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Actual Problems of the Theory of Civil Law

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Abstract:
The article focuses on the pressing issues surrounding the theoretical framework of civil rights in Russia. The authors conduct a thorough examination of the challenges stemming from the inadequately developed general theory of civil law, which they argue is indicative of the inherent weaknesses within the contemporary jurisprudential landscape. Through a meticulous analysis, the article aims to shed light on the implications of these deficiencies and their impact on the theoretical and methodological foundations of legal discourse in Russia. By elucidating these critical issues, the authors endeavor to stimulate scholarly dialogue and propose potential avenues for addressing the identified shortcomings, thereby contributing to the advancement of legal scholarship in the field of civil rights.

Keywords: theoretical and methodological framework, dogma of law, the general theory of civil law, civil law system, the legal nature of the legal definitions.

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1. Introduction

The current state of the science of civil law seems contradictory. On the one hand, there are grounds to recognize the level of its development as high, as evidenced primarily by the development of fundamentally new civil legislation that ensured the transition to private-law principles of regulatory regulation of property and personal non-property relations, recognition of the principles and norms of international law as an integral part of the Russian civil legal system. On the other hand, it should be noted that the main efforts of representatives of domestic civil law are still directed at the development of problems lying in the field of the so—called dogma of law.

For most of the researchers, a certain imperative that dominates them is the desire to solve individual, particular practical problems, the attitude to finding and highlighting solutions to specific, casuistic situations or revealing the meaning and content of the norms of the current positive civil law [1].

It is not surprising that references to legislation as the main or only argument for the validity of a scientific position have become familiar to many civilists who have forgotten that the task of legal science is not only to comment on the content of laws, but also the theoretical and methodological justification for their improvement. Being passionate about the problems of the dogma of civil law, civilists often touch on its fundamental theoretical and methodological problems in passing, and allow the incorrect use of the conceptual apparatus developed by legal science [2]. There is even an opinion on the inadmissibility of introducing allegedly alien legal constructions of the general theory of law into civil law [3].

The authors of the book "Civil Law of modern Russia", despite their marked fascination with the theory of civil law, nevertheless managed to avoid the absolutization of a theoretical and methodological orientation [4], which is not always typical for research of this kind. In particular, in the scientific publication, the issues under consideration are closely linked to the current problems of civil law regulation of

property and personal non-property relations, amendments to civil legislation are proposed, most of which look reasonable and useful.

A significant place is given to subjective civil law. This decision is quite justified, since subjective law and its holders constitute the necessary logical assumption of any civil law, without which the latter would be unthinkable [5]. The validity and the need to consistently disclose the social role of subjective civil law in ensuring the freedom and independence of participants in civil turnover, as well as regulatory and legal means for determining its boundaries and protection do not require excessive argumentation.

The need to use civil law definitions for the legal mediation of public relations arises only at the stage of complication of social relations, when predominantly casual legal regulation ceases to meet the objective needs of a no-nonsense, abstract civil law.

In modern state legal systems, civil law definitions are used as the initial legal forms of modeling positive and negative social phenomena (processes, needs), as well as the formulation of the relevant rights and obligations of participants in civil turnover. There is a dependence of the reflection in civil law definitions of the nature of the content of civil personality on the level of democracy of the political and ideological system and the development of civil science.

As specific legal instruments within civil law regulation, civil law definitions exhibit the following characteristics:

1) Precedence: They typically precede the formulation and normative establishment of civil rights and obligations, laying the conceptual groundwork upon which legal norms are built.
2) Abstraction and Generalization: Civil law definitions operate at a higher level of abstraction, synthesizing and generalizing the fundamental attributes of social and legal phenomena, thereby providing conceptual clarity and coherence.
3) Structural Distinctiveness: They possess a distinct structure that sets them apart from legal norms, often manifesting as broad conceptual frameworks rather than specific regulatory directives.
4) Functional Diversity: Civil law definitions serve multiple functions, including providing information, guiding ideological orientation, shaping systemic frameworks, regulating conduct, safeguarding rights, and reflecting societal values.

