KAZAN UNIVERSITY LAW REVIEW

Volume 8, Winter 2023, Number 1

kazanlawreview.org

KAZAN UNIVERSITY LAW REVIEW

Volume 8, Winter 2023, Number 1

kazanlawreview.org

«KAZAN UNIVERSITY LAW REVIEW»
(registered by The Federal Service
for Supervision of Communications,
Information Technology
and Mass Communications in Russia
on 17 November 2016
(certificate number PI № FS 77-67763
(ПИ № ФС 77-67763))

Editorial office:
room 326, 18 Kremlyovskaya St.,
Kazan, 420008 Russia

Founders of the mass media:
Federal State Autonomous Educational Institution of Higher Education "Kazan (Volga region) Federal University"; "Publishing house "STATUT" Ltd.; "Yurlit" Ltd.

ISSN 2541-8823 (print)

ISSN 2686-7885 (online)
Publication:
four issues per year (one issue per quarter)

Dear readers,

I would like to present for your attention the first regular issue of the journal "Kazan University Law Review" in 2023.

The issue you are now holding in your hands contains articles on topical issues in the theory and practice of Russian and foreign law.

The issue starts with an article by Denis Latypov, Candidate of Legal Sciences, Associate Professor of the Department of Business Law, Civil and Arbitration Procedure of the Perm State National Research University, "Compensatory ways to protect civil rights in Russia". The author analyzes the specifics of the application of such methods of protection of civil rights as recovery of losses, compensation for non-pecuniary damage, and recovery of penalties and analyzes the legal regulations. The article attempts to analyze the existing judicial practice and summarize the most frequently encountered issues. A practice-oriented conclusion is also made.

The issue continues with a collective of authors: Sadagat Bashirova, Candidate of Legal Sciences, Associate Professor and Guzel Valeeva, Candidate of Historical Sciences, Associate Professor of the Department of Theory and Methods of Teaching Law; Polina Shafigullina, first-year Master's student of the Department of Environmental, Labor Law and Civil Procedure of the Kazan Federal University, with a scientific study on the topic "The legal status of chatbots: problem statement and solutions". The authors propose to consider the concept and structure of chatbots and also discuss the issues of the legal character of the status of electronic systems, including the possibility of using artificial intelligence in the legal environment. In order to analyze the work of modern systems, the existing intelligent programs providing legal services are presented, and the practice of electronic service application is given. Possible solutions to the problems identified by the subject of the study are proposed.

I am sincerely glad to present to you the study by Yuliya Avdonina, Senior Lecturer of the Department of Environmental, Labor Law and Civil Procedure, and Denis Koshelev, second-year master's student of the Kazan Federal University, "The foreclosure of pledged real estate property: statement of the problem". The authors of this study formulated the concept of the definition of "foreclosure on pledged property", revealing the legal character of the specified institute. The prospects of solving the problem of the collision of creditors' rights are assessed.

With best regards,
Editor-in-Chief
Damir Valeev

TABLE OF CONTENTS

ARTICLES

Denis Latypov
Candidate of Legal Sciences,
Associate Professor of the Department of Business Law, Civil and Arbitration Procedure of the Perm State National Research University

COMPENSATORY WAYS TO PROTECT CIVIL RIGHTS IN RUSSIA

DOI 10.30729/2541-8823-2023-8-1-5-16

Abstract. *The article is devoted to the analysis of the legal regulation of ways to protect civil rights aimed at loss compensation. The subject of the study are the usage peculiarities of such methods as recovery of losses, compensation for non-pecuniary damage and recovery of penalties. We attempted to conduct the analysis of the existing judicial practice concerning the above-specified questions. The generalization of the most frequently encountered issues in the resolution of such disputes is also given in this article. Summing up the results of the analysis we have drawn the conclusion that it is necessary to consolidate certain legal norms designed to establish a uniform approach.*

Keywords: *method of civil rights protection, recovery of damages, compensation for non-pecuniary damage, recovery of penalties.*

The Civil Code of the Russian Federation does not legally determine "compensation for losses" as the purpose of protecting a subjective civil right.

"Compensation" (from the Latin *Compensatio*) is "recompense"[1], which is supposed the following meaning "to recompense what has been lost". Obviously, compensation applies when there is no possibility of restoring what has been lost to its original form.

[1] [Electronic resource] // URL: https://ru.wikipedia.org/wiki/компенсация (date of access: 11.12.2021).

Conversely, "loss" is something lost (damage)[1].

In the legal literature, the term "compensation" itself is being viewed in different ways. As a rule, compensation is qualified as a measure of civil-law responsibility, since it is applied between legally equal subjects, at the request and in favor of the injured party, to protect the private property right of the victim, as well as its primary purpose of compensating the property losses of the copyright holder (compensatory, restorative function)[2].

Compensation is aimed at loss replacement to the empowered person, whose subjective civil right has been negatively affected. At the same time, compensated losses may be both proprietary and non-proprietary. Here we should note the long-standing discussion about the possibility of compensation for non-property losses of a legal entity[3]. We believe that there should be no obstacles in setting the designated purpose of protection depending on the subject applying a particular method of protection of civil rights, at least because of the presence of the principle of equality of subjects of civil legal relations. Nowadays, there are examples of judicial practice, which allow the possibility of compensation for non-material damage in favor of legal entities with reference to the practice of the European Court of Human Rights, the Constitutional Court of the Russian Federation, the Presidium of the Supreme Arbitration Court of the Russian Federation[4]. Any other approach would put legal entities, which have been subjected to damage to business reputation, in a situation of unreasonably limited protection of their legitimate interests, indirectly indicating the reduction of the real responsibility for relevant offenses.

Therefore, as it has been already noted, compensatory methods of protection of civil rights are aimed only at equivalent compensation for the violated (lost) right, if it is impossible to restore the right in its original (initial) form, which existed before the violation. Consequently, the distinctive feature of compensation of losses from other previously established goals of protection of civil rights will be the focus of the applied method to replace the loss that took place as a result of the negative impact on the subjective civil right.

---

[1] [Electronic resource] // URL: https://ru.wikipedia.org/wiki/потеря (date of access: 11.12.2021).

[2] *Novoselova L. A.* Printsip spravedlivosti i mekhanizm kompensatsii kak sredstvo zashchity isklyuchitelnykh prav [The principle of justice and compensation mechanism as a means of protecting exclusive rights] // Vestnik grazhdanskogo prava [Herald of Civil Law]. — 2017. — No. 2. — Pp. 48–55.

[3] See, e.g.: *Khokhlov V. A.* Grazhdansko-pravovaya otvetstvennost za narushenie dogovora: dis. ... d-ra yurid. nauk. [Civil liability for breach of contract: dissertation of the Doctor of Juridical Sciences] — Samara. — 1998. Pp. 287–288.

[4] See, e.g.: Resolutions of the Arbitration Court of the Ural district from 25.09.2015 No. F09-6957/15 in case No. A07-1900/2015; 18AAC from 04.08.2014 No. 18AP-7319/2014; 5AC from 28.12.2015 in case No. A51-15888/2015 // ConsultantPlus information system.

A classic example of a compensatory method of protection referred to in Article 12 of the Civil Code of the Russian Federation is the ***recovery of damages.***

Reference to compensation (indemnification) of losses is found quite often in the Civil Code of the Russian Federation. Obviously, the legislator particularly emphasizes the legality of the application of such a method of protection of civil rights in certain situations, pointing to its universal character.

We believe that the legal essence of the category of "losses" is somehow interconnected with the potential ability of their compensation. From the analysis of the norms of the codified act of civil legislation — the Civil Code of the Russian Federation, which operates with the term "damages", carried out within this study, we can conclude about the dual meaning of this category, perceived both as a consequence of the offense, and as an object of sanction in the form of "compensation for damages" (Article 393 of the Civil Code of the Russian Federation). Thus, operating with the terms "losses" and "damages", the Civil Code of the Russian Federation determines it either the corresponding right of the creditor (to demand their compensation), or the corresponding obligation of the debtor (to compensate them). Consequently, the fulfilled analysis allows us to conclude about the conceptual view of the domestic legislator on losses as a measure of civil-law responsibility for non-performance or performance of an obligation while causing damage[1].

