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«Асоціація цивілістів України»

ПРОБЛЕМИ ЦИВІЛЬНОГО ПРАВА ТА ПРОЦЕСУ

Тези доповідей учасників
науково-практичної конференції,
присвяченої 96-й річниці від дня народження
Олександра Анатолійовича Пушкіна

м. Харків, 21 травня 2021 р.

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Проблеми цивільного права та процесу : тези доп. учасників наук.-практ. конф., присвяч. 96-й річниці від дня народження О. А. Пушкіна (м. Харків, 21 трав. 2021 р.) / МВС України, Харків. нац. ун-т внутр. справ ; Харків. обл. осередок Всеукр. громад. орг. «Асоціація цивілістів України». – Харків : ХНУВС, 2021. – 304 с.

У збірнику розміщено тези наукових доповідей та повідомлень, у яких розглядаються актуальні проблеми цивільного, сімейного та цивільного процесуального права.

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Матеріали викладені в авторській редакції з незначними коректорськими правками. Відповідальність за точність поданих фактів, цитат, цифр і прізвищ несуть автори та їх наукові керівники. Електронна копія збірника безоплатно розміщується у відкритому доступі на сайті Харківського національного університету внутрішніх справ (<http://www.univd.edu.ua>) у розділі «Наука», сторінка «Конференції, семінари, та круглі столи», а також у репозитарії ХНУВС (<http://dspace.univd.edu.ua/xmlui/>).

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них прав, спадщина є особливим, неординарним об'єктом, особливість якого визначається підставами його виникнення, формуванням складу та належністю правоволодільцю, що зумовлює доцільність включення спадщини в коло об'єктів цивільних прав безпосередньо передбачених ст. 177 ЦК України.

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EMERGENCE OF RIGHTS AND OBLIGATIONS ON OBJECTS OF CIVIL LAW

Legal norms in themselves do not give rise to legal relations, do not give rise to subjective rights and legal obligations of parties of relationship. In order for public relations, or rather the social ties of members of society to be successfully coordinated with each other in the appropriate legal framework, legal grounds for their emergence are necessary.

The ground for the emergence of rights to objects are juridical facts. They mean the consequences of circumstances of reality (factual or legal), with which parties, due to formal legal certainty (contract, custom, court decision, legal norm) link emergence, change or termination of rights, individual competences or entire legal relationship to the relevant object.

It should be noted that in most cases the presence of one juridical fact is not enough for the consequences programmed in the legal model of behavior of the subject of law. In some cases, a cumulative sequence of several juridical facts is

necessary. Such their multiple interdependence is called the legal structure, i. e. a set of juridical facts necessary and sufficient for the onset of the legal consequences provided by law.

Traditional in the science of civil law is the separation of juridical facts as the ground for the emergence of rights to objects of public relations on the basis of will. It is based on the dependence of the method of establishing the subjective right to the object on the behavioral activity of the relevant subject. The volitional criterion of the ground for the emergence of rights to objects allows us to classify juridical facts into actions and events.

Actions are the acts of person characterizing the external expression of his/her will and consciousness as a result of purposeful activity in a social environment governed by law.

The most common ground for emergence of the right to an object related to the action is a transaction, which means the action of a person aimed at establishing, changing and terminating civil rights and obligations.

In particular, a unilateral transaction as a ground for the emergence of real rights is represented by the following legal constructions as: acquisition of ownership of newly created property, processed property and public gifts of nature (Articles 331-333 of the Civil Code of Ukraine), acceptance of inheritance (Article 1268 of the Civil Code of Ukraine).

The unilateral nature of such transaction is due to the fact that for the emergence of the real right to the relevant object unilateral action of its potential right holder is enough. In particular, for the emergence of ownership of a thing as an object of the material world requires its own actions to create it. The process of creating a thing as an object of law does not correspond to the activities of third parties in this direction. It is the initiative activity of one person - the creator (owner). The same can be said of such legal structure as the collection of medicinal herbs, berries, fishing, the implementation of other forestry. These unilateral actions, within the legal field of Ukraine (part 1 of Article 333 of the Civil Code of Ukraine), entail the emergence of ownership of the object - the thing.

The creation of real estate, in contrast to the above grounds for the emergence of rights, is not limited to a single juridical fact. The obligatory condition of action of such mechanism of emergence of the right to object is existence of actual (legal) structure which elements are the following: 1) the completion of construction (creation of property); 2) the acceptance of the object into operation (registration of the declaration on readiness of the object for operation); 3) the implementation of the state registration of the real right to the relevant object.

As we can see, as an element of the legal structure, along with such juridical fact as a transaction, there is also such juridical fact as an act of a subject of public law - an individual act of law. The design of this legal structure is associated with a plurality of legal manipulations aimed at establishing the right to an object.