These and other properties of civil law definitions are revealed in the context of existing forms of their normative consolidation and structural and functional links with other legal means of civil law regulation (principles, norms, acts of civil law implementation, etc.).

The detailed classification of civil law definitions is based on the following parameters: the depth and breadth of reflection of socio-legal reality (complex and derivative), the features of the object of reflection of socio-legal reality (proper legal and special), forms of objectification (scientific, normative, interpretative).

Among the shortcomings of the legislative consolidation of civil law definitions, in particular, it is necessary to highlight the lack of definition of the concepts of most principles, goals and objectives of civil legislation, objects of civil rights, self-defense, civil liability; the absence in a number of definitions of the concepts of illegal acts of the specifics of the subject of civil law regulation and the tautology of some of them.

If we talk about the mechanism of interaction between the principles and norms of civil law in modern Russia, we should proceed from the fact that the principles of civil law are the basic principles (ideas) stipulated by the objective needs of the development of economic relations and enshrined in legislation, determining the essence and content of civil law regulation, and the norms are based on legal principles and enshrined in legislation generally binding rules of conduct expressed in specific permissions, obligations and prohibitions.

1.1. Literature review

The perspective of esteemed figures in Russian academia, including V.I. Sinaisky [6], I.A. Pokrovsky [7], G.F. Shershenevich [8], and Y.S. Gambarov [9], underscores the enduring relevance of the deficiency in a comprehensive general theory of civil law. This sentiment resonates with the observations made by D.A. Kerimov [10], who aptly asserts that the absence of a robust theoretical and methodological framework impedes the progress of legal sciences across various domains. Despite the recognition that the development of any field of study hinges on the establishment of a solid theoretical foundation, contemporary legal scholarship tends to overlook this crucial aspect. This oversight risks stagnation and limits the potential for scholarly advancement, confining the discipline within the confines of established norms without fostering innovative growth.

2. Method

The genesis of this mechanism lies in the actual civil relations that arise regarding the production, movement, exchange and consumption of material goods, are of a natural-legal, equivalent nature and are based on the ideas of equality of their participants, freedom of contract, non-interference in private affairs. At the initial stage of the functioning of the state legal system, due to the casual and class nature, the written norms of civil law do not adequately consolidate the principles of natural law economic relations between people. With the transition to abstract legal regulation and democratization of the state legal system, the natural law principles of civil law are becoming more and more adequately legislated and acquire significant importance in civil law regulation.

The social aspect of the mechanism of interaction of principles and norms of civil law can be characterized as the influence of socio-economic, political-ideological, organizational and technical factors on the process of their mutual functioning. The low level of socio-economic development, the significant polarization of political and ideological attitudes, the strong influence of opportunistic, corporate and criminal interests, weak organizational work to promote advanced ideas of forming market relations have a negative impact on the regulatory support and implementation of the principles of civil law.

3. Results and Discussion

The structural and functional features of the mechanism of interaction of principles and norms of civil law are determined by the following three main levels of the system of legal principles, which serve as the basis for the organization of the regulatory system of civil law regulation [11]:

1) a list of the basic principles of civil law that determine the structure and content of the entire regulatory framework of civil law regulation;
2) a set of requirements arising from the basic principles of civil law and determining the content of the relevant civil law institutions;
3) the structural connection of general legal and civil law principles that provide an industry interpretation of the requirements of general legal principles to the norms of civil law.

