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### **ON THE PROBLEMS OF STATE FORMS OF PROTECTION OF SUBJECTIVE RIGHTS OF PARTICIPANTS IN BANKING LEGAL RELATIONS**

**Abstract.** The article is devoted to the study of forms of protection of subjective rights, their implementation at the national level in the framework of banking relations. The article analyzes the forms of protection of private and public rights, ways to protect civil rights, the functions of banking relations, the object and subject composition of banking relations, scientific, theoretical and practical recommendations for improving the application of law on banking relations.

The authors draw attention to the imperfection of domestic government regulations in terms of forms of protection of subjective rights of participants in banking relationships. Based on the analysis of regulatory sources, it is concluded that the form of protection of subjective rights of participants in banking relations is a statutory procedure for protection of subjective rights in banking or banking operations (subjective law is aimed at public interest, sociocentric), its implementation takes place by one or another jurisdictional body depending on its nature, the content of which is both the activities of the state, its authorized bodies, public associations, and the ability of the person to exercise his right to protection in case of violation of subjective rights and legitimate interests, including, seek protection from the competent state authorities.

There is a need for normative consolidation of the concept of forms of protection of subjective rights of participants in banking relations.

**Keywords:** form of protection, subjective rights, private and public rights, civil rights, functions of banking legal relations, object and subjective composition of banking legal relations, banking legal relations.

**JEL Classification:** G21

Formulas: 0; fig.: 0; tabl.: 0; bibl.: 14.

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## ЩОДО ПРОБЛЕМАТИКИ ДЕРЖАВНИХ ФОРМ ЗАХИСТУ СУБ'ЄКТИВНИХ ПРАВ УЧАСНИКІВ БАНКІВСЬКИХ ПРАВОВІДНОСИН

**Анотація.** Присвячено дослідженню форм захисту суб'єктивних прав, реалізації їх на національному рівні в рамках банківських правовідносин. Проаналізовано форми захисту приватних і публічних прав, способів захисту цивільних прав, функції банківських правовідносин, об'єктний і суб'єктний склад банківських правовідносин, запропоновано науково-теоретичні і практичні рекомендації удосконалення застосування норм права, присвячених регулюванню банківських правовідносин.

Звернено увагу на недосконалість вітчизняних державних приписів у частині форм захисту суб'єктивних прав учасників банківських правовідносин. На підставі аналізу нормативних джерел зроблено висновок, що форма захисту суб'єктивних прав учасників банківських правовідносин — це визначений законом порядок захисту суб'єктивних прав у процесі банківської діяльності або при здійсненні банківських операцій (суб'єктивне право спрямоване на інтерес публічний, соціоцентричний), реалізація якого відбувається тим або іншим юрисдикційним органом залежно від його природи, зміст якого становить як діяльність держави, уповноважених нею органів, громадських об'єднань, так і можливість самої особи реалізовувати власне право на захист у разі порушення суб'єктивних прав і законних інтересів, у тому числі звернутися за захистом до компетентних державних органів.

Доведено доцільність нормативного закріплення поняття форм захисту суб'єктивних прав учасників банківських відносин.

**Ключові слова:** форма захисту, суб'єктивні права, приватні і публічні права, цивільні права, функції банківських правовідносин, об'єктний і суб'єктний склад банківських правовідносин, банківські правовідносини.

Формул: 0; рис.: 0; табл.: 0; бібл.: 14.

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## О ПРОБЛЕМАТИКЕ ГОСУДАРСТВЕННЫХ ФОРМ ЗАЩИТЫ СУБЪЕКТИВНЫХ ПРАВ УЧАСТНИКОВ БАНКОВСКИХ ПРАВООТНОШЕНИЙ

**Аннотация.** Посвящено исследованию форм защиты субъективных прав, реализации их на национальном уровне в рамках банковских правоотношений. Анализируются формы защиты частных и публичных прав, способов защиты гражданских прав, функции банковских правоотношений, объектный и субъектный состав банковских правоотношений, делаются научно-теоретические и практические рекомендации совершенствования применения норм права, посвященных регулированию банковских правоотношений.

Обращено внимание на несовершенство отечественных государственных предписаний в части форм защиты субъективных прав участников банковских правоотношений. На основании анализа нормативных источников делается вывод, что форма защиты субъективных прав участников банковских правоотношений — это определенный законом порядок защиты субъективных прав в процессе банковской деятельности или при осуществлении банковских операций (субъективное право направлено

на интерес публичный, социоцентрический), реализация которого происходит тем или иным юрисдикционным органом в зависимости от его природы, содержание которого составляет деятельность государства, уполномоченных им органов, общественных объединений, так и возможность лица реализовать свое право на защиту в случае нарушения субъективных прав и законных интересов, в том числе обратиться за защитой в компетентные государственные органы.

