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LEGAL OBLIGATION, ITS PLACE AND ROLE IN THE THEORY OF CIVIL-LAW PROTECTION OF STATE

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Abstract: The article is devoted to legal obligation and its influence as a legal institute. Any legal obligation becomes a substantive duty only when it is supported by the possibility and necessity of ensuring it through execution. The author presents different positions of scholars in the doctrine. The article outlines the mechanism of civil law protection of the state as a legal structure in civil legal relations; it indicates the specifics of the mechanism under consideration, its essentially complex nature; it talks about government officials minimizing the risks and the cost on the part of the state. The provisions of the Civil Code of the Russian Federation are shown as well. The analysis allows us to consider the theory of civil law protection of the state as a single system of specific elements and to argue that the current state of the mechanism for exercising civil liability of the state with certain attempts to reform it requires clarification.

Keywords: obligation, civil law, protection, state, theory.

At one time, Aristotle introduced into ontology the principle of development and the categories of act and potency[1], opposing them to each other. Non-realization of a potentially deterministic act means a break of the causal connection of phenomena, an anomaly of the logical chain of development. This logic is fully applicable to the law, confirming the correctness of the conclusion that any legal obligation becomes a substantive duty only when it is supported by the possibility and necessity of ensuring it

[1] Latin. *actus et potentia* – scholastic translation of Greek ενεργεια χαι δυναμιζ – reality and possibility (Aristotle. Collection of works in 4 vols. Vol. 1: Metaphysics. Book 11 (Θ). Moscow, 1975).

through execution. It is the separation of these two states (disregard or misunderstanding) from their ontological unity that is the reason for the traditional dispute regarding the content of a legal relationship[1], whereas in the state of *potentia* relationship its content constitutes rights and duties in the form of a legal norm, and in the state of *actio* – in a dynamic form in the process of their implementation with "nodal points" in the form of the so-called "legal states"[2], fixing the commission of legally significant actions (concluding an agreement of intent, signing the supply agreement, the adoption of additions / amendments to the minutes of the leasing contract, and so on).

For this reason, the point of view of N.A. Dmitrik is unacceptable: while criticizing the interpretational model of the mechanism of exercising subjective civil rights by N.I. Miroshnikova, he withdraws the legal norm (as a legal means for the subject of law itself) from the elemental composition of the mechanism of exercising subjective rights.

The mechanism of civil law protection of the state as a legal structure[3], as a certain set of structural and functional unity of legal means, methods, algorithms of possible and / or mandatory actions of participants in civil legal relations and government officials aimed at minimizing the risks and the cost on the part of the state with the participation of the latter in civilian circulation, can function successfully only under the condition that the basic determinant is the necessity of legal "self-limitation" of the state. This means that within the framework of civil turnover in accordance with the Civil Code of the Russian Federation with a clear regulatory certainty of the state's legal personality, the imperativeness of the latter's decrees in the legal field along the entire vertical of power should be damped by both the obligatory mutual correlation of legal rights and obligations of parties of civil legal relations[4], and the corresponding responsibility that meets the requirements of the fundamental principle of law – the equivalence. At the same time, it is important to note that the consistent implementation of the principles of operation of this mechanism ensures even more reliable protection of all participants in civil legal relations.

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[1] See the editorial note stating the authors' different opinions on "paragraph 3. Subjects and objects of civil legal relations" regarding the set of elements of civil legal relations and their interrelations": Civil Law: course book in 3 vols. Vol. 1, ed. by N.D. Egorov, I.V. Eliseev, et al., chief editors A. P. Sergeev, Yu. K. Tolstoy. Moscow: Velbi, Prospekt Publ., 2006, p. 101.

[2] E. A. Sukhanov in this connection speaks about the civil law regime: *Russian civil law: course book, in 2 volumes*, V.S. Yem, I. A. Zenin, N. V. Kozlova, and others, edited by E. A. Sukhanov, 2nd ed. Moscow: Statute Publ., 2011. Vol. 1. General part. Real right. Inheritance right. Intellectual property rights (date of access: 09/01/2019).

