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PROBLEMATIC QUESTIONS DETERMINING CATEGORY OF “INTEREST” IN CIVIL LAW OF UKRAINE

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SUMMARY

Article explores peculiarities notion of category “interest” in civil law relations, its essence and purpose are determined, highlighted gaps in civil legislation of Ukraine, impede protection interests of subjects of civil legal relations Particular attention is paid to discussion of civil law scholars on definition of category “interest”, its properties, characteristic features in modern civil legislation. It is determined that category of interest represents one of the leading positions in emergence, change and termination of civil legal relations, therefore it has a considerable interest for further research.

Key words: interest, civil legal relations, contractual legal relations, legal nature of the category of interest, “legal interest” and “legally protected interests”, individuals and legal entities right and legal interest realization.

ПРОБЛЕМНІ ПИТАННЯ, ЩО ВИЗНАЧАЮТЬ КАТЕГОРІЮ «ІНТЕРЕС» У ЦИВІЛЬНОМУ ПРАВІ УКРАЇНИ

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АНОТАЦІЯ

У статті досліджуються особливості поняття категорії «інтерес» у цивільних правовідносинах, визначається його сутність та призначення, виявляються прогалини в цивільному законодавстві України, що ускладнюють захист інтересів суб'єктів цивільних правовідносин. Особливу увагу приділено дискусії провідних учених цивільного права щодо визначення категорії «інтерес», його властивостей і характерних ознак, а також запровадженню цього поняття в сучасне цивільне законодавство. Визначено, що інтерес відіграє провідну роль у виникненні, зміні й припиненні цивільних правовідносин та становить значний інтерес під час подальшого дослідження.

Ключові слова: інтерес, цивільні правовідносини, договірні правовідносини, правова природа категорії інтересу, «законний інтерес» та «охоронюваний законом інтерес», реалізація права й законного інтересу фізичних і юридичних осіб.

Statement of the problem. Even at a very early level of unconscious behavior, there are problems of interest, as a reflection of certain needs, which continue to exist throughout life of individual, existence of society, state and world community. At present time, there are many definitions, understandings and ratings category “interest” (as in civil law and in other fields of knowledge), however, it isn't possible to diminish its value in modern conditions, because interest is basis of activity of each subject, and, consequently, plays a fundamental role, both in social life and in legal regulation of social relations.

Without analyzing category of “interest” can't hope to build a successful mechanism of law formation, his influence on social relations in general and behavior of an individual, in particular.

At various stages of human history, to issue of “interest” addressed representatives of different areas scientific thought. Thus, philosophical tradition connects it with human desire to achieve a certain goal, desire to achieve satisfaction of both society and individual level. K. Helvetius considered “interest” as a “spring” of human activity, focused on identifying objective social determinants of last one [1, p. 158]. He distinguished three kinds of interests: interests of individuals, or personal, private interests; interests of certain social groups within a particular society or interests of communities; interests of society or public interest.

Analysis of recent research and publications. At present time, category of civil law “interest” is research subject by many prominent scholars: I.A. Biryukova, S.M. Bratusya, O.M. Vinnika, N.V. Vitruka, Yu.S. Gambarova, R.E. Gukasyana, M.D. Egorova, O.S. Ioffe, R.A. Maidanika, O.V. Malka,

V.V. Mikhailova, V.K. Popova, R.O. Stefanchuka, G.G. Kharchenko, G.F. Shershenevicha and others. However, problem of determining legal nature of interest as a category of civil and family law remained rather unsolved. Scientists are still discussing subjective and objective nature of interest, private and public interest, personal and social.

The article aims formulating. The purpose of article is to research and analyze theoretical views of scholars and practices studying category of “interest” in civil law and civil legislation.

The major study material statement. In legal literature, along with usual use term “interest”, words such as “legal interest”, “legally protected interests”, which have a normative basis are often found. Adding specializing signs of its kind aimed at distinguishing and interests classification by criterias of protection and provision of law. For example, B.T. Khudoyarov think that “legal interests” should be understood as interests which have a legal basis, for example, issuance by registration body of a civil status a certificate of birth, etc. [2, p. 18].

However, Professor E.O. Kharitonov reasonably argues that while speaking about peculiarities of interpretation concept of “interest” in modern civil law, should pay attention to incorrectness (archaic) use of expressions: “legal interest”, “legally protected interests”, “protected interest”, etc. [3, p. 220]. This approach is shared by us, as interests behind legal regulation don't form subject of civilized science study. Therefore, it is clear that a priori, when term “interest” is used, implies such interest, which is covered by protection of objective law.

According to A.Ya. Kurbatov, term “interest” can be used to refer two different, albeit interrelated phenomena: interest

as a phenomenon of social existence (“objective interest”) and interest as a phenomenon of consciousness (“subjective interest”), formation of which takes place under influence of both objective and subjective factors [4, p. 56].

