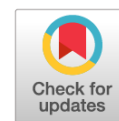


About the Judicial Protection of Subjective Civil Rights



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Abstract. *The article is devoted to the judicial protection of subjective civil rights. The author tries to formulate the concepts of “subjective civil rights” and the “judicial protection of subjective civil rights” to determine the ratio of subjective civil rights and the right to judicial protection as well as the judicial protection features of various subjective civil rights categories. The paper presents the author’s conception of subjective rights, the various ways by which they are protected, and the features of the protection of certain types of subjective civil rights. The aim of the research is to find the most optimal ratio of the right of subjective right’s owner to protection and the right of subjective right for protection, in order to determine the most typical ways to protect certain categories of subjective civil rights. The methodological basis of the research includes the well-known general and private scientific methods of scientific knowledge. The paper concludes by stating that subjective civil rights have general (universal) and specific ways of protection.*

Keywords: *subjective civil rights, judicial protection, judicial protection methods, civil liability measures, damages, penalty, compensation.*

In legal science, theoretical disputes about the existence of an independent subjective right to the protection of civil rights continue between scholars. Some experts insist on the inclusion of the right of individuals and legal entities to protection in the subjective civil law as a right (legal claim) to protection with the help of competent law enforcement and judicial authorities [1–3]. Others argue about the autonomy of the subjective right to protection [4].

A.P. Sergeev considers the second position to be the most convincing. The well-known civilist emphasizes that the subjective civil right to protection appears in the rights-holder only at the time of violation (challenge) and is carried out within the framework of the protective legal relationship that has arisen. The subjective right to protection includes a legal opportunity for the rights-holder to commit their own actions and the ability to demand proper behavior from the obligated person. If the first type of opportunities includes, in particular, civil legal methods of self-defense (necessary defense, measures of operational impact), then the second type is the compulsory measures of a property nature on state bodies’ part in relation to the offender¹.

In our opinion, the two designated positions on this issue differ from each other only in the

degree of generalization of the complex of legal opportunities (powers). Most representatives of the general law theory and civilists include in the composition of subjective civil rights: a) the right to own one’s actions, b) the right to demand certain actions from obligated persons, and c) the right to protect one’s rights and legitimate interests with the help of judicial and other human rights bodies by filing claims against the offender in order to further suppress the offense, compensate for damage (losses), and/or restore the original situation [5–14].

Another group of researchers also believes that the subjective right (the right to protection) includes a legal opportunity for the rights-holder to commit their own actions and the ability to demand proper behavior from the obligated person. In other words, both the first and second positions are based on the rights of the rights-holder to their own behavior, the requirements from the obligated person of certain actions in the interests of the authorized person, and the presentation of legal claims to violators and debtors. In essence, the third power derives from the other two powers, and both powers indicated by the disputing parties (scientists) are aimed at protecting the rights and legitimate interests of the injured person(s), regardless of whether these powers are included in the category of regulatory subjective rights or subjective right to protection.

¹ Civil law. Textbook: in 3 v. Vol. 1 / Under the editorship of A.P. Sergeev. 2nd ed., reprint. Moscow: Prospect, 2018, p. 542.

We consider it unacceptable to include in the third power of the owner of a subjective civil right the use of only necessary defense and measures of operational impact, and to consider the subjective right to defense only as measures of civil liability of the offender. The content of the powers of subjective civil law bearer includes not only self-defense but also the presentation of claims to the offense, the consideration of these claims in court, and the application of compulsory state-power measures (sanctions) to the offender. The content of the subjective right to protection also includes actions of a self-protective nature and coercive actions of the court and other human rights bodies to restore the original situation and compensate for damage (losses). Indeed, the subjective right to protection (as an element of a protective civil legal relationship) appears in the subject of the protective legal relationship that has arisen at the time of violation of their rights and legitimate interests. It is also true that subjective civil rights of a regulatory type contain such rights-securing (guarantee) measures as the self-defense activity of the victim [15–17], the possibility of their appeal to the court, and the human rights activity of the court.