[3] The substantive characteristic of the corresponding concept, including model, logical structuredness, conventionality, and law-enforcement potential, is given in the following work: Baranov V. M. *Legal technique: a course of lectures.* Nizhny Novgorod: Nizhny Novgorod Academy of the Ministry of Internal Affairs of Russia, 2015, p. 363–375.

[4] Obviously, the priority of a number of (subjective) civil rights belonging to the state cannot be questioned due to the conditionality and focus of the latter specifically on meeting public, socially significant interests (disposing of state property in privatization transactions, conclusion of state contracts, production sharing agreements, concession agreements, the withdrawal of land for state needs, the preemptive right to acquire agricultural land, etc.).

Another sign indicating the specifics of the mechanism under consideration is its essentially complex nature, which takes it beyond the framework of exclusively civil law regulation (which is not the object of this study). This is due to the need to eliminate the lacunae that occur in the implementation of civil law transactions involving the state with virtually unprofitable (indicating inefficiency, and even causing direct damage to the state) consequences when participants in such transactions are satisfied with the actual and legal status quo, and the corresponding mechanisms of evaluation, inspection, and control over such transactions are either absent or, for one reason or another, do not work[1].

The structure itself, the elemental composition and the stage-procedural implementation of the mechanism under consideration are aimed at eliminating dysfunctionality in civil law relations (in civil circulation) with the participation of the state.

The theory of public administration rightly notes that "in view of the excessive enthusiasm in accepting various conceptions, strategies and doctrines, the number of which in recent years has exceeded any reasonable bounds, it has been forgotten that we need to develop effective mechanisms to ensure efficiency, stability and resilience to failures, errors and other defects in public administration, which is characterized by relatively high defectiveness in a number of areas – significant dysfunctions of systemic and fundamental nature."[2] At the same time, the state faces the risks of "dissatisfaction of legal requirements, interests and expectations of all interested parties, in particular, of the state itself"[3], and "the most damaging risks in public administration are associated with the existence of corruption factors and possible manifestations of corruption"[4].

It is obvious that the mechanism for the implementation of state power, which is transitioning to an increasingly wider use of the administrative and legal procedures (the so-called "administrative regulations"[5]), requires constant improvement of their regulatory control in order to avoid the opposite, inhibiting, deterrent effect when

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[1] This refers to additional mechanisms for analyzing and verifying the existing and newly developed legislation and other regulatory documents with respect to corruption, as well as initiating the relevant procedures by higher financial and control authorities, tax, customs, antimonopoly and other services, the Accounts Chamber, prosecutors and others. As for the examples of such lacunae, we can point to the permission of Federal Border Agency (liquidated by the Decree of the President of the Russian Federation in February 2016) to independently purchase land plots or the decision to open duty free shops at border crossings, which ultimately resulted in fraudulent schemes and embezzlement of budget funds. A recent example is the large-scale abuse and theft in the field of restoration of cultural heritage objects through the Ministry of Culture of the Russian Federation detected in 2016.

[2] Ponkin I. V. *The theory of deviantology of public administration: uncertainty, risks, defects, dysfunctions and failures in public administration*, IGSU RANEPA under the President of the Russian Federation. Moscow: Buki-Vedi Publ., 2016, pp. 63, 187.

[3] Ibid., p. 47–48. See also: Hubbard R., Paquet G. *The black hole of public administration*. Ottawa: University of Ottawa Press, 2010.

[4] Tikhomirov Yu. A. Risk in the focus of legal regulation, *Risk in the sphere of public and private law: a collective monograph*, ed. by Yu. A. Tikhomirova, M. A. Lapina; Financial University under the Government of the Russian Federation. Moscow: Ot i do Publ., 2014, p. 11.

[5] See, for example: Yatskin, A. V. *Legal regulation of the administrative reform in modern Russia*: dissertaion ... Cand. Legal Sciences. Moscow, 2007.

the latter become administrative barriers[1] unjustifiably, on the one hand, extending the limits of discretion of officials of public authorities, and on the other, limiting the freedom to exercise and the rights and interests of private entrepreneurs[2].