Legal principles perform the following functions in the mechanism of their interaction with the norms of civil law [12]:

1) norm—forming - ensures the formation of the concept of the normative basis of civil law regulation; the adequacy of reflection in the norms of civil law of the objective needs of the development of economic relations; unity and internal consistency of the norms of civil law; identification and overcoming of contradictions in the system of norms of civil law;

2) regulatory — helps to overcome gaps in the system of norms of civil law; the direct emergence of the rights and obligations of participants in contractual relations; the correct interpretation of norms in the process of civil law regulation; assessment of the legality and validity of the application of norms of civil law;
3) informational — determines the development of prescriptive information contained in the norms of civil law; subjects receive concentrated information about the essence and features of civil law regulation.

The functional role of legal norms in the mechanism of their interaction with the principles of civil law is determined by the permissive and dispositive orientation of civil law regulation [11]. Permissive norms of civil law, by consolidating the list of subjective rights of individuals and legal entities, determine the legally possible scope of their implementation of legal principles. Dispositive norms provide subjects with the freedom of discretion necessary for the implementation of legal principles in the process of exercising their civil rights. Binding, prohibiting, imperative norms ensure the unhindered exercise of subjective civil rights by subjects.

The shortcomings of the legislative consolidation of the principles and norms of civil law reduce their effectiveness. Decree of the President of the Russian Federation No. 1108 dated July 18, 2008 "On Improving the Civil Code of the Russian Federation" provided for the development of a Concept for the development of civil legislation. The development of the Concept is due to a number of objective reasons. Since the early 1990s, when civil legislation began to be created, important economic and social transformations have taken place in the country, which have not been properly reflected in legislation [13]. In particular, there is a need to introduce two fundamental changes of a systemic nature into the Civil Code.

Corporate relations should be included in the range of relations regulated by civil law and defining its subject matter. In addition, it is necessary to create in the Civil Code a complex of interrelated institutions of property law, based on the right of ownership and united by a comprehensive system of general rules of property law. Unlike most developed Western countries, Russian legislation has not created a system of stable property rights to land and other natural resources.

A new concept should appear in the legislation — "public joint stock company". A public joint-stock company is a joint-stock company whose shares and securities convertible into its shares are publicly placed (by open subscription) and publicly traded under the conditions established by securities laws [14].

Among the features of the functioning of public joint-stock companies are increased requirements for the minimum amount of authorized capital, the establishment of the obligation to publicly disclose information provided for by the law on business companies and securities laws, maintaining the register of shareholders of a public joint-stock company and the functions of the accounting commission by an independent organization with the appropriate license. Non—profit organizations are supposed to be named "non-profit corporate organizations" and "non-profit unitary organizations", the first of which are supposed to include consumer cooperatives, public organizations of citizens, associations and unions (with detailed regulation of their status), the second - foundations, institutions and religious organizations [15].

As part of the disclosure of the topic of subjective civil law and the economic security of private entrepreneurs, the place and role of subjective civil law in the system of legal support for the economic security of private entrepreneurs are analyzed. At the same time, the economic security of private entrepreneurs is considered as a state of security for their interests, expressed in the possibility of systematically obtaining benefits from their activities in conditions of economic freedom based on the principles of a market economy, and its legal support is considered as a system of permissive, protective and protective legal measures established by law and implemented by state, public organizations and citizens means that create a favorable environment for economic

activity in market conditions.

Subjective law serves as the foundation for legally ensuring economic security for private entrepreneurs. It is characterized as a legal instrument that [16]:

1) Represents the permissive and discretionary nature of civil law regulation, fostering favorable conditions for business entities' freedom of discretion and initiative.
2) Translates the fundamental principles of civil law regulation of market relations into a framework of powers essential for entrepreneurial activity.
3) Functions as a mechanism for calibrating and defining the boundaries of permissible behavior, thereby preventing the misuse of a business entity's status.
4) Possesses a natural-legal character, delineating the relative autonomy of business entities from societal development levels and the organized efforts of the state.