Subjective civil rights are rights based on the norms of civil (objective) law of the subjective rights-holder to: 1) their own behavior (for example, their actions on the possession, use, and disposal of their property and other objects of civil rights); 2) making demands to obligated persons for proper behavior; 3) making demands to the court and other human rights bodies for the legal protection of the injured person, and the application of civil liability measures to the offender.

The Constitution of the Russian Federation² proclaims human rights as the highest value of the government and society, with the sacred duty of the government to recognize, respect, and protect the rights and freedoms of people and citizens. All constitutional (basic) rights and freedoms of Russian citizens are directly applicable, determine the meaning, content, and application of laws, the activities of the legislative and executive authorities, and local self-government and are provided by justice. Everyone is guaranteed judicial protection of their rights and freedoms. In Russia, laws that cancel or detract from the rights and freedoms of people and citizens cannot be enacted. They may be restricted only by Federal laws in accordance with the procedure established by law (articles 18, 55).

² The Constitution of the Russian Federation (adopted by popular vote 12.12.1993) (considering the amendments introduced by Laws of the Russian Federation on amendments to the Constitution of the Russian Federation from 30.12.2008 No. 6-FKZ, from 30.12.2008 No. 7-FCL from 05.02.2014 No. 2-FKZ, from 21.07.2014 No. 11-FCL) // Collected legislation of the Russian Federation. 2014. No. 31, article 4398.

The rights of Russian citizens are constitutional, cross-sectoral, and sectoral in nature. Under the protection of the norms of civil (objective) law, the Civil Code of the Russian Federation³, there are subjective absolute and relative rights, corporate and inheritance rights. Part of subjective absolute rights are property rights, moral rights, and moral rights in intellectual activities (see, for example, the right of authorship, the author's right to name, right to inviolability of the work, the right to disclosure of a work, and the right to opinion, articles 1265, 1266, 1268, and 1269 of the Civil Code). As is known, real rights are property rights and limited real rights (for example, see articles 209 and 216 of the Civil Code of the Russian Federation). Protection is ensured by proprietary methods (recognition of the right(s), vindication of one's things, and filing negating claim) (articles 301–305 of the Civil Code). The objects of personal non-property rights are honor, dignity, one's good name, business reputation, privacy, and other intangible benefits listed in article 150 of the Civil Code of the Russian Federation. Their protection is ensured in the manner prescribed by law, to the extent and in the cases in accordance with the norms of the Civil Code, other Federal laws, based on the nature of the impaired intangible good, the content of the protected rights, and the nature of the offense (Paragraphs 1 and 2 of Article 150 of the Civil Code). In order to protect the legitimate interests of the bearers of personal subjective rights, intangible benefits may specifically be protected by the court's recognition of the fact of personal non-property rights violation, publication of the court's decision on the violation, suppression, or prohibition of actions that violate or threaten to violate personal non-property rights or encroach or threaten to encroach on non-material benefits.

Moral rights in intellectual activities are protected by the recognition of rights, restitution, and suppression of illegal actions or actions, creating a threat of infringement, compensation for moral damages, publication of the court decision on the infringement, and other means provided by law. The authors' honor, dignity, and business reputation are protected in accordance with article 152 of the Civil Code of the Russian

³ The Civil Code of the Russian Federation (part one) from 30.11.1994 № 51-FZ (as amended on 16.12.2019, No. 32, article 3301; Civil Code of the Russian Federation (Part two) of 26.01.1996 No. 14-FZ (ed. of 18.03.2019, with ed. from 28.04.2020) // collected legislation of the Russian Federation. 1996. No. 5, article 410; Civil code of the Russian Federation (part III) of 26.11.2001 No. 146-FZ (as amended on 18.03.2019) // collected legislation of the Russian Federation. 2001. No. 49, article 4552; Civil code of the Russian Federation (part four) from 18.12.2006 № 230-FZ (ed. from 18.07.2019) // Collected legislation of the Russian Federation. 2006. No. 52 (part 1), article 5496.

