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THE PROTECTION OF THE RIGHTS OF THE PARTICIPANTS OF THE LEGAL RELATIONSHIPS ARISING FROM THE CONTRACTS ON PROVIDING FINANCIAL SERVICES

Abstract. *In today's economic conditions the number of the signed contracts on providing financial services in various spheres significantly increased. As a rule, such contracts terminate with their appropriate execution. However, sometimes there are situations when the parties have to protect the rights. Investigating theoretical bases of the protection of the rights of the participants of the legal relationships arising in the sphere of providing financial services, the author gives definition of the concept "civil protection". Also it is offered to consider means of protection as independent category. At a research of separate features of protection of the rights of the participants of the specified legal relationship, the system of ways of protection of such rights is offered. Also investigating the special legislation and court practice, the author marks out features of protection of the rights of the participants of the legal relationships arising from separate types of contracts on providing financial services.*

JEL Classifacation: K12, K29, K36

Introduction.

In today's economic conditions the request for the bank credits, insurance services, providing bail, and other services are significantly increased. Noted circumstances brought to the fact that a significant amount of persons conclude contracts on providing financial services. The requirements enshrined in such contracts are carried out mostly by the subjects voluntarily. However, in practice often there are situations when the established rules can be violated. In such cases, the party which rights were violated has a right of defense. Unfortunately, for this time there was a situation on which the rights and legitimate interests of banks and other special subjects of providing financial services belong much above the rights and legitimate interests of persons which consume such services. There are various abuses of financial services provider's rights, more than that, persons who consume financial services can be properly uninformed concerning protection of the rights.

The efficiency of the participants' rights protection of the legal relationships arising from the contracts on providing financial services depends on a correct choice of a way of right protection. Incorrect choice of a way of the right protection often leads to refusal by authorized body in the satisfaction of statements of participants of such legal relationships or to refusal in the satisfaction of complaints. As a result, there is no renewal of the violated right or legitimate interest. At the same time, the purpose of legal regulation is unachieved. It induces participants of legal relationships arising from the contracts on providing financial services, to apply other, illegal actions directed to protection of the rights, for example, fictitious bankruptcy, tax avoidance and others.

Unfortunately, special provisions concerning protection of the rights of participants of the legal relationships arising from the contracts on providing financial services are not contained in the current legislation. Due to the above-mentioned circumstances, their list demands specification in the rules of law. The aim of the research is to define the theoretical bases and the general features of protection of the rights of participants of legal relationships arising from the contracts on providing financial services and also to clarification the peculiarities of protection of the rights of participants of legal relationships arising from separate types of the contracts on providing financial services.

The state of the topic research. The main theoretical bases on the topic research were formulated by the famous scientists of the pre-revolutionary, Soviet and modern periods, such as: M. M. Agarkov, S. S. Alekseyev, L. M. Baranova, T. V. Bodnar, V. I. Borisova, M. I. Braginsky, S.M. Bratus, V.V. Vitryansky, A. M. Gulyaev, O. V. Dzera, O. S. Ioffe, I. S. Kanzafarova, A.G. Karapetov, V. M. Koretsky, O. O. Krasavchikov, H. Kyotts, O. Lando, V. V. Luts, D. I. Meyer, E. O. Sukhanov, E. O. Kharitonov, K. Tsvaygert, Ya. M. Shevchenko, G. F. Shershenevich, etc.

1. The Theoretical Bases of Protection of the Rights of the Participants of the Legal Relationships arising from the Contracts on Providing Financial Services

For disclosure of contents and identification of the peculiarities of protection of the rights of the participants of the legal relationships arising from the contracts on providing financial services, first of all, it is necessary to investigate the basic theoretical provisions concerning protection of the noted rights of the participants of the legal relationships, and ways of protection in general provisions of the Civil code (further – the CC) of Ukraine.

In the Article 6 of the CC of Ukraine is noted that "protection of the civil rights is carried out in accordance with the established procedure by court, arbitration or the arbitration court" [6]. According to the Article 15 of the CC of Ukraine each person has a right of defense of the civil law in case of its violation, non-recognition or contest [6]. The definition of the concept "civil law protection" in the CC of Ukraine is not provided.

Despite of the fact that the research of the concept of the legal protection always took the important place in juridical science in general and in civil law science in particular, among views of scientists, concerning definition of this concept – there is no unified point of view.

All existing approaches in legal literature come down to the fact that legal protection is considered as: 1) the system of the legal norms directed to prevention of offenses and elimination of their consequences; 2) the system of the legal means aimed at providing and implementation of the relevant civil rights; 3) activity of court or other jurisdictional bodies from prevention and renewal of the violated right. The points of view of experts who consider legal protection as the system of the legal norms directed to prevention of offenses and elimination of their consequences belong to the first group (S. S. Alekseyev and others). At such approach the legal protection is actually identified with legal institute which norms provide realization of protective functions concerning existence and implementation of the relevant rights. S.S. Alekseyev considers that legal protection – "is the state and compulsory activity directed to renewal of the violated right, ensuring performance of legal obligations" [3, p.180]. "Legal protection", he specifies, "begin to develop from the moment of offense, and, with their help, actions of legal responsibility and protection of the subjective rights are carried out" [3, p.180]. In other words, protection of the subjective right is carried out by public authorities within the special law-enforcement relationships, and, thus, S. S. Alekseyev puts an equal-sign between legal protection and protection of the rights.

