 2nd ed.]. Sankt-Peterburg: Yuridicheskiy tsentr Press, 2022. 408 p. (In Russian)

Belov V. A. Grazhdanskoe pravo. Aktualnye problemy teorii i praktiki v 2 t. Tom 2 [Civil Law. Actual problems of theory and practice in 2 vols. Volume 2] / otvetstvennyy redaktor V. A. Belov. 2-e izd., ster. Moskva: Izdatelstvo Yurayt, 2024. 525 p. (In Russian)

Kurs grazhdanskogo prava: Chast obshchaya. T. 1 [The course of civil law: Part general. V. 1] / Gambarov Yu. S. S.-Pb.: Tip. M. M. Stasyulevicha, 1911. 793 p. (In Russian)

Kärger K. Zwangsrechte: Ein Beitrag zur Sustematisierung der Rechte [Coercive rights: A contribution to the suspension of rights]. Berlin, 1882. 549 p. (In German)

Vavilin E. V. Osushchestvlenie i zashchita grazhdanskikh prav [The realization and protection of civil rights]. M.: Volters Kluver, 2009. 338 p. (In Russian)

Volkov A. V. Zloupotreblenie grazhdanskimi pravami. Problemy teorii i praktiki: monografiya [The abuse of civil rights. Problems of theory and practice: monograph]. Moskva: Volters Kluver, 2009. 341 p. (In Russian)

Information about the authors

Aleksandr Makarov (Kazan, Russia) — Second-year Master's student of the Faculty of Law of the TISBI University of Management (13, Mushtari St., Kazan, 420012, Russia; e-mail: sanek2902200025@mail.ru).

Karina Aynutdinova (Kazan, Russia) — Candidate of Legal Sciences, Associate Professor of the Department of Criminal Law and Procedure of the Faculty of Law of the TISBI University of Management (13, Mushtari St., Kazan, 420012, Russia; e-mail: karina.arturovna14@mail.ru).

Recommended citation

Makarov A. F., Aynutdinova K. A. Levers for realization the mechanism of subjective civil law. *Kazan University Law Review*. 2024; 3 (9): 165–169. DOI: 10.30729/2541-8823-2024-9-3-165-169.