Losses, which are subject to compensation in case of breach of contract, in continental law can be conditionally divided into two kinds: compensatory losses, i.e., losses caused by non-fulfillment of an obligation in general, and moratorium losses, i.e., caused by delay in fulfillment of an obligation on the part of a debtor[2].

The difference between them is that moratorium losses can be recovered together with the claim for performance of the obligation in kind, while the recovery of compensatory losses implies that the claim for performance of a contractual obligation is not presented.

Compensatory damages are a measure of civil liability, "the essence of which is to provide the injured party with a liquid equivalent as sufficient and lawful compensation"[3].

---

[1] See: *Pinding A. Ya.* Vozmeshchenie ubytkov, prichinennykh promyshlennym predpriyatiyam neispolneniem dogovornykh obyazatelstv: avtoref. dis. … kand. yurid. nauk. [Compensation for losses caused to industrial enterprises by non-fulfillment of contractual obligations: autoreferat of dissertation of the Candidate of Legal Sciences.] — M. — 1968. P. 25; *Vaskin V. V.* Vozmeshchenie ubytkov v grazhdansko-pravovykh obyazatelstvakh: avtoref. dis. … kand. yurid. nauk. [Compensation of losses in civil law obligations: autoreferat of the dissertation of Candidate of Legal Sciences.] — Saratov. — 1971. P. 218; *Krol M. S.* Vozmeshchenie ubytkov v kapitalnom stroitelstve [Compensation for losses in capital construction]. — Donetsk. — 1972. P. 205.

[2] *Volkov A. V.* Vozmeshchenie ubytkov po grazhdanskomu pravu Rossii: dis. … kand. yurid. nauk. [Compensation of losses under the Civil Law of Russia: dissertation of the Candidate of Legal Sciences] — Volgograd. — 2000. P. 52.

[3] *Volkov A. V.* op. cit. P. 63.

The legal provisions on damages are aimed at ensuring the restoration of the property sphere of the victim by awarding monetary compensation, as a general rule, both in terms of the lost and the foregone income[1].

The existing legal definition of compensation for damages, contained in Article 15 of the Civil Code of the Russian Federation, allows qualifying "losses" as negative property consequences arising for a person as a result of violation of non-property or property rights. Implementation of such a method of protection as compensation for damages is possible only in the presence of certain conditions of civil-law responsibility[2].

The traditional set of necessary elements for the implementation of such a measure of civil-law responsibility as compensation for damages is a complex of the following conditions: the presence of illegal conduct of the damages offender, the presence of the losses themselves with the authorized person, as well as the causal link between the illegal conduct and the resulting losses[3].

Meanwhile, the exact amount of damage is not an essential factor. According to the legal position formulated in Paragraph 4 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of 24.03.2016 No. 7 "On application by the courts of certain provisions of the Civil Code of the Russian Federation on liability for breach of obligations"[4], from the provisions of Paragraph 5 of Article 393 of the Civil Code of the Russian Federation, it follows that the court cannot refuse to satisfy the creditor's claim for loss compensation caused by non-performance or improper performance of an obligation, only on the grounds that the amount of losses cannot be established with a reasonable degree of reliability. In this case, the amount of damages to be compensated, including lost profits, shall be determined by the court taking into account all the circumstances of the case, based on the principles of justice and proportionality of responsibility to the breach of obligation.

Thus, the causal link, which can be proved by an authorized person with a reasonable degree of certainty, is a certain *conditionally essential factor*. This legal position follows from the Ruling of the Judicial Board for Economic Disputes of the Supreme Court of the Russian Federation of 29.01.2020 No. 305-ES19-19395

---

[1] *Lomidze O. G., Lomidze E. Yu.* Obyazatelstvo iz neosnovatelnogo obogashcheniya pri nedostizhenii storonoy dogovora svoey tseli [Obligation from unjust enrichment when a party to a contract fails to achieve its objective] // Vestnik VAS RF [Herald of the Supreme Arbitration Court of the Russian Federation]. — 2006. — No. 7. — Pp. 24–35.

[2] Resolution of the Volga-Vyatka District Court of 08.06.2020 in case No. A43-13968/2019 // ConsultantPlus Information System.

[3] A similar legal approach is formulated in Paragraph 12 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of 23.06.2015 No. 25 "On the application by the courts of certain provisions of Section I of Part I of the Civil Code of the Russian Federation".

[4] Bulletin of the Supreme Court of the Russian Federation. — 2016. — No. 5.

in case No. A40-98757/2018, as well as from Paragraph 5 of the Resolution of the Plenum of the Supreme Court "On the application by courts of certain provisions of the Russian Federation Civil Code on liability for violation of obligations".

The foregoing allows us to conclude that there is a causal link between illegal conduct and damages when the resulting losses are likely to have arisen precisely because of the offense declared by the injured person. In case of absence of any other reasons that may have led to such losses.

Further, terminologically, "damages" are qualified differently both in the law and in the scientific literature. It is generally accepted to use the terms "damages", "expenses", "losses", which are identical in their meaning, in the sense that the compensation of such implies the amount of awarded in order to level out the property result of the offense.

At the same time, the definition of "losses" is broader than only "expenses" or "damages". The concept of losses covers not only the real (already accomplished) losses, but also the costs that the victim will have to incur in the future in order to restore the original state of a subjective civil right. The above analyzed points gave rise to a discussion about the appropriateness of enshrining compensation for damages as a separate method of protecting civil rights, the possibility of abandoning this method by replacing it with other compensatory measures (for example, the recovery of penalties).

As an example, V.A. Khokhlov pointed out that the expenses to be incurred by an injured party do not necessarily have to be aimed solely at restoring a violated right. As an example, he cited the following situation: in order to fulfill a supply contract, the buyer incurred expenses on paying rent for a warehouse to place the goods, which should have been delivered by the supplier, but were not delivered finally. Obviously, such expenses cannot be qualified as those aimed at restoration of the violated right, however, in connection with the existing violation should be reimbursed[1].

Regarding the types of damage, it is necessary to note the following.

Legal regulation of the considered method of protection of civil rights allows concluding about two types of damages to be compensated: real damage (incurred or necessary expenses to restore the violated right, loss, or damage to the property of the victim) and loss of profit (unreceived income, which the victim would have received in the absence of the offense) (Paragraph 2 of Article 15 of the Civil Code).

As it has been already noted, domestic legislation has no provisions allowing qualifying other types of possible losses. In its turn, the legal norms of foreign countries keep other options of losses.

---

[1] *Khokhlov V. A.* Grazhdansko-pravovaya otvetstvennost za narushenie dogovora: dis. ... d-ra yurid. nauk. [Civil liability for breach of contract: dissertation of the Doctor of Juridical Sciences] — Samara. — 1998. — 349 p.

For example, pre-priced damages under English law (the amount of damages to be compensated to the injured party when the other party commits an offense, initially agreed upon by the parties to a civil legal relationship). In the doctrine of the Soviet period, similar losses were called "normative", i.e., losses that can be initially controlled or predicted by fixing in the contract.

Subsequently, scientists developed the concept of contingent losses, which were also defined in the contract in the form of certain fixed amounts to be compensated, or in the form of the rate (value) of damage depending on the amount of non-performance and the terms of violation of contractual obligations[1]. At the same time, this kind of losses has never been legally fixed neither in the Soviet nor in the Russian law.

The next type of loss, also not known to Russian civil law, is symbolic losses. As it has already been noted, the possibility of collecting such losses is enshrined in English and American law. In particular, in the USA, in the actual absence of losses, a symbolic amount of 1 cent can be awarded to the victim. It is obvious that such judicial act is designed to state (fix) the wrongful behavior itself. Similar examples are known to the law-enforcer of England, which allows the possibility of collecting the so-called contemptible (negligible) losses from the defendant[2].

Again, we emphasize that the above-mentioned examples of the application of the considered method of protection the civil rights in other countries, especially taking into account the actual reception of certain variations by the Russian court, indicate the overdue need for legislative consolidation of these possible types of compensatory methods. It is believed that this approach will most fully ensure the achievement of the objectives of civil rights protection with all the variety of possible negative impacts.