Federation (article 1251 of the Civil Code of the Russian Federation).

Subjective civil rights of a relative type are closely related to contractual, tort, and conditional legal relations (obligations). This type of rights and legal relations is characterized by the presence of specific authorized and obligated persons (creditors and debtors). The bearer of the subjective right dominates the behavior of the debtor and has the right to demand from one the fulfillment of all obligations provided for by law and the terms of the contract. In the case of an offense, a contractual relationship is being reformed in a protective relationship in which the injured person (the creditor) has the right to claim damages, compensation, and/or application of other measures of civil protection and responsibility. Tort and conditional legal relations are law enforcements from the very beginning of their existence, and, of course, the protection of the injured participants' rights in these legal relations is carried out taking into account the legitimate interests of the victim(s).

Subjective corporate rights include the rights of founders (participants) of corporate organizations related to participation in these organizations, their management, and distribution of profits. Thus, the participants of economic partnership or company shall have the right to participate in managing the affairs of the corporation; to obtain relevant corporate information; to appeal decisions of bodies of corporate governance; to demand, on behalf of the corporation for the damages caused to the corporation; and to challenge large transactions and related party transaction. They may also lay claim to the profit (dividends) in established corporate law; the right to a liquidation quota; to require, under the act and the constituent document cases, exclusion from partnership or company (Section 1, Articles 65.2 and 67 of the Civil Code of the Russian Federation).

Exclusive rights in intellectual activities related to turnover of property are protected in accordance with the law of obligations set out in Parts One and Two of the Civil Code and the rules of Part Four of the Civil Code (for example, see article 1252).

Subjective hereditary (property) rights belong to heirs by law and/or will, as well as to other persons (by virtue of a testamentary refusal) (for example, see Chapters 61–63, Article 1137 of the Civil Code of the Russian Federation). Their protection takes place in accordance with the procedure established by law with the help of methods of protection that do not contradict the law.

Protection of rights in the subjective aspect is the ability of subjects of civil law to act in a certain way in case of violation of their subjective civil rights and legitimate interests by obligated persons, as well as by third parties and/or state (municipal) bodies, to take self-defense measures,

to demand proper behavior from obligated and third parties under the threat of state-power coercion, to seek help from the state, and to undergo the procedure of applying state-power civil law methods of protection and measures of civil law liability in order to prevent and restore the original situation in accordance with the procedure established by law.

The legal basis of judicial protection is the main provisions, principles, and norms of the Constitution of the Russian Federation, Federal Constitutional Law No. 1-FKZ of 21.07.1994 (as amended on 29.07.2018) "On the Constitutional Court of the Russian Federation"⁴, Federal Constitutional Law No. 1-FKZ of 31.12.1996 (as amended on 30.10.2018) "On the Judicial System of the Russian Federation"⁵, Law of the Russian Federation of 26.06.1992 No. 3132-1 (ed. of 02.08.2019) "On the Status of Judges in the Russian Federation" (with amendments and additions, valid from 25.10.2019)⁶, Federal Constitutional Law No. 1-FKZ of 07.02.2011 (as amended on 06.03.2019) "On Courts of General Jurisdiction in the Russian Federation" (with amendments and additions, valid from 01.09.2019)⁷, Federal Constitutional Law No. 1-FKZ of 28.04.1995 (as amended on 18.07.2019) "On Arbitration Courts in the Russian Federation,"⁸ Federal Law No. 188-FZ of 17.12.1998 (as amended on 28.11.2018), "On Justices of the Peace in the Russian Federation,"⁹ Civil Procedure Code of the Russian Federation No. 138-FZ of 14.11.2002 (as amended on 24.04.2020)¹⁰, Arbitration Procedure Code of the Russian Federation No. 95-FZ of 24.07.2002 (as amended on 02.12.2019)¹¹, and other legal sources.