Concerning the definitions of the concepts "legal protection" and "protection of rights", the views of scientists are also different. Some jurists consider that legal protection is only a component of protection of rights. So, Ya. M. Shevchenko considers that "the concept of protection of rights includes at itself together actions of economic, political, ideological character which provide normal regulation of the public relationships, preventions of offenses, elimination of the reasons that them generates (regulatory norms), as well as the actions directed to renewal or recognition of the rights in case of its violation or contest, namely, – the protection (security norms)" [4, p. 76].

Other experts consider that "legal protection" and "protection of rights" are independent, separate categories. So, O. Degtyaryov means by "protection of rights" – "the preventive measures which are carried out by public authorities and public organizations for prevention of violation of the civil rights and also elimination of different obstacles which prevent realization of these rights" [5, p. 20-21].

We completely agree with the opinion of S. S. Alekseyev and others, and we consider that the concept "legal protection" and "protection of rights" are equal among themselves, because the protection of the rights is carried out in the corresponding procedure, by public authorities and within the special law-enforcement relationships.

Returning to the question of the definition of a concept of legal protection, to the second group belong the points of view of scientists (N. S. Malein, G. M. Stoyakin, V. M. Vedyakhin and others), who considers legal protection as the system of legal means aimed at providing and realization of the relevant civil rights .

N. S. Malein by the legal protection understands the system of the means allocated for prevention of offenses and elimination of their consequences [34, p. 192].

According to the opinion of G. M. Stoyakin, the legal protection includes three components: “1) the edition of norms which establish the rights and obligations, define its implementation, protection and applications of sanctions; 2) activity of subjects from implementation and protection of the subjective rights; 3) preventive activity of the state and public organizations and also activity from implementation of legal sanctions” [2, p. 34]. So, G.M. Stoyakin offered broad interpretation of legal protection which includes three specified elements. V. M. Vedyakhin notes that the term “legal protection” is used in different meanings, both in the legislation, and in scientific literature. In the legislation the most frequent concept of legal protection has rather abstract character and means the obligation of the state and its bodies to protect either these or those rights, or these or those objects, or these or those subjects of law [35, p. 83]. On our opinion, such approach to definition of the concept of legal protection shows in details all features of legal protection and its structure elements. Views of experts who considers the legal protection as activity of court or other jurisdictional bodies from prevention and renewal of the violated right, belong to the third group (R.O. Stefanchuk and others). So, R.O. Stefanchuk considers that it is necessary to understand as a concept of civil protection “a view and the measure of potential or obligatory impact of the public relationships provided by the law which came under illegal influence, for the purpose of the renewal broken, unrecognized or appealed right” [1, p. 94].

Thus, the concept “civil law protection” can be defined in three meanings: 1) as a system of legal norms; 2) as a system of legal means; 3) as an activity of court or other jurisdictional bodies. In the first meaning, as the civil law protection, it is necessary to understand the system of legal norms which is directed to protection of the rights of participants of legal relationships and renewal of their state, existed before violation. In the second meaning, the civil law protection consists in using legal “instruments” of protection of the persons’ rights whose legitimate interests and the rights were violated. In the third meaning, the civil law protection is considered as activity of authorized bodies concerning protection of violated rights and interests of participants of legal relationships and also renewal of their legal status which existed before violation of the right.

Means of protection of the civil rights are provided in Article 16 of the CC of Ukraine. The judicial protection means of the civil rights and interests can be: 1) the recognition of the right; 2) the recognition of the legal transaction invalid; 3) the cancellation of the action which violates the right; 4) the renewal of the state which existed before violation; 5) the enforcement of obligations in kind; 6) the change of legal relationships; 7) the legal relationship's termination; 8) the indemnification and other ways of compensation of property harm; 9) the compensation of moral (non-property) harm; 10) the recognition of decisions, actions or inactions of public authority, authority of the Autonomous Republic of Crimea or local government body, their official and officials illegal. The court can protect civil rights or interests by other legal mean, established by the contract or the law [6, Art. 16].

However, in the CC of Ukraine the concept "means of protection" is not defined. In legal literature the unity of thoughts concerning definition of the specified concept is also absent. Besides, some authors do not define such concepts as "form" and "mean" of protection. Concerning a ratio of the concepts "form" and "mean" of protection – all existing points of view can be distributed on two groups. The first group includes the points of view of authors who distinguishes the concepts "form" and "mean" of protection (for example, V.V. Vitryansky, G. P. Timchenko, V. V. Butnev, M. K. Treushnikov). This group of authors understands by the form of protection the activity which is accurately determined by the law concerning protection of the right which is carried out by specially authorized bodies; that is, the form of protection is a complex of internally coordinated organizational means of protection of the subjective right that are carried out within the only legal regime [43; 44, 45].

The "protection form" in legal literature is also defined as "a set of internally coordinated organizational actions concerning protection of the subjective rights and interests, protected by the law" [7, p. 20]. "Under the mean of protection of the right considers the methods by which can be reached: the termination, inadmissibility, elimination of violation of the right, its renewal and/or compensation of the harm done by offense" [7, p. 14]. It is possible to mark out such features of means of protection: 1) it is independent civil law category; 2) they are directed to the termination, elimination and prevention of violation of the right; 3) their purpose is secure the performance of the obligation, and in case of commission of violation of the right – renewal of the violated right and hold the person accountable for violation the rights; 4) are implemented by authorized bodies and in the order established by the law.