The next way to protect civil rights aimed at compensating losses and enshrined in Article 12 of the Civil Code of the Russian Federation is the ***material loss collection.***

The compensatory nature of this method of protection of civil rights has been repeatedly noted in court practice. The existing approach to the understanding of forfeit is quite well-established[3]. Obviously, the compensatory property of a penalty

---

[1] *Ioffe O.S.* Plan i organizatsiya dogovornykh svyazey v sotsialisticheskom narodnom khozyaystve [Plan and organization of contractual relations in the socialist national economy] // Uchenye zapiski [Scientific Notes]. — Vyp. 10. — M.: VNIISZ. — 1967. P. 52; *Godes A.B.* Voprosy materialnoy otvetstvennosti gosudarstvennykh predpriyatiy i organizatsiy v usloviyakh novoy sistemy planirovaniya i ekonomicheskogo stimulirovaniya [The issues of material responsibility of state enterprises and organizations under the new system of planning and economic incentives] // Voprosy Grazhdanskogo prava i protsessa [Issues of Civil Law and Procedure]. — L.: Izd-vo LGU. — 1969. P. 21.

[2] *Dzhenks E.* Angliyskoe pravo [The English law] / per. L.A. Luntsa. — M.: Gosyurizdat. — 1947. P. 198.

[3] See, e.g.: Decisions of the Supreme Court of the Russian Federation of 18.10.2021 No. 305-ES21-18693, of 19.05.2021 No. 307-ES21-5800 // ConsultantPlus Information System.

is due to the requirements of the law on its proportionality to the consequences of the violation (non-performance or improper performance) of obligations.

According to the legal position reflected in the Decree of the Presidium of the Russian Federation of 14.02.2012 No. 12035/11, the compensatory nature of civil liability in the form of forfeit involves the payment of such compensation to the victim of the losses, which would be adequate and commensurate with the violated interest[1]. At the same time, there is a different approach, including in the highest courts. Thus, defining the legal nature of the penalty in the field of consumer protection legislation, the Supreme Court of the Russian Federation pointed to the exclusively punitive nature of such a sanction, which does not pursue the goal of compensating the losses of the consumer[2].

Such contradictory judgments additionally determine the need for a more detailed study of the considered method of protection.

The following statement has become an axiom in jurisprudence — the penalty performs simultaneously the function of a way to protect civil rights, being present in Article 12 of the Civil Code of the Russian Federation; and the function of a way to ensure the performance of obligations, including through the norms of Articles 329–330 of the Civil Code of the Russian Federation. It should be noted that the civility theory of forfeit, which includes doctrinal understanding of its legal character, classifications of its types, grounds for application, etc., is at a decent scientific level, as evidenced by numerous scientific essays on this subject[3].

The Civil Code of the Russian Federation regulates two types of forfeit: fine and penalty. At the same time, the law does not establish any differences between one type and the other one, what is actually pointing to their identity. Respectively, the qualification of fine and penalty can be identified only in the scientific literature.

It is considered that the penalty as a fine is an amount of money determined by law or contract which the debtor must pay to the creditor for non-performance or improper performance of the obligation in the predetermined amount or as

---

[1] Herald of the Supreme Arbitration Court of the Russian Federation. — 2012. — No. 6.

[2] Paragraph 7 of the Review of the practice of consideration by the courts of cases related to the application of Chapter 23 of the Tax Code of the Russian Federation, approved by the Presidium of the Supreme Court of the Russian Federation 21.10.2015 // ConsultantPlus Information System.

[3] *Artemenko M. S.* Rol neustoyki v obespechenii ispolneniya planovo-dogovornykh obyazatelstv v novykh usloviyakh khozyaystvovaniya: avtoref. dis. … kand. yurid. nauk. [The role of forfeit in ensuring the fulfillment of planned-contractual obligations in the new conditions of economic management: autoreferat of the dissertation of Candidate of Legal Sciences] — M. — 1986. — 32 p.; *Bykov A. G.* Rol grazhdansko-pravovykh sanktsiy v osushchestvlenii khozyaystvennogo rascheta: avtoref. dis. … kand. yurid. nauk. [The role of civil law sanctions in the implementation of economic settlement: autoreferat of dissertation of the Candidate of Legal Sciences] — M. — 1967. — 25 p.; *Travkin A. A.* Neustoyka v sovetskom prave: avtoref. dis. … kand. yurid. nauk. [The forfeit in the Soviet Law: autoreferat of dissertation of the Candidate of Legal Sciences] — M. — 1968. 35 p.

a percentage of the value of the object of performance[1]. At the same time, the penalty is a lump sum payment [2].

Forfeit is traditionally defined as an amount of money that the debtor is obliged to pay the creditor as a percentage of the amount of overdue payment (unfulfilled obligation); such amount is calculated continuously on an accrual basis[3].

At the same time, there is practically no difference between a forfeit-fee, forfeit-penalty and a simple forfeit without indication of its variety. Theoretically, differences can be identified in the classification of forfeit because of its correlation with damages. Therefore, based on Article 394 of the Civil Code of the Russian Federation, the civil law doctrine distinguishes four kinds of penalties: offsetting; exclusive; punitive; alternative[4].

Another classification of types of forfeit is based on the criterion of presence (absence) of contractual nature (contractual or legal forfeit). A contractual penalty is necessarily fixed by the parties to the agreement in writing by virtue of the imperative requirements of Article 331 of the Civil Code (failure to comply with the written form invalidates the agreement)[5], in contrast to the legal penalty regulated respectively only by the law.

Therefore, the considered method of protection of civil rights, obviously, should be attributed to compensatory methods of protection. Contrary to the existing opinion, the above-mentioned method has no punitive (or retributive) purpose[6]. It seems that the definition of punishment as the purpose of protection of civil rights is unacceptable, since the very punishment (retribution) is inherent in

---

[1] Sovetskoe grazhdanskoe pravo: uchebnik [Soviet Civil Law: Textbook]. T. 1 / pod red. O. A. Krasavchikova. — M. — 1985. P. 487.

[2] Grazhdanskoe pravo [Civil Law] T. 1 / pod red. A. P. Sergeeva, Yu. K. Tolstogo. — M. — 2001. P. 569.

[3] *Kostyuk V.* Obespechenie ispolneniya obyazatelstv [Ensuring performance of obligations] // Khozyaystvo i pravo [Economy and Law]. — 2003. — No. 3. (Prilozhenie).

[4] *Kazantsev V. I.* Grazhdansko-pravovye sposoby obespecheniya ispolneniya obyazatelstv [Civil law methods of securing obligations] // Zakony Rossii: opyt, analiz, praktika [Russian laws: experience, analysis, practice]. — 2006. — No. 12. — Pp. 63–77.

[5] A similar approach is reflected in the doctrine, see: Kommentariy k Grazhdanskomu kodeksu RSFSR [The Commentary to the Civil Code of the Russian Soviet Federative Socialist Republic] / Otv. red. S. N. Bratus, O. N. Sadikov. — M.: Yuridicheskaya literature. — 1982. P. 233.

[6] The position on the penal (punitive) nature of the penalty is quite often found in the scientific literature. See, e.g.: *Eliseev N. G.* Mnogokratnye ubytki za narushenie antimonopolnogo zakonodatelstva: perspektivy poyavleniya v rossiyskom prave [Multiple damages for violation of antitrust law: prospects for appearance in Russian law] // Vestnik VAS RF [Herald of the Supreme Arbitration Court]. — 2013. — No. 8. — Pp. 4–15; Kommentariy k Grazhdanskomu kodeksu Rossiyskoy Federatsii, chasti pervoy (postateynyy) [Commentary to the Civil Code of the Russian Federation, Part One (article-by-article)] / pod red. T. E. Abovoy, A. Yu. Kabalkina. M., 2004. 926 p.; *Kazantsev, V. I.* op. cit; *Vasin V. N., Kazantsev V. I.* K voprosu o pravovoy prirode shtrafa [On the question of the legal character of the fine] // Rossiyskiy sudya [Russian judge]. — 2006. — No. 1. — Pp. 29–34.

criminal or administrative law, but not in civil law, among the basic principles of which is to ensure the equivalence of exchanged material goods[1]. This means that general orientation of any method of protection of civil rights, firstly, to ensure the observance (restoration) of balance of rights and legitimate interests of participants of civil legal relations. Consequently, the considered way of protection (recovery of forfeit) is intended for equivalent compensation of losses due to the negative impact on the subjective civil right, but not to punish the person who has violated a civil-law obligation.