It appears that the protection of subjective civil rights is designed to comply with the following principles of judicial protection: 1) the right of citizens and legal entities to judicial protection (Article 46 of the Constitution); 2) legal equality of citizens before the law and court (Article 19

⁴ Collected legislation of the Russian Federation. 1994. No. 13, article 1447.

⁵ Collected legislation of the Russian Federation. 1997. No. 1, article 1.

⁶ News of the Meeting of Popular Deputies and Supreme Council of the Russian Federation. 1992. No.30, article 1792.

⁷ Collected legislation of the Russian Federation. 2011. No. 7, article 898.

⁸ Collected legislation of the Russian Federation. 1995. No. 18, article 1589.

⁹ Collected legislation of the Russian Federation. 1998. No. 51, article 6270.

¹⁰ Collected legislation of the Russian Federation. 2002. No 46, article 4532.

¹¹ Collected legislation of the Russian Federation. 2002. No. 30, article 3012.

of the Constitution of the Russian Federation); 3) smooth implementation of protection and availability of court protection; 4) competitiveness of parties to the litigation (Article 123 of the Constitution of the Russian Federation); 5) the constitutionality (legality) and the independence of judges and their submission only to Federal law, the administration of justice only by the court (Articles 118 and 120 of the Constitution of the Russian Federation); 6) objectivity, validity, fairness, integrity, and inadmissibility of abuse of law; 7) reasonableness; 8) proportionality; 9) a harmonious combination of public and private interests; 10) completeness, comprehensiveness, and consistency; 11) professionalism; 12) efficiency; 13) enforceability; and 14) efficiency.

Judicial protection of the rights and legitimate interests of holders of subjective civil rights is carried out taking into account the nature and content of the protected relations, the type and nature of the offense committed, the grounds, goals, conditions, and legal restrictions [18].

The Civil Code of the Russian Federation contains the main ways to protect subjective civil rights. Other Federal laws contain additional methods of protection (Articles 12-6.1). There are preventive, suppressive, confessional, compensatory-restorative, punitive, and other methods of protection. Such basic methods of protection as compensation for losses, recovery of interest, penalties and fines, and compensation for moral damage are simultaneously measures of civil liability [19–22].

Losses are monetary expressions of property losses (damage); expenses incurred or that will be incurred in the future in connection with the committed offense; loss; and damage to property (real damage); as well as lost income (lost profits) (Article 15 of the Civil Code of the Russian Federation). As for damages in civil law, however, according to the principle of full compensation, the law allows the possibility of reducing the penalty size if circumstances specified by law are taken into account. The result of damages is to restore the original status of the victim (creditor) (Article 393 of the Civil Code). The plaintiff is obliged to prove that the proper defendant in their claim is the person who caused the damage (loss), as well as the obligation to prove the fact of violation of the obligation (damage), and the existence of losses. The amount of losses should be determined with a known (reasonable) degree of confidence. A claim for damages cannot be refused on the grounds that it is impossible to determine the exact amount of damages. In such a situation, the amount to be compensated is determined by the court based on all the investigated circumstances of the case and the principles of justice and proportionality. The absence of guilt is proven by the person who

violated the obligation (Paragraph 2 of Article 401 of the Civil Code of the Russian Federation). As a general rule, the defendant's guilt in breach of an obligation is assumed until proven otherwise. The causer of losses is exempt from compensation for damage if they prove that the damage was not caused by their actions (Paragraph 2 of Article 1064 of the Civil Code of the Russian Federation). A person who is responsible for the breach of an obligation, regardless of guilt, is obliged to prove the circumstances that serve as a basis for exemption from liability¹².