Обосновывается необходимость нормативного закрепления понятия формы защиты субъективных прав участников банковских отношений.

**Ключевые слова:** форма защиты, субъективные права, частные и публичные права, гражданские права, функции банковских правоотношений, объектный и субъектный состав банковских правоотношений банковские правоотношения.

Формул: 0; рис.: 0; табл.: 0; библи.: 14.

**Introduction.** The relevance of the research topic. Regulation of forms of protection of subjective rights of the participants is a priority principle in the system of constitutional law of each country. In accordance with part five of article 55 of the Constitution of Ukraine everyone is guaranteed the protection of their rights, freedoms and interests from violations and illegal encroachments by any means defined by law [1]. Specified constitutional provision provides for the application of forms of protection of the rights of participants of relations, including those not provided for in the procedural rules. In continuation of the thought, article 13 of the Convention on the protection of human rights and fundamental freedoms reads: «Everyone whose rights and freedoms recognized in this Convention are violated shall have an effective remedy in national authority, even if such violation was committed by persons who perform their statutory authority» [2]. Forms of protection of subjective rights and legitimate interests is a dynamic element of the mechanism of legal protection, which, in turn, refers to the exercise of the right, and the content of which is activity of the state, its government authorities, public associations, and the ability of individuals to exercise their right to protection in case of violation of subjective rights and legitimate interests, including to seek protection before a competent public administration.

**Research analysis and problem statement.** In the legal literature, the works of such well-known scientists, such as: V.P. Грибанова, Г.А. Sverdlika, D.M. Chechota, M.A. Gurvich, B.B. Butneva, G.P. Tymchenko and others.

In modern conditions of development and functioning of society, a necessary condition is the creation of a holistic mechanism of legal protection, which ensures the restoration of violated subjective rights, protection of legitimate interests, elimination of any obstacles to the exercise of subjective rights. and legitimate interests.

**Results of the research.** D. Chechetov classified forms of protection of rights and legitimate interests of citizens on the nature of the governments carrying out the defence and singled out the judicial, administrative, arbitral, notarial and public form [3, p. 53]. We will add the approval of the S. F. Kechichian tangential to the fact that the subjective civil law represents the law provided the measure of possible behavior (the right to private action) and a measure of permitted conduct (a right to someone else's actions) without the addition of the third element is the possibility to resort to measures of state coercion, since the possibility of «force» is accompanied by a subjective right, but is not of its essence [4, p. 58—59].

In continuation of the ideas in certain article 3 of the Civil Code of Ukraine the General principles of the civil law, which must comply with civil rights and civil interests are: 1) the inadmissibility of arbitrary interference in the private sphere of the individual; 2) the inadmissibility of deprivation of the right of ownership, except the cases established by the Constitution of Ukraine and the law; 3) freedom of contract; 4) freedom of entrepreneurial activity that is not prohibited by law; 5) judicial protection of civil rights and interests; 6) fairness, integrity and reasonableness. A mission of civil justice is fair, impartial and timely consideration and permission of civil cases to protect the violated, unrecognized or disputed rights, freedoms or interests of physical persons, rights and interests of legal entities, interests of the state (article 1 CCP) [5]. In turn, the task of

administrative justice is fair, impartial and timely resolution of court disputes in the sphere of public law relations for the effective protection of the rights, freedoms and interests of physical persons, rights and interests of legal entities from violations on the part of public authorities [6]. Protection of violated rights, freedoms or interests of the person who applied to the court may be exercised by the court also in another way that does not contradict the law and ensure effective protection of the rights, freedoms and interests of man and citizen, other subjects in the sphere of public law relations from violations on the part of the authorities. And according to the Law of Ukraine «About applications of citizens» citizens of Ukraine have the right to appeal to state authorities, local self-government, associations of citizens, enterprises, institutions, organizations irrespective of forms of ownership, mass media, officials in accordance with their functional responsibilities with comments, complaints and suggestions concerning their statutory activities, a petition or motion for the realization of their socio-economic, political and personal rights and legal interests and complaint about their violation [7]. Therefore, in this aspect, relevant is the study of forms of protection of subjective rights of participants of the banking relationship at the national level.

