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On ways to protect the rights of the parties to the contract: Based on the Supreme Court of Ukraine practice

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Abstract: The article considers ways to protect the rights of the parties to a contract in resolving their disputes based on the application of the Supreme Court of Ukraine practice. The institution for the protection of civil rights is inextricably linked with the institution for the exercise of civil rights since a clear civil turnover implies not only the recognition of certain civil rights for subjects but also ensuring their reliable legal protection. For that reason, the relevance of the research lies in the fact that the conclusions and proposals will considerably improve the effectiveness of human rights activities and the quality of providing legal assistance to subjects of civil law relations. Considering the above, the purpose of the study is to analyse the doctrinal and regulatory aspects of ways to protect the rights of the parties to the contract during resolving their disputes and determine the main trends in the practice of the Supreme Court of Ukraine on this problem. The main methods used in the study of ways to protect the rights of the parties to the contract are observation, empirical description, and experiment. The main results of the study are the construction of national civil law on the pandect system by separating the general and special parts to determine the correct application in judicial practice of general and special provisions of the Code, which regulate certain legal institutions.

Keywords: Human rights; Civil law; Obligations; Legitimate interests; Legal liability

Summary: **1** Introduction – **2** Materials and Methods – **3** Results – **4** Discussion – **5** Conclusions – References

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1 Introduction

One of the main guarantees of the parties' fulfilment of their obligations under the contract is the possibility to protect their rights. Currently, the problem of protecting civil contracts is becoming relevant in Ukraine. The effectiveness of all contractual regulations in the country depends on the solution of this issue. Protection of civil rights is one of the most important categories of the theory of civil and civil procedure law, without clarifying which it is very difficult to understand the type and features of civil sanctions, mechanisms for their implementation, and other issues that arise due to the violation of civil rights.[1] Therefore, in the case of illegal encroachment on the property and personal non-property rights and legitimate interests of a person, the latter should be subject to protection, which, in turn, requires the state to ensure proper legal regulation to determine the means of exercising such rights and interests, to establish effective ways to protect them.[2]

Methods of protecting civil rights should be divided into measures of state enforcement procedure that have signs of civil liability measures, and measures of protection in the narrow sense that do not have signs of civil liability.[3] Therewith, for effective protection of the rights of the parties during resolving their disputes, it is advisable to apply liability measures and protection measures.[4] The provisions of Article 15 of the Civil Code of Ukraine stipulate that each person can protect their civil rights in case of violation. For the protection of their right or interest, a person has the right to apply to the court (Article 16 of the Civil Code of Ukraine).[5]

Civil law protects the status of individuals and legal entities, establishes legal guarantees for the protection of their civil rights.[6] While the lack of full-fledged effective guarantees of protection of the parties to the contract entails for the weaker party in the contract, the occurrence of unreasonable adverse material consequences.[7] The above undermines the credibility of the state authorities, attempting to implement the principle of a social market economy laid down in the provisions of the Constitution of Ukraine, and encourages individuals to be wary of concluding various civil contracts. This situation negatively affects the creation of a system of property relations based on the ideas of good faith and mutual respect of participants in civil legal relations. The dynamic state of civil protection of the interests of the parties to the contract is expressed in the implementation of a certain interest and elimination of consequences of its violation. Legal means for

[1] MIRANDA NETTO; PELAJO, 2019.
[2] Effective judicial protection..., 2020.
[3] KREUTOR *et al.*, 2016.
[4] MARQUES and PAOLIELLO, 2019.
[5] 2003.
[6] GEVAERD, 2019.
[7] WÓJTOWICZ, 2020.

such activities are legal opportunities (tools) that are contained in the provisions of civil law and are used in exercising the rights and obligations of the parties to the contract. Considering the functional focus on preventing and suppressing violations of the interest of the obligated person and eliminating the negative consequences of the violation, they should be called ways to protect the parties to the contract.