This is all the more significant since the professional activities of state and municipal servants need constant public control due to the subjective characteristics of each person endowed with the necessary powers (this is where the specifics are important – the specifics of transforming a legal prescription into the conscious-willed imperative of a positive action of the subject of law aimed at achieving the most effective result among the options normally available). "The nontransparent, and therefore irresponsible, power is ineffective"[3].

Let us add to this a much earlier statement that with regards to non-transparency, the management of state property, as primarily one of the areas of public administration, is by no means a sphere of "detailed and systematic application of law"[4].

The basic principles of civil law require the participants in civil legal relations to act in good faith in the establishment, implementation and protection of civil rights and in the performance of civil duties (par. 3 of Art. 1 of the Civil Code of the Russian Federation), as well as they prohibit taking advantage of their illegal or unfair behavior (par. 4 of Art. 1 of the Civil Code). The requirements of good faith, rationality and fairness of actions, prevention of abuse of law and violation of the moral principles of society are contained in par. 2 of Art. 6, par. 5, Art. 9, Art. 10, Art. 1064 of the Civil Code of the Russian Federation and in a number of other articles.

Speaking about these requirements, along with the requirements of national orientation, high professionalism, as well as others, imposed on public servants, I. V. Ponkin notes: "It is presumed that mistakes in public administration are innocent behavior of public services who made such mistakes. To a certain extent, one can even conditionally talk about the "right to make mistakes". But even if one recognizes such a claim, it should

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[1] See Decree of the President of the Russian Federation of 15.05.2008 no. 797 "On urgent measures to eliminate administrative restrictions in the conduct of entrepreneurial activity", Collection of Legislation of the Russian Federation, 2008. no. 20, art. 2293. "In contrast to the barriers caused by structural and strategic circumstances, the barriers operating in the field of regulation appear as a result of acts issued or carried out by government executive bodies, local governments, non-state or professional self-regulating bodies, to which governments delegated the regulatory authority. They include administrative barriers to entry to the market, stipulating exclusive rights, the introduction of certificates, licenses and other authorization procedures required to start conducting business operations and actions (Article III, Chapter 7 of the Model Competition Code, 2010, United Nations Conference on Trade and Development. Model Act on Competition (2010), at http://www.unctad.org/en/docs/tdrbpconf7L7_en.pdf.

[2] See, in particular: Efremov, M. O. *Administrative procedures as a form of realization of the competence of public authorities in relations with individuals*, dissertation ... Cand. Legal Sciences. Moscow, 2005, p. 19.

[3] Khabrieva T. Ya. Administrative procedures and administrative barriers: in search of an optimal correlation model, *Administrative procedures and control in the light of European experience,* ed. by T.Ya. Khabrieva and J. Marku, Moscow: Statute Publ., 2011, p. 115.

[4] Wilson W. The Study of Administration, *American Political Science Quarterly*. 1887. Vol. 2, no. 2, p. 212.

be significantly limited – both by the scale of the actual or expected (possible) negative consequences of an error, and by the number of such events (errors) per unit of time and per segment or government body, per official"[1].

A large-scale example of the dysfunctional role of pseudo-legal decisions, deliberately implemented nevertheless in a strictly ideological pattern[2], was the so-called mortgage auctions held in Russia during the reforms of the 1990s.

The variety of legal facts that entail the need to use the mechanism of civil law protection of the state is quite obvious and may be a consequence of both lawful and illegal actions (inaction) of authorities, the commission of which should entail the onset of civil liability of the respective subjects.

Article 46 of the Constitution of the Russian Federation guarantees the right to judicial protection to everyone without any restrictions, and in accordance with Article 53 of the Constitution everyone has the right to compensation by the state for harm caused by illegal actions (or inaction) of state authorities or their representatives.

