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WAYS TO PROTECT CIVIL RIGHTS OF A LEGAL ENTITY

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Summary

The ways to protect the civil rights of a legal entity have been analyzed; theoretical and practical aspects of the legal protection of business reputation of legal entities have been described; the classification of civil legal ways to protect the business reputation of the legal entity has been done; the importance of legal process ways of protection in the mechanism of civil right of a legal entity as to the business reputation has been proved in the article.

Key words: methods of protection, civil rights, reputation, business reputation, legal entity, civil legal methods of protection, protection of business reputation.

Аннотация

В статье проанализированы способы защиты гражданских прав юридического лица; раскрыты теоретические и практические аспекты правовой охраны деловой репутации юридических лиц и осуществлена классификация гражданско-правовых способов защиты деловой репутации юридического лица; обоснована важность судебно-процессуальных способов защиты в механизме охраны гражданского права юридического лица на деловую репутацию.

Ключевые слова: способы защиты, гражданские права, репутация, деловая репутация, юридическое лицо, гражданско-правовые способы защиты, защита деловой репутации.

Problem statement. The current stage of the development of Ukrainian society has found expression in many state building processes in Ukraine, led to a deep, comprehensive review and processing of many theoretical and practical problems of the domestic legal system. One of the important public issues is improving the legal regulation of non-legal personality.

The need to protect the moral rights of legal entities, which is obvious, with new force declared itself due to the rapid development of the media, the Internet relations, etc.

Differences in relations regulation connected with the reputation of a legal entity, necessitating the existence of certain agreed conflicting provisions designed to protect the violated rights of individuals in civil law and process.

Nowadays a lot of unresolved issues of content, features, public reputation of the legal entity leads to ambiguity enforcement, including the controversial litigation.

Relevance of the researched topic. The development of Ukrainian society is manifested in many state building processes in Ukraine. In this regard, the urgent task of national jurisprudence is an in-depth and comprehensive review and

study of the many theoretical and applied legal problems, one of which is to improve ways of protecting the civil rights of a legal entity, including their reputation. The need for legal protection of business reputation of the legal entities is particularly actualized due to the rapid development of media technologies and the dissemination of information, including those on the Internet. The relevance of the research is also caused by European and world processes of unification and harmonization of civil law, which certainly touches the civil protection of business reputation.

Ways to protect the civil rights of a legal entity and business reputation as a legal category received much attention in pre-revolution legal literature. A great emphasize also was put in its importance in the Soviet period of the development of civilistic science.

The largest contribution to the development of that perspective was made by domestic researchers of civil law. Their research can be divided into the following groups: aimed at the disclosure of the civil status of the legal entities and those that are directly related to the protection of business reputation.

Scientific interests of the Ukrainian civilists including: O.M. Zhidkova, O.V. Synehubova, A.O. Tserkovna,



I.V. Saprykina, D.D. Luspenyk, S.I. Shymon, V.P. Paliyuk, O.V. Kohanovska, R.O. Stefanchuk, S.I. Chornoochenko, L.V. Krasyska, O.V. Shynkaruk, etc., as well as representatives of economic law: O.M. Vinnyk, V.S. Kulishenko, O.P. Podtserkovnii, V.S. Shcherbina, etc., related to the institution of moral rights and issues of protection (defense) of business reputation.

In these studies important aspects of the entities are highlighted, during which negative consequences are possible for the reputation of the legal entities. Therefore, knowledge of research results of the leading scientists in this field will facilitate thorough deep understanding of the business reputation protection of the legal entity.

The purpose of the research is to analyze ways to protect the civil rights of a legal entity, including disclosure of the theoretical and practical aspects of the legal protection of business reputation of the legal entities and implementation of the classification of civil legal ways to protect the business reputation of the legal entity.

Presentation of the basic material. Both legislation and research of national and international civilists, use the concept of „means of protection” of civil rights. Some scholars distinguish methods of civil protection of some civil rights: the legislative consolidation of the relevant law, the legal regulation of certain economic activities and Ukraine’s accession to the relevant international agreements. However, all of them are related to the legal regulation of the relevant civil rights namely the form of material consolidation and ensure business reputation. However, more attention should be paid exactly to the civil protection methods of business reputation of the legal entities which are incorporated in the forms of legal protection of business reputation and the business reputation self-defense. Because all of these ways depend on the efficiency of the respective rights, their renewal in case of violation.