It is possible to refer to the second group the points of view of authors which do not draw line between noted concepts (for example, O.O. Krasavchikov, M. I. Braginsky). These authors, identifying "form" and "mean" of protection, allocate such forms of protection as: a) recognition of the right; b) renewal of a state which existed before violation of the right and prevention of actions which broke such state; c) award to performance in kind; d) termination or change of legal relationship; e) providing the person, who violated the right, the done harm from ; e) the appeal to the competent authority given powers of authority [31; 30]. According to our point of view, it is necessary to agree with specialists from the first group who accurately distinct noted concepts. It is impossible to agree with the point of view of authors of the second group as the mean of protection can be implemented in a certain form, and, therefore, they are not identical on their value. For example, the appeal to competent authority – is the mean of protection, but such actions are implemented in an administrative and legal form. Thus, the concept "mean of protection" is independent category which should be distinguished from allied concepts, and it is possible to define as the certain methods or actions which are provided by the current legislation that are implemented in the order established by the law by authorized bodies, and which are directed to the termination, elimination and prevention of violation of the right, and in case of violation commission – renewal of the violated right and hold the person accountable for violation the rights.

In particular, the action of norms of the CC of Ukraine extends to the legal relationships arising from the contracts on providing financial services, and, therefore, the means of protection, listed in Article 16 o the CC of Ukraine, are applied to participants of the specified legal relationships. However, at application of the specified means of protection it is necessary to consider certain features of financial services. Also there are questions whether all means of protection provided in Article 16 of the CC of Ukraine can be applied to participants of such legal relationships, and, as such list not exhaustive, whether there are specific means of protection inherent only in financial services.

2. The General Features of Protection of the Rights of the Participants of the Legal Relationships arising from the Contracts on Providing Financial Services

The protection of the rights of the participants of the legal relationships arising from the contracts on providing financial services is regulated by the Constitution of Ukraine, the CC of Ukraine, the Code of Civil Procedure of Ukraine, the Law of Ukraine of 12.05.1991 “About Consumers’ Protection” [14], the Law of Ukraine of 12.07.2001 “About Financial Services and State Regulation of the Markets of Financial Services” [8]. Article 55 of the Constitution of Ukraine guarantees everyone the right for the appeal in court of decisions, actions or inactions of public authorities, local government bodies and officials [13].

The Law of Ukraine “About Financial Services and State Regulation of the Markets of Financial Services” notes the consumers in definition of a concept of participants of the markets of financial services [8, Art. 1]. Participants of the markets of financial services are legal entities and natural persons – subjects of an entrepreneurial activity who have the right to carry out activity from providing financial services, and consumers of such services [8, Art. 1]. Part 1 of Article 22 of the Law of Ukraine “About Consumer Protection” directly indicates that consumer protection, provided by the legislation, is carried out by court [14] (such ways of protection are enshrined in Article 16 of the CC of Ukraine). Such ways of protection of the rights and interests of the participants of the legal relationships arising from the contract on providing financial services in Ukraine remains the most effective mechanism of protection of the violated right and a real possibility of its renewal.

The specified means of protection can be realized by competent public authorities: by the National Bank of Ukraine (concerning the market of banking services and activity from money transfer); by the National Securities Commission and the Stock Market (concerning securities markets and derivative securities (derivatives); by the National Commission which carries out State Regulation in the sphere of the Markets of Financial Services (concerning other markets of financial services); by the Antimonopoly Committee of Ukraine and other public authorities which supervise the activity of participants of the markets of financial services and obtain from them information within the powers determined by the law [8, Art. 21]. Unfortunately, in the law the accurate powers of the specified bodies are not defined.

Powers of the central body (The National Commission of Financial Services) and other bodies which carry out consumer protection are defined in Art. 26, 27 of the Law of Ukraine "About Consumer Protection", the Cabinet Decree of 23.11.2011 "About the National Commission which carries out State Regulation of the Markets of Financial Services" [20].

However, as it is clear from the Articles 26, 27 of the specified Law and the specified Decree, powers of such bodies extend to consumer protection in the relations with producers of goods and contractors. As for three main bodies which carry out regulation of the market of financial services, – the provisions concerning their concrete powers are absent. The Draft Law of Ukraine "About Modification to Some Acts of Ukraine concerning Improvement of Consumer Protection of Financial Services" of 29.12.2015, which expects the second reading in parliament contains separate provisions concerning powers of the National Bank of Ukraine in the sphere of consumer protection of financial services [18].

According to the Draft Law, the National Bank of Ukraine will have the right to determine the minimum information which will have to be provided to the consumer of financial services and for its failure or providing for deception will be fined. The lack of notifications of the consumer about the facts provided in the law (for example, about change of a floating interest rate or about retreat of the rights of the requirement for the contract on providing financial service, if it is required by the law), as well as failure to provide to the client of the copy of the contract, will also be punished by regulatory penalties [18].

Also in this Draft Law it is offered to make significant changes to the existing system of financial services, having entered new body of protection of the rights of the participants of the legal relationships arising from the contracts on providing financial services, – "the Financial Ombudsman" [18]. Unfortunately, in this Draft Law the concrete, accurate powers of new body of protection meanwhile are not defined. According to our point of view, creation of such independent special body is expedient. In particular, the main competence of "the Financial Ombudsman" has to consist in the decision as pre-judicial settlement of disputes concerning protection of the rights of the participants of the legal relationships arising in the sphere of providing financial services.

We consider that determination of the competence of such special body is needed to be introduced in the financial legislation of Ukraine. We completely agree with provisions concerning powers of the Financial Ombudsman which are defined in the Draft Law [18].