At the same time professor Ye.O. Kharitonov substantiates that in concept of domestic civil law notion of “interest” is considered as a category subjective, not objective [5, p. 220]. Thus, interest in legislative terms contrasted scientific terms.

Current civil and family law is quite active in concept of interest, while not stopping at same time on its detailed normative definition. Only Ukraine Family Code uses term “interest” in different variations about 70 times.

It must also be agreed that interest is driving force of any activity, in particular, is a decisive factor in formation of agreement necessary for conclusion a contract (as well as commission of another legal action) will of its parties.

As a general rule, such interest is generated by fact that civil law refers to “payment or other counter-provision performance of its duties”, while recognizing this particular sign as necessary and sufficient for payment contracts allocation.

The word “interest” has a number of meanings, among which it is expedient to consider those which may be relevant for understanding interest in private (civil) relations.

Interest is a measure of interest that can have varied manifestations. Interest can have a purely domestic (or consumer) nature and consist of relevant interest in meeting needs of individual. A person may have an interest in obtaining a profit by doing business. In this case, it is about entrepreneurial interest. Interest of legal entities can be both public and private depending on type of legal entities – private and public law. Interest of legal entities of private law depends on interests of their founders; it defines goal of such entities, satisfied by their bodies and actions can have both business and non-business nature.

From domestic and business interests should be distinguished legal interest, which in particular is to acquire a subjective right to a certain benefit, for example, by committing one or another transaction. Legal interest is usually formed by domestic or business interest. Legal and domestic interests don’t always coincide in their legal sense. Legal interest to relevant object, as a rule, determines content and nature of transactions, other legitimate actions of participants in specified relationship. However, loss of domestic or business interest doesn’t mean loss of legal interest and doesn’t lead to automatic termination of subjective civil law. Preservation in person of subjective right testifies about presence of interest of its carrier in preserving right of ownership or other right to a thing, that is, legal interest.

Category of legal interest from different positions is covered in theories of “interest” developed by the doctrines of civil law and civil process.

In civil procedural law, interest is understood as activity of trusted persons to protect another’s subjective right.

Occasionally, interest is seen as a notion other than law, refer to a status, that hasn’t found expression in a particular subjective right.

Legal interest in civil proceedings is that court’s decision concerns rights and obligations of parties. An interested person is acknowledged whose right is violated or disputed; other participants in process have a peculiar interest, but interests of parties and other participants in civil process aren’t an element of subjective civil rights, as interest in civil process only implementing external influence and is a sign additional to substantive law and subjective right in civil law, which can’t be part of subjective right in civil law.

In civil law, concept of interest is sometimes identified with notion of damage, which is archaic, since losses in subjective law don’t necessarily have to be foreseen, and therefore interest in this sense can’t be included in concept of any subjective

right. Subject’s interest in some cases is proposed to understand in sense of awareness possibility of satisfying his needs for certain benefits, which has same meaning as will of subject, and therefore absent in person that hasn’t his own will, therefore still can be carrier of subjective law.

Noteworthy understanding category of “interest” in two ways – as a legal fact and desire (individual needs) legal character. Interest as legal fact or certain state of person is basis for emergence, conservation, implementation and protection of civil rights, and also defines limits of their implementation. Interest can be considered as desire or need of person who is object of protection, since it is aimed at achieving a certain legitimate result, acquisition and implementation of subjective rights.

Most often, civil law doctrine understands term “interest” in two meanings: as a prerequisite for emergence or mandatory element of a particular subjective right and as an opportunity to satisfy their claims with help of subjective law.

In this regard, it’s necessary to distinguish between notion of interest as precondition or basis of any subjective right and action in so-called interest. The first one means sense of existence subjective right, main purpose for which it exists, and the second – an opportunity to satisfy any actions their needs, that exists, particularly in case of using his or someone else’s things because there is no subjective rights, in which its owner wasn’t interested.

For example, in trustful legal relations, interest protected by law is to protect violated and promote impaired (making) other people’s or their own subjective rights by committing acts (services, works) for their own and others’ needs (beneficiary, trustee) in order to prevent harm, or to perform duty, or other unjust interests of another person; so actions are taken in view of obvious benefit or benefit of person concerned, taking into account known or probable intentions of person concerned.

In any case, private-law interest is a reflection of legal form distribution of object of private (civil) legal relations and represents possibility of sharing object of use in private ownership on basis of “mine” and “another’s” (in particular, interest of owner, participant in family relations), or in form of adapting object to joint realization of private and public interests (for example, when performing a public servitude on river, a national park, etc.).

A general approach to this legal category provides grounds for considering civil interest as a system-forming criterion for field of civil (private) law, prerequisite and main objective of subjective civil law existence, through possibility of satisfying any actions their needs as a private individual.

Unlike private interest, public interest is a prerequisite and main purpose of existence competence of public law subjects, which is carried out due to adaptation of object legal relations to collective realization of public interests and satisfaction of actions defined by law collective needs as subjects of public law.