The next method of protection from those listed in Article 12 of the Civil Code, which has the same purpose that is ***compensation for non-pecuniary damage.*** Such a way of protection, based on the legal regulation, claims to be independent, distinct from other ways, including those enshrined in this article of the Code.

At the same time, some scientists qualify this method of protection as a derivative, applied only together with other means of protection, for example, recovery of damages[2].

Significantly, the law operates with the term "compensation" in relation to non-pecuniary damage. In other cases of damage, the term "recovery" appears[3]. Obviously, the above-mentioned information further substantiates the compensatory purpose of the method of protection in question.

Compensation for non-pecuniary damage is interpreted as a measure provided for by the norms of substantive law, which has as its purpose the restoration of benefits and rights of a personal (non-property) character[4].

Studying the provisions of Article 150 of the Civil Code of the Russian Federation we can conclude that under non-pecuniary benefits the legislator defines intangible goods, violation of which, in turn, entails the infliction of non-pecuniary damage.

In contrast to compensation for damages, compensation for moral damage is aimed at compensating losses of non-property nature (despite the same form of compensation in the form of a monetary equivalent). More than that, compensation for moral damage is allowed irrespective of compensation for property damage (Paragraph 3 of Article 1099 of the Civil Code of the Russian Federation).

---

[1] Resolution of the Arbitration Court of the Ural District of 15.07.2016 No. F09-7482/16 // ConsultantPlus information system.

[2] *Monastyrskiy Yu. E.* Ubytki i nematerialnyy vred [Losses and non-pecuniary damages] // Vestnik grazhdanskogo prava [Herald of Civil Law]. — 2019. — No. 2. — Pp. 113–132.

[3] *Koloteva V. G.* Primenenie zakonodatelstva o kompensatsii moralnogo vreda v rossiyskoy sudebnoy praktike. Problemy opredeleniya razmera kompensatsii moralnogo vreda [Application of the law on compensation for moral damage in Russian judicial practice. Problems of determining the amount of compensation for moral damage] // Pravo i politika [Law and Politics]. — 2007. — No. 8. — Pp. 82–91.

[4] *Gushchin D. I.* Yuridicheskaya otvetstvennost za moralnyy vred [Legal liability for moral damages]. — SPb. — 2002. P. 122.

Therefore, it should be concluded that compensatory methods of protection of civil rights are aimed exclusively at the equivalent compensation for harm caused to the entitled person as a result of the negative impact on the subjective civil right. Such methods of protection of a violated (lost) right are applied if it is impossible to restore the right in its original (initial) form, which existed before the negative impact.

However, contrary to the existing opinion, punishment (retribution)) cannot be the purpose of protecting civil rights in the application of compensatory methods, because another approach does not correspond to such a principle of civil law as ensuring the equivalence of exchanged material goods, rather than punishing the person who has had a negative impact on a subjective civil right.

Compensatory methods of protection of civil rights should include the recovery of losses, penalties, compensation for moral damage, etc.

References

Artemenko M. S. Rol neustoyki v obespechenii ispolneniya planovo-dogovornykh obyazatelstv v novykh usloviyakh khozyaystvovaniya: avtoref. dis. … kand. yurid. nauk. [The role of forfeit in ensuring the fulfillment of planned-contractual obligations in the new conditions of economic management: autoreferat of the dissertation of Candidate of Legal Sciences] — M. — 1986. — 32 p. (In Russian)

Bykov A. G. Rol grazhdansko-pravovykh sanktsiy v osushchestvlenii khozyaystvennogo rascheta: avtoref. dis. … kand. yurid. nauk. [The role of civil law sanctions in the implementation of economic settlement: autoreferat of dissertation of the Candidate of Legal Sciences] — M. — 1967. — 25 p. (In Russian)

Dzhenks E. Angliyskoe pravo [The English law] / per. L. A. Luntsa. — M.: Gosyurizdat. — 1947. — 489 p. (In Russian)

Eliseev N. G. Mnogokratnye ubytki za narushenie antimonopolnogo zakonodatelstva: perspektivy poyavleniya v rossiyskom prave [Multiple damages for violation of antitrust law: prospects for appearance in Russian law] // Vestnik VAS RF [Herald of the Supreme Arbitration Court]. — 2013. — No. 8. — Pp. 4–15. (In Russian)

Godes A. B. Voprosy materialnoy otvetstvennosti gosudarstvennykh predpriyatiy i organizatsiy v usloviyakh novoy sistemy planirovaniya i ekonomicheskogo stimulirovaniya [The issues of material responsibility of state enterprises and organizations under the new system of planning and economic incentives] // Voprosy Grazhdanskogo prava i protsessa [Issues of Civil Law and Procedure]. — L.: Izd-vo LGU. — 1969. — Pp. 112–116. (In Russian)

Grazhdanskoe pravo [Civil Law] T. 1 / pod red. A. P. Sergeeva, Yu. K. Tolstogo. — M. — 2001. — 848 p. (In Russian)

Gushchin D. I. Yuridicheskaya otvetstvennost za moralnyy vred [Legal liability for moral damages]. — SPb. — 2002. — 166 p. (In Russian)

Ioffe O. S. Plan i organizatsiya dogovornykh svyazey v sotsialisticheskom narodnom khozyaystve [Plan and organization of contractual relations in the socialist national economy] // Uchenye zapiski [Scientific Notes]. — Vyp. 10. — M.: VNIISZ. — 1967. — Pp. 3–177. (In Russian)

Kazantsev V. I. Grazhdansko-pravovye sposoby obespecheniya ispolneniya obyazatelstv [Civil law methods of securing obligations] // Zakony Rossii: opyt, analiz, praktika [Russian laws: experience, analysis, practice]. — 2006. — No. 12. — Pp. 63–77. (In Russian)

Khokhlov V. A. Grazhdansko-pravovaya otvetstvennost za narushenie dogovora: dis. ... d-ra yurid. nauk. [Civil liability for breach of contract: dissertation of the Doctor of Juridical Sciences] — Samara. — 1998. — 349 p. (In Russian)

Khokhlov V. A. Obshchie polozheniya ob obyazatelstvakh: Uchebnoe posobie [The general provisions on obligations: Textbook]. — M.: Statut. — 2015. — Pp. 287–288. (In Russian)

Koloteva V. G. Primenenie zakonodatelstva o kompensatsii moralnogo vreda v rossiyskoy sudebnoy praktike. Problemy opredeleniya razmera kompensatsii moralnogo vreda [Application of the law on compensation for moral damage in Russian judicial practice. Problems of determining the amount of compensation for moral damage] // Pravo i politika [Law and Politics]. — 2007. — No. 8. — Pp. 82–91. (In Russian)

Kommentariy k Grazhdanskomu kodeksu RSFSR [The Commentary to the Civil Code of the Russian Soviet Federative Socialist Republic] / Otv. red. S. N. Bratus, O. N. Sadikov. — M.: Yuridicheskaya literature. — 1982. — 680 p. (In Russian)

Kommentariy k Grazhdanskomu kodeksu Rossiyskoy Federatsii, chasti pervoy (postateynyy) [Commentary to the Civil Code of the Russian Federation, Part One (article-by-article)] / pod red. T. E. Abovoy, A. Yu. Kabalkina. M., 2004. 926 p. (In Russian)

Kostyuk V. Obespechenie ispolneniya obyazatelstv [Ensuring performance of obligations] // Khozyaystvo i pravo [Economy and Law]. — 2003. — No. 3. (Prilozhenie). (In Russian)

Krol M. S. Vozmeshchenie ubytkov v kapitalnom stroitelstve [Compensation for losses in capital construction]. — Donetsk. — 1972. — 205 p. (In Russian)