To resolve particular problems one should analyze the views of scholars first, and then pay attention to the provisions of the current legislation.

Representatives of the classical theory of the civil understanding the protection means of subjective civil rights distinguish substantive measures of coercion

by which the recovery (recognition) of disputed rights and human impact on the lawbreaker occurs [1, p. 284]. In fact, two traditional concepts of the right to protect are formed in civilistics; according to the first the right to protection is an integral part of any subjective right along with the right to their own actions and the right to demand an appropriate behavior of the obligated persons, according to the second the right to protection is recognized by independent subjective right. In both cases, the civil protection methods are associated with the person’s ability to apply enforcement measures for law breaking or the right that is denied.

It should be noted that the issue of civil-legal means (methods) of the individuals’ right protection are being investigated very actively. Wherein the subject of research is often problems emphasized on wrongful actions or the inaction the persons protected from, for instance, both the researches of G.V. Yeromenko [2] and the issues of protection within legal protection for instance the thesis of I.V. Kryvosheyina [7] and the legal protection of the moral rights of the legal entity scientific (the monograph of O.V. Shynkaruk [12].

Quite a thorough and conceptual work towards identifying ways and forms of judicial protection of civil rights is G.P. Tymchenko study [4]. It should be positively noted the researcher’s approach whereby the issue of protecting ways civil rights is seen in close connection with the accomplishment of the right of defense and real protection as the guarantee of rights and freedoms of subjects of law. We should agree with the regulation of that the institution of civil rights protection is a complex and interdisciplinary, which has substantive legal economic and procedural aspects [10]. Indeed, civil protection methods are provided both by the standards of economic and procedural law, so they should be considered in indissoluble unity, focusing primarily on the final result of protection – renewal of law breaking or losses compensation.

In fact, the means of civil rights protection are economic legal in nature, since the specifics of subjective civil rights show that these rights can be protected only as the ways appropriate by nature and the content of subjective civil rights.

It is worth paying attention to research aimed at disclosing civil legal ways to protect the rights of individual persons.

I.V. Kryvosheyina pays attention to civil ways to protect the rights of the company name, [7] as the trade name can be considered as the demonstration of the business reputation. A researcher in particular, proposes to delete from the Law of Ukraine „On Protection of Rights to Trademarks for goods and services” the regulation, according to which a trademark designation cannot be registered which is identical or similar so that it can be confused with the brand names that are known in Ukraine and belong to others.

T.S. Kyrychenko reveals the features of subjective rights protection of the patentee, distinguishing jurisdictional and non-jurisdictional forms of protection of the subjective rights and proposes to differentiate general (court order) and special (administrative) order of protection within the jurisdictional form of protection. The content of the administrative method of patent protection comes to the consideration and resolution of complaints and appeals in the state apparatus, its competent authorities and lawyers [5]. Using the results of this research to the problems of civil protection of business reputation of a legal entity, it may be noted that the form of legal protection is the main and highest form of jurisdiction. However, other alternative methods of protection that are not related to the administration of justice, and preferably have a contractual nature (arbitration, mediation form) may be used in the protection of business reputation of a legal entity. Of course, such „additional” methods of protection do not exclude and cannot exclude court jurisdiction, as justice is recognized in Ukraine and the world by the standard of protection of human rights in terms of legal state.

The basis for standards system building aimed at protecting the subjective rights are the standards enshrined in the Civil Code of Ukraine concerning the protection of civil rights and interests by the Court, the President of Ukraine, state authorities, bodies of the Autonomous Republic of Crimea or local authorities, notary and self-defense of civil rights [11, p. 16–19]. According to these standards each person is guaranteed the right to apply to the court for protection of his personal non-property or proprietary rights and interests.

