



THE ESSENCE OF THE PROTECTION OF CIVIL RIGHTS BY THE INDIVIDUAL HIMSELF

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<https://doi.org/10.5281/zenodo.7732436>

Annotation: This article is devoted to highlighting the concept and legal essence of one of the most important issues of modern civil law, the Institute for self-defense of civil rights. The author studies various interpretations of the self-defense of civil rights, identifies the features of this institution, tries to define the practical problems of Legal Regulation.

Keywords: self-defense, independent actions for self-defense, human rights, necessary defense, final necessity, civil law, delict.

One of the main features of civil law is the self-defense of civil rights. In this case, the relationship between the individual and the state is regulated by the regulatory legal acts of the countries. Self-defense of civil rights is entrenched in the CC. Article 13 of the fk is devoted to the issue of self-defense of civil rights, according to which citizens are allowed to exercise the right to self-defense, but in this, citizens must remain proportional and act within certain limits without deviating from the conditions, requirements and procedures established by law.

Self-defense of civil rights should be understood as the occurrence of actions by an authorized person in the factual order allowed by the law aimed at protecting his personal or property rights and interests¹.

G.Sverdlik and E.Strau rightfully argues that self-defense of civil rights is his actions aimed at ensuring the inviolability of the right of an authorized person allowed by law or contract, preventing violations and eliminating the consequences of this violation².

S.N.Veretennikoving to veretennikova, self-defense is an individual (initiator) voluntary action carried out in compliance with the rules of legality provided for by legislation aimed at protecting the civil rights and interests of subjects (individuals and legal entities) protected by law against them in the presence of a real threat of such violation by infringing or violating the rights of another person³.

M.S.Korableva introduces the following into the signs of self-defense: self-defense is carried out when the violation has already occurred and continues, or (in some cases) against Real aggression in the rights and interests of the authorized person (for example, necessary defense); self-defense is carried out by the victim himself; self-defense should not go beyond the actions necessary to prevent⁴.

¹ Грибанов В.П. Осуществление и защита гражданских прав. М., 2000. – 117 с.

² Сverdлык Г., Страунинг Э. Способы защиты гражданских прав и их классификация // Государство и право. 1999. № 1. – С. 35.

³ Веретеникова С.Н. Меры самозащиты в российском гражданском праве: Автореф. дис. ... к.ю.н. Екатеринбург, 2004. – 11 с.

⁴ Кorableва М.С. Защита гражданских прав: новые аспекты. В кн.: Актуальные вопросы гражданского права / под ред. М.И. Брагинского. – М., 1998. – С. 88-89.

In the legal literature, it is cited that the self-defense of civil rights by an individual is understood by an authorized person to take actions in a factual order corresponding to the law aimed at protecting material and intangible goods⁵.

Self-defense of civil rights by some authors, although in the law (Article 11 of the Civil Code) it is noted that protection of Rights is usually considered a form of protection of civil rights, although it belongs to one of the methods of protection of civil rights⁶.

It should be noted that the authors, in general, correctly and rationally define the framework of self-defense, indicating its features and the basics of applying civil rights.

A key feature of self-defense measures is their compensation property. This is expressed by the use of self-defense measures in the event of a violation (or the threat of its violation) of a subjective civil right to protect a violated right. In connection with these characteristics, self-defense refers to methods of protecting civil rights.

Taking into account the above, attempts to take into account signals as this method of protecting the right of action, consisting of installation, stamping of objects, etc., seem controversial. In such a situation, civil law is not violated. Appropriate actions are aimed at preventing civil rights violations, are not a measure of influence on the individual and are carried out within the framework of normative-legal relations (aimed at an unknown circle of persons).

Self-defense measures (in the narrow sense of the word) apply in case of violation of the right to extrajudicial property. The implementation consists in suspending the planned violation of the right, preventing it or having a mandatory effect on the offender in order to immediately eliminate the consequences of the violation that has occurred. Such a goal can only be achieved through active actions.

Thus, coercion is expressed here in the fact that one person's self-defense actions force another person (against his will, without consent) to stop his illegal action, eliminate its consequences or take other actions to restore the right.

Unlike immediate measures of influence, actions for the self-defense of rights are factual, that is, they do not affect the emergence, change or abolition of civil rights and obligations. In addition, these are unilateral actions-legal actions.

