LEGAL PROTECTION IN MACEDONIAN LEGISLATION

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Abstract: Legal protection means an important segment of law and society in general. Legal protection is essentially a mechanism used by the entities for the realization of their endangered or violated subjective rights. Regardless of which branch of law is concerned, legal protection is present in every segment of the law. It also appears in certain forms, where they are more detailed in this scientific paper. In modern society in which all rights and freedoms is largely guaranteed and regulated by legislation, but constant activity in a way that those same rights are violated or performed a certain discrimination. Discrimination occurs as a result of not equal treatment of persons in the basis differs. To prevent this phenomenon, it is necessary to be well known and available to the appropriate level of discrimination can be reduced.
Keywords: Legal protection, subjects, realization of legal protection, discrimination

1. THE NOTION OF LEGAL PROTECTION

Protection of the injured, disputed or endangered civil subjective rights is performed, that is, according to a special method of legal protection, for which the generic term civil procedure is used. The term civil procedure means a special way (method) of acting by the courts and other competent bodies that, with the participation of the parties and other participants, undertake a series of borrowing related and consequential actions in order to examine whether there are conditions for providing legal protection of civil subjective rights and whether it is reasonably requested, and when it is determined that protection is justified in determining measures for its realization. The manner of acting by the court, other competent authorities, the parties and other participants in the civil procedure is prescribed by law. It is expressed as a continuous event, composed of a series of procedural actions undertaken by the entities in the procedure. Each of these actions is a consequence of the previous and the assumption of the next procedural action, and their ultimate goal is to make a decision determining the content of the legal protection or providing the necessary protection. The notion of civil procedure is not a legal one, but a theoretical category. The civil procedure is a generic term that denotes several different methods for the protection of civil subjective rights. In this sense, civil procedure is not a single process phenomenon. It is composed of several different procedures in which a different type of legal protection is given that corresponds to the specific violation of the subjective rights and to the specific need of legal protection. The civil procedure is divided into two basic branches: litigation and non-litigation procedure. The structure of the extra-marital proceeding is also a complex procedure and covers the non-contentious procedure in the narrow sense, the enforcement procedure and the bankruptcy procedure. And there is another opinion that the civil procedure consists of three basic branches: litigation, extra-judicial and executive procedure. The enforcement procedure covers the procedures for individually and for general enforcement, ie enforcement procedure, security procedure and bankruptcy procedure. Regardless of which of these divisions will be accepted, it is indisputable that the protection of civil subjective rights is exercised, ie it grants in litigation, extra-judicial, executive and bankruptcy proceedings as separate methods of civil procedure. In civil proceedings, protection of civil subjective rights is granted in cases where they are violated, disputed or endangered. The subject of legal protection in the civil procedure, that is, the subject of the procedure itself, determines civil law work. Civil Procedure is a basic and regular method of protecting civil legal matters. As an exception, certain civil legal matters can be resolved under the rules of other methods of legal protection or by other bodies (eg in criminal proceedings, administrative proceedings, etc.). The notion of civil legal work as a subject of civil proceedings does not fully coincide with the substantively legally conceived notion of a civil legal relationship. The notion of civil legal work also covers legal relations which, according to the material right criteria, are outside the framework of classical civil law relations - actually legal, obligatory - legal and hereditary - legal relations. Thus, with the notion of civil legal work, apart from the legal affairs of property and other civil legal relations, the legal matters arising from personal (family), family and labor relations are also covered. Depending on the civil law procedure that gives legal protection, the civil legal matter that is the subject of the procedure can be appealed as litigant, non-contentious and enforceable. The subject in individual civil proceedings is determined by the laws governing those procedures. It determines in which civil legal matters are handled in an appropriate procedure.

In the civil procedure, they discuss and decide about the basic rights and obligations of the individual and the citizen in the disputes of personal and family relations, labor relations, as well as from the property and other civil legal relations of the natural and legal persons, unless for some of the mentioned disputes with a separate law does not provide for them to decide on the rules under any other procedure. In the extrajudicial procedure, the courts act and decide on the personal, family property and other legal conditions and relations when it is determined by law.