The Resolution of 23.06.2015 No. 25, by the Plenum of the Supreme Court of the Russian Federation explained that the amount of lost benefits depends on the creditor of measures to receive and make the necessary arrangements (Paragraph 4 of Article 393 of the Civil Code). At the same time, the creditor has the right to present to the court not only evidence of taking measures for obtaining the lost profit but also any other evidence of the possibility of its recovery. This party bears the burden of proving the fact and the amount of damage (loss) caused (with a reasonable degree of reliability), the presence of a causal relationship between the action (or inaction) of the offender, and the negative consequences that have occurred. The defendant has the right to challenge these circumstances and submit their objections to the court, other evidence refuting the plaintiff's claims, and their guilt (Paragraphs 1 and 2 of Article 401 of the Civil Code of the Russian Federation).

In the Resolution by the Plenum of the Russian Federation Supreme Court of March 24, 2016 No. 7 (ed. of 07.02.2017) "On the application by courts of Certain Provisions of the Russian Federation Civil Code on Liability for Breach of Obligations"¹³, it is clarified that in case of default or inadequate execution of obligations (in particular, when delaying said execution) the law or the contract may require the debtor to pay the creditor a certain amount of money as fines or penalties (Paragraph 1 of Article 330 of the Civil Code). The penalty may be reduced by the court in the case of its obvious disproportion to consequences of the infringement of obligations (Paragraph 1 of Article 333 of the Civil Code).

The legal regime of the use of percent for illegal detention of other people's money, evasion from their return, or other delay in the execution

¹² The Resolution of Plenum of the Supreme Court of 23.06.2015 No. 25, "About application by courts of certain provisions of Section I of the Civil code of the Russian Federation" // Bulletin of the Supreme Court of the Russian Federation. 2015. No. 8.

¹³ Bulletin of the Supreme Court of the Russian Federation. 2016. No. 5.

of the obligations is provided for in Article 395 of the Civil Code. According to this article, the amount of interest recovery is set based on the key rate of the Bank of Russia. It is possible to collect interest in excess of the losses caused. Meanwhile, the simultaneous collection of interest and penalties is unacceptable. The law does not allow the collection of compound interest (interest on the interest), except in cases provided for by law. The court may reduce the amount of interest owed on the debtor's application because of their disproportionate impact offense¹⁴.

Monetary compensation for moral damage is collected for causing physical and mental/emotional suffering to citizens. The amount of compensation for moral damage is determined by the court, regardless of the size of the reimbursed property damage, taking into account the principles of reasonableness, fairness and good faith, the degree of the offender's fault, and the extent and nature of physical and moral suffering connected with individual peculiarities of the personality and other relevant circumstances (Articles 150–51, 1099–1101 of the Civil Code). Claims for compensation for non-pecuniary damage, as non-property claims, do not have a statute of limitations. An important role in the application of the said provisions of the Code is played by the explanations set out in the Resolution of Plenum of the Supreme Court dated 20.12.1994 No. 10 (edited on 06.02.2007) "Some questions of application of the legislation on moral harm compensation"¹⁵, in the Resolution by the Plenum of the Russian Federation Supreme Court of 28.06.2012 No. 17, "On consideration by courts of civil cases on disputes on consumer protection"¹⁶, in the Resolution by the Plenum of the Russian Federation Supreme Court of 24.02.2005 No. 3, "On judicial practice in cases of protection of the Honor and dignity of citizens, as well as the business reputation of citizens and legal entities"¹⁷, as well as in the Review of the practice of consideration by courts of cases on disputes on the protection of honor, dignity, and business reputation (2016)¹⁸.

¹⁴ See more: resolution by the Plenum of the Russian Federation Supreme Court No. 13, Plenum of the Russian Federation No. 14 from 08.10.1998 (as amended on 24.03.2016) "About application of the provisions of the Russian Federation Civil Code about the interest for using alien money resources" // Bulletin of the Supreme Court of the Russian Federation. 1998. No. 12.

¹⁵ Bulletin of the Supreme Court of the Russian Federation. 1995. No. 3.

¹⁶ Bulletin of the Supreme Court of the Russian Federation. 2012. No. 9.

¹⁷ Bulletin of the Supreme Court of the Russian Federation. 2005. No. 4.