By means of adoption of the new law in Ukraine, it is tried to reconstruct the existing system of protection of the rights of the participants of the legal relationships arising from the financial services according to the existing system of protection in the European Union (further – the EU). So, approach of the EU to the system of the protection of the rights of the participants of the legal relationships arising from the contracts on providing financial services, relies on the principles which are established by the corresponding Directives.

By the Directive 2006/48/EU of the European Parliament and Council of June 14, 2006 "On Establishment and Implementation of Activity of Credit Institutions" and the

Directive 2006/49/EU of the European Parliament and Council of June 14, 2006 "About Sufficiency of Fixed Capital of Investment Firms and Credit Institutions", it is established that the participants of the legal relationships arising from the contracts on providing the financial services "have to have access to: sufficient information for acceptance the decisions upon purchase of financial services; to inexpensive mechanisms of protection against breaches of contract about providing financial services; to programs of financial education" [21, item 14.1; 22, item 10.2]. Also these Directives provide compensation and guarantee schemes of protection of specified persons.

Also, by the Directive 94/19/EU of the European Parliament and Council of 30.05.1994 "Concerning Schemes of Guaranteeing Deposits", the main types of guarantees of protection of the rights of the participants of the legal relationships arising from the contracts on providing the financial services, are established. So, "the general guarantees of protection of the rights of clients of banking institutions within the EU are: realization of state members of powers by national authorities concerning implementation of bank supervision and ensuring stability of a banking system; creation and activity of specialized body for coordination of action of supervisory bodies at the level of the EU; methodological ensuring control of activity of banks; establishment of an obligation of banks concerning preservation of a bank secrecy" [23, p. 48].

In separate types of banking services it is possible to allocate such guarantees of protection: "support of functioning of schemes of guaranteeing deposits according to the national legal system; the obligation of banks to the conclusion of the consumer credit agreement to provide to the borrower sufficient information on essential terms of agreement; an obligation of bank to accept early performance by the consumer of the credit agreement or the termination of participation in it under certain conditions; an obligation of bank to provide a basic information about the registered payments and monthly information on the account to the consumer; the recommendation to banks not to apply opaque methods of terrifying, openness of data on real expenses and meetings for provision of services; anticipation of a possibility of the client in case of timely informing on a case of not authorized or incorrectly performed payment operation to assert the rights during the period determined by the national legal system" [23, p. 48].

In our opinion, such provisions would be expedient to be included in the new law. Noted powers would allow concretizing functions of the authorized bodies concerning protection of the rights of the participants of the legal relationships arising from the contracts on providing the financial services.

There are defined in the Section VII of the Law of Ukraine "About Financial Services and State Regulation of the Markets of Financial Services" only "measures of impact" which are applied "in case of violation of laws and other normative legal acts which regulate activity from providing financial services". Such "measures of impact" are enshrined in Article 40 of the specified Law [8].

It is also possible to give examples concerning "measures of impact" which were applied by the National Commission which carries out State Regulation in the sphere of the Markets of Financial Services. The Order of the National Commission which carries out State Regulation in the sphere of the Markets of Financial Services of 12.02.2019 established application of such measure of impact as the cancellation of license [41]. The order of 27.12.2018 applied as the measure of impact - the obligation of elimination of violation in a certain time [42]. On our opinion, not all above-mentioned is "measures of impact", as "measures" and "means" are different behind the ultimate aim.

Concerning a concept of "measures" of protection of the subjective rights, S. S. Alekseev focused attention on existence of measures of protection of the subjective rights and enforcement of obligations as which he understood the measures to performance of obligations directed to renewal of the violated subjective rights of the injured person which are expressed in assignment of new obligations and provide renewal of the rights, irrespective of existence of fault of the person that violate them [3, p. 184]. Completely agreeing with the above-stated definition, it is necessary to distinguish such concepts as "means" and "measures" of protection. Actions which are made "within means of protection" have an ultimate aim to stop, to eliminate and not to allow violations of the right, and if the last was violated – to renew it and to make the offender responsible. Whereas "measures of protection" are actions that aimed at providing performance of the obligations and renewal of the right which was violated. The purpose of application of the last is to performance of existing obligations by any lawful way.

In particular, such actions, as: "to oblige the violator to take measures for elimination of violation and/or to take measures for elimination of the reasons which promoted violation commission; to demand convocation of extraordinary meetings of participants of monetary institution; to discharge the leadership of management of monetary institution and to appoint temporary administration" [8, Art. 40] should carry to "measures of impact" or to actions of ensuring implementation of the financial liability as commission of such actions is directed to implementation of the existing obligation. Such actions, as: "to impose penalties in the sizes provided by this Law; to stop or cancel temporary the license for the right of implementation of activity from providing financial services; to approve the plan of renewal of financial stability of monetary institution; to exclude according to the legislation of participants of the markets of financial services (except consumers of financial services) according to the State register of monetary institutions or the Register of persons which are not monetary institutions, but have the right to render separate financial services; to establish for non-bank financial groups economic standards, limits and restrictions concerning implementation of separate types of operations are raised; to make the decision on the ban to the non-state pension funds - subjects of the second level of a system of provision of pensions to sign new pension contracts with participants of an accumulative system of obligatory state pension insurance in case of violation of the requirements established for such non-state pension funds by the law and license conditions" [8, Art. 40] should carry to "means" of protection as their aim is to stop violation, and in case of violation commission – application to the offender of negative consequences.