On the notion of forms of protection, then the law is not its definition, and in the legal literature there are different concepts. Some scientists under the form of protection of subjective rights and interests understand the legal procedure of protection of rights and interests undertaken by the different jurisdictional authority, depending on its nature [8, p. 6]. Other — a set of internally agreed arrangements for the protection of subjective rights that occur within a single legal regime [9, p. 17]. According to G. P. Timchenko, forms of protection is subject to certain conditions, tool for the implementation of the right to defense. In those or other forms of protection are considered legal Affairs, which, in turn, suggest a certain procedure (order) of the implementing stakeholders of the right to protection and jurisdiction of the authorities of the jurisdiction [10]. Note that scientists determine ways to protect the rights as stipulated by law, aimed directly at the protection of the right. Such actions are the final acts of protection in the form of substantive or jurisdictional actions actions to address obstacles to the implementation of the subjects of their rights or the restraint of violations, restore the situation that existed before the violation. In turn, the forms of protection of subjective rights and legitimate interests is a dynamic element of the mechanism of legal protection, which, in turn, refers to the exercise of the right, and the content of which is activity of the state, its authorized bodies, public associations, and the ability of individuals to exercise their right to protection in case of violation of subjective rights and legitimate interests, including to seek protection before a competent state bodies.

Note that there is a difference between private and public subjective rights that first aims to interest mainly private, self-centered, the other — mainly on the public interest, sociocentric [11, p. 92]. Note that the system of subjective public rights of private persons consists of the rights to freedom of speech, Assembly, Association, religion; of the rights associated with the participation of citizens in managing public Affairs (active and passive suffrage, the right to exercise public control, the right to participate in the administration of justice); of rights to receive administrative services; rights to use public property (streets, squares, parks, etc.); of the rights associated with the ability to protect their rights and freedoms (right to appeal). In turn, subjective public rights are exercised through a system of subjective public rights and duties of individuals. However, a subjective right is not only (not so much) the right to the actions (yours or others), and above all the right to use tangible and intangible benefits, the social needs and interests of the people, the right to participate in the political life of the country, to participate in governance, to access the social values and benefits. That is, from a material point of view, the subjective right always means the possibility of benefiting from certain social benefits, not just a measure of possible behavior, which is only a legal tool for this purpose [12].

Using dedicated scientists signs of methods of protection of civil rights in General, we consider it appropriate also to analyze their features in the context of protection of civil rights:

– the basis for their use is the law or contract (for the protection of civil rights — often a contract, in which for the parties have the rights and obligations);

- implemented entity under a material relationship (for the case under consideration — as part of the civic material relationship);
- arise from the fact objectively wrongful act — violation, denial or contestation of the law (for this case — most of the violations of law by failure to perform duties defined in the undertaking) [13].

In the context of forms of protection of subjective rights of participants in banking relations should analyze the provisions of the Law of Ukraine «On Banks and Banking», which states that the bank is a legal entity, which on the basis of a license issued by the NBU, has the exclusive right to types of banking operations: attraction of funds from individuals and legal entities to deposits; placement of borrowed funds on its own behalf, on its own terms and at its own risk; opening accounts of individuals and legal entities [14].

Banking legal relations perform the following main functions: they fix the specific behavior of participants in the process of banking activity or in carrying out banking operations; determine the range of subjects to which the rules of banking law apply; ensure the enforcement of legal remedies for the exercise of subjective rights and legal obligations.

Banking legal relations consist of subjects between which there is a legal relationship, objects and content, ie subjective legal rights and obligations. Subjects of banking legal relations can be state bodies (NBU), legal entities (commercial banks, enterprises), individuals (citizens of Ukraine, foreigners). The special subject of this relationship is the state.

The subject of banking relationships is relative to what they arise — cash, securities, property, actions of citizens and legal entities (the implementation of payments, foreign currency transactions, purchase and sale of securities). Material content of banking relationships is the behavior of agents, consisting of subjective rights and duties established by the norms of banking law. The rights of one party correspond to the duties of the other and Vice versa. For example, the view of the NBU in the petition of the resident borrower's obtaining an individual license for attraction of credit resources from foreign banks. On the one hand, the resident-borrower is entitled to require the consideration of their request, and the NBU is obliged to consider such a request, give an answer like that. On the other hand, the NBU is entitled to require the resident-borrower additional information, safeguards needed to address this issue, as a resident-the borrower must fulfill the requirements of the NBU.

The subject structure of banking relationships involves the allocation of several levels: a) clients or, as they say, the clientele of banks — citizens, legal entities, their separate subdivisions, and other organizations; b) credit institutions, and primarily banks; c) the Bank, as a body of state Executive power and the centre of the banking system; g) derivatives the banking education banking unions, associations, leagues, groups, corporations, clearing houses, e) the authorities exercising functions of state regulation of banking activities and interaction with the banking system.