2. NEED FOR PROTECTION OF CIVIL SUBJECTIVE RIGHTS

Civil law as a subjective right is a set of powers that recognizes objective civil law, that is, the real, binding and inherited right, that is, it grants to the subjects of civil law in their mutual relations1. The legal order in each state is based on the firm link between its legal norms (normative element of the legal order) and the real behavior of people according to those norms (factual element of the legal order). In its dynamism, eg the autocratic order begins the creation of legal norms, and ends with their realization through the behavior of the people in the legal relations. This unity of normative and factual exists in the civil law as part of the whole of the legal order. The normative civil-legal order is composed of legal norms regulating civil subjective rights and civil legal relations, as well as the position of the subjects in those relations (material civil law). The normative civil-legal order as a set of abstract legal norms gets its full value at the moment when it is accomplished in practice, first of all so that the interested entities regulate their relations, taking into account the existing legal norms, to which they are then voluntarily and amicably adhere to and meet them. Legal entities become numerous and diverse civil law relations every day, gaining certain powers (subjective rights) or assuming certain obligations (duties). The subjective right is a legal authorization for a certain conduct of the subject of the right in order to protect its interest. A correlative notion of subjective law is the legal obligation. The content of the legal obligation consists of certain behavior (cost or non-existence), which is defined as an imperative sent to the subject of the obligation to behave in a prescribed manner, in order to achieve a certain goal. The titular of the subjective right is authorized to require the entity of the legal obligation to fulfill its obligation. The liable person with his spontaneous behavior, in accordance with the content of the legal obligation, enables the titular of the right to exercise his / her subjective right. With the realization of the typified and with the legal norm, the determined behavior of the subjects of the civil legal relationship is achieved by the content of that relationship, and at the same time the projected normative civil legal order in the actual relations of the legal entities is revived. In most individual cases, the subjects of subjective rights and legal obligations behave in a manner as determined by legal norms. With this, the civil legal order is realized spontaneously, without disturbance. However, sometimes the legal entities do not behave in accordance with their powers and subjective rights, that is, until the commitment of the holder of the obligation to get rid of its fulfillment. The content of the legal relationship can not be achieved, and the normative civil legal order can not be revived in the actual relations of the legal entities. Given the possibilities for the primary efficiency of the legal norms to be omitted, due to the absence of self-initiative, voluntary and spontaneous behavior of the legal entities in accordance with the legal norms it is necessary to provide mechanisms, instruments for their secondary efficiency, which implies their forcible fulfillment. After all, social relations are legal relations only if the state, in addition to regulating them, provides adequate and effective legal protection of those relations. The basis for the mechanism of coercion is the right to legal protection of subjective rights determined by the substantive legal norms. The right to legal protection is the authorization of the title-holder of the right to require the state to interrogate his instrument for the protection of his right. The remedies mechanism must be so limited that it will be able to provide legal protection for all recognized subjective rights and all entities.

3. FORMS OF PROTECTION OF RIGHTS

Stages of development for the protection of rights. In parallel with the emergence of legal relations and the recognition of certain subjective rights, there is a need for their protection. In the early stages of its development, the primitively organized social community was limited only to the recognition of subjective rights, without restricting an appropriate social mechanism for their protection. Therefore, in the early stages of social development, the protection of rights is exercised as a private protection of rights - self-help. Before the history of civil proceedings is marked by self-help as the dominant way of leveling all conflicts, and in response to the attack on the basic goods of the community and individuals in it. Self-help was effective to the extent that it provided quick protection of rights, and less of the contents of the protection. Why? Private protection of rights as the earliest form of protection of rights means that the holder of the subjective right has undertaken measures for exercising and securing his right. The right holder himself assessed whether the right belongs to him and whether he was violated and also himself assessed the adequacy of the measures he himself was able to take in order to exercise his intended right. Protection measures that were taken by the lawyer themselves were reduced to the use of physical force, which is why in the protection The one who was stronger than his opponent would succeed. Taking into consideration these immanent characteristics of self-help, it is clear that the protection of rights in these early periods of impairment resembles a

real war for the protection of private interests. The social community was powerless to provide other and more adequate protection mechanisms, initially it was self-reliant in self-help, but only to the point when it was based on the subjective criteria and properties of the holders of subjective rights, it did not begin to seriously undermine the presuppositions for survival for the social community. In the later stages of social development, due to increased legal relations and the frequent conflicts of those relations, people tried to essentially resolve their disputes themselves or settled the settlement of disputes to trusted third parties (elected judges, arbitrators) who mediated or arbitrated in resolving disputes. The agreement, the dispute to be entrusted to the resolution of elected judges, also meant that the parties in the dispute agreed that they would voluntarily make their decisions, or any agreements reached before the arbitrators. However, in these stages of social development, the resolution of disputes by elected judges has no organized form (it still takes place outside the state organization), and in that sense it appears as a form of private protection of rights. With the emergence and especially of the affirmation of the state as a coercive organization, the idea of organized protection of rights emerges. In the aspiration to limit and regulate private protection of rights, and in the protection of rights to involve representatives of the state, a civil procedure is initiated as a judicial procedure. The idea is implemented gradually in a way that the state begins to prescribe accession rules in order to protect the recognized subjective rights and to organize an apparatus for providing that protection. Initially, the rules on the review procedure were rudimentary and there was no permanent organization of legal protection bodies. Over time, these rules for the procedure are more elaborated, and the organizational forms through which the protection of rights is exercised are given a permanent character. Private protection of rights is almost completely replaced by state-organized rights protection, as a modern form of legal protection.