Lomidze O. G., Lomidze E. Yu. Obyazatelstvo iz neosnovatelnogo obogashcheniya pri nedostizhenii storonoy dogovora svoey tseli [Obligation from unjust enrichment when a party to a contract fails to achieve its objective] // Vestnik VAS RF [Herald of the Supreme Arbitration Court of the Russian Federation]. — 2006. — No. 7. — Pp. 24–35. (In Russian)

Monastyrskiy Yu. E. Ubytki i nematerialnyy vred [Losses and non-pecuniary damages] // Vestnik grazhdanskogo prava [Herald of Civil Law]. — 2019. — No. 2. — Pp. 113–132. (In Russian)

Novoselova L. A. Printsip spravedlivosti i mekhanizm kompensatsii kak sredstvo zashchity isklyuchitelnykh prav [The principle of justice and compensation mechanism as a means of protecting exclusive rights] // Vestnik grazhdanskogo prava [Herald of Civil Law]. — 2017. — No. 2. — Pp. 48–55. (In Russian)

Pinding A. Ya. Vozmeshchenie ubytkov, prichinennykh promyshlennym predpriyatiyam neispolneniem dogovornykh obyazatelstv: avtoref. dis. … kand. yurid. nauk. [Compensation for losses caused to industrial enterprises by non-fulfillment of contractual obligations: autoreferat of dissertation of the Candidate of Legal Sciences.] — M. — 1968. — 18 p. (In Russian)

Sovetskoe grazhdanskoe pravo: uchebnik [Soviet Civil Law: Textbook]. T. 1 / pod red. O. A. Krasavchikova. — M. — 1985. — 544 p. (In Russian)

Travkin A. A. Neustoyka v sovetskom prave: avtoref. dis. … kand. yurid. nauk. [The forfeit in the Soviet Law: autoreferat of dissertation of the Candidate of Legal Sciences] — M. — 1968. 35 p. (In Russian)

Vasin V. N., Kazantsev V. I. K voprosu o pravovoy prirode shtrafa [On the question of the legal character of the fine] // Rossiyskiy sudya [Russian judge]. — 2006. — No. 1. — Pp. 29–34. (In Russian)

Vaskin V. V. Vozmeshchenie ubytkov v grazhdansko-pravovykh obyazatelstvakh: avtoref. dis. … kand. yurid. nauk. [Compensation of losses in civil law obligations: autoreferat of the dissertation of Candidate of Legal Sciences.] — Saratov. — 1971. — 32 p. (In Russian)

Volkov A. V. Vozmeshchenie ubytkov po grazhdanskomu pravu Rossii: dis. … kand. yurid. nauk. [Compensation of losses under the Civil Law of Russia: dissertation of the Candidate of Legal Sciences] — Volgograd. — 2000. — 199 p. (In Russian)

Information about the author

Denis Latypov (Perm, Russia) — Candidate of Legal Sciences, Associate Professor of the Department of Business Law, Civil and Arbitration Procedure of the Perm State National Research University (15 Bukireva St., Perm, 614990, Russia; e-mail: dennich@mail.ru).

Recommended citation

Latypov D. N. Compensatory ways to protect civil rights in Russia. Kazan University Law Review. 2023; 1 (8): 5-16. DOI: 10.30729/2541-8823-2023-8-1-5-16.

Sadagat Bashirova

Candidate of Legal Sciences, Associate Professor of the Department of Theory and Methods of Teaching Law of the Kazan Federal University

Guzel Valeeva

Candidate of Historical Sciences, Associate Professor of the Department of Theory and Methods of Teaching Law of the Kazan Federal University

Polina Shafigullina

First-year Master's student of the Department of Environmental, Labor Law and Civil Procedure of the Kazan Federal University

THE LEGAL STATUS OF CHATBOTS: PROBLEM STATEMENT AND SOLUTIONS

DOI 10.30729/2541-8823-2023-8-1-17-23

Abstract. *In this article, the authors give the concept of a chatbot, describe the structure and purpose. The issues of the legal character of chatbots are considered, including the possibility of using artificial intelligence in the legal environment. Existing intelligent programs that provide legal services are presented, the practice of application of electronic services is given. In addition, the study reflects the identified problems of determining the legal status of the chatbot as a person of the organization that uses it. Ways of solving the indicated problematics by means of recommendations for making changes in the current legislation of the Russian Federation are offered.*

Keywords: *chatbot, artificial intelligence, responsibility, subject of law, legal status, legal position.*

Today, the relevance of this research topic is based on the dynamic development of the modern world and the active implementation of digitalization in all spheres of society. One of these innovations is already being actively used all over the world, and that is chatbots.

Virtual assistants facilitate the work of, for example, a lawyer, but it is not uncommon for an electronic assistant to give the wrong solution to a problem: a chatbot is a program, and a legal case is unique. In addition to determining who is responsible for the actions of a chatbot, there is a pressing issue of defining the definition of "chatbot": what to recognize as such a program? We should not forget that in some cases, the electronic assistants collect personal data. However, does the consumer know about it? Is the person protected from information leakage?

Although the IT industry is developing quite rapidly in the area of chatbots, especially between 2020 and 2023, the first chatbots in history appeared more than half a century ago.

The first chatbot in history is considered to be a bot named Eliza, created in 1966 by Massachusetts Institute of Technology professor Joseph Weitzenbaum. Eliza's task was to communicate with patients in a mental hospital, keep them company and maintain a social environment. Elisa's creation gave a major boost to the development and implementation of artificial intelligence technology in human life.

What is the functionality of chatbots today? Let's define the object of the study and answer the question posed.

A chatbot is a computer program that conducts a conversation using auditory or textual methods. Chatbots (or virtual interlocutors) are used in conversational systems for a variety of practical purposes, including customer service or information gathering.

Speaking about a unified concept, requirements for the structure and technology of a chatbot — they are not currently fixed, but it is clear that the main task of any chatbot is the analysis of contextual information and its processing with the usage of the tools available on the chosen functioning platform.

It is important to understand that all the mechanisms are triggered directly by the "interlocutor" of the bot (customer, client), by entering certain requests and providing text documents in supported formats. The result of the interaction between the bot and the client can be a consultation, analysis, and preparation of a document of a legal character.

Therefore, the functionality of the chatbot consists of the following aspects:

— recognition of texts and voice queries in the specified language;

— analysis of written and spoken information;

— creating and forwarding informative messages to both group chats and a specific recipient;

— work with general services of the Internet or with individual portals of user (user's choice).

Chatbots can be relatively simple programs using the power of artificial intelligence, or multicomplex, complex, performing a number of tasks.

Today there is an increasing growth of chatbots that use NLP — the field of natural language processing, for example, the computer's ability to understand the user's intentions when communicating by analyzing the text entered.

The following main types of chatbots are distinguished by the type of purpose:

— assistant bots (e.g., Weatherman_bot, which sends the weather in the city);

— bots using artificial intelligence (provide the advantage of a more realistic conversation with the user);

— bots for entertainment (text or animated games);

— bots for business (today such bots are able to integrate information into devices and programs used by employees of organizations, for example, Excel tables or CRM systems, to make money transfers and other operations).

All these subspecies of chatbots make up two big groups: simple and complex chatbots.

Thus, speaking of simple chatbots, Sleptsova Yu. N. characterizes them as programs acting according to a predefined list or algorithm, based on what the user chooses from the suggested actions.

Complex bots, on the other hand, are based more on artificial intelligence, which makes them more "flexible": programs are able to learn as they interact with the client, which allows them to perform even more complex tasks in the future. Here we mean not only working with audio and textual information, but also with photo and video materials.

In addition to business bots (conversational assistants), textbooks and educational literature, there are also technical chatbots (usually based on artificial intelligence and rules — a mixed type).

Nowadays the prescriptive definition and other legal issues of application of such legal relations concerning chatbots are not fixed, but there is an opinion that a chatbot may well perform some functions of a lawyer.

Many large IT, insurance, financial, and legal companies use bots to perform simple algorithmic actions and even simple customer support.

