

The Relationship between the Protection and Maintenance of Civil Rights by a Person

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Annotation:

Increasing the efficiency of civil procedure in the country requires the prompt resolution of issues related to ensuring the fulfillment of contractual obligations, as well as the protection of the rights of participants in contractual and non-contractual relations.

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This is greatly facilitated by two new institutions in civil law - safeguarding as a means of ensuring the fulfillment of obligations and self-defense as a means of protecting civil rights. The introduction of interception into the system of methods for ensuring the fulfillment of obligations has significantly expanded the creditor's capabilities. The granting of the right to self-defense contributes to the creation of a truly legal democratic state in which relations arising in the process of exercising citizens' rights, without the assistance of authorized state bodies, in the process of protecting their rights and legitimate interests, cannot be conceived without effective legal regulation. Therefore, both institutions are in high demand and have great potential in modern citizen turnover. There is a similarity between these two methods of protecting civil rights, which are manifested in the use of unilateral actions in response to violations of the law by the subjects, therefore it is often difficult to properly assess such actions in relation to certain life situations: for example, disputes related to the payment of property, the acquisition of property in lease, the refusal to keep and return property, the seizure of land plots, apartments, etc. It is necessary to clearly define in which cases the right to detention arises, in which cases self-defense and criminal punishable actions are arbitrary, thus self-defense has a boundary character. This necessitates their further legal regulation. At the same time, detention from all methods of ensuring the fulfillment of obligations is the least studied method in the theory of civil law and legislation, and its practical application is related to problems that cannot be solved only with the help of existing norms of the

Civil Code. The institution of self-defense of civil rights is insufficiently developed, its legal definition is not given in the law, and the methods of its implementation are not defined¹. At the same time, it should be noted that due to the novelty of these institutions and the lack of legal regulation, law enforcement practice has begun to develop very rarely and only recently. The lack of legal norms regulating these institutions also requires the development of proposals for improving legislation.

Legal literature² there are instances of interpreting detention from two different perspectives - as a "method of ensuring the fulfillment of obligations" and as a "method of protecting civil rights." The nature of detention as a means of ensuring the fulfillment of obligations in national civil law³ noting that it has been widely studied, it should be noted that its application as a method of protecting civil rights has not yet been studied.

In contrast, many opinions have been put forward regarding the interpretation of detention by Russian civilians as a measure of quick action used in the protection of civil rights. In particular, V.P. Gribanov⁴ emphasizes that seizure is a quick and effective way to ensure the timely and high-quality fulfillment of obligations, and in this way, it is also a unique measure of protection of civil rights. M.S. Karpov⁵ it is emphasized that the fact that detention is a measure of immediate action is related to its nature, essence, and conditions of application. According to E.P. Marisina, detention has a dual nature, and the state of detention as a method of ensuring the fulfillment of obligations or as a measure of operational influence also practically complements each other⁶. S.V. Pakhman interprets seizure in the following three different forms: the creditor must keep the property belonging to the debtor until the fulfillment of the obligation; the right to suspend the circulation of the property belonging to the debtor; the authority to take the property from the debtor⁷. S.V. Sarbash, interpreting seizure as a method of fulfilling an obligation, states that this method provides a property guarantee to the creditor and ensures that in the event of failure to fulfill the obligation, the creditor satisfies his claims from the proceeds from the sale of seized property through the conduct of bidding in court⁸. A one-sided agreement to catch some authors⁹, others are contracts¹⁰ It

¹ Лазаренкова О.Г. Право удержания и самозащита в современном гражданском праве: автореф. дис. канд. юрид. наук. – Санкт-Петербург: 2007. – С. 3-4.

² Труба А.Н. Субъективное право удержания и пределы его осуществления: автореф. дис. ... канд. юрид. наук. – Тюмень: 2006. – 125 с.