¹⁸ Approved by the Presidium of the Supreme Court of the Russian Federation. 2016. No. 10.

The methods of judicial protection of subject real rights are explained in the joint Resolution by the Plenum of the Russian Federation Supreme Court No. 10 and the Plenum of the Russian Federation Supreme Court No. 22 dated 29.04.2010 (ed 23.06.2015), "About some questions arising in judicial practice when resolving disputes relating to the protection of the right of ownership and other real rights."¹⁹ In this Resolution it is explained that in case of alienation by the defendant of the vindicated property the court is called to replace the improper defendant with the proper one. The owner has the right to claim his property from someone else's illegal possession, regardless of the defendant's objection that they are a bona fide acquirer, if they present evidence to the court that the property has left their possession against their will (Paragraph 38). If the vindicated property is not in the possession of the defendant, but in the temporary possession of another person(s), the court shall involve this person(s) as a co-respondent(s) (Paragraph 32). The plaintiff (vindicator) is obliged to prove their ownership of the claimed property (Paragraph 36). In case of satisfaction of the vindication claim, the buyer of someone else's property has the right to apply to the court with a claim to the seller for compensation of losses caused by the seizure of the goods on the grounds that arose before the execution of the sale contract (Paragraph 43). A claim for the return of property arising from contractual (restorative) relations is considered by the court in accordance with the legislation on these relations (Paragraph 34).

The Plenum also clarified that a negatory claim (Article 304 of the Civil Code) shall be satisfied if the claimant proves that they are the owner or the person who owns the property, and the defendant's actions, not connected with deprivation of possession, in violation of his right of ownership or title of ownership (Paragraph 45). A non-compensatory claim does not have a statute of limitations (Paragraph 49).

Great help in the application of corporate law is provided by: Resolution by the Plenum of the Russian Federation Supreme Court of June 23, 2015 No. 25, Resolution by the Plenum of the Russian Federation Supreme Court of March 24, 2016, No. 7, Resolution by the Plenum of the Russian Federation Supreme Court No. 90, Plenum of the Supreme Arbitration Court of the Russian Federation No. 14 of December 9, 1999, "On certain issues of application of the Federal law "On limited liability companies,"²⁰ Resolution

¹⁹ Bulletin of the Supreme Court of the Russian Federation. 2010. No. 7.

²⁰ Bulletin of the Supreme Court of the Russian Federation. 2000. No. 3.

by the Plenum of the Supreme Arbitration Court of the Russian Federation No. 19 of November 18, 2003 (as amended on 16.05.2014), “On certain issues of application of the Federal Law “On Joint-Stock Companies”²¹, Resolution by the Plenum of the Russian Federation Supreme Court No. 27 of 26.06.2018 “On challenging large and interested-party transactions”²², Review of judicial practice on some issues of application of legislation on business entities (2019)²³, Information letter by the Presidium of the Supreme Arbitration Court of the Russian Federation of May 24, 2012 No. 151, “Review of consideration by arbitration courts of disputes connected with the exclusion of a participant from a limited liability company”²⁴, and others.

Along with general (universal) methods of protection (Article 12 of the Civil Code of the Russian Federation), corporate legislation provides for special ways to protect subjective corporate rights: methods of protection related to the management of a corporate organization (requirement to hold a general meeting, requirement to include a proposed issue in the agenda or a candidate in the list of candidates, and invalidation of a decision of the general meeting); the methods connected with property participation in the corporate organization (methods of protection to ensure the return of the shares of a shareholder who has lost the right to participate in the corporation against their will due to unlawful actions of other participants or third parties, and the payment of fair compensation with simultaneous damages at the expense of guilty persons) (Clause 3, Article 65.2 of the Civil Code); methods of protection associated with the transfer of the rights and duties of the shares’ buyer to the right of pre-emption, a joint repurchase shares compulsorily at the request of a shareholder (Article 76 of the JSC Law), with a vindication of the shares, with the unauthorized debit bank accounts, uncertificated securities (Clause 3 of Article 149.3 of the Civil Code); loss accounts, rights to uncertificated securities (Article 149.5 of the Civil Code) (restoration of corporate control), with the withdrawal or exclusion from the business company, with the appeal of large transactions, related party transactions, and with the participation of affiliated persons; methods of protection related to the payment of declared dividends, etc.