Various elements, or powers, within the framework of subjective civil law play distinct roles in this process. These roles are particularly evident in laws pertaining to [17]:

1) Possession, use, and disposal of property for conducting economic activities that are legally permitted to generate regular income.
2) Property and business risk insurance.
3) Utilization of detective and security services.
4) Mandates for all parties to adhere to the fundamental principles of civil law regulation within market relations.
5) Obligations imposed by law on relevant state entities to ensure the economic security of private entrepreneurs.
6) Fulfillment of contractual obligations.
7) Protection of infringed rights, including those related to honor, dignity, reputation, and business integrity.

It is essential to underscore the significance of the subjective civil right to detective and security services in ensuring the economic security of private entrepreneurs. This right encompasses various possibilities, including [17]:

1) Utilizing detective and security services as stipulated by laws and contractual agreements, while retaining control over the process and quality of service provision.
2) Imposing requirements on detective and security services for timely and proper fulfillment of contractual obligations, as well as non-disclosure of confidential information to third parties, and seeking compensation for losses resulting from non-compliance or inadequate performance.
3) Seeking judicial protection in instances where detective and security services fail to adhere to the legitimate demands of the client.

The legislation does not clearly distinguish the types of legal means to ensure the economic security of private entrepreneurs. Not all elements of property rights that directly ensure the economic security of private entrepreneurs have been adequately consolidated in the Civil Code. There is also no regulatory mechanism for the implementation of the right of private entrepreneurs to self-defense and fulfillment of the state's program obligations to ensure the economic security of private entrepreneurs. Gaps and contradictions in the legislation regulating the activities of detective and security services limit the content of the subjective civil right to receive this type of service [17].

The system of legal means for the protection of subjective civil rights is a set of sectoral and intersectoral legal phenomena in structural and functional unity, united in order to prevent and suppress unlawful encroachments on legal opportunities and social benefits of participants in civil turnover.

The elements of the system of legal means of protecting subjective civil rights are

classified [13]:

1) by branches of law — constitutional law, civil law, administrative law, criminal law;
2) according to the method of protection: preventive — legal prohibitions, obligations and restrictions; protective — recognition of the right, invalidation of the transaction, award of performance of duties in kind, etc.; punitive — compensation for losses, recovery of penalties, compensation for moral damage, administrative fine, deprivation of the right to engage in certain activities, imprisonment, etc.;
3) the form of protection: jurisdictional — judicial, prosecutorial, administrative, notarial, etc.; non—jurisdictional - self-defense, operational impact.

The protective means of the private law complex presuppose the administrative independence of the subjects to put these means into effect, to "turn on" the mechanism of their application in the event of a threat of encroachment or encroachment on subjective civil rights. The public law means applied to the violator of subjective civil rights are exclusively punitive in nature (in the private law sphere, only a small part of the means representing measures of property liability belong to them).

The interaction of complexes of legal means of protecting subjective civil rights is carried out through the protection of civil rights of the same name by private law and public law branches of legislation, as well as the use of public law means of protecting civil rights in private law branches, and vice versa. The jurisdictional forms of protection of subjective civil rights include the procedural activities of competent state bodies and non-governmental organizations authorized by law to protect the disputed or violated rights of individuals and legal entities. The priority and most effective jurisdictional form of protection of subjective civil rights is judicial, which includes the procedural activities of the Constitutional Court of the Russian Federation, courts of general jurisdiction, arbitration courts, and the European Court of Human Rights [18].

Among the shortcomings of the legislative consolidation of the system of legal means of protecting subjective civil rights are the following: the use of concepts of different types of legal means of protecting civil rights without taking into account their corresponding semantic load; the consolidation of both protective and punitive types of legal means as methods of protecting civil rights; the lack of definition of concepts of some protective principles of civil legislation and general prohibition abuse of law.

The established mechanism of interaction between private law and public law means of protecting subjective civil rights suffers from a number of flaws. In particular, there is insufficient public legal protection of copyrights, state property rights, and intellectual property rights. The existing contradictions between public and private legal means reduce the effectiveness and sometimes undermine the foundations of civil rights protection.