It is worth emphasising that in many cases, participants in civil law relations have different, sometimes contradictory, or oppositely directed interests. Thus, when entering into a loan contract, the bank's interest is to maximise its profit and minimise the risks of non-repayment of funds, and the borrower's interest is to receive money on the most attractive terms. Generally, both sides make compromises, conceding in something and winning in the main, and as a result of interaction, both sides achieve their goals. However, in conditions of imperfect competition, there may be gaps in such a mechanism, and therefore the intervention of law and legal regulation is necessary. For that reason, for the effective protection of a civil right or interest, it is important that the method of protection is chosen by the interested party, which must correspond to such a right. The purpose of the article is an analysis of the doctrinal and regulatory aspects of ways to protect the rights of the parties to the contract and determine the main trends in the practice of the Supreme Court of Ukraine on this problem.

2 Materials and Methods

The methodological basis of the presented research is a systematic review of the legal regulation of ways to protect the parties to the contract and in the segment of judicial practice that has developed in the field of civil protection.

The research is based on basic philosophical methods – metaphysics, synergetic dialectics, with an emphasis on epistemological aspects of the procedural institution of protection of the parties to a contract as one of the most important categories of the theory of civil and civil procedure law. Such methods allowed discovering the types and features of civil sanctions, mechanisms for their implementation, and other issues that arise due to the violation of civil rights. In addition, the possibilities of private scientific methods of cognition, such as historical, logical, formal-legal, comparative-legal, descriptive, legal modelling, and forecasting were actively used. The applied methods allowed interpreting the studied material to comprehend the theoretical provisions for their application by the Supreme Court of Ukraine. Moreover, these research methods characterised the ambiguous application of the provisions of the Civil Code of Ukraine in case of refusal of the contract.

Having analysed the considered positions of legal scholars, it can be concluded that the methodology of legal research in this study allowed not only

learning state-legal phenomena by philosophical methods but also independently creating principles and ways to protect the parties to a contract in civil law. Thus, general scientific methods (formalisation, abstraction, modelling) allowed defining the “methods of protection” and actually giving their classification. General methodological techniques and tools for the study of civil law phenomena and processes were presented in the form of a certain template, which was filled in based on the specific features of the cognitive object or in the form of general principles and rules for conducting research activities. Such rules were the basis for the principles of protecting the weaker party of a civil contract and adapting civil legislation to actual situations.

Special legal techniques and tools are represented by exceptional methods, principles, requirements, and techniques used only in legal science. Such methods, for example, can include the formal-legal method, interpretative, comparative-legal, etc. These methods contributed to the characterisation of various scientific approaches to the study of ways to protect the parties to the contract, considering current trends in legal science and the practice of the Supreme Court.

The study also highlights methodological techniques and tools that are combined into a system of legal techniques and research methods, which are a certain algorithm for collecting the necessary material for research, which is based on data generalisation and law enforcement practice. The main purpose of such technological methods and procedures is to prepare empirical material that has been included in the scope of scientific knowledge, in particular, the practice of the Supreme Court of Ukraine. On this basis, individual decisions of the Supreme Court of Ukraine in the field of protection of the parties to various contracts were analysed.

The most common methods in the study are systematisation of documents, generalisation of law enforcement and judicial practice, interpretation and systematisation of existing regulations, etc. This level has a special legal certainty, as the practice of the Supreme Court is not presented in its classical sense, but as a set of samples and models of cognitive activity created by lawyers for convenience.

3 Results

In accordance with Part 1 of Art. 15 of the Civil Code of Ukraine, every person has the right to protection of civil rights in case of their violation, non-recognition, or challenge. Thus, the subjective right to protection is a legally established ability of a person to use law enforcement measures to restore the violated right and stop actions that violate the right of the weak party. The development and establishment of a social market economy make it necessary to highlight the principle of protecting the weak party to a civil contract and adapt civil legislation to the actual state and actions of subjects of contractual legal relations. Signs of

the weak party to the contract are increased interest of one of the subjects of the contract in concluding it; insufficient information about the subject of activity of the counterparty under the contract; insufficient information about the established rights, obligations, and responsibilities of the subjects of contractual relations; hastiness of the decision to conclude the contract, made in such conditions that contribute to making a rash decision and allow asserting the lack of will of the subject who made the decision, etc.