Chatbots of legal companies are often able to conduct consultations, introduce the company's specialists, offer options for solving disputable issues, and work with documentation. We have selected the most useful active legal bots:

— *Docubot* — creates legal documents, analyzes legal websites and generates samples of applications, petitions, contracts, etc.;

— *LawBotLexi* and *Legalibot* are designed to analyze documents for grammatical and semantic errors;

— *LISA* — makes non-disclosure agreements;

— *COntractINtelligence* — supports loan agreements;

— *Visabot* — assists immigrants on permits;
— *RentersUnion* — chatbot for finding and renting housing;
— *Doogue O`BrienGeorge* — drafts speech for court based on;
— *Ross* — Bankruptcy Lawyer Consultant;
— *DoNotPay* — bot for help with small legal problems.

As for the legal status of chatbots, it is somewhat undefined: a chatbot cannot be a subject of legal relations, as it is only a product, the development of software, which makes the bot exactly the object of legal relations. However, the central question remains — with whom does the client have a dialogue? Is the chatbot an official representative of the company or just an online reference service?

Unofficially, a chatbot that conducts correspondence with clients automatically becomes a subject of a legal entity — its representative, and again the question is whether the chatbot's answers can be regarded as the company's position. The question arises: who is responsible in this case if chatbot's recommendations led the client to a negative result, which is sometimes irreversible in the legal field?

Now chatbots being a complex software unit communicating with the client, are recognized as a full-fledged official representative of a business entity and, accordingly, the legal entity itself is responsible for the actions of the chatbot. We fully agree with this position because the legal entity itself participates in the development of chatbots by putting certain options and skills in them and thus gives a number of powers, defines their scope. Unfortunately, as with a live lawyer, there is never a hundred percent guarantee of winning a case, nor is there a guarantee that the client will not suffer losses.

We have identified a number of features that we can recommend that companies and private practitioners consider when working with chatbots:

— the chatbot has the status of intellectual property of the company-developer;
— determination of the legal entity's responsibility (in other words, the simpler the chatbot and its functionality, the fewer chances the client has to hold the company liable: the chatbot is still more of a reference interface than a thinking employee with a legal background and practical experience).

To avoid negative consequences, we recommend companies, especially legal ones, when using chatbots to fully explain to clients the rules of using a chatbot, specifying the peculiarities of such a service. For example, by placing on the official pages (accounts) or in the description of the chatbot instructions on working with the resource, privacy policy, etc.

Who is responsible for the wrongly generated for the principal legal document, wrongly given advice, which may well lead to the rejection of claims, the omission of procedural deadlines?

Regarding the issue of liability, we have identified two options:

— liability lies with the company that owns the chatbot (e.g., the law firm on whose behalf the chatbot is acting);

— the responsibility lies with the developer (only the exclusive rights to the objects are affected here). It should be noted that with the transfer of development follows the transfer of rights to its results to the organization that uses the development (chatbot in this case). But even this point is increasingly regulated by a simple form of agreement between the developer of the chatbot and the company for which it will be created.

Therefore, we conclude that the subject, providing services and using a chatbot for this purpose, is responsible — the legal entity or an individual entrepreneur itself.

Despite the dynamic step forward of science in the field of artificial intelligence, the provision of legal services by a chatbot alone (without the support of a lawyer on duty) can only be of an informative, reference and informational character.

Professional lawyers are the only category of citizens who are the least exposed to the risk of receiving a negative result, because most often they turn to bots to receive a standard document or a short answer to the request and are able to assess the quality of the material provided independently. Also, legal practitioners help to improve the program by testing it, tracking changes in the legislation (again, we conclude that the chatbot is an assistant to the lawyer, but not a complete substitute for the lawyer).

A practicing lawyer of bankruptcy consulting in the city of Kazan asked us a question: how do we guarantee the security of personal data of the principals? We answer — the risk of leakage of personal information can't be reduced by one hundred percent, neither by a real lawyer nor a whole company, nor a chatbot. It is elementary at the level that information about principals is stored in spreadsheets, on electronic media, in databases. Like the chatbot, these systems are hypothetically hackable (not to mention the lockers in the filing rooms turnkey, although 4 out of 5 law firm employees surveyed responded that they store this kind of information on electronic media).

For both — a live lawyer and a chatbot — the general conditions of liability for personal data leakage can be applied. In order to minimize such incidents, we suggest not set questions when answers can reveal personal data in the chatbot program or to regularly monitore the work of services responsible for information security.

Analyzing the structure and functionality of modern chatbots, we came to the halfway conclusion that chatbots can be used quite successfully for template work, but will hardly be adapted to intellectual work, empathy, and search for non-standard, creative solutions, like a live lawyer.

The decision to create chatbots for a law firm stems from a desire to optimize the technical work of employees, increase the flow of clients and reduce the speed of information processing without limiting the process to the time of day.

Besides, chatbots have no days off, are devoid of human factor, due to which they could make a mistake, and also have special algorithmic protection.

However, we have identified a few problems that have not been resolved to date:

— The concept and legal status of a chatbot. The lack of a concept and consolidation of the legal status of a bot deprives it of the possibility to be part of a legal entity and officially express the position of the organization. In addition, an issue arises for the client: how to evaluate the actions and recommendations of the bot? Who is responsible in the case of an error?

— Information security. We singled out the issues of information security as a separate issue, because today the developers and owners are not obliged to provide chatbots with programs protecting against leakage of received data.

As possible ways of solving the identified issues in the legal regulation of chatbots, we consider it necessary to make the following additions:

— Federal Law "On information, information technologies and information security" dated 27.07.2006 No. 149-FZ, with provisions on the concept and legal status of chatbots as the subject of legal relations, as well as specific paragraphs of articles on the obligations of chatbot owners to provide information and instructions on the use of robots, for example, a statement on the official website: "This chatbot is an automated help service and is for informational purposes only".

— Federal Law "On Personal Data" dated 27.07.2006 N 152-FZ by provisions obligating persons who use in their activities automated systems to collect and store personal information to ensure the maintenance of such systems with professional algorithms of protection against leakage of data obtained and its transfer to third parties.

References

Akulich M. V. Chat-boty i marketing [Chatbots and marketing] / M. V. Akulich. — gor. Ekaterinburg, Sverdlovskaya oblast: Izdatelskie resheniya, 2018. — 180 p. (In Russian)

Borovskaya E. V. Osnovy iskusstvennogo intellekta [Basics of artificial intelligence] / E. V. Borovskaya, N. A. Davydova. — Moskva: Laboratoriya znaniy, 2020. — 130 p. (In Russian)

Paraskevov A. V., Kadentseva A. A., Moroz S. I. Perspektivy i osobennosti razrabotki chat-botov [Perspectives and specifics of chatbot development] // Nauchnyy zhurnal KubGAU [Scientific journal of Kuban State Agrarian University]. — 2017. — No. 130. — Pp. 395–404. (In Russian)

Sleptsova Yu. N. Avtomatizatsiya marketingovykh protsessov pri pomoshchi chat-bota [Automating marketing processes with chatbots] // Nauchnyy zhurnal [Scientific journal]. — 2020. — No. 3 (48). — Pp. 38–39. (In Russian)

Yang S. Algoritmicheskie yazyki realnogo vremeni. Konstruirovanie i razrabotka [Real-time algorithmic languages. Design and development] / S. Yang. — Moskva: Mir, 2021. — 400 p. (In Russian)

Information about the authors

Sadagat Bashirova (Kazan, Russia) — Candidate of Legal Sciences, Associate Professor of the Department of Theory and Methods of Teaching Law of the Kazan Federal University (18 Kremlin St., Kazan, 420008, Russia; e-mail: bsfshirova-sg@mail.ru).

Guzel Valeeva (Kazan, Russia) — Candidate of Historical Sciences, Associate Professor of the Department of Theory and Methods of Teaching Law of the Kazan Federal University (18 Kremlin St., Kazan, 420008, Russia; e-mail: valeeva@icloud.com).

Polina Shafigullina (Kazan, Russia) — First-year Master's student of the Department of Environmental, Labor Law and Civil Procedure of the Kazan Federal University (18 Kremlin St., Kazan, 420008, Russia; e-mail: shafigullina.pr@gmail.com).

Recommended citation

Bashirova S. G., Valeeva G. A., Shafigullina P. R. The legal status of chatbots: problem statement and solutions. Kazan University Law Review. 2023; 1 (8): 17-23. DOI: 10.30729/2541-8823-2023-8-1-17-23.