The restriction of economic rights of citizens is a legislative narrowing of the natural law possibilities of their acquisition, content or list of powers, as well as options for the implementation process, carried out with the help of various legal means. Prohibitions and obligations aimed at establishing a certain (special) list of objects and a range of subjects of economic rights, as well as special requirements and conditions for subjects, the procedure for the emergence and exercise of economic rights can be called the main legal means of restricting the economic rights of citizens [19].

The delineation and principles governing restrictions on the economic rights of citizens hold paramount importance. These restrictions demarcate the legislative boundaries within which the natural legal scope of these rights is narrowed, serving the interests of safeguarding individuals, society, and the state. The determination of the measure and content of these restrictions adheres to the following principles:

1) **Legality:** Restrictions are only permissible when enacted by law.
2) **Primacy of Individual Rights and Freedoms:** Restrictions must be proportionate to the interests safeguarded, respecting the rights and freedoms of individuals.

3) **Consideration of the Nature of Limited Economic Rights:** Restrictions should account for the inherent legal nature and operational sphere of economic rights, recognizing the developmental needs that may necessitate such limitations.
4) **Justice:** Ensuring that the restriction of economic rights for a minority does not encroach upon the similar rights of the majority or more significant rights.

The drawbacks associated with the regulatory and legal codification of restrictions on the economic rights of citizens, along with efforts to ensure their legality, validity, and protection, encompass the following:

1) **Declarative and Interpretative Legislative Consolidation:** Legislative measures may often merely articulate the goals and boundaries of restricting economic rights in a theoretical or ambiguous manner, lacking substantive clarity or precision.
2) **Excessive Expansion of Regulatory Functions:** There is a tendency towards the overextension of the state's registration and licensing mechanisms concerning the economic rights of citizens. This expansion could lead to bureaucratic complexities and hinder the efficient exercise of economic liberties.
3) **Delegation of Authority to Subordinate Lawmaking:** The assignment of a significant portion of responsibilities for limiting economic rights to subordinate legislative bodies can result in potential inconsistencies, regulatory overreach, and a lack of accountability in decision-making processes.

The judiciary's consistent involvement in addressing matters of legality, validity, and safeguarding restrictions on citizens' economic rights is not always uniform. The societal significance of civil offenses is evident in their public peril, which encompasses both objective and subjective dimensions, as follows:

1) Reflecting the dominant societal interests in the pertinent civil law regulation of public relations.
2) Manifesting through the conduct of individuals by either causing harm or posing a threat thereof to personal non-property relations governed by civil law.
3) Receiving legal mediation through the duties and obligations of participants in civil relations.

4. Conclusion

The legal essence of civil offenses lies in their inherent illegality, characterized by an objective misalignment between the actions of individuals and the obligations prescribed by civil law norms, business practices, and other established standards. These standards encompass principles of good faith, justice, morality, as well as agreements, unilateral transactions, governmental decrees, judicial rulings, and internationally recognized norms and treaties.

Employing the theory of multidimensional objects within civil offenses, they can be delineated as social objects, legal instruments subject to civil law regulation, and societal benefits safeguarded by civil law. In the adjudication process, identifying social and legal objects is often a crucial step towards determining the actual object, facilitating the enforcement of civil liability measures such as compensation for damages and penalties.

An examination of the objective and subjective facets of civil offenses enables the distinction between mandatory and discretionary elements. The objective aspect encompasses an unlawful act representing a manifestation of public peril, along with property or moral harm inflicted upon the offended party, and a causal nexus between the unlawful act and the resultant harm. Actual property damage may constitute both mandatory and discretionary components of the objective side of civil offenses. On the other hand, the subjective side encompasses culpability in the form of intent or negligence, alongside purpose and motive, where culpability stands as a requisite element while purpose and motive remain optional. It is noteworthy that the concept of innocent liability, as outlined in civil law, is predicated not on the commission of an

offense, but rather on the objective causation of harm, necessitating compensation.

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