Ways to protect civil rights and interests of the Central Committee of Ukraine determines: 1) the recognition of rights;



2) the recognition of the deal as being invalid; 3) the termination, which violates the right; 4) the situation restoring that existed before the violation; 5) the enforcement of the obligation in kind; 6) changing legal relationship; 7) termination of legal relationship; 8) compensation of losses and other means of compensation for property damage; 9) compensation for moral (non-property) damage; 10) recognizing the illegal decisions, actions or omissions of state authorities, authorities of the Autonomous Republic of Crimea or local self-government, their officials and officers.

The court may apply provided ways of protection. But it is not limited only to these civil law means of protecting the individuals' rights and interests. The court can protect civil right or interest another way that foreseen by contract or law [11, p. 16].

Critically evaluating prevised list of ways of civil rights and interests protection of their possible application to protect the business reputation of a legal entity should be noted the following. Such way as situation restoring that existed before the violation, it is unlikely can be applied to protect the business reputation of a legal entity. Indeed, because of the information nature of business reputation is actually impossible to return the information sphere on a specific legal entity to the previous field, which is distorted by certain illegal actions. Accordingly, it is impossible to restore the situation that existed before the violation of the right to reputation of a legal entity.

The possibility of using this method of business reputation protection of a legal entity as the enforcement of the obligation in kind is quite problematic because it is difficult to simulate a situation where such an obligation may concern the business reputation of a legal entity.

It's worth noting that non-judicial consideration of the conflict situation that has arisen over the business reputation of a legal entity is appropriate, because without addressing to court the parts will save time and financial resources necessary for the proceedings [9, p. 158].

The protection of civil rights by a notary writing in the debt paper in the cases and procedure established by law [11, p. 18], cannot be a direct way to protect the reputation of a legal entity, because the latter (reputation) is an in-

angible good. But the right of a person to defend their civil rights and the rights of other individuals from violations and illegal encroachments, that the use of individual means of countering that are not prohibited by law and not contrary to morals of the society is acceptable and quite effective form of civil protection of business reputation of a legal entity.

But the methods of self-defense must meet the law content that was broken according to the nature of the actions, which it was broken and the consequences that are caused by this disorder and can be selected by the person or fixed contract or acts of civil legislation [11, p. 19]. The standard does not include options for how self-defense should be applied. However, methods of self-defense may be the information of a legal entity not forbidden by law, whose reputation suffered and aim at business reputation restoring, such as publications and messages in the media, on Internet resources, public speaking etc.

Of course, you should determine the appropriate way to protect the business reputation rights of a legal entity the recognition of an unlawful legal act of a public authority, the authority of the Autonomous Republic of Crimea or local government individual action, if it acts contrary to civil law and violates the right of business reputation. However, it is difficult to imagine a case where the court finds illegal and abolishes the legal (rather than individual action) act of public authority, the authority of the Autonomous Republic of Crimea or local government if it is contrary to acts of civil law and violates the individual's right to business reputation. Analysis carried out of at least 374 decisions and rulings in cases involving business reputation showed examples of this protection of business reputation.

CC of Ukraine recognizes the person, who suffered losses as a result of violation of his civil rights, the right to reimbursement [11, p. 22]. In right violation due to business reputation a legal entity can justify real losses (in terms of costs that a person has done or should do to restore their violated rights) or lost benefits (income that a person could really get in normal circumstances, if his right to business reputation was not violated).

Today CC Ukraine provides a direct basis for moral damages in case of humiliation of a legal entity's business reputa-

tion. The size of financial compensation for moral damage is defined by a court depending on the nature of the offense, the depth of physical and mental suffering, deterioration of skills the victim or deprivation of his feasibility, the degree of guilt of the person that caused a moral damage, if guilt is the basis for compensation, as well as taking into account other circumstances which are essential [11, p. 23].

Besides the Central Committee of Ukraine, the ways of right protection are provided by other laws. Some of these methods can be applied to protect a legal entity's right to business reputation. In particular, the courts in accordance with their competence, resolve disputes concerning the right of: the establishment of the owner's certificate; conclusion and execution of license agreements; violation of the owner's right [3].