4. CONTEMPORARY FORMS OF PROTECTION OF RIGHTS

The protection of rights organized by the state is a legally regulated form of legal protection in front of specialized judicial review bodies and according to previously prescribed rules for the procedure. In modern legal systems, the protection of rights, as a rule, is provided by specialized state bodies - courts. Judicial protection of rights is a regular form of legal protection. The courts provide protection of the rights according to the law prescribed by the law for acting, which are obliged to adhere to those who seek legal protection and those who need to provide protection. The procedure for judicial protection of the rights may have different forms depending on the nature of the right that is protected in it and the need for legal protection. Through the actions of the competent bodies, the legally prescribed way ensures the exercise of the subjective rights that could not be accomplished in a regular manner - by voluntary and spontaneous behavior of the legal entities. This is all the more so that in modern conditions, the state monopolizing the protection of rights, takes on itself the care for the forced execution of decisions by the competent authorities and in a prescribed procedure. When providing protection of rights, the state is obliged to organize its system in a way that will be able to provide legal protection for all recognized subjective rights and all entities. The state can not remove the obligation to provide legal protection from itself. However, in contemporary conditions besides the judicial protection of rights as a regular and primary form of legal protection, there are other forms of protection of rights. Although by their very nature they are forms of private protection of rights, due to their sanction by law, they are treated as forms of organized protection of rights. These are allowed self-help and trial by non-state bodies - arbitrations. In modern terms, self-help as a private, legal unencoded protection of rights is prohibited. In all modern legal systems, including our legal system, there is a prohibition of self-willing and protection of rights. Anyone who self-will gain some right or right that he considers to belong to him will be punished for a criminal act of autonomy2. However, the prohibition of self-rule and protection of rights is not absolute and suffers exceptions. In certain cases, the state tolerates self-help and allows the rights-holders to independently, with their own real actions to provide protection and their rights. These are situations where the competent state authorities are not able to intervene in a timely and effective manner on the violation of subjective rights or their intervention is inexpedient. Then the titles of the law are entitled to individual legal protection - self-help. Because of the powerlessness of the competent authorities, the titles of the rights are not obliged to allow their subjective rights to be violated, and then seek their protection. The titles of the rights are authorized, under the conditions prescribed by law, to appeal against the legal attack or endangering their subjective rights, by taking their own real actions adequate to the particular need for protection. Only assistance is allowed only if it moves within the boundaries and the rules stipulated by law. Beyond that it constitutes a violation of another's subjective right. Hence, self-help is an exceptional, extraordinary and subsidiary form of protection of rights. There are more cases of legally regulated self-help, as a modern form of protection of rights. The most characteristic are: the necessary defense, the ultimate need, the permitted self-help and the right to detention. From the criminal law, it is known that it is not a criminal offense that is done in the necessary defense, as well as what is done in extreme need. Accordingly, there is a rule in the law of obligations, according to which a person who in the necessary defense causes damage to the attacker is not obligated to compensate, except in the event of an overdraft of the necessary defense. Also, when

someone causes damage in a state of need, the injured party can claim compensation from the person guilty of the occurrence of the danger of damage or from the persons from whom the damage was removed, but from the latter, no more than the benefits that they had from it. Furthermore, in case of self-help, he / she will cause damage to the person who caused the need for self-help. Authorized self-help means the right of every person to remove the violation of the right when there is an immediate threat, if such protection is necessary, although the manner of removing the violation of the right corresponds to the circumstances in which the danger arises. Finally, the creditor of the claim in whose hands is a certain debtor is entitled to keep the case until the iusretentionis is paid. In addition, in all modern legal systems, the state is also tormenting the trial by non-state bodies - arbitrations. The state allows legal entities to voluntarily and amicably entrust the settlement of disputes about their subjective rights to non-state bodies, while prescribing the conditions under which legal entities can cast their disputes on resolving these bodies as well as the legal importance of decisions that they will bring them.

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