Signs of a weak party to a contract can manifest in contractual relations in different ways. Therewith, the need to protect the weak party in the contract arises only if the presence of one or more signs of the weak party led to the conclusion of the contract on discriminatory terms, including depriving the weak party of the relevant rights, imposing additional, unjustified obligations, excluding or limiting the liability of the second party for violation of obligations. The level of protection of the weak party of a contractual relationship should be commensurate with the consequences of the strong party's use of the weakness of its counterparty.

The above, admittedly, concerns the institution of protection of subjective civil rights of the parties to the contract. Therewith, it is worth noting that in recent years the Supreme Court (SC) of Ukraine has made many generalisations to ensure the unity of approaches to understanding the criteria for the effectiveness of ways to protect the rights of the parties in the contractual sphere.[8] Thus, there are many examples that indicate the correct, in the authors' opinion, approach in applying methods of protecting the rights of a party to a contractual obligation, which take place in the judicial practice of the SC, and examples of the ambiguous application of the provisions of the Civil Code of Ukraine in terms of protecting the rights of the parties to a contract.

Hereinafter the application of substantive law provisions in the legal positions of the Grand Chamber (GC) of the SC of Ukraine, which are perceived positively, is described, in particular:

1. Regarding the definition by the SC of "a way to protect a subjective right", which fully reflects doctrinal trends in this area and is covered through "material and legal protective measures stipulated by law, through which the restoration (recognition) of violated (disputed) rights and influence on the offender are taken. This interpretation is found in the Resolution of the GC of the SC of Ukraine in case No. 925/1265/16.[9]
2. Simultaneous application of various forms of contractual liability follows from Art. 61 of the Constitution of Ukraine, according to which no one

[8] Judgment of the Supreme Court in case No. 216/3521/16-ts., 2019.
[9] 2018.

can be twice brought to the legal responsibility of the same type for the same offence, since this case does not imply application of different types of legal liability for the same offence, on the contrary, different pecuniary consequences within the limits of liability in civil law in general are applied. Given this, it becomes possible to combine different forms of liability within the institution of contractual liability, in particular the doctrine of types of penalties.

3. An indisputable positive aspect is a considerable expansion in the practice of the legal consequences of default on monetary obligations defined in Part 2 of Art. 625 of the Civil Code of Ukraine to a wide variety of legal relations in the private law sphere in contracts of various types, the subject of which is money.
4. A serious obstacle to the effective protection of the rights of the parties to the contract is the lack of established practice in this area. As the most effective way to solve this problem, studying international legislation concerning various types of contracts can be suggested. The current legislation provides for such a legal possibility. Moreover, the current legislation of Ukraine establishes the primacy of international law. This allows applying the provisions of an international contract of Ukraine, if it establishes other rules for protecting the rights of the parties to the contract, rather than those provided for by civil legislation (Article 9 of the Constitution of Ukraine).[10] The study of international provisions allows considering more progressive provisions of law since at the international level the practice of protecting the rights of the parties to a contract is more advanced.
5. The doctrinal developments of civil lawyers are also aimed at developing the appropriate judicial vision. In this regard, it is worth highlighting the main conclusions, in particular: interest, which is provided for in Art. 625 of the Civil Code of Ukraine, in its essence, is not identical to the concept of interest for the use of funds under a loan agreement or credit contract, so their simultaneous collection does not contradict the current legislation of Ukraine; three per cent per annum for violation of a monetary obligation in accordance with Art. 625 of the Civil Code of Ukraine and a penalty as liability for violation of a monetary obligation can be applied simultaneously (Civil Code of Ukraine). Another important point to note is that the general rules of liability for violation of any monetary obligation, defined in Art. 625 of the Civil Code of Ukraine, apply to contractual and

[10] 1996.

non-contractual obligations, which is demonstrated in the Resolution of the Supreme Court of Ukraine in case No. 910/10156/17.[11]