²¹ Bulletin of the Supreme Arbitration Court of the Russian Federation. 2004. No. 1.

²² Bulletin of the Supreme Court of the Russian Federation. 2018. No. 8.

²³ Confirmed by the Presidium of the Supreme Court of the Russian Federation. 25.12.2019 // SPS ConsultantPlus.

²⁴ Bulletin of the Supreme Arbitration Court of the Russian Federation. 2012. No. 8.

The protection of exclusive rights to the results of intellectual activity and to the means of individualization is carried out, in particular, by: 1) recognition of rights; 2) the prevention and suppression of illegal actions; 3) damages (see, for example, Article 1245, Paragraph 3, Articles 1263 and 1326 of the Civil Code); 4) seizure of a material medium; and 5) publication of the court decision on the violation and the violator. An alternative (in relation to compensation for losses) is the payment (at the request of the injured person) of monetary compensation, excluding the plaintiff’s obligation to prove the amount of losses incurred. The amount of compensation is determined by the court within the limits provided for by law, taking into account the nature of the violation and other circumstances of the case, in compliance with the principles of reasonableness and fairness. The total amount of compensation may be reduced by the court, but not less than fifty percent of the total amount from the minimum amount of all compensation for violations (Article 1252 of the Civil Code of the Russian Federation).

A great deal of explanatory work on application of the intellectual standards of the legislation on the subjective rights for authors and other subjects of intellectual activity was carried out by the Supreme Court in its Judgment of April 23, 2019 No. 109, “On the application of part IV of the Civil Code of the Russian Federation”²⁵. The Plenum, in particular, explained that compensation is a measure of responsibility for the fact of violation. When determining its size, the court takes into account the following: the circumstances related to the object and nature of the violation, the period of illegal use of intellectual property rights, the presence and degree of the offender’s guilt, possible property losses of the rights-holder, the principles of reasonableness and justice, and the requirements of proportionality of compensation for the violation consequences (Paragraphs 62 and 65).

In the Resolution No. 9 of May 29, 2012 (as amended on 23.04.2019), “On judicial practice in cases of inheritance,” the Plenum of the Russian Federation Supreme Court provided important clarifications on the protection of subjective inheritance rights²⁶.

Thus, the judicial protection of numerous types of subjective civil rights has general and specific features that professional judges should know and skillfully apply in practice.

²⁵ Bulletin of the Supreme Court of the Russian Federation. 2019. No. 7.

²⁶ Bulletin of the Supreme Court of the Russian Federation. 2012. No. 7.

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О судебной защите субъективных гражданских прав

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Аннотация. Статья посвящена судебной защите субъективных гражданских прав. Автор пытается сформулировать понятия «субъективные гражданские права», «судебная защита субъективных гражданских прав», выяснить соотношение субъективных гражданских прав и права на судебную защиту, особенности судебной защиты различных категорий субъективных гражданских прав. В работе представлены авторские понятия субъективных прав и способов их защиты, выделены особенности защиты отдельных видов субъективных гражданских прав. Задачей исследования является поиск наиболее оптимального соотношения правомочия обладателя субъективного права на защиту и субъективного права на защиту, выяснение наиболее типичных способов защиты отдельных категорий субъективных гражданских прав. Методологической основой исследования послужили известные общие и частнонаучные методы научного познания. Сделан вывод о том, что субъективные гражданские права имеют общие (универсальные) и специфические способы защиты.

Ключевые слова: субъективные гражданские права, судебная защита, способы судебной защиты, меры гражданско-правовой ответственности, убытки, неустойка, компенсация.

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