In this case, each of these elements of the legal composition contains a set of necessary legal conditions necessary for the occurrence of the relevant juridical

fact. Such may be the transfer of the construction object according to the contract to the customer; conducting a technical inspection of the newly created real estate unit; production of its technical passport; preparation of a declaration of readiness of the facility for operation; submission of documents for state registration of rights to real estate to the judiciary, etc.

The acceptance of inheritance also serves as the ground for the emergence of real rights to the object. It should be noted that the legal significance of inheritance law is that it is the legal ground for the emergence of a new right - property rights. In other words, inheritance law is important to its owner not so much as a right, but as a juridical fact.

The acceptance of inheritance is a unilateral transaction, expressed in the active action of the heir (part 1 of Article 1269 of the Civil Code of Ukraine) or being in a certain civil status in relation to the testator (part 3-4 of Article 1268 of the Civil Code of Ukraine).

At the same time, a specific feature of the acceptance of inheritance as the basis for the emergence of rights to objects is the presence of a set of circumstances that have arisen due to certain events that have legal significance. Such is the death of an individual, or the recognition of his/her death.

It should be noted that a transaction does not always serve as the ground for the emergence of real rights to an object. For certain legal structures, this is an individual act of law (a legal act of a subject of public law). Among such grounds for the emergence of real rights to an object, it is necessary to highlight the termination of ownership of property that cannot belong to a person, the redemption of land plots, other real estate units, private property for public needs or for reasons of public need, the redemption of a cultural heritage monument, requisition, confiscation, nationalization.

For legal relations of obligations, the grounds for the emergence of rights to an object are specified by virtue of their characteristics, the content and dynamics of which, as a rule, depend on all parties of the legal relationship, or at least on the creditor in the obligation.

The most widespread ground for the emergence of rights to an object in legal relations of obligations is a contract. In the system of juridical facts, the contract is declared in such lawful actions as a transaction (bilaterally binding one).

The contract as a juridical fact is the ground for the acquisition of property right, ensures the transformation of an absolute legal relationship into an obligation one with the subsequent establishment of a new absolute legal relationship. The fulfillment of contractual obligations on the transfer of property into ownership leads to the emergence of property rights for one party (purchase and sale, donation) or for both parties (exchange).

The uniqueness of such a juridical fact is explained by the fact that, on the one hand, it is capable of causing consequences in the form of the emergence of rights to an object, and on the other, both objective and subjective grounds for the emergence, change and termination of both real and obligatory legal relations, the occurrence of which is associated with the emergence of the relevant rights, obligations or

even new legal relations between the parties to the contract can be enshrined in the terms of the contract.

The ground for the emergence of rights to objects is also a legal act. It is understood as an action that entails a legal consequence, regardless of whether these actions were aimed at the consequences, which (by virtue of the rule of law) are called, or not. Acts cause legal consequences, regardless of whether the subject was aware or not aware of their legal significance, whether he/she wanted or did not want them to occur.

A significant part of lawful acts is generated by the material and objective activities of people (production, consumption of material goods, the creation of works of literature and art, discoveries and inventions, etc.). Legal acts are actions in which a person: a) realizes the nature of his/her action, foresees its actual consequences and, although he/she does not wish, he/she deliberately allows them to occur; b) realizes the nature of his/her action, foresees its actual consequences and wants them to occur, while it does not provide for possible legal consequences. The possibility or impossibility of predicting legal consequences in this case does not matter, since legal consequences arise as a result of the rule of law, and not the wish of a person.

Considering the essence of a legal act in the theory of civil law of Ukraine, it should be noted that it is the ground for the emergence of real rights to an object.

These include the acquisition of property right to an ownerless thing (Article 335 of the Civil Code of Ukraine); acquisition of property right to a movable thing, the owner of which has renounced (Article 336 of the Civil Code of Ukraine); acquisition of property right to a find (Article 338 of the Civil Code of Ukraine); acquisition of property right to a neglected pet (Article 341 of the Civil Code of Ukraine); acquisition of property right to a treasure (Article 343 of the Civil Code of Ukraine).

The above grounds for the emergence of rights to an object are initially caused by the commission of legally significant actions that are not related to the onset of legal and actual consequences in the form of transfer of ownership to another person.

The content of a legal act in this case is due to the need to ensure the safety of property of another when it is identified. In the future, the formation of such a configuration of juridical facts as the discovery of property of another, public notification of incidentis and the expiration of the statutory period for ensuring the safety of this property entails the onset of legal consequences in the form of the emergence of a real right to an object.

Herewith, a prerequisite for the occurrence of these legal consequences is the absence of the claimed rights to the object by a third party. The emergence of the legal owner of the property distorts the investigated programmed mechanism for establishing real rights, shifting the emphasis towards negotiorum gestio.

These conditions specify the grounds for the emergence of real rights to an object. Firstly, we are talking about a certain mechanism of legal establishment, the elements of which are the legal structure.