6. Application of general provisions on compensation for non-pecuniary damage, which is defined in Art. 23 of the Civil Code of Ukraine,[12] regardless of whether this form of civil liability is fixed in legislative provisions or contractual clauses, which is an important step towards improving the legal mechanism for protecting the subjective civil right of a party to a contract.
7. In terms of applying such a method of protection as invalidation of the contract, which is essentially used to dispose of such a legal fact as the contract: a) further delineation of the grounds for declaring the contract invalid (when the conditions of its validity are violated) and not concluded (when there is no contract on its essential terms); b) development of a vision about the possibility of recognising the contract as valid (mainly in case of non-compliance by the parties with the requirement for the written form of the transaction or the requirement for its notarisation); c) determination of cases when this method of protection will not be effective. Thus, the Supreme Court states that "the recognition of contracts for the alienation of disputed property as invalid will not result in the release of the land plot or the removal of obstacles to its use, and therefore will not restore the violated right of the plaintiff, who is not the owner of the property, alienated under the disputed purchase and sale contract." The above legal position is embodied in the Resolution of the Supreme Court of Ukraine in the case nº 462/5804/16-ts.[13]

An extremely important point in this context is that the Supreme Court of Ukraine emphasises that such a method of protection as declaring a contract invalid may be used solely to protect the civil rights or interests of a person (for example, to create prejudice for a public dispute; in cases of default on obligations arising from public legal relations; default on debt obligations). Thus, in one of the Resolutions,[14] the Supreme Court of Ukraine indicates that "when entering into a disputed transaction, the plaintiff pursued the goal of preventing the bank from satisfying its claims (protecting the violated right) in the future by enforcing a possible court decision to recover credit debt from it, as it noted in the statement of claim." In this regard, the Supreme Court absolutely correctly considered such intentional actions of the plaintiff as unscrupulous with the application of the legal consequences that follow from it.

[11] 2018.
[12] 2003.
[13] 2019.
[14] Resolution of the Supreme Court in case No. 462/5804/16-ts., 2019.

4 Discussion

The main reason for the need to protect one of the parties to the contract is the economic inequality of the subjects. In particular, according to many researchers, the "weakness" primarily relates to unprofessionalism rather than economic weakness. The inequality of the parties to the legal relationship, apparently, is also associated with an underdeveloped competitive environment.[15] Thus, even with economic resources and sufficient competence, the subject of civil turnover often has no real choice, since all for entities that provide, for example, communication or banking services, the conditions are almost equally unfavourable for the counterparty.

Researchers have formulated signs of the weak party of the contract: increased interest of one of the subjects of the contract in concluding a contract in comparison with its counterparty; insufficient information about the subject of activity of the counterparty under the contract, offered goods and services; insufficient information about the established rights, obligations, and responsibilities of subjects of contractual relations; hastiness of the decision to conclude a contract, made in conditions that obviously contribute to making a rash decision and allow asserting the absence of the will of the subject who made the decision.[16] Admittedly, these signs may not be present all at the same time. Given this, researchers distinguish three main signs of the weak party to the contract: increased interest in concluding a contract; lack of professionalism in comparison with the counterparty in the field in which the contract is concluded; unequal negotiation opportunities in comparison with a professional counterparty.[17]

However, the authors consider it inappropriate to outline the latter feature, since unequal negotiation opportunities do not occur independently, but due to increased interest, lack of professionalism, and a number of other factors, in particular, unequal economic opportunities, lack of necessary information, etc. All these factors are often interrelated, as a lack of professionalism leads to a lack of sufficient awareness etc. Therefore, the weak party in a civil contract is a certain symbol of a participant in contractual obligations, which has a considerably smaller volume of certain organisational, material, professional, informational, and other competitive opportunities that are important for the development, implementation, and protection of a subjective right in comparison with its counterparty. This approach to the concept of the weak party to the contract correlates with the theory of inequality of negotiation opportunities, which was widespread in the West at

[15] DUPEYRÉ and ROSA, 2019.
[16] VAVILIN, 2009.
[17] VAVZHENCHUK, 2019, p. 6-11.