S. F. Afanasyev in his work "The illusiveness of accessibility of justice with regards to claims for damages compensated by the state under par. 2, Article 1070 of the Civil Code of the Russian Federation" gives convincing examples when the courts of general jurisdiction, using the provision of par. 1, part 1 of Art. 134 of the Civil Procedure Code of the Russian Federation as a procedural tool (namely, the institution of jurisdiction) "too harshly", virtually eliminates the very right to legal access to justice. Claims for damages compensated by the state in the manner of par. 2 of Art. 1070 of the Civil Code of the Russian Federation "are not generally accepted by the courts for consideration", if they are about compensation for damages caused by the administration of justice, in the absence of a sentence stating the guilt of the particular judge[3].

According to par. 1, part 1, Article 134 of the Civil Procedure Code of the Russian Federation, the court refuses to accept the claim, if it "is not a subject for consideration in civil proceedings, since the application is considered in a different judicial procedure".

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[1] I. V. Ponkin. *The theory of deviantology of public administration* ... p. 64, 196. He also cited the phrase attributed to Joseph Fouche, Napoleon's Police Minister: "C'est pire qu'un crime, c'est une faute" – "It was worse than a crime; it was a blunder."

[2] In connection with this, V. M. Baranov, citing the work of V. A. Tumanov, correctly notes the adoption of such regulatory decisions, which even in an abstract legal, externally ideologically neutral form are essentially the realization of a certain ideological attitude, and "at the same time, the ideological influence turns out to be hidden behind the legal technique "(See V. Baranov. *Essays on rule-making techniques. Selected Works*. Nizhny Novgorod: Nizhny Novgorod Academy of the Ministry of Internal Affairs of Russia, 2015, p. 376; See also Tumanov V. A. Ideology and law: some aspects of the interaction, V. A. Tumanov. *Selected works*, Moscow, 2010, p. 339).

[3] See: S.F. Afanasyev. The illusiveness of accessibility of justice with regards to claims for damages compensated by the state under clause 2, Art. 1070 of the Civil Code of the Russian Federation, *Russian judge*, 2014, no. 11, p. 40–44. See also A. Kovler. Russia in the European Court: 2012 – the year of the "great breakthrough" // Russian justice. 2013. no. 3, p. 16. We should point out that the wording of par. 1. of Art. 11 of the Civil Code of the Russian Federation "Judicial Protection of Civil Rights" includes a point on the protection of rights "in accordance with the jurisdiction of cases established by procedural legislation".

The legislator, however, did not clearly define the "different judicial procedure" here, and individual courts (judges), voluntarily or involuntarily creating a situation of competition in the system of judicial bodies[1], as well as, apparently being guided by the spirit of corporate community, casuistically sharing the concepts of justice and legal proceedings, began to make decisions on claims under par. 2 of Art. 1070 of the Civil Code of the Russian Federation on compensation for damages caused by the administration of justice, using, for example, the following wording: "currently the grounds and procedure for damages compensated by the state ... have not been regulated in legislation."[2]

And this is despite the fact that, on the one hand, "the absence of a national legislative framework should not serve as a basis for refusing to work on the case"[3], and "the existence and extent of any damage are the subject of precisely those proceedings that the applicant unsuccessfully tried to initiate. Thus, the objection of the authorities of the Russian Federation is devoid of substance ... and is subject to rejection"[4]. On the other hand, the grounds for the state to compensate for damages that have arisen during the implementation of civil proceedings due to unlawful actions (inaction) of the court (judge) may arise even if the judge's fault is established in the framework of the civil proceedings[5] and "in the absence of national legal regulation (the legislation on the grounds and procedure for state compensation for damages caused by illegal actions (inaction) of the court (judge)), the norms of the Constitution of the Russian Federation should be directly applied and thereby there should be accepted all necessary actions to implement the decisions of the Constitutional Court of the Russian Federation ..."[6]. Hence

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1 See Vershinin A.P. *Choice of the method of protection of civil rights*. St Petersburgh, 2000, p. 209; Zhuikov V.M. *Judicial Reform: Problems of Access to Justice*. Moscow, 2006, p. 46; Development of procedural legislation: the fifth anniversary of the actions of the Arbitration Procedure Code of the Russian Federation, the Civil Procedure Code of the Russian Federation and the Federal Law of the Russian Federation "On Arbitration Courts in the Russian Federation". Voronezh, 2008; Online interviews with V. D. Zorkin, Chairman of the Constitutional Court of the Russian Federation: "The Preliminary Results of the Activities of the Constitutional Court of the Russian Federation on the Threshold of the 15th Anniversary", SPS Consultant Plus Publ.