Yuliya Avdonina

Senior Lecturer of the Department of Environmental, Labor Law and Civil Procedure of the Kazan Federal University

Denis Koshelev

Second-year master's student of the Kazan Federal University

THE FORECLOSURE OF PLEDGED REAL ESTATE PROPERTY: STATEMENT OF THE PROBLEM

DOI 10.30729/2541-8823-2023-8-1-24-29

Abstract. *The article formulates the concept of foreclosure on pledged. The analysis of the legal nature of foreclosure of pledged property has been carried out in property. The authors reveals the problems of collision of creditors' rights.*

Keywords: *foreclosure, pledge, real estate property, creditor.*

The foreclosure on the debtor's property is the main measure of enforcing property-related documents. According to the current Federal Law "On enforcement proceedings", Paragraph 1 of Article 69 states that foreclosure on the property of the debtor includes seizure of property and (or) its forced sale, or transferring it to the claimant.

In contrast to the Law "On enforcement proceedings" of 1997, the current Law does not include the seizure procedure in the institution of foreclosure, since according to the meaning of Article 80 of the Federal Law "On enforcement proceedings" seizure by making a ruling is in general a security measure aimed primarily at ensuring the safety of the property to be realized or handed over to the claimant (Paragraph 1 Part 3 Article 80 of the Federal Law "On enforcement proceedings").

For the first time, the institute of foreclosure became officially applied in the course of the judicial reform of 1864 with the introduction of the Statute of Civil Proceedings. Historically, its formation and development were connected with the need to protect the rights and legitimate interests of creditors.

The Statute introduced new methods of enforcement which included, in particular, foreclosure on movable property of the debtor and foreclosure on immovable property of the debtor. According to the Statute of civil legal procedure of 1864, the choice of the way of execution (transfer of property in kind, performance of actions and works at the expense of the defendant, the foreclosure on movable and real estate property) depended on the claimant (Article 935 of the Statute of Civil Proceedings)[1].

However, it is interesting to note that in the rather long history of the institution of foreclosure, which includes more than a hundred years, neither doctrine nor legislation has developed the notion of foreclosure of property. Currently, the Federal Law "On enforcement proceedings" provides only a list of measures (means) that are part of the foreclosure procedure.

It seems a fair theoretical position, according to which foreclosure on property should be defined through its aim. In this case, since the purpose of enforcement proceedings is the fastest and correct execution of the requirements contained in a writ of execution, therefore, this aim should be consistently reflected in all procedures of enforcement proceedings, including the foreclosure of property.

This means that foreclosure is, above all, a type of method of satisfying the claims of the claimant, which consists in committing a particular set of legal actions.

Thus, it seems appropriate to understand foreclosure as a measure of enforcement, applied to the debtor in order to meet the requirements of the recoverer by seizure of property, and its forced sale or transfer to the recoverer.

Foreclosure on pledged property has a number of specific features that allow to distinguish it from other measures of enforcement, in particular, from the foreclosure on the property not encumbered by collateral obligations.

Pledge is one of the methods of securing the fulfillment of an obligation, because unlike personal security, in the fulfillment of which the creditor depends primarily on the solvency of the debtor, in pledge the creditor's interest is satisfied at the expense of the subject of pledge[2].

---

[1] Ustav grazhdanskogo sudoproizvodstva (Sv. Zak. t. XVI ch. I, izd. 1892 g., po Prod. 1906 goda). S zakonodatelnymi motivami, razyasneniyami Pravitelstvuyushchego Senata i kommentariyami russkikh yuristov, izvlechennykh iz nauchnykh i prakticheskikh trudov po grazhdanskomu pravu i sudoproizvodstvu (po 1 Noyabrya 1907 goda) [Statute of Civil Procedure (Code of Laws volume XVI part I, edition 1892, as continued in 1906). With legislative motives, explanations of the Governing Senate, and commentaries by Russian lawyers, extracted from scholarly and practical works on civil law and legal procedure (up to November 1, 1907)] / Sost.: *Tyutryumov I. M.* — S.-Pb.: Izd. S.-Pb. T-va Pechati i Izd. dela Trud, 1908. — 1891 p.

[2] *Rasskazova N. Yu.* Zalog dvizhimogo imushchestva [Pledge of movable property] // Mery obespecheniya i mery otvetstvennosti v grazhdanskom prave: Sbornik statey [Measures of security and measures of responsibility in civil law: Collection of essays]. — M.: Statut, 2010. — Pp. 7–42.

The legislator classifies the parties to enforcement proceedings into three groups. The classification is based on the legal status of the party to the enforcement proceedings. Thus, when foreclosing on pledged property the parties to the enforcement proceedings are the pledge recoverer and the pledge debtor; when foreclosing on the property of the debtor at the request of the pledgee, who is the pledgee of this property, the parties to the enforcement proceedings are the pledge recoverer and the main pledge debtor, and when foreclosing on the property of a debtor encumbered by a third person's rights of lien, at the request of an unpledge recoverer, the parties are the unpledge recoverer and the pledged debtor.

The legal status of recoverers can also be classified on the following criteria:

1) depending on the security of recoverers' claims (the legal status of secured creditors and the legal status of creditors whose claims are not secured by collateral);

2) depending on the content of the legal status (substantive legal status and procedural legal status of the recoverers)

3) depending on the type of enforcement measures (the legal status of enforcers in foreclosure of property, sale of property, distribution of money and transfer of unrealized property to the recoverer).

The fact that foreclosure of pledged property includes not only the seizure, but also the sale of pledged property, it represents nothing less than a special basis for ending ownership rights to pledged property in the event of its sale[1].

Identifying this case, G. F. Shershenevich pointed out that "the court cannot, as a general rule, deprive someone of his property right or create such a right for a known person. Its task is limited to determining the ownership of the right. However, there are cases where the court not only awards, but also deprives the right of ownership, namely, in foreclosure of the defendant's property and in divisions of common property"[2].

A court act of foreclosure on pledged property, made at the request of the pledgeholder, is the basis for enforcement actions against the pledgeholder, the procedure of which is regulated by the procedural law. Herewith, in order to increase the efficiency of enforcement actions, in particular foreclosure of pledged property, the legislator stipulates that foreclosure of pledged property in favor of the pledgeholder. The execution of the claim can be carried out without a court act of foreclosure.

The main problem of non-pledged creditors as compared to pledged creditors is to determine the ratio of their claims. The claims of a non-pledged creditor and,

---

[1] Grazhdanskoe pravo. Uchebnik. T. 1 [Civil Law. Textbook. T. 1] / *Agarkov M. M., Bratus S. N., Genkin D. M., Serebrovskiy V. I.,* i dr.; Pod red.: *Agarkov M. M., Genkin D. M.* — M.: Yurid. izd-vo NKYu SSSR, 1944. — 419 p.

[2] Kurs grazhdanskogo prava: Vvedenie. T. 1: Vyp. 1-2 [A course in Civil Law: Introduction. T. 1: Vol. 1-2] / *Shershenevich G. F.* — Kazan: Tipo-lit. Imp. Kazan. un-ta, 1901. — 474 p.

accordingly, the debtor's obligations are not guaranteed by anything. The existence of a non-pledged creditor's right of claim against the debtor is not sufficient to recognize his right to foreclose on the collateral. Theory and practice require a number of actions, which should result in obtaining an enforcement document on foreclosure of collateral and submitting it for execution to the bailiff service. The bailiff, in turn, is entitled to foreclose on the pledged property in favor of a non-collateral creditor only on the basis of a court act. In this regard, the legal character of such a court act is of interest both from a theoretical and practical point of view.

The rule set forth by Part 1 Article 78 of the Federal Law "On Enforcement Proceedings" says that the possibility of foreclosure of the pledged property exists only if the enforcement proceedings have been initiated on the basis of a writ of execution, which is a writ of execution (Paragraph 1, Part 1, Article 12), or on the basis of a court act (court order), which is also in accordance with Paragraph 2, Part 1, Article 12 is an enforcement document.