Banking relationships in content regulation can be classified into legal relations governing the organization of the banking system; emerging in the field of banking operations; credit; settlement; currency; concerning the circulation of securities.

Types of relationships can be distinguished depending on the subject composition: a) between banks and customers; b) between two commercial banks in the implementation of banking operations; c) between the Central Bank and the banks; d) between the banks on the creation of unions, associations, clearing chambers and other derivative formations — membership relationship; d) between the Central Bank and government — a relationship of mutual representation; e) between the Central Bank and the Supreme representative bodies — the purpose and the report.

In addition, the banking relationship can be classified depending on the nature of banking operations, i. e. stand relationship, explaining:

- a) passive banking operations where the Bank acts as a debtor, and Institute Bank Deposit, Bank accounts, issue of securities;

- b) active banking operations in which the Bank is involved as lender, and the credit contracts and contracts of assignment of a monetary claim;
- c) the intermediary banking and payment relationship;
- d) ancillary banking relationship for the provision of information and other services.

Depending on the content of legal relationship can be classified as follows:

- a) property; related funds as a kind of property;
- b) non-property related to the provision of Bank secrecy, the use of certain names, protection of business reputation of the Bank, rating assignment, etc.;
- c) organizational related to the construction of the internal organizational structure of the Bank and the banking system as a whole.

**Conclusion.** Based on the above it can be concluded that the form of protection of subjective rights of participants of banking relationships is determined by the law order of protection of subjective rights in the process of banking activities or in implementation of banking operations (the subjective right is aimed at the public interest, sociocentric), the implementation of which is one or other jurisdictional authority, depending on its nature, the content of which is activity of the state, its authorized bodies, public associations, and the ability of individuals to exercise their right to protection in case of violation of subjective rights and legitimate interests, including to seek protection before a competent state bodies.

#### Література

1. Конституція України : Закон України від 28.06.1996 № 254к/96-ВР // Відомості Верховної Ради України. — 1996. — № 30. — Ст. 141.
2. Конвенція про захист прав і основоположних свобод : Закон України від 17.07.1997 № 475/97-ВР // Офіційний вісник України. — 1998. — № 13 ; 2006. — № 32. — 23 серпня.
3. Чечот Д. М. Субъективное право и формы его защиты / Д. М. Чечот. — Ленинград : Изд-во Ленинградского ун-та, 1968. — 143 с.
4. Practitioner's Handbook on International Arbitration / F.-B. Weigand, V. C. H. Beck (Eds.). — München, 2002.
5. Цивільний кодекс України від 16.01.2003 № 435-IV // Відомості Верховної Ради України. — 2003. — № 40. — Ст. 356.
6. Кодекс адміністративного судочинства України від 06.07.2005 № 2747-IV // Відомості Верховної Ради України. — 2005. — № 35, 35—36, 37. — Ст. 446.
7. Про звернення громадян : Закон України від 02.10.1996 № 393/96-ВР // Відомості Верховної Ради України. — 1996. — № 47. — Ст. 256.
8. Воложанин В. П. Несудебные формы разрешения гражданско-правовых споров / В. П. Воложанин. — Свердловск : Среднеуральск. книжное изд-во, 1974. — 202 с.
9. Бугаев В. В. К понятию механизма защиты субъективных прав. Субъективное право: проблемы осуществления и защиты / В. В. Бугаев. — Владивосток, 1989. — С. 15—18.
10. Тимченко Г. П. Способи та процесуальні форми захисту цивільних прав : автореф. дис. на здобуття наук. ступеня канд. юрид. наук. / Г. П. Тимченко. — Харків, 2002. — 21 с.
11. Адміністративне право України. Повний курс : підручник / редкол. : В. Галуцько, П. Діхтієвський, О. Кузьменко, С. Стеценко та ін. — Херсон : ОЛДІ-ПЛЮС, 2018. — 446 с.
12. Бервено С. Загальні засади цивільної відповідальності за порушення договірних зобов'язань / С. Бервено // Юридична Україна. — 2006. — № 5. — С. 47—53.
13. Дурденевский В. Н. Субъективное право и его основное разделение / В. Н. Дурденевский // Правоведение. — 1994. — № 3. — С. 78—95.
14. Про банки і банківську діяльність : Закон України від 07.12.2000 № 2121-III // Відомості Верховної Ради України. — 2001. — № 5. — Ст. 30.