2 See Appeal determination of Volgograd Regional Court of 05.06.2013 on case no. 33-5894 / 13, SPS ConsultantPlus Publ. See also Determination of the Supreme Court of the Russian Federation of June 01, 2010 on case no. 67-G10-10; Appeal determination of the Lipetsk Regional Court of July 3, 2013 on case no. 33-1646a / 2013, etc., SPS ConsultantPlus Publ.

3 Resolution of the European Court of Human Rights, December 13, 2011 "Vasilyev and Kovtun v. Russia" // SPS "ConsultantPlus" Publ.

4 Resolution of the European Court of Human Rights, September, 16, 2010 "Chernichkin v. Russia", SPS "ConsultantPlus" Publ.

5 Resolution of the Constitutional Court of the Russian Federation no. 1-P of January 25, 2001 "On the case of verifying the constitutionality of the provision of par. 2.of Art. 1070 of the Civil Code of the Russian Federation in connection with complaints from citizens I. V. Bogdanov, A. B. Zernova, S. I. Kalyanova and N. V. Trukhanov ", SPS" ConsultantPlus" Publ. (date of access: 09/18/2016).

6 Determination of the Constitutional Court of 27.05.2004 no. 210-0 "On refusal to accept a complaint from citizen A.S. Chernichkin for violation of his constitutional rights", SPS "ConsultantPlus" Publ. (date of access: 09/18/2016).

the requirements of par. 1, part 1 of Article 134 of the Civil Procedure Code of the Russian Federation, according to which the court refuses to accept the claim if it is not a subject to consideration in civil proceedings, because the claim is being considered in a different judicial procedure, cannot be an obstacle to accept such claims by the judge.

The theory of implementation and protection of civil rights in stages links the consolidation of a certain set of legal facts (legal definitions necessary to apply the relevant rule of law) to the stage of formation of the subjective right preceding directly the establishing of the right as a stage of consciously-willed use of the subjective right by its holder (in reality it is one stage as a rule). The other stages are procedural realization of the right, protection of the violated right and the actual implementation of it.

The mechanism of implementation and protection of civil rights itself is not considered as a rigid structure, as it allows and even requires a certain adaptation and mobile configuration, taking into account the specifics of the tasks to be solved and the required goals.

At the same time, for the mechanism of civil law protection of the state as a locally specified system, the obligatory, and in essence, constitutive stages are the following:

A) pre-implementation (regulatory determination);

B) the protection of violated or disputed civil rights in court and the implementation of subjective rights de jure (judicial act);

C) provision (the implementation of subjective rights de facto)[1].

The stage of implementation of the law is considered as a state of the subjective right at a certain point in time, characterised by a set of certain interdependent qualitative characteristics, and the structure of the mechanism for exercising civil law protection of the state is formed by the unity of successive stages in their procedural implementation, up to the legal and actual realization of the right. Moreover, each element of the defense mechanism must be formed in such a way that it not only realizes its internal goal and justifies its essence, but also creates all the conditions for the advancement and the implementation of the next stage[2].

The pre-implementation stage (normative determination) of the mechanism for exercising civil law protection of the state implies the existence of the relevant requirements directly in the rule of law, which involves guaranteeing the possibility of judicial protection of the counterparty's rights and the creation of a mechanism (civil law and procedural) ensuring consideration of the claim with the obligatory participation of the official, the action (inaction) of whom caused the damage.

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[1] Within the framework of the latter, various ways of exercising subjective rights are possible – voluntary execution, realization of their right by the claimant themselves (for example, by sending an executive document to the bank where the debtor's funds are held, using the mechanisms of the law on enforcement proceedings through the ECHR, etc.) .