The Law of Ukraine „On Copyright and Related Rights” includes methods of civil protection of copyright and related rights. In violation by any person of copyright and (or) related rights, non-compliance under the contract terms and conditions of works and (or) objects of related rights to use works and objects of related rights of circumvention of technological protection measures or information, forgery (or) document rights management or endangering the misuse of copyright and (or) related rights and other violations of moral rights and property rights of copyright and (or) related rights are entitled to: a) to claim their rights and renovation, including to ban actions infringing copyright and (or) related rights or pose a threat of violation; b) to apply to the court for renewing and (or) cessation of actions infringing copyright and (or) related rights or pose a threat of violation; c) to submit claims for compensation for moral (non-property) damage; d) to sue for damages (property damage), including lost profits, or collection of income received by the infringer as a result of a breach of copyright and (or) related rights or compensation; e) require the cessation of preparatory actions for breach of copyright and (or) related rights, including the suspension of customs procedures, if there is a suspicion that may be missing on the territory of Ukraine or its customs territory of counterfeit copies of works, phonograms, means circumvention of protective equipment in the manner prescribed by the Customs Code of



Ukraine; e) participate in inspections of production facilities, warehouses, manufacturing processes and business operations related to the production of copies of works, phonograms and video for which there is reason to suspect abuse or threat of infringement of copyright and (or) related rights, procedure established by the Cabinet of Ministers of Ukraine; g) require, including the courts, publications in mass media information about violations of copyright and (or) related rights and judicial decisions concerning these violations; g) to require persons who violate the copyright and (or) related rights of the plaintiff, information about third parties involved in the production and distribution of infringing copies of works and objects of related rights and circumvention of technical means of protection, and the channels distribution; c) require the adoption of other legal actions related to the protection of copyright and related rights [4, p. 1, Art. 52].

As you can see, the list of specified methods of protection of copyright and related rights is significantly greater than that defined in the Civil Code of Ukraine. This makes it possible to conclude on the feasibility definition in law of expanded the list of methods of protection and a legal entity rights to business reputation.

The classification according to different criteria provides the most complete picture of the civil ways to protect business reputation of a legal entity.

Protection methods of civil rights defined by art. 16 CC are used to protect the business reputation of a legal entity. They can be defined as a general means of protection, as they relate to the protection of any person's rights violated.

Since the violation of business reputation of a legal entity has some features compared to other violations of subjective rights (primarily due to the information nature of business reputation), then additional methods of protection can be defined as special.

Accordingly, the degree of regulation can define common methods of protection (according to Art. 16 CC, besides situation restoring that existed before the violation and recognition unlawful legal act) and special protection methods of a legal entity's business reputation (denial, response, expression of his opinion, public apology, circulation of newspapers and books withdrawal, etc.).

In connection to information character of the business reputation and accordingly most violations of a legal entity's rights, the methods of business reputation protection against wrong information the Plenum of Supreme Court of Ukraine, except response rights and wrong information, also demands on losses paying and morale harm to a legal entity, caused by such violations. Mentioned requirements are seen in accordance with the common backgrounds as to the harm inflicting [8]. As we can judge the Plenum of Supreme Court of Ukraine determines both common and special methods of the legal protection of the legal entity's business reputation.

Russian researchers suggest the division of civil legal means of protection into legal material and jurisdiction methods of protection. Legal material methods define rights and responsibilities of relations starting with actions that break the law, situation restoring that exist before the violation, doing responsibility, discontinuing or changing legal relations, namely methods, that can be implied by interested individuals; jurisdiction method of protection is accepting the right or adjudge to particular action [1, p. 46].

Such position gives backgrounds to determine by the criteria for the division of methods of civil legal protection of a legal entity's business reputation accordingly form the subject, that has the right to protect business reputation it should be accentuated on: methods that can be applied by a person of the business reputation; judicial and procedural methods of the business reputation protection; methods of protection that can be applied by other authorized state body.

Conclusions. Civil legal ways to protect business reputation of a legal entity – is provided within the forms of civil protection of the business reputation of a legal entity measures to ensure recovery, compensation and implementation of the right to the business reputation of a legal entity. The classification of civil legal ways to protect the reputation of a legal entity was done. The degree of regulation defines: general ways to protect the business reputation of a legal entity (under Art. 16 of the Central Committee of Ukraine, in addition to restoring the situation that existed before the violation and recognition of the illegal legal act) and special methods of protection of the busi-

ness reputation of a legal entity (rebuttal response expression of his opinion, public apology, circulation newspapers, books, etc. withdrawal).