In the legal literature, it is customary to call self-defense measures necessary defense and actions in the case of final necessity. In our opinion, self-defense measures, like all other civil legal impact measures, are carried out in protective legal relations.

In accordance with Articles 11, 13 of the Civil Code, any subject of civil law has the opportunity to self-defend his right (the subjective right of self-defense).

This right is an element of the content of legal relations that arise, exist and cease when a legal relationship is terminated (for example, a violated right is restored).

The right to self-defense cannot exist outside of legal relations. Such a situation is excluded by the science of civil law. This legal relationship cannot be a regulator, as it would consist of legal legal legal actions applied in violation of civil law or when a real threat is created. Legal communication is aimed at ensuring the protection of civil rights.

⁵ Ем В.С. Право на защиту // Гражданское право. Т. I / отв. ред. Е.А. Суханов. М., 2004. – 563 с.

⁶ Сергеев А.П. Защита гражданских прав // Гражданское право. Т. 1 / под ред. А.П. Сергеева, Ю.К. Толстого. М., 2004. – 339 с.

The subject of this communication is the victim (owner) and the violator who has a protective obligation to stop his illegal actions or eliminate the negative consequences of the actions of the owner in the property sphere.

For example, the owner can independently return the threat of destruction of property, independently immediately take possession of what the outlaw illegally owns, or remove barriers to the use of the thing and carry out similar actions.

Necessary defense and final necessity is a certain situation (rules, conditions) in which actions are carried out, which are methods of protecting rights, and are not only a method of civil-legal protection, and not only the rights of the person carrying out actions, but also the rights of third parties⁷.

E. L. Strau rightly argues that self-defense of civil rights is allowed to be carried out in such a way that the actions necessary to ensure inviolability of the right, prevent violations and eliminate the consequences, if there is no clear discrepancy between the methods of self-defense and the nature of aggression and the level of danger in the process of its implementation⁸.

D.V. Mikshis, analyzing self-defense, came to the conclusion that its purpose is to ensure the inviolability of a violated civil law⁹.

The Civil Code does not contain the definition of necessary defense. The Criminal Code establishes that it is not a crime to harm an aggressive person in a state of necessary defense, that is, in the protection of the personality and rights of the defender or other persons protected by the law of the interests of society or the state, if this aggression is associated with life-threatening violence that is protective or other person or

Necessary defense is used by subjects of civil law in order to protect personal non-personal rights (life, health) or property rights, in a situation where the violator tries to destroy, damage or seize the property of the owner of the right to self-defense. In civil law, necessary defense is legal if the boundaries of Defense are not exceeded, that is, actions that clearly correspond to the nature of aggression¹⁰.

The owner or owner of a property right has the right to take independent actions to protect his right in case of illegal encroachment on him. In civil law, the necessary defense is an independent action to eliminate (stop) the violation of the absolute law, which begins with the psychological persuasion (without harm) or physical (through harm) coercion of the offender. Thus, in civil law, the necessary defense should be applied in a balanced and timely manner only to the debtor of legal relations, and is characterized by the fact that the exclusive right is aimed at protecting from the behavior of the binding side of legal relations. In the event of non-compliance with these requirements, the necessary defense will "turn" into a violation that will lead to the occurrence of a delict obligation.

It is necessary to note that the concept of "self-defense of Civil Rights", which expresses the individual actions of a person aimed at prohibiting the violation of civil rights of people, is a kind of legal opportunity. It should be noted that self-defense of civil rights is carried out regardless of the participation of the competent authorities.

⁷ Обушенко Л.А. Самозащита как форма защиты права частной собственности // СПС "Консультант плюс"

⁸ Страунинг Э.Л. Самозащита гражданских прав: Дис. ... к.ю.н. М., 1999. – 16 б.

⁹ Микшис Д.В. Самозащита в гражданском праве: Автореф. дис. ... к.ю.н. Екатеринбург, 2006. – 12 с.

¹⁰ Гюев Ю.Ю. Правовая природа института самозащиты гражданских прав в РФ // ОБЩЕСТВО И ПРАВО. 2012. № 2 (39). – С. 83.

In summary, self-defense of civil rights should be proportional to aggression, not deviate from the scope of legislation, and should be aimed at preventing, eliminating and stopping aggression. Therefore, at the legislative level, it is advisable to establish specific measures for the self-defense of an individual's right and strictly establish their scope.

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