[2] See Vavilin E.V. *Principles of civil law. The mechanism of implementation and protection of civil rights*, pp. 160–178; Vavilin E.V. The development of Russian legislation in the implementation and protection of civil rights, *Civil Law,* 2009, no 1; Vavilin E.V. *The mechanism of the exercise of civil rights and duties*, p. 9.

The variety of forms of state participation in civil matters, not to mention the power-political nature of the state itself and its functions such as establishing the legal basis for a single market mechanism, is due to a number of factors of the economic nature per se. The state is the largest owner of land resources, water bodies and subsoil; it has exclusive rights in relation to the continental shelf or objects excluded from civilian circulation; it may act as the lessor of the property in its possession, the customer and the buyer under government contracts; as a heir of the escheated property or treasure containing items of cultural significance; as a founder of legal entities, etc[1].

The specificity of participation and legal regulation in such civil relations, which is unfortunately not always consistent or placed within the same conceptual framework, one way or another connected with the pre-implementation stage of the mechanism under consideration and designed to provide the necessary guarantees to the parties, is determined by the relevant regulatory legal acts[2]. A number of provisions of these documents determine the necessary procedural regulation in the implementation of the contractual relations of the parties and the procedure for damages. In particular, on the grounds of acquisition and termination of property rights or the specifics of certain types of obligations (social contracts, state and municipal contracts, loans, etc.), the specifics of the legal status of enterprises and institutions established by the state.

For example, the ownership of subjects of the Russian Federation and municipalities may be terminated as a result of redemption by tenants – small or medium-sized businesses – in accordance with Federal Law no. 159-FZ of July 22, 2008 "On specific features of the alienation of real estate owned by the state or municipality and leased by small and medium-sized businesses and on amendments to certain legislative acts of the Russian Federation."

In accordance with the Federal Law of 01.12.2007 no. 317-FZ "On the State Atomic Energy Corporation "Rosatom"[3], the rules established by this corporation apply to the entire relevant industry (see par. 1 of Article 4, par. 3 of Article 6 and a number of other provisions of the law).

The formation of a subjective right as a stage of the mechanism of civil law protection of the state is characterized by the fact that at this moment the creation of a completed

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[1] See par. 1.2 of the Law of the Russian Federation of 21.02.1992 no. 2395-1 "On Subsoil", Rossiyskaya gazeta, 1992, May 5; 2013, December 30; Federal Law of 30.11.1995 no. 187-83 "On the Continental Shelf of the Russian Federation", Collection of Legislation of the Russian Federation, 1995, no. 49, Art. 4694; Rossiyskaya gazeta, 2014, 5 February; par. 1, Art. 16 of the Land Code of the Russian Federation of 10.25.2001, no. 136-FZ, Collection of Legislation of the Russian Federation, 2001, no. 44, Art. 4147; Rossiyskaya gazeta, 2013, December 30; par. 1, Art. 8 of the Water Code of the Russian Federation of 03.06.2006, no. 74-FZ, Collection of Legislation of the Russian Federation, 2006, no. 23, Art. 2381; Rossiyskaya gazeta, 2013, December 30.

[2] See the Federal Law of 18.07.2011 no. 223 FZ "On the procurement of goods, works, services by certain types of legal entities"; Federal Law of 05.04. 2013 no. 44-FZ "On the contract system in the field of procurement of goods, works, services for state and municipal needs"; a number of norms of the Budget Code of the Russian Federation and other regulations.

[3] Collection of Legislation of theRussian Federation. No. 49, art. 6078.

composition of legal definitions takes place. For subsequent stages, the correct fixation of the actual circumstances of the legal relations of the parties (documenting them) will be decisive.

The practice shows a significantly increased civil turnover with a certain instability of the current legislation and high volume of law-making of the subjects of the Federation, not meeting sometimes the requirements of federal legislation. It shows conflict or even direct competition of certain norms, a large array of normative and sub-normative acts (regulations, instructions, guidelines clarifications, etc.) and the accumulated judicial practice on various categories of cases. Under these circumstances, the task of forming the actual composition of legal disputes that meets the requirements of legality and validity of the judgment, is often associated with certain complications, leading to the instability of judgments.