Also in the Law of Ukraine "About Financial Services and State Regulation of the Markets of Financial Services" it is noted that the purpose of state regulation of the markets of financial services is "protection of interests of consumers of financial services" [8, Art. 19]. In the Article 20 of this Law there are listed actions which belong to forms of state regulation of the markets of financial services [8]. According to our opinion, such forms of state regulation of the markets of financial services as their purpose is the termination of offense and imposing on the offender of civil responsibility, it is possible to carry to specific ways of protection of participants of financial legal relationship which arise from contracts on providing financial services and are carried out in an administrative form.

Therefore, on the basis of the conducted legislation research, we offer the following system of means of protection of the rights of the participants of the legal relationships arising from the contracts on providing the financial services:

1. The general means of protection which can be realized in a judicial form: 1) the recognition of the right; 2) the recognition of the legal transaction invalid; 3) the cancellation which violates the right; 4) the renewal of situation which existed before violation; 5) the compulsory performance of obligations in kind; 6) the change of legal relationship; 7) the legal relationship termination; 8) the indemnification and other ways of compensation of property harm; 9) the compensation of moral (non-property) harm; 10) the recognition illegal decisions, actions or divergence of public authority, authority of the Autonomous Republic of Crimea or local government body and officials.

2. Special means of protection which can be realized in an administrative form: 1) imposing of a penalty in the sizes provided by the legislation; 2) to stop or cancel temporarily the license for the right of implementation of activity from providing financial services; 3) to approve the plan of renewal of financial stability of monetary institution; 4) to exclude according to the legislation of participants of the markets of financial services (except consumers of financial services) according to the State register of monetary institutions or the Register of persons which are not monetary institutions, but have the right to render separate financial services; 5) to establish for non-bank financial groups economic standards, limits and restrictions concerning implementation of separate types of operations are raised; 6) to make the decision on the ban to the non-state pension funds – subjects of the second level of a system of provision of pensions to sign new pension contracts with participants of an accumulative system of obligatory state pension insurance in case of violation of the requirements established for such non-state pension funds by the law and license conditions; 7) the maintaining the state registers of monetary institutions and registers of persons which are not monetary institutions, but have the right to render separate financial services, and licensing of activities for providing financial services; 8) the

legal regulation of activity of monetary institutions; 9) supervision of activity of participants of the markets of financial services (except consumers of financial services); 10) the application authorized public authorities of actions of influence.

According to the CC of Ukraine, “self-defense is application by the person of methods of counteraction which are not prohibited by the law and do not contradict the moral principles of society” [6, Art. 19]. Self-defense does not belong to means of protection of the rights of the participants of the legal relationships arising in the sphere of providing the financial services, as one of the parties will be the special subject, legal entity to which self-defense cannot be applied. It is possible to apply any means of protection in judicial or in an administrative form, by the help of the authorized bodies. Thus, it is necessary to make the following changes to the Section VII “Measures of Impact” of the Law of Ukraine “About Financial Services and State Regulation of the Markets of Financial Services”: 1. to make changes to the name of the section – to replace with “The Measures of Impact and Means of Protection”; 2. to make changes to Article 40 – to exclude actions which are not measures of impact (as it was proved above); 3. to supplement the Article 40.1 with “The Types of Means of Protection” which contains the following text: “In case of violation of the rights and legitimate interests of participants of legal relationships arising from the contracts on providing the financial services, it could be realized the applied means of protection in judicial and administrative forms”. The general means of protection which can be realized in a judicial form: 1) the recognition of the right; 2) the recognition of the legal transaction invalid; 3) the cancellation which violates the right; 4) the renewal of situation which existed before violation; 5) the compulsory performance of obligations in kind; 6) the change of legal relationship; 7) the legal relationship termination; 8) the indemnification and other ways of compensation of property harm; 9) the compensation of moral (non-property) harm; 10) the recognition illegal decisions, actions or divergence of public authority, authority of the Autonomous Republic of Crimea or local government body and officials.

Special means of protection which can be realized in an administrative form: 1) imposing of a penalty in the sizes provided by the legislation; 2) to stop or cancel temporarily the license for the right of implementation of activity from providing financial services; 3) to approve the plan of renewal of financial stability of monetary institution; 4) to exclude according to the legislation of participants of the markets of financial services (except consumers of financial services) according to the State register of monetary institutions or the Register of persons which are not monetary institutions, but have the right to render separate financial services; 5) to establish for non-bank financial groups economic standards, limits and restrictions concerning implementation of separate types of operations are raised; 6) to make the decision on the ban to the non-state pension funds – subjects of the second level of a system of provision of pensions to sign new pension contracts with participants of an accumulative system of obligatory state pension insurance in case of violation of the requirements established for such non-state pension funds by the law and license conditions; 7) the maintaining the state registers of monetary institutions and registers of persons which are not monetary institutions, but have the right to render separate financial services, and licensing of activities for providing financial services; 8) the legal regulation of activity of monetary institutions; 9) supervision of activity of participants of the markets of financial services (except consumers of financial services); 10) the application authorized public authorities of actions of influence".

3. The Peculiarities of the Protection of the Rights of the Participants of the Legal Relationships arising from the Separate Types of the Contracts on Providing the Financial Services

The list of financial services is enshrined in Article 4 of the Law of Ukraine "About Financial Services and State Regulation of the Markets of Financial Services" [8]. It is possible to apply the general civil law means of protection to all listed financial services and special means that are used in the sphere of financial services. However, depending on a type of financial service – from taking into account of peculiarities and features of the last. In our scientific research we will consider peculiarities of protection of the rights in separate types of such contracts. In particular, such type of financial services as release of payment documents, payment cards, traveler's checks and/or their service, other forms of ensuring calculations is regulated, except the CC of Ukraine and the Law "About Financial Services and State Regulation of the Markets of Financial Services", by the Law of Ukraine "About Payment Service Providers and Money Transfer in Ukraine". Considering ways of protection of the rights of the participants of the legal relationships arising from the contract of this type of financial service it is necessary to consider relevance of information for the last.