one time.[18] As the English judge Lord Denning indicated, inequality of negotiation opportunities can arise for various reasons, including various forms of moral pressure, social conditions, the market situation, and even improperly obtained benefits. The result of unequal negotiation opportunities may be the use by a party with a stronger negotiating position of unreasonable or excessively burdensome conditions for the other party.[19]

As a solution to this situation, researchers suggest applying the contra proferentem principle, which is an extremely successful tool for reducing the level of unpredictability in the relations of the parties and in resolving their disputes, minimising the costs of the parties to coordinate their behaviour and of the court to enforce the contract. It imposes the negative consequences of the unclear text of the contract solely on the drafter, instructing the courts to interpret the disputed condition in favour of the receiving party. Accordingly, the ambiguity of the contractual condition ceases to be a serious problem for the receiving party and the court. In addition, a counterparty who is offered an unclear condition can easily predict, without serious costs, what interpretation will be applied by the court, and rely on it in its behaviour. The same will be done by a drafter who is aware that this position will be supported by the court when resolving a dispute. As a result, this rule of interpretation coordinates the behaviour of the parties to the contract quite effectively, indicating the most favourable interpretation of the contract for the receiving party. On the other hand, this principle offers a fairly simple way for the court to determine the content of disputed contractual terms, which does not require applying political and legal considerations to the process of interpretation and allows it to resolve the dispute based on the content of the contract, and not replacing it with one's own ideas about good faith, reasonableness, and fairness. This in turn saves the cost of legal proceedings by simplifying the procedure for resolving contractual disputes in court.[20] The contra proferentem principle has already been supported by the Supreme Court of Ukraine in the Decision of the Civil Court of Cassation as part of the SC of April 18, 2018, in case No. 753/11000/14-C, the Decision of the Economic Court of Cassation as part of the SC of May 2, 2018, in case No. 910/16011/17.

In the legal literature, the inequality of the de facto parties is formulated, from which the definition of strengths and weaknesses can be derived. Actual inequality is a situation in which one side of a relationship (a strong party) uses its formally and legally existing rights to the detriment of the other party (a weak party); the former receives unjustified advantages, and the latter does not receive

[18] PYANKOVA, 2011.
[19] CICORIA, 2003, p. 4-12.
[20] SISUEV, 2021.

what it could expect. The Supreme Court of Ukraine in its practice also linked the weak party to the contract and the inequality of negotiation opportunities.[21] Therefore, the approach of this institution to the weak party of a legal relationship, in general, should be recognised as correct.

Nevertheless, this approach requires detail, there is not even an approximate list of factors that affect the inequality of negotiation opportunities. On the one hand, this will not allow the courts to focus only on the listed factors, since it is impossible to provide an exhaustive list of situations in which there are unequal negotiation opportunities. On the other hand, an inexhaustible list of factors that affect the inequality of negotiation opportunities could serve as a kind of guide for the future. Considering the above, the researchers suggest that the following factors should be considered when analysing negotiation opportunities: asymmetry of information and professionalism, the presence of trusting relationships and personal dependence, etc.[22] The authors believe that the weak party of legal relations can be any participant in civil turnover, an individual and a legal entity, including a person engaged in business activities. Moreover, the establishment of the “weakness” of the party should occur precisely within the framework of a specific legal relationship. Additional ways to exercise and protect the legitimate interests and rights of the weak party are objectively in demand. Ways to protect the rights of a weak party under a contract are possible from the standpoint of unilateral strengthening of the rights of one party to the contract (a weak subject in the obligation), and from the standpoint of strengthening civil liability or increasing the obligations of the other party (a strong party in the obligation).[23] Therewith, the protection of the weak party in the obligation cannot be limited to the legislative level of legal regulation – only the foundation is laid at the legislative level, all the nuances of a particular transaction can be considered only at the bylaw level. This is the positive role of the judicial authorities in ensuring the interests of the weak party of the legal relationship.