In case of violation of the requirement of proper proof of evidence, the adverse consequences of the unproved statement of the party about the factual circumstances of the case are assigned to that party or another person participating in the case who could and should have provided themselves with reliable evidence in accordance with the law or their interests.

For this reason, state and local governmental bodies, as well as legal entities established by them, in order to confirm, protect and defend their rights arising from entering into contracts, changing their terms, terminating contracts, making other transactions, registering property rights, completing cash transactions, registration of organizations or citizens as entrepreneurs, when imposing and collecting fines, writing off funds in an indisputable manner, performing other legally significant actions, should take timely measures to document the performed actions / refusal to perform them in the form established by the requirements of the law, standards, approved samples, business practices, etc.

In general, understanding the position of A. A. Volos, according to which the protection at this stage does not play a decisive role[1], we should note that with regard to the state, a correct understanding and fixation of the circumstances proving the fact of causing damage to the state and / or its counterparties is very important. In this area, it is possible to create formalized lists that allow both parties to the legal relationship and the court to correctly qualify them[2].

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[1] See: Volos A.A. Protection of the weak party of the obligation on different stages of the action of the mechanism of realization of civil rights and fulfilling obligations. *Competition law*, 2014, no. 4, p. 39-42.

[2] It should be noted that the practice of such an approach has long existed in the administrative law. As an example, the Letter of the Federal Customs Service of the Russian Federation of January 10, 2008 no. 01-11 / 217 "Guidelines on qualification of violations of currency ligislation" (together with the "Guidelines on qualification of administrative offenses under Article 15.25 of the Code of Administrative Offenses of the Russian Federation"), which also consider the situations of the presence / absence of an administrative offense in the actions of the resident importer, taking into account the illegal actions by the bodies or officials of a foreign state as well. This document demonstrates a useful approach for the formation of a mechanism of exercising subjective right where it can also be successfully used in

With regard to the stage of establishing the right, understood as the realization by the subject of his or her own right, as well as its recognition by other persons, the remark that some of the subjects do not have sufficient information about whether they have certain rights, and therefore they become a weak party of the obligation[1], applies to the participation of the state in civil law relations. Here it transforms into the situation when the subjects having the authority to represent the interests of the state in civil law relations and the information about the violation of right if the state (taking a bad deal or wilful non-fulfilment of responsibilities), are inactive for various reasons (corruption factors, unwillingness to act, etc.), the outcome of which is damage to state property.

In the process of procedural realization of the right, the subject performs legally significant actions aimed at obtaining a benefit. These procedures are often spelled out in legislation, regulations, are directly reflected in the materials of judicial practice.

In view of the above, it is legitimate to conclude that the current state of the mechanism for exercising civil liability of the state with certain attempts to reform it and the emergence of new rules governing the management of state and municipal property requires a greater degree of specificity.

The study allows us to consider the created theory of civil law protection of the state as a single system of the elements mentioned above, highlighting a legal obligation as a system-forming element of the guaranteed implementation of such protection.

References

Afanasyev S.F. The illusiveness of accessibility of justice with regards to claims for damages compensated by the state under clause 2, Art. 1070 of the Civil Code of the Russian Federation, *Russian judge*, 2014, no. 11, p. 40–44.

Baranov V. M. *Legal technique: a course of lectures.* Nizhny Novgorod: Nizhny Novgorod Academy of the Ministry of Internal Affairs of Russia, 2015, p. 363–375.