Noted law did not install the concrete system of information security, however, leaving standards of the specified law, it is possible to allocate such special means of protection: 1) establishment of a special order of providing information services [19, Art. 40]; 2) establishments of responsibility for violation of measures of ensuring information security [19, Art. 39]; 3) introductions and uses of a uniform system of information security [19, Art. 39]. Other rights which do not concern instructions for use of information are protected in the general order which was considered above. The relations which arise in the sphere of trust management of financial assets and property are regulated, except the CC of Ukraine and the Law "About Financial Services and State Regulation of the Markets of Financial Services", by the Law of Ukraine of 7.12.2000 "About Banks and Bank activity" [24], the Law of Ukraine of 5.07.2012 "About Institutes of the General Investment" [25], The Decree of the National Securities Commission and the Stock Market of 5.12.2014 "About Features of Implementation of Activity from Management of Assets of Institutional Investors" [26]. Above-mentioned special acts do not provide provisions concerning protection of the rights of the participants of the legal relationship arising from the contracts of trust management of financial assets and property. Therefore, it is necessary to be guided by general provisions concerning protection.

The following financial service noted in the list is activity from a currency exchange. The last is regulated by the CC of Ukraine, the Law of Ukraine “About Financial Services and State Regulation of the Markets of Financial Services”, the Law of Ukraine “About Banks and Bank Activity”, the Law of Ukraine of 21.06.2018 “About Currency and Currency Transactions"” [28]. The Law of Ukraine “About Currency and Currency Transactions” does not contain separate provisions concerning protection of the rights of the participants of these legal relationship, however, Article 14 contains “Measures of Impact”: “1) to banks – measures of impact according to the Law of Ukraine “About Banks and Bank Activity”; 2) to authorized institutions (except banks): a) written caution; b) restriction, stop or termination of implementation of separate types of currency transactions; c) penalties; d) stop or withdrawal (cancellation) of the license for implementation of currency transactions; 3) to legal entities (except authorized institutions) – in the form of penalties; 4) to natural persons, public officials of authorized institutions, public officials of legal entities – the measures of impact in the form of penalties provided by the Code of Ukraine about Administrative Offenses” [27]. On our opinion, such measures of impact prevent commission of violations.

Such service as attraction of financial assets with the obligation of their rather following return is regulated by the CC of Ukraine, the Law of Ukraine “About Financial Services and State Regulation of the Markets of Financial Services”, the Resolution of Cabinet of Ministers of 7.12.2016 “About the Statement of License Conditions of Implementation of Economic Activity from Providing Financial Services (except professional activity in securities market” [28]. Special provisions concerning protection of the rights of participants of this legal relationship are not enshrined in special acts, and, therefore, it is necessary to be guided by general provisions concerning protection.

Financial services in financial leasing are regulated by the CC of Ukraine, the Law of Ukraine “About Financial Services and State Regulation of the Markets of Financial Services”, the Law of Ukraine of 16.12.1997 “About Financial Leasing” [29]. In Article 9 of the Law of Ukraine “About Financial Leasing” directly provided provisions concerning protection of the lessee: “Protection of his rights regarding leasing on an equal basis with protection, the established legislation concerning protection of the rights of the owner is provided to the lessee (sublessee). The lessee (sublessee) has the right to demand including from the lessor, elimination of any violations of its rights regarding leasing” [29]. It should be noted that provisions concerning protection of the rights of the lessor are not provided in the Law. Means of protection of the rights of the lessee are accurately not allocated, and that, by the general rule, the norms of the CC of Ukraine can be used.

The lessee appealed to court with the action of rescission of the contract of leasing with bank in connection with its unseemly performance by the lessor. In the claim the claimant referred to the general norms of the CC of Ukraine and also to the provisions of the Law “About Financial Services and State Regulation of the Markets of Financial Services”.

The court met requirements of the claimant in full: "Having analyzed all above-stated facts in total and leaving noted regulations, the court came to a conclusion that the challenged contract of financial leasing should be nullified from the moment of commission as it is perfect as a result of deception, that is requirements of the claimant should be met, having collected in favor of the claimant of means in a size to the sum of 36000 UAH" [37]. From this Decision of the Vasilkovsky district court of the Dnipropetrovsk region of 26.12.2016 [37], comes up that the claimant used the general means of protection provided by Art. 16 of the CC of Ukraine. Financial services concerning granting means as a loan including on the terms of the financial credit are regulated by the CC of Ukraine, by the Law "About Financial Services and State Regulation of the Markets of Financial Services", the Law of 2.10.1992 "About Pledge" [30], etc. Proceeding from the analysis of the specified laws it is possible to allocate such ways of protection of the rights of participants of credit legal relationship: 1) penalty, the established law or the contract for a delay case; 2) indemnification, caused to the loan provider; 3) granting to the creditor the right for refusal of overdue performance if such right is not limited by the law or the contract; 4) responsibility of the borrower for impossibility of performance that accidentally came during delay. Besides, it is possible to nullify in a judicial proceeding currency credit agreements. Refer to the fact that liabilities have to be expressed and be carried out in UAH (Art. 533 of the CC of Ukraine). That is, issuing the credits in foreign currency, banks voluntarily and consciously increase own risks (what expect them, for example, in case of sharp falling of exchange rate)? Looks not really logically. Or it is the planned scheme that allows earning on changes in the exchange rate of currencies (as it occurs at the financial exchanges). For lawyers this question is ambiguous, and there is no only thought concerning it yet. However, this option can be used for protection of the rights of debtors – and as practice testifies, rather successfully. So on August 20 in 2009 the decision of Economic court of the Donetsk region on the claim of LLC Central Hotel (Donetsk) to the Bank was made (represented by the Donetsk branch). And on September 14 in 2009 The Donetsk Economic Court of Appeal confirmed the resolution of the first instance [38].