In absence or derivative (secondary) nature of public interest there is a division of object legal relationships in private ownership on principle of “mine” and “another’s” regardless of public or private legal personality of participants in such relationships.

For property relations and related relations, based on subordination one party to another, main purpose of which is to implement private-law interest with participation of a state body or local self-government body, must apply civil law provisions with exceptions provided by law, defining public competence of a public law entity.

Necessity for legislators in applying notion of interest but not any other gives reason to assert about serious substantive and practical load on this category.

In this regard, abandonment of such important concept without legislative definition caused need for an official inter-

pretation of concept “legally protected interest” by Constitutional Court of Ukraine.

In its decision, Constitutional Court of Ukraine built a legal position, based on comparison and matching interests and subjective law, which showing organic relationship of these concepts. According to results of review it was decided that interest should be understood as desire to use a concrete material and/or immaterial good, as a result of general content of an objective and directly non-intermediate in subjective law, a simple legitimate permission, which is an independent object of judicial protection and other means of legal protection in order to satisfy individual and collective needs, which don't contradict Constitution and laws of Ukraine, public interests, justice, conscientiousness, reasonableness and other general legal principles [6].

This discussion contributes to ambiguity of current legislation in definition term of “interest”. Thus, in Constitution of Ukraine, Civil Code of Ukraine and a number of other normative legal acts term “interest” is used, Criminal Code of Ukraine (chapter XIV) refers to “law-protecting interests”, Civil Procedural Code and Code of Administrative judicial proceedings – about “interests”, “legitimate interests” and “legally protected interests”, accordingly.

In addition, there are problems with substitution of concepts, or their identification: sometimes interest is simply identified with subjective law, replacing each other; sometimes interests and subjective rights are opposed to each other – legislator applies a dividing link “rights or interests”. Therefore, relevance study of category “interest” in general, and its legal nature, in particular, doesn't raise doubts or objections.

The realization of interests is influenced by their legal nature: what kind of interest is implement (protected, guarded) – private or public, personal or social. This fact entails a number of further chains in mechanism of legal regulation.

On subjective legal nature of interest in civil and family law indicates, firstly, that necessity is always a prerequisite of interest. It appears as desires, intentions, aspirations – “conscious stimulus” implementation provided by civil law rights. Secondly, interest is subjective, since it is formed on basis of individually defined needs and qualities of each person.

However, it should be noted that interest is formed on basis of natural human rights and includes biological and social needs. In addition, realization of interest is possible only in public relations. Beyond this, interest is transformed into emotional state of individual. Impossible to pay attention on fact that subjective right and interest are in close connection: interest is root cause of appearance of subjective law, during realization of subjective law, interest remains its essence, determines expediency of implementing actions aimed at the realization of subjective law, regardless of whether, to what extent regulation or protection of interests is practically possible under rules of objective law. All this testifies to objective nature and essence of interest.

It should be noted that concept of interest in the provisions of Civil Code of Ukraine is interpreted in a peculiar narrow and pragmatic sense and acquired features of “quasi-subjective law”. For example, art. 500 of Civil Code of Ukraine states that any person who, prior to date of filing an application for a trade mark or, if claimed prior to priority date of application in interests of its activities, has used trademark in good faith in Ukraine or has undergone significant and serious preparation for such use, has right to continue use or use provided for by said training free of charge [7]. Also possible give an example art. 612 of Civil Code of Ukraine – if, as a result of delay of debtor, fulfillment of obligation has lost interest in creditor, he may refuse to accept execution and demand damages [7]. Confirmation of our statement can serve art. 1283 of Civil Code of

Ukraine, which regulates protection of inherited property and establishes that protection of ancestral property is carried out in interests of heirs, recipients and lenders of testator in order to preserve him prior to adoption of inheritance by heirs [7].

That is, interest can be interpreted as a certain legal possibility of a participant in civil relations to conduct chosen behavior, this interest, moreover, can be protected in case of its violation or other encroachment on it.

No less important is that whatever interests (private or public), they should be balanced. Only in such condition can be asserted effectiveness of legal regulation of social relations and prospect of development, whether economy, or civilian turnover as its private law form. At the same time, it is undoubtedly necessary to assess negatively absence of such a balance between private and public interests, or, in other words, an imbalance that will inevitably lead to legal conflicts, economic dislocation and other negative consequences. Therefore, assessing the significance notion of interests balance, in professional literature, it isn't by accident that idea of need to recognize interests balance as one of branch principles is defended [8, p. 152].

Conclusions. Thus, summarizing, it is necessary to state ambivalent legal nature of interest in civil law. Indeed, at first glance, interest has a purely subjective nature, because he (interest) in civil and family law is personal, private. However, interest generates right (subjective) and, as a result, is objectified through it. We believe that in further research should focus on issues of subjectivity and objectivization of interest.

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