determining the effectiveness of an official's legal relations with the counterparty, which resulted in causing damage to state property. It proposes the following measures: a) at the stage of pre-contract preparation: clarification of the reliability and business reputation of the counterparty; b) at the stage of concluding a contract: entering into the contract a method of ensuring the fulfillment of obligations depending on the reliability and business reputation of the partner (bank guarantee, penalty, surety, pledge, deposit, etc.); the use of such forms of settlement under the contract, which exclude the risk of the counterparty's failure to fulfill obligations under the contract; development of a mechanism for resolving possible disputes, with a clear indication of the timing of pre-trial remedies for violated rights and an indication of which judicial body will consider the dispute that has arisen; use of commercial risks insurance; c) after non-fulfillment or improper fulfillment by the counterparty of its obligations: stating the complaint; submitting a claim to judicial authorities after the response to the complaint or the expiration of the response period demanding to recover the amount due from the counterparty, etc. (See Letter of the Federal Customs Service of the Russian Federation of January 10, 2008 no. 01-11 / 217 "Guidelines on qualification of violations of currency legislation" (along with the "Guidelines on qualification of administrative offenses under Article 15.25 of the Code of Administrative Offenses of the Russian Federation"), *Customs Herald*, 2008, no. 3).

[1] See Volos A.A. Idem. P. 39-42.

Baranov V. *Essays on rule-making techniques. Selected Works*. Nizhny Novgorod: Nizhny Novgorod Academy of the Ministry of Internal Affairs of Russia, 2015, p. 376;

Civil Law: course book in 3 vols. Vol. 1, ed. by N.D. Egorov, I.V. Eliseev, et al., chief editors A. P. Sergeev, Yu. K. Tolstoy. Moscow: Velbi, Prospekt Publ., 2006, p. 101.

Efremov, M. O. *Administrative procedures as a form of realization of the competence of public authorities in relations with individuals*, dissertation ... Cand. Legal Sciences. Moscow, 2005, p. 19.

Hubbard R., Paquet G. *The black hole of public administration*. Ottawa: University of Ottawa Press, 2010.

Kovler A. Russia in the European Court: 2012 – the year of the "great breakthrough" // Russian justice. 2013. no. 3, p. 16.

Khabrieva T. Ya. Administrative procedures and administrative barriers: in search of an optimal correlation model, *Administrative procedures and control in the light of European experience,* ed. by T.Ya. Khabrieva and J. Marku, Moscow: Statute Publ., 2011, p. 115.

Ponkin I. V. *The theory of deviantology of public administration: uncertainty, risks, defects, dysfunctions and failures in public administration*, IGSU RANEPA under the President of the Russian Federation. Moscow: Buki-Vedi Publ., 2016, pp. 63, 187.

Russian civil law: course book, in 2 volumes, V.S. Yem, I. A. Zenin, N. V. Kozlova, and others, edited by E. A. Sukhanov, 2nd ed. Moscow: Statute Publ., 2011. Vol. 1. General part. Real right. Inheritance right. Intellectual property rights (date of access: 09/01/2019).

Tikhomirov Yu. A. Risk in the focus of legal regulation, *Risk in the sphere of public and private law: a collective monograph*, ed. by Yu. A. Tikhomirova, M. A. Lapina; Financial University under the Government of the Russian Federation. Moscow: Ot i do Publ., 2014, p. 11.

Tumanov V. A. Ideology and law: some aspects of the interaction, V. A. Tumanov. *Selected works*, Moscow, 2010, p. 339).

Vavilin E.V. *Principles of civil law. The mechanism of implementation and protection of civil rights*, pp. 160–178;

Vavilin E.V. The development of Russian legislation in the implementation and protection of civil rights, *Civil Law,* 2009, no 1;

Vavilin E.V. *The mechanism of the exercise of civil rights and duties*, p. 9.

Vershinin A.P. *Choice of the method of protection of civil rights*. St Petersburgh, 2000, p. 209;

Wilson W. The Study of Administration, *American Political Science Quarterly*. 1887. Vol. 2, no. 2, p. 212.

Yatskin, A. V. *Legal regulation of the administrative reform in modern Russia*: dissertaion ... Cand. Legal Sciences. Moscow, 2007.

Zhuikov V.M. *Judicial Reform: Problems of Access to Justice*. Moscow, 2006, p. 46; Development of procedural legislation: the fifth anniversary of the actions of the Arbitration Procedure Code of the Russian Federation, the Civil Procedure Code of

the Russian Federation and the Federal Law of the Russian Federation "On Arbitration Courts in the Russian Federation". Voronezh, 2008;

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