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#### References

1. Verkhovna Rada Ukrainy. (1996). Konstytutsiia Ukrainy: Zakon Ukrainy vid 28.06.1996 № 254k/96-VR [The Constitution of Ukraine: Law of Ukraine of June 28, 1996 № 254k]. *Vidomosti Verkhovnoi Rady Ukrainy — Bulletin of the Verkhovna Rada of Ukraine*, 30, 141 [in Ukrainian].
2. Konventsiia pro zakhyst prav i osnovopolozhnykh svobod: Zakon Ukrainy vid 17.07.19997 № 475/97-VR [Convention for the Protection of Human Rights and Fundamental Freedoms: Law of Ukraine of 17.07.19997 № 475/97-VR]. (1998). *Ofitsiinyi visnyk Ukrainy — Official Bulletin of Ukraine*, 13, 32 [in Ukrainian].
3. Chechot, D. M. (1968). *Sub'ektivnoe pravo i formy ego zashchity [Subjective law and forms of its protection]*. Leningrad: Izd-vo Leningradskogo un-ta [in Russian].
4. Weigand, F.-B., & Beck, V. C. H. (Eds.). (2002). *Practitioner's Handbook on International Arbitration*. Munich.
5. Verkhovna Rada Ukrainy. (2003). Tsyvilnyi kodeks Ukrainy vid 16 sichnia 2003 roku № 435-IV [Civil Code of Ukraine of January 16, 2003 № 435-IV]. *Vidomosti Verkhovnoi Rady Ukrainy — Bulletin of the Verkhovna Rada of Ukraine*, 40, 356 [in Ukrainian].

6. Verkhovna Rada Ukrainy. (2005). Kodeks administratyvnoho sudochynstva Ukrainy vid 06.07.2005 № 2747-IV [Code of Administrative Procedure of Ukraine dated 06.07.2005 № 2747-IV]. *Vidomosti Verkhovnoi Rady Ukrainy — Bulletin of the Verkhovna Rada of Ukraine*, 35, 35—36, 37, 446 [in Ukrainian].
7. Verkhovna Rada Ukrainy. (1996). Pro zvernennia hromadian: Zakon Ukrainy vid 02.10.1996 № 393/96-VR [On citizens' appeals: Law of Ukraine of October 2, 1996 № 393/96-VR]. *Vidomosti Verkhovnoi Rady Ukrainy — Bulletin of the Verkhovna Rada of Ukraine*, 47, 256 [in Ukrainian].
8. Volozhanin, V. P. (1974). *Nesudebnye formy razresheniya grazhdansko-pravovykh sporov [Non-judicial forms of resolution of civil disputes]*. Sverdlovsk: Sredneural'sk. knizhnoe izd-vo [in Russian].
9. Bugaev, V. V. (1989). *K ponyatiyu mekhanizma zashchity sub'ektivnykh prav. Sub'ektivnoe pravo: problemy osushchestvleniya i zashchity [On the concept of the mechanism of protection of subjective rights. Subjective law: problems of implementation and protection]*. Vladivostok [in Russian].
10. Tymchenko, G. P. (2002). Sposoby ta protsesualni formy zakhystu tsyvilnykh prav [Methods and procedural forms of protection of civil rights]. *Extended abstract of candidate's thesis*. Kharkiv [in Ukrainian].
11. Administratyvne pravo Ukrainy. Povnyi kurs [Administrative law of Ukraine. Full course]. (2018). [Editorial board: V. Galunko, P. Dikhtievskiy, O. Kuzmenko, S. Stetsenko (et al.)]. Kherson: OLDI-PLIUS [in Ukrainian].
12. Berveno, S. (2006). Zahalni zasady tsyvilnoi vidpovidalnosti za porushennia dohovirnoho zoboviazannia [General principles of civil liability for breach of contract]. *Yurydychna Ukraina — Legal Ukraine*, 5, 47—53 [in Ukrainian].
13. Durdenevskiy, V. N. (1994). Sub'ektivnoe pravo i ego osnovnoe razdelenie [Subjective law and its basic division]. *Pravovedenie — Jurisprudence*, 3, 78—95 [in Russian].
14. Verkhovna Rada Ukrainy. (2001). Pro banky i bankivsku diialnist: Zakon Ukrainy vid 07.12.2000 № 2121-III [On banks and banking: Law of Ukraine of 07.12.2000 № 2121-III]. *Vidomosti Verkhovnoi Rady Ukrainy — Bulletin of the Verkhovna Rada of Ukraine*, 5, 30 [in Ukrainian].

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