Depending on the subject authorized to protect the business right of a legal entity it has been defined: methods that can be used by the subject of the business reputation; judicial and procedural means of business reputation protection; methods of protection that can be applied to other authorized state body.

Procedural ways to protect the mechanism of civil rights protection of a legal entity to business reputation is important but not the only. With the help of judicial proceedings court issues are considered, which involves a procedure for the implementation by the interested parties the right to be defended and the courts – the jurisdictional authority.

Completing the review of civil legal ways to protect the business reputation of a legal entity, it should be noted that the list of ways to protect is not exhaustive; with the development of the information society it will develop new, more effective measures of protection of business reputation of civil legal protection.

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ПОНЯТИЕ «ФИНАНСЫ»: ТЕОРЕТИКО-ПРАВОВОЙ АНАЛИЗ

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Summary

The article detailed consideration of the concept of „finance” from different perspectives: as an economic and legal category, material and procedural sense in broad and narrow sense, in terms of economic and civil rights, the main positive and negative aspects in the sense of the term and invited the author’s interpretation of the term „finance”.

Key words: finance, financial system, financial activities, money, cash, public relations.

Аннотация

В статье осуществлено детальное рассмотрение понятия «финансы» с разных точек зрения: как экономической и юридической категории, в материальном и процессуальном смысле, в широком и узком понимании, с точки зрения хозяйственного и гражданского права, определены основные положительные и отрицательные аспекты в толковании этого понятия, а также предложено авторское толкование понятия «финансы».

Ключевые слова: финансы, финансовая система, финансовая деятельность, деньги, денежные средства, общественные отношения.

Постановка проблемы. Финансы, финансирование, финансовая система, финансовая деятельность государства – это те понятия, которые довольно часто используются в нашей повседневной жизни, поскольку тесно связаны с производством, товарно-денежной политикой государства, развитием всех форм собственности, а также экономическим развитием государства в целом.

Актуальность темы. Финансы играют важную роль в развитии общества, являются основой для образования экономических отношений в государстве, выступают как специфическая форма производственных отношений между субъектами хозяйствования. Поэтому в современных экономических отношениях, в условиях рыночной экономики необходимым является исследование функционирования и развития финансов в государстве, формирования специальных знаний и навыков их целенаправленного использования и эффективной организации финансовой деятельности органов государственной власти.

Состояние исследования. Понимание финансов и финансовой системы было предметом рассмотрения в работах многих отечественных и зарубежных ученых: Л.К. Вороновой, О.Н. Горбуновой, Е.Ю. Грачевой, И.Б. Заверухи, М.Ф. Ивлиевой, М.В. Карасевой, Ю.А. Крохина, Н.И. Химичевой, А.И. Худякова и др.

Цель исследования – анализ понятия «финансы», его разных аспектов, выделение подходов с различных точек зрения.

Изложение основного материала. В научной литературе до сих пор нет единого мнения относительно смысла понятия «финансы», а потому необходимым является исследование «финансов» на современном этапе развития демократического общества, правового, социального, независимого государства. Целью статьи является проведение теоретико-правового анализа понимания понятия «финансы». Для достижения поставленной цели в статье решаются следующие задачи: исследование термина «финансы» с разных точек зрения: исторической и философской, экономической теории, юриспруденции, исследование понятия «финансы» в узком и широком смысле, с точки зрения материальной и процессуальной формы, хозяйственного и гражданского права.

Переходя к непосредственному рассмотрению цели нашего исследования, отметим, что термин «финансы» появился в XIII веке и происходит от латинского слова «financia» – обязательная оплата. Эта оплата связана с передачей части дохода гражданина в распоряжение монарха, короля или иного правителя на его содержание и на другие расходы государственного содержания [1, с. 4–5]. В юридической литературе имеется мнение о происхождении термина «финансы» от