It is also worth noting that in modern conditions, courts are faced with the analysis of an intervention in other people’s contractual relations, that is when one contract contradicts another (including making transactions to the detriment of creditors). Thus, as experts in this field note, the provisions of Art. 620 of the Civil Code of Ukraine apply to cases of the conclusion of several contracts for the purchase and sale of property rights. Therewith, the judicial practice has formed two scenarios, depending on the registration or non-registration of ownership rights to a real estate object by the second acquirer of property rights and, accordingly, the

[21] Resolution of the Civil Court of Cassation of the Supreme Court in case No. 750/1535/17., 2019.
[22] SISUEV, 2021.
[23] DJAKOVICH, 2019.

choice of methods of protection considering the above. In the case of registration of ownership rights, compensation for losses will be effective, unlike the recognition of the second contract as invalid. In the case of non-registration of property rights, an effective method of protection will be the recognition of the contract as invalid.[24]

Separately, it is worth paying attention to the application by the judicial practice of provisions regarding the beginning of the limitation period for a claim to declare a transaction invalid. Thus, as a general rule, as V.I. Krat emphasises, for a claim to declare a transaction invalid, the statute of limitations begins from the day when the person learned or could learn about the transaction (when the transaction was committed under the influence of violence - from the date of termination violence). An exception to this rule is to determine the beginning of the statute of limitations on the requirements for invalidation of the testament because the right to sue in this case arises only after the death of the testator.[25] In addition, judicial practice correctly proceeds from the fact that in case of violation of the civil right of a minor, the statute of limitations begins from the date of reaching the legal age, which is confirmed by the Supreme Court of Ukraine Decision of March 11, 2020, in case No. 753/6432/16-C.[26]

Therewith, there are a number of examples of judicial practice of the Supreme Court of Ukraine, which can be called losses rather than achievements in law enforcement. Hereinafter those examples that have attracted special attention are listed:

1. An indication of the Supreme Court that only the methods of protection defined by law or contract are possible in the application. Thus, in one of the cases considered by the Supreme Court of Ukraine, the plaintiff asked to recognise the bank deposit contract as valid, after receiving a letter from the bank, which informed that the contract is void in accordance with the provisions of Art. 38 of the Law of Ukraine "On the deposit guarantee system for individuals".[27] Obviously, the Supreme Court should have specified that this method of protection is ineffective in a particular case. Recognition of bank deposit contracts as null and void based on the above article has been repeatedly criticised by civil lawyers because the category of nullity of a transaction (contract) is clearly defined by the provisions of the Civil Code of Ukraine (Art. 215). However, the Supreme Court stated that "the method of protection chosen by the plaintiff must be provided for by law or contract".[28] It should

[24] KRAT, 2020.
[25] KRAT, 2021.
[26] The decision of the Supreme Court in case No. 753/6432/16-ts., 2020.
[27] 2012.
[28] Resolution of the Supreme Court in case No. 522/3541/15-ts., 2020.

be emphasised that the legality of the method of protecting violated civil law is also determined by the principle of access to justice, the choice of an effective method of protection, the general principles of civil law and the moral foundations of society. A list of ways to protect violated rights, as rightly noted by V. A. Vasilieva, today is not exhaustive and the aggrieved party applies the method of protection that it considers the most effective, admittedly, provided that it meets the eligibility criteria.[29]

2. As a negative example of application, isolated cases regarding the interpretation of the grounds for declaring transactions invalid can be mentioned. Thus, in particular, the case of notarisation of a testament by a notary outside the notary district has gained resonance. In this regard, I. V. Spasibo-Fateyeva rightly emphasises the lack of grounds to consider such transactions invalid. A transaction may be void or declared invalid by a court in the cases and on the grounds provided for, in particular, in Articles 215 and 203 of the Civil Code of Ukraine. If a notary has certified a person's testament outside of the notary district, this does not affect the form of the transaction and does not fall under the requirements on the procedure for certifying it, which are contained in the Civil Code and may affect the validity of the testament.[30] The authors of the study unequivocally agree with this conclusion of the researcher and consider such examples of judicial practice to be an extremely negative phenomenon.
3. Ambiguous application of the provisions of the Civil Code of Ukraine in case of refusal of the contract. For example, in one of the Resolutions of the Supreme Court of Ukraine, which concerned the determination of the procedure for refusing a lease contract, it is indicated that, since the provisions of the Civil Code of Ukraine, which regulate hiring relations, do not define the form of refusal from the contract, the refusal can take any form, at the choice of the party to the lease contract that makes the refusal.[31] Therewith, the general provisions of the Civil Code of Ukraine regarding the form of refusal of a transaction define a rule according to which the form of refusal must correspond to the form of the contract itself unless otherwise is established by legislative acts. As follows from the Civil Code of Ukraine, its provisions do not contain special rules regarding the procedure for refusing a contract of employment, which means that the general provisions of the code should be applied. In fact,