³ Рахимов Д.Б. Мажбуриятлар бажарилишини фуқаролик-хуқуқий таъминлаш: юридик. фан. док. дис. ... автореф. – Тошкент: 2021. – 21 б; Суёнова Д.Ж. Современные способы обеспечения договорных обязательств: национально-правовое и международно-правовое регулирование /<https://articlekz.com/article/7130>; Зокиров И.Б. Ўзбекистон Республикасининг Фуқаролик ҳуқуқи. Умумий қисм, -Тошкент: ТДЮИ. 2005, -Б.330; Рўзиназаров Ш.Н. Мажбуриятларни бажаришни таъминлаш усули сифатида мол-мулкни ушлаб қолишнинг аҳамияти //Иқтисод ва ҳуқуқ. Экономика и право. –2017. –№12. –Б.33; Рўзиназаров Ш, Бабаев Ж, Иноятова С., Нуралиев М. Фуқаролик ҳуқуқида мажбуриятларнинг бажарилишини таъминлаш усуллари. Ўқув қўлланма. – Т.: ТДЮУ, 2018. – 71 б.

⁴ Грибанов В. П. Осуществление и защита гражданских прав / Пределы осуществления и защиты гражданских прав. – М.: Статут. – 2000 – С. 80

⁵ Карпов М. С. Гражданско-правовые меры оперативного воздействия: Автореф. дис. ... канд. юрид. наук. – М., 2003. – С. 4

⁶ Марисина Е.П. Право удержания в гражданском праве России: автореф. дис. ... канд. юрид. наук. – М.: 2008. – 9 с.

⁷ Пахман С.В. Обычное гражданское право России. Юридические очерки. Т. 1. – СПб., 1877. – 98 с / <https://www.sovremennoepravo.ru/>

⁸ Сарбаш С.В. Удержание как способ обеспечения исполнения обязательств. – М.: 1998. – 177 с.

⁹ Брагинский М.И., Витрянский В.В. Договорное право. Общие положения. – М.: Статут, 1998, – С. 448-449; Южанин Н.В. Удержание как способ обеспечения обязательств: дис. ... канд. юрид. наук. – Рязань, 2001. – 13 с.

¹⁰ Гонгало Б.М. Учение об обеспечении обязательств. – М.: Статут, 2002. – 194 с.

is considered that. According to V.S. Yem, the right to detention belongs to the category of protective measures of the right of security provided for by law¹¹.

Based on the above analysis, the detention can be interpreted as a measure of prompt protection for the protection of the debtor's rights and the protection of the debtor's rights by the individual. According to the first part of Article 290 of the Civil Code, "the creditor has the right to retain the property belonging to the debtor until the fulfillment of the obligation." On the one hand, this issue, on the other hand, is considered an opportunity provided to the creditor to protect his rights, and thus the creditor can take measures to prevent or eliminate the violation of his rights. In other words, the detention of the property belonging to the debtor until the fulfillment of the obligation by the creditor is also important as a measure to ensure legal protection.

In general, there are many rules of detention in civil legislation. Such rules are widely applied in relations such as transportation, work performance, service provision, and especially in contracts of purchase and sale. In this case, the person who has fulfilled the obligation in his/her possession shall have the status of a creditor, and the person who should have fulfilled the obligation that has expired, but has not yet fulfilled it, shall have the status of a debtor. In this case, a lien shall be applied if the debtor's property is legally and contractually at the disposal of the creditor and has arrived at the due date of execution, but has not yet been executed by the debtor. The property belonging to the debtor, withheld by the creditor, shall be returned to the debtor upon the fulfillment of the obligation.

A method of protection of civil rights, analogous to seizure, is the protection of civil rights by the individual himself. The right to self-defense is one of the natural rights of a person. The instinct of self-defense is inherent in human nature as a biosocial being, that is, the protection of oneself and valuable things for the individual from various threats arises naturally in a person [4, p. 19). For existence and the possession of a source of existence are the primary conditions for human existence and survival. Therefore, the protection of oneself and one's rights should be expressed at the level of legislation as a natural right of every person.

The right to self-defense arises not only from the moment of violation of the right, but also from the moment of the threat (threat) of violation of the right. In addition, the Civil Code considers individuals and legal entities as subjects of personal protection of civil rights, taking into account the specifics of civil law relations.

The first part of Article 28 of the Constitution of the Republic of Uzbekistan provides for the provision of a person with the opportunity to defend themselves. Similar rules are more broadly expressed in Articles 31 and 55 of the Constitution as a right to protection. After all, the protection of rights begins with the individual's own actions and can subsequently be fully ensured with the help of state bodies. Therefore, the direct application by a person of measures related to the protection of rights is a measure recognized to a certain extent at the level of legislation.