The banks provide responsibility of the parties in the form of a penalty fee in credit agreements. It is connected with the fact that the tax obligations of the income tax payer are defined during the actual receiving a penalty fee. That is it is expedient to apply a penalty fee in case of non-performance by the borrower of conditions of the credit agreement instead of increase in a payment for the credit. At the same time we will note that the penalty fee is way of ensuring implementation of obligations and cannot replace a payment for use of the credit in the form of percent. On a contractual basis also such way of ensuring implementation of credit obligations as bail which is also recognized as financial service by the Law of Ukraine "About Financial Services and State Regulation of the Markets of Financial Services". As comes up from the analysis of court practice, at the solution of a question concerning protection of the rights of the participants of the legal relationships arising from the contract of bail, the essential value is an ultimate aim of the last – or it is financial service, or way of ensuring implementation of the obligation.

So, by the Decision of Economic Court of the Zaporozhye region of 02.07.2007, the claim was refused in full. Person 1 appealed to court behind protection of the violated right which evolved from consumption of services of bail; – the service was rendered in an unseemly way. The court motivated the refusal in protection of the right of the claimant with the fact that the Law of Ukraine "About Financial Services and State Regulation of the Markets of Financial Services" establishes legal principles in the sphere of providing financial services by exclusively monetary institutions and other subjects of an entrepreneurial activity which exclusive type of activity is providing financial services, including provision of guarantees and guarantees. Thus - only bail which is provided by monetary institution in the context of the called Law is financial service. The provision of the called Law does not extend on other subjects of economic activity in other economic relations. The claimant is not monetary institution, such type of economic activity as providing financial services is not provided by the Charter of society "The medical center "Tair" and not declared as an exclusive type of its activity. Contract No. 96-DP2 signed by party litigants of 11.07.2006. The essence of bail is not the financial service, but the guarantee as the type of ensuring implementation of obligations provided by Article 546 the CC of Ukraine about what it is noted in a preamble of the challenged contract" [37].

From noted Decision it is possible to mark out the qualifying sign of bail as financial service. The monetary institution has to be the subject of providing such service. In that case, situation concerning protection of the rights of participants which arise from contracts of bail – can be realized in a judicial proceeding according to the specified Law. On the other hand, the material interest of the creditor can be protected indifferently – by insurance protection of solvency of his debtor. Credit insurance conditionally consists of two main spheres – own credit insurance and insurance of pledges, bail or guarantees under the obtained credits.

Also it is necessary to notice such "mean of protection of the rights" of the creditor as activity the collectors' companies. The task of the collectors' companies – is not only to organize the help to the creditor in return of money, but also to help the debtor, having provided legal consultation concerning the solution of questions of return of the credit. Also the companies of "black collectors" work. These are illegal associations which raise debts in the illegal ways. In connection with such activity the Ministry of Justice plans to forbid formation of these companies. The popularity of services of such companies is connected with insufficient efficiency of judgments, and if to consider such question systemically – that will turn out that the problem of non-compliance with balance between stimulation and restriction of social interests is fault to it [11]. According to our point of view, the credit history also belongs to ways of protection of the rights of creditors. The credit history is information on implementation of obligations under credit agreements. One of the main problems of relationship of creditors with borrowers, consists in absence at the creditor of full reliable information about the borrower with a certain historical retrospective, and at the borrower of opportunities quickly and easily to finish the business reputation on performance of liabilities.

Having considered ways of protection of the rights of the creditor, we will pass directly to ways of protection of the rights of the debtor (borrower). Article 1085, 1086 of the CC of Ukraine and the Law of Ukraine "About Consumer Protection" provide ways of protection of debtors (counterclaims of the debtor, inadmissibility of unreasonable increase in an interest rate unilaterally, etc.). As the question of credit legal relationship is very relevant now – special ways of protection of the rights of debtors were introduced. Firstly, this is the fictitious bankruptcy. In practice of bankruptcy very often happens so that the remains of property of the bankrupt enterprise by means of some frauds "are brought" out of the crisis enterprise in new to an insolvency proceeding. As a result there is such situation: the enterprise which has a debt is closed, and its property successfully works at the new enterprise. And provide to creditors the document on impossibility of meeting requirements due to the lack of property. As a result they can only write off receivables from balance at the expense of gross incomes. At the same time the debtor's heads, as a rule, do not bear any responsibility [40]. The contract of the credit can be nullified or partially invalid. This way of protection can be carried both to the loan provider, and to the borrower, what court practice testifies to. The Comintern district court of Kharkov region having considered in proceeding in open court in Kharkiv a civil case in the claim the PERSON 1 to the Alfa-Bank (CJSC), the third party the PERSON 2 about recognition partially invalid hollow the credit agreement, – accepted claim requirements the PERSON 1 to CJSC Alfa-Bank, the third party the PERSON 2, about recognition partially invalid to satisfy the provision of the credit agreement [39].