In the Federal Law "On enforcement proceedings" the legal character of the court order is contradictory. On the one hand, the legislator indicates a court order among the enforcement documents, on the basis of which foreclosure on pledged property can be enforced. On the other hand, it seems that in this case there is an unresolved contradiction between the provisions of the Civil Procedure Code and the Federal Law "On enforcement proceedings".

Thus, in accordance with Article 122 of the Civil Procedural Code of the Russian Federation, a court order may be issued in strictly defined cases, the list of which does not include the foreclosure of pledged property, because the court needs to resolve a number of issues related to foreclosure of pledged property as collateral. At the same time, the court should not blindly follow the will of the claimant (pledged creditor) in deciding on the foreclosure of the pledged property. The inseparability of the procedural form from the procedure of foreclosure on pledged property is due to the need to establish judicial control by the state in this sphere of public life. In this regard, the court, when deciding on the issue of foreclosure on pledged property, must carefully investigate the circumstances and the existence of grounds for foreclosure in order to make a legal and reasonable decision.

It follows that foreclosure on the pledged property is possible only on the basis of a writ of execution. Therefore, if a recoverer, whose claims to recover the amount from the debtor have been satisfied in an order, subsequently wishes to foreclose on the pledged property, he must file a statement of claim in court and only on the basis of the court decision may obtain a writ of execution in the general order. This means that non-collateral creditors, when filing a court order for the recovery of money from the debtor, are not entitled to resort to the institution of foreclosure of the pledged property to satisfy their claims.

As L. A. Novoselova truthfully points out, this is justified by the fact that "the judicial act has already indicated the property which is subject to foreclosure, so there is no need to observe the order of foreclosure of the debtor's property established by law"[1]. This means that the foreclosure of pledged property to the pledgeholder is a procedure, which precedes other measures of enforcement.

However, the main problem of non-pledged creditors in comparison with pledged creditors is that their claims cannot be satisfied by the pledged property due to the absence of a mechanism for the realization of such a right and the possibility of foreclosure only by an executive document.

Therefore, the absence of a mechanism for exercising the rights of non-pledge creditors through foreclosure on pledged property in conditions of their collision with the rights of pledge creditors in practice leads to the creation of unjustified advantages between these creditors and contradictions between the laws on enforcement proceedings and the Civil Code of the Russian Federation. In this regard, it seems appropriate to resolve these contradictions taking into account the thesis, the essence of which is that the pledge creditor has the right to obtain satisfaction of their claims at the expense of the pledged property in the first place (predominantly). However, this does not mean that non-collateral creditors do not have the right to enforce the pledged property on an equal basis with creditors whose claims are secured by pledge.

References

Grazhdanskoe pravo. Uchebnik. T. 1 [Civil Law. Textbook. T. 1] / Agarkov M. M., Bratus S. N., Genkin D. M., Serebrovskiy V. I., i dr.; Pod red.: Agarkov M. M., Genkin D. M. — M.: Yurid. izd-vo NKYu SSSR, 1944. — 419 p. (In Russian)

Kurs grazhdanskogo prava: Vvedenie. T. 1: Vyp. 1–2 [A course in Civil Law: Introduction. T. 1: Vol. 1–2] / Shershenevich G. F. — Kazan: Tipo-lit. Imp. Kazan. un-ta, 1901. — 474 p. (In Russian)

Novoselova L. A. Nekotorye problemy zaloga v ispolnitelnom proizvodstve [Some problems of collateral in enforcement proceedings] // Vestnik grazhdanskogo prava [Herald of Civil Law]. 2008. — T. 8, No. 3. — Pp. 107–122. (In Russian)

Rasskazova N. Yu. Zalog dvizhimogo imushchestva [Pledge of movable property] // Mery obespecheniya i mery otvetstvennosti v grazhdanskom prave: Sbornik statey [Measures of security and measures of responsibility in civil law: Collection of essays]. — M.: Statut, 2010. — Pp. 7–42. (In Russian)

[1] *Novoselova L. A.* Nekotorye problemy zaloga v ispolnitelnom proizvodstve [Some problems of collateral in enforcement proceedings] // Vestnik grazhdanskogo prava [Herald of Civil Law]. 2008. — T. 8, No. 3. — Pp. 107–122.

Ustav grazhdanskogo sudoproizvodstva (Sv. Zak. t. XVI ch. I, izd. 1892 g., po Prod. 1906 goda). S zakonodatelnymi motivami, razyasneniyami Pravitelstvuyushchego Senata i kommentariyami russkikh yuristov, izvlechennykh iz nauchnykh i prakticheskikh trudov po grazhdanskomu pravu i sudoproizvodstvu (po 1 Noyabrya 1907 goda) [Statute of Civil Procedure (Code of Laws volume XVI part I, edition 1892, as continued in 1906). With legislative motives, explanations of the Governing Senate, and commentaries by Russian lawyers, extracted from scholarly and practical works on civil law and legal procedure (up to November 1, 1907)] / Sost.: Tyutryumov I. M. — S.-Pb.: Izd. S.-Pb. T-va Pechati i Izd. dela Trud, 1908. — 1891 p. (In Russian)

Information about the authors

Yuliya Avdonina (Kazan, Russia) — Senior Lecturer of the Department of Environmental, Labor Law and Civil Procedure of the Kazan Federal University (18 Kremlin St., Kazan, 420008, Russia; e-mail: kkafedra983@gmail.com).

Denis Koshelev (Kazan, Russia) — Second-year master's student of the Kazan Federal University (18 Kremlin St., Kazan, 420008, Russia; e-mail: granta2014@yandex.ru).

Recommended citation

Avdonina Yu. N., Koshelev D. A. The foreclosure of pledged real estate property: statement of the problem. Kazan University Law Review. 2023; 1 (8): 24-29. DOI: 10.30729/2541-8823-2023-8-1-24-29.

Journal "Kazan University Law Review"
Call for papers

The inaugural issue of the journal was launched by the Law Faculty of Kazan Federal University in December 2016. ISSN number: 2541-8823.

The journal is printed in English and comes out in four issues per year.

The journal has an International Editorial Council and a Russian Editorial Board. All articles are reviewed by a professional copyeditor whose native language is English.

Requirements for submissions:

- The journal accepts articles on fundamental issues of law not previously published elsewhere. The content of articles should reflect the author's original academic approach and developed doctrine of jurisprudence.
- Articles must be submitted in the English language only.
- Recommended number of words/pages: the journal uses the character count method. Articles (text plus footnotes) should contain 40,000 to 120,000 characters including spaces.
- Articles must include an abstract with 150–250 words and a list of at least five Keywords.
- The section 'Information about the author' must appear at the end of the article: it should contain the surname and name of the author, title of the author, place of work (or study), postal address, telephone number and e-mail address.
- For postgraduate students: please attach (as an image file) a review on the article written by a certified supervisor.
- Deadlines for submission of articles:

  Issue no. 1 – January 15 (launch of printed issue is March);

  Issue no. 2 – April 15 (launch of printed issue is June);

  Issue no. 3 – June 15 (launch of printed issue is September);

  Issue no. 4 – October 15 (launch of printed issue is December).
- Citation format: footnotes should conform to the 20th edition of *The Bluebook: A Uniform System of Citation*.

The journal staff may be contacted via e-mail at:

kulr.journal@gmail.com

Kazan Federal University | FACULTY of Law

Faculty of Law welcomes everyone applying for master's degree!

MASTER'S PROGRAMS 2024

- Anti-corruption studies
- European and international business law (in English)
- International human rights law
- Legal analytics
- Legal support of business
- Preliminary investigation and criminal justice
- Litigator in civil, arbitration and administrative proceedings
- Private and business law
- Legal protection of the rights of citizens in criminal proceedings
- Lawyer in governmental authority
- Lawyer in digital economy

KAZAN UNIVERSITY LAW REVIEW
Volume 8, Winter 2023, Number 1

Signed to print 01.03.2023
Form 70x100 1/16. Volume 2 printed sheets
Circulation 100

Published by LLC “Prospekt”,
111020, Moscow, Borovaya st., 7, building 4

ООО “Проспект”,
111020, г. Москва, ул. Боровая, д. 7, стр. 4

Свободная цена