Secondly, such juridical facts are inter-industry in nature (acts of public law accompanying the mechanism of legal establishment).

It should also be noted that a legal act leads to the creation of such real right object as a literary, artistic, musical or scientific work (Articles 437, 451, 458 of

the Civil Code of Ukraine), an invention, a utility model, an industrial design (Article 462 of the Civil Code of Ukraine), rationalization proposal (Article 484 of the Civil Code of Ukraine), commercial secret (Article 506 of the Civil Code of Ukraine) and other objects of intellectual property rights.

The writing of a poem creates copyright regardless of whether the author was aware of the meaning of his/her actions or not. The motivation of the subject of intellectual property rights is aimed not at achieving the legal consequences stipulated by the norm in the form of material remuneration or the acquisition of other property rights, but at the realization of the individual's own creative abilities.

In this case, the defining criterion for differentiating a legal act from an act of law becomes goal-setting of the vigorous activity of a person to achieve an established legal result.

Thus, we can conclude that a legal act by its legal nature gives rise to the action of a certain mechanism for establishing a property right to an object. In other words, a legal act should be classified among the so-called contributing juridical facts.

Civil law obligations, due to their inherent specifics as coordinated volitional and purposeful actions of subjects of law, cannot arise as a result of the commission of a legal act. Nevertheless, the legal act itself can serve as a condition for the emergence of legal relations of obligations.

Illegal actions as a juridical fact (tort) serve as the basis for the emergence of protective legal relations, the content of which is the implementation of the compensatory and restorative function of civil law. Tort is the basis for the emergence of rights to such object as a property claim for compensation for material and moral damage caused. This is an object of law of a special kind, implemented only in protective legal relations. Its peculiarity, in contrast to other objects of the material world, is that this object is not subject to free circulation in civil-law transactions. This is due to the nature of protective legal relations, the essence of which boils down to the need to compensate for the damage caused directly to the victim by the causer, the inextricable connection of such compensation with the personality of the subjects of the tort legal relationship.

At the same time, it should be noted that the needs of civil transactions can create conditions for the objective impossibility of compensation for the caused property and non-property damage to the injured person (death of the injured person). These circumstances force the legislator to ensure the implementation of the preventive function of law in a different projection. In particular, the expansion of the boundaries of the civil-law transactions capacity of the object under consideration is determined by the framework of hereditary legal relations. We are talking about the admissibility of transferring the right to claim compensation for damage caused to another person - the heir according to the procedure of hereditary succession (Article 1230-1231 of the Civil Code of Ukraine) through its one-time transformation.

Another ground for the emergence of rights to an object is an event. It refers to the circumstances that arise and exist independently of the will of a person and beyond his/her control. These are natural phenomena, the emergence and development

of which does not depend on the will and consciousness of person. The main feature of a legal event is the fact that the phenomenon is not conditioned by volitional human activity. Depending on the influence of a person on events, the latter are divided into absolute (natural disasters) and relative (birth of a person).

In most cases, the occurrence of an event serves as the basis for the termination of the rights to the object. Considering the event in the context of the grounds for the emergence of rights to the object, it should be noted that this juridical fact has no predominantly independent legal significance. The event is the starting juridical fact in the complex structure of the legal establishment mechanism, which, in the process of accumulation and consolidation with other juridical facts, leads to a legal consequence in the form of the emergence of the right to the relevant object.

In other words, an event as a phenomenon of objective reality, not conditioned by human nature, cannot independently serve as the ground for the emergence of rights to the object. This requires the subsequent volitional activity of the subject of law. In other words, the event as a juridical fact "provokes" the onset of other juridical facts, which are the ground for the emergence of rights to the object.

An example of an event as a juridical fact is the expiration of time of prescription (Article 344 of the Civil Code of Ukraine). A person who has taken possession of property of another in good faith and continues to openly and continuously own real estate for ten years, or movable property for five years, acquires the property right to it.

Let us pay attention to such a feature of usucapio¹ as the conditionality of the legal result inherent in it by juridical facts formed in its legal model before the expiration of the relevant period (property ownership, duration of ownership, continuity and openness). The expiration of time of prescription can be attributed to the initial (final) juridical facts that close the chain of elements of the relevant legal composition.

Summing up the above, it should be noted that the grounds for the emergence of rights to objects - juridical facts - are unique in their nature. Their uniqueness lies in their singularity, which is caused by the nature of human behavior in social conditions. Depending on the content of the social environment in which they arise, juridical facts are configured according to individual characteristics. Their diversity cannot be reflected normally or doctrinally. It is possible to single out only the general contours in which they find their external manifestation. Such contours are the strong-willed nature of the subject of law, which allows us to combine juridical facts in the following algorithms: action - event; event - action; legal act - act of law; legal act - event - legal act, etc.

¹ In Roman law, the acquisition of property by virtue of the prescription of actual ownership, as well as the prescriptive ownership itself.

Наукове видання

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