[29] VASILIEVA, 2019.
[30] SPASIBO-FATEYEVA, 2021.
[31] Judgment of the Supreme Court No. 910/4391/19., 2002.

examples of such incorrect application of general and special provisions of the Civil Code of Ukraine in terms of contracts are not uncommon in judicial practice.

5 Conclusions

As is commonly known, guarantees of the exercise of rights and liability for violation of obligations are a necessary structural element of the status of subjects of legal relations. In this regard, the legislative formalisation of the mechanism for protecting the rights of the parties to the contract during resolving their disputes will best contribute to the normal interaction of civil law entities, the creation of favourable conditions for the achievement of the goal of the contracts reached by them, the development of the institution of the contract in general. One of the mechanisms for protecting the rights of the parties to a contract is the application of the contra proferentem principle, which is an extremely successful tool for reducing the level of unpredictability in relations between the parties and in resolving their conflicts, minimising the costs of the parties to coordinate their behaviour and of the court to enforce the contract. It imposes the negative consequences of the unclear text of the contract solely on the drafter, instructing the courts to interpret the disputed condition in favour of the receiving party. The legislation in this area and judicial practice should be developed in expanding ways to protect the violated rights of subjects of contractual relations. The main goal of the legislator in this area should be to create appropriate mechanisms for protecting the rights of participants in civil legal relations, which, on the one hand, would provide the maximum possible number of tools for protecting rights, on the other hand, provide for effective restrictions that allow eliminating or considerably minimising the risks of abuse of the right by unscrupulous parties.

Admittedly, it is impossible to address all problematic aspects of protecting the rights of the parties to the contract within the framework of one study. Summarising the above, it is worth noting that despite a certain ambiguous application of substantive law provisions in terms of protecting the rights of the parties under the contract, the judicial practice of the Supreme Court of Ukraine is consistent, mostly corresponds to the doctrinal vision, and reflects the trends in the field of relations under study.

Sobre as formas de proteger os direitos das partes no contrato: com base na prática do Supremo Tribunal Federal

Resumo: O artigo considera formas de proteger os direitos das partes de um contrato com base na aplicação da prática da Suprema Corte. A instituição da proteção dos direitos civis está indissociavelmente ligada à instituição do exercício dos direitos civis, uma vez que uma clara rotatividade civil implica não

só o reconhecimento de certos direitos civis dos sujeitos, mas também a garantia de uma proteção jurídica confiável. Por isso, a relevância da pesquisa reside no fato de que as conclusões e propostas melhorarão significativamente a eficácia das atividades de direitos humanos e a qualidade da assistência jurídica aos sujeitos das relações de direito civil. Diante do exposto, o objetivo do estudo é analisar os aspectos doutrinários e normativos das formas de proteção dos direitos das partes no contrato e determinar as principais tendências da atuação do Supremo Tribunal Federal sobre esse problema. Os principais métodos utilizados no estudo das formas de proteção dos direitos das partes do contrato são a observação, a descrição empírica e a experimentação. Os principais resultados do estudo são a construção do direito civil nacional sobre o sistema pandêmico, separando as partes geral e especial para determinar a correta aplicação na prática judiciária das disposições gerais e especiais do Código, que regulamentam determinados institutos jurídicos.

Palavras-chave: Direitos humanos. Direito civil. Obrigações. Interesses legítimos. Responsabilidade legal.

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