For example, criminal law provides for liability for arbitrariness, which is considered a crime in itself and has nothing to do with self-defense (Article 229 of the Criminal Code). In the science of civil law, there is no single approach to understanding the protection of rights by the individual. For example, E.A. Sukhanov understands the actual actions expressed in the influence of a person on himself or his property in legal possession through the protection of civil rights by himself¹².

¹¹ Ем В.С. Обеспечение надлежащего исполнения обязательств // Гражданское право: В 4 т. Т. 3: Обязательственное право / Отв. ред. - Е.А. Суханов. – М.: Волтерс Клувер, 2008. – 224 с.

¹² Российское гражданское право: учебник: в 2 т. / В.С. Ем, И.А. Зенин, Н.В. Козлова и др.; отв. ред. Е.А. Суханов. 2-е изд., стереотип. М.: Статут, 2011. Т. 1. Общая часть. Вещное право. Наследственное право. Интеллектуальные права. Личные неимущественные права. – С. 221-222.

In turn, E.L. Straugh's actions aimed at ensuring the inviolability of the right of the authorized person authorized by law or contract through self-defense, preventing violations, and eliminating the consequences of such violations are understood. Self-defense in civil law is any action aimed at restoring or preventing violated rights that is legal and proportional to the nature of the damage caused. It should be noted that the basis for self-defense can be not only an action aimed at violating rights, but also the threat of such an action, perceived by the person as real. Speaking of signs of self-protection of rights, it is possible to highlight the following:

1. self-defense is a person's independent action. Independent action refers to the actions of a person to protect their rights without appealing to a court or other state body or local authority that can protect these rights.
2. Self-defense is a legal action. Legitimacy means the protection of rights in any way that is not prohibited by law.
3. self-defense should be proportionate to threats and violations of the right. Correspondence means that actions aimed at self-defense of rights should not exceed the specific degree of violation. The following is a simple example: if the phone is stolen, the owner of the phone is not entitled to detain his car.

The Civil Code does not name specific methods of self-defense, therefore this list is open. Damage caused in the process of self-defense of rights shall be recognized as legal and does not impose legal liability on the person who caused this harm.

The parties to the legal relations have problems with the exercise of this right. The main problems in exercising the right to self-defense are:

- a) violation of the principle of proportionality. This is the most widespread problem in the exercise of the right to self-defense, regardless of the field of law. A violation of the principle of proportionality lies in the fact that the protected person in the process of protecting their rights deviates from the level of damage caused or likely to be caused to him (the defender).
- b) violation of the principle of legality. Article 229 of the Criminal Code criminalizes arbitrariness. The protecting person may also violate other legal norms (for example, unilateral unjustified refusal to fulfill the contract, unjustified suspension of the fulfillment of obligations).
- c) difficulties in applying the rules of necessary defense and ultimate necessity by law enforcement agencies, in particular, an assessment of the proportionality of damage caused by the protecting person.

An example of the problem of disrupting balance can be cited from judicial practice. In this case, the plaintiff appealed to the court with a demand for the return of illegally owned equipment and compensation for damage. The defendant demanded the recovery of the funds and filed a counterclaim. By the decision of the court of first instance, the defendant was obliged to return the equipment used in accordance with the law. The counterclaim of the defendant was satisfied, and the sum of money was recovered from the plaintiff.

The defendant retained the equipment until the plaintiff paid the monetary amount established by the court decision. The defendant chose a method of self-defense, such as holding something. However, his method violated the principle of proportionality, as the cost of the equipment exceeded the amount owed. For this reason, the defendant does not have grounds for maintaining the equipment, as well as for self-defense of rights. An example of proportional protection can be a video recording of a violation of rights using a hidden camera. The court determined that the installation of this video recording (including with a hidden camera) in places that are transparent

and clearly open to the general public and do not make exceptions, the use of video recording is a proportional and permissible method of self-defense of civil legislation.

In conclusion, detention and the protection of civil rights by the individual are common as quick action measures, and in both cases, the protection of rights is carried out. Both of these methods are universal and ensure the interests of the violated person through their application.

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