Also, proceeding from the analysis of norms of the CC of Ukraine force majeure is the basis of release from responsibility. According to Article 617 of the CC of Ukraine, "The person who violated the obligation is exempted from responsibility for violation of the obligation if she proves that this violation happened as a result of a case or force majeure" [6]. According to Article 679 of the CC of Ukraine, "if with the seller the provided guarantees concerning quality of goods, the seller is responsible for his shortcomings if he does not prove that they arose after his broadcast to the buyer as a result of violation by the buyer of instructions for use or storage of goods, actions of the third parties, a case or force majeure" [6]. In Article 906 by the CC of Ukraine it is enshrined that: "The performer who broke the contract on provision of services for a payment at implementation of an entrepreneurial activity by it, is responsible for this violation if he does not prove that appropriate performance was impossible as a result of force majeure if another is not established by the contract or the law" [6]. Therefore, the participant of legal relationship will be exempted from liability in case of force majeure, and the rights of such participant will be protected. Thus, it is possible to allocate the next means of protection of the rights of the participants of legal relationships arising from credit contracts, that are provided by the current legislation: 1) penalty, the established law or the contract for a delay case; 2) indemnification, caused by the loan of credit; 3) granting to the creditor the right for refusal of overdue performance if such right is not limited by the law or the contract; 4) responsibility of the borrower for impossibility of performance that accidentally came during delay; 5) bail; 6) insurance protection of solvency of the debtor; 7) fictitious bankruptcy.

Besides, on our opinion, the means of protection of the rights of participants of the legal relationships arising from the credit contracts can also be considered: 1) activity of the collectors' companies; 2) credit history; 3) force majeure.

Concerning such financial services as provision of guarantees, money transfer, and pledge – it is necessary to apply general provisions concerning protection of the rights of participants of this legal relationship as special ways of protection are not provided by the law. Services in the sphere of insurance and in the system of accumulative provision of pensions, except the "general" laws which concern financial services are regulated by the Law of Ukraine "About Insurance". However, in the last it is not allocated special ways of protection for this financial service. Only in Article 42 it is noted that "the state guarantees control and protection of property and other rights and legitimate interests of insurers, conditions of free competition in implementation of insurance activity" [33].

Protection of the rights of participants of legal relationship which arise from contracts on providing other financial services (professional activity in securities market which is subject to licensing, factoring, administration of financial assets for purchase of goods in groups, property administrations for financing of construction objects that implementation of operations with the real estate according to the Law of Ukraine of 19.06.2003 "About financial and credit mechanisms and property administration at construction of housing and operations with the real estate", operations with mortgage assets for the purpose of issue of mortgage securities, banking and other financial services which are provided according to the Law of Ukraine "About Banks and Bank Activity") it is carried out in the general order which was considered above.

Thus, leaving the analysis of court practice and above-mentioned provisions that at protection of the rights of participants of legal relationship which arise from contracts on providing financial services, it is necessary to consider that in case there are special norms which regulate the sphere of these legal relationship, – special provisions are applied. In case of lack of special norms – it is necessary to use the general norms of rather civil protection. Besides, courts at accepted decisions concerning noted question, are guided by the general norms of the CC of Ukraine.

Conclusions

Thus, during the conducted research, defining theoretical bases of the protection of the rights of the participants of legal relationship arising from the contracts on providing financial services, the next conclusions were reached:

1. The concept "civil law protection" can be determined in three meanings: 1) as the system of legal norms; 2) as the system of legal means; 3) as activity of court or other jurisdictional bodies.

2. The concept "mean of protection" must be considered as the independent category on which it is necessary to understand certain methods or actions which are provided by the current legislation that are implemented in the order established by the law by authorized bodies, and which are directed to the termination, elimination and prevention of violation of the right, and in case of violation commission – renewal of the violated right and hold the person accountable for violation the rights.

At allocation of the general features of protection of the rights of the participants of the legal relationships arising from the contracts on providing the financial services, such conclusions were reached:

1. The special system of means of protection of the rights of the participants of legal relationships arising from the contracts on providing financial services was proposed.

2. It is offered to make the following changes to Section VII "Measures of Impact" of the Law of Ukraine "About Financial Services and State Regulation of the Markets of Financial Services": 1) to make changes to the name of the section - to replace with "The Measures of Impact and Means of Protection" ; 2) to make changes to Article 40 – to exclude actions which are not measures of impact (as it was proved above); 3) to supplement the Article 40.1 with "The Types of Means of Protection" the above-stated system.

At clarification of the peculiarities of the protection of the rights of the participants of legal relationships arising from the separate types of the contracts on providing financial services, there were drawn the conclusions that:

1. In case there are special norms which regulate the sphere of these legal relationships, – special provisions are applied. In case of lack of special norms – it is necessary to apply the general norms of civil protection.

2. Proceeding from the analysis of the current legislation, court practice, and Decisions of appropriate authorities, the next means of protection of the rights of the participants of the legal relationships arising from the contracts on providing credit services, that are provided by the current legislation are allocated: penalty, the established law or the contract for a delay case; indemnification, caused to the loan provider; granting to the creditor the right for refusal of overdue performance if such right is not limited by the law or the contract; responsibility of the borrower for impossibility of performance that accidentally came during delay; bail; insurance protection of solvency of the debtor; fictitious bankruptcy.

3. Besides, it was proved, that the means of protection of the rights of participants of the legal relationships arising from the credit contracts, can also be considered: 1) activity of the collectors' companies; 2) credit history; 3) force majeure.

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