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Drug-Related Crimes in the Asia Pacific Region: Special Features of the Methods and Strategies of Struggle

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Abstract: The research studies some issues of the category of abuse of civil rights. The article raises the questions which are devoted to the relation between the category of abuse of civil rights and the categories "the implementation of right in conflict with its purpose", "the actions in circumvention of the law". The researcher researches the social essence of abuse of rights from the point of view of the private law interests and the conflict approach. In the study, the norms of abuse of rights in the Russian legislation, the system and the features of some sanctions for abuse of rights according to the Russian civil law are analyzed. The problem of abuse of rights is researched through the prism of the instrumental approach to law. The research discloses the methodological recourse of the instrumental approach. The functional aspect of the problems which is the subject of this research is determined.

Key words: Abuse of rights, instrumental approach, the interest, the balance of interests, the implementation of right, the purpose of right, the sanctions for abuse of rights, legal conflict

INTRODUCTION

Abuse of equitable rights is one of the most urgent problems of juridical science and practice in different legal systems. Its historical roots go back to the period of Roman law, where, in spite of the dominant principle of absolute rights (qui jure suo utitur, neminem laedit-no one is offended by those who uses its right) at that time, the idea of inadmissibility of abuse of rights has been already expressed: "malititis non est indulgendum". Currently, with the extension of the private law relations and the dispositive sources of their regulation the entities of law open new opportunities to implement their rights which are not always properly and conscientiously used. The elaboration of the means of the counteraction of such behavior is the urgent task of the present jurisprudence.

However, it must be stated that nowadays the unified comprehension of the researching category is not worked out in juridical science yet. In Russian juridical science some attempts to research the category of abuse of rights from the position of scope of implementation of equitable right, the purpose of right, the principle of conscientiousness have been made. Often the debates about abuse of rights come to the definition the place of abuse of rights in the system of legal behavior, from the position of its lawfulness or illegality. It should be noted that the research of abuse of rights, basing on the positivist methodology and dichotomous division of the legal behavior on the offense and the legitimate act, leads to the inevitable logical contradictions. On the one hand, the existence of equitable right and its implementation is an attribute of lawful behavior, on the other hand-the harmful consequences of such implementation bring together abuse of rights and the offense. However, we must realize that the dilemma about abuse of rights in the system of legal behavior, its relation between the lawful behavior and the offense should not be the aim in itself. Ultimately, the key issue is to develop the effective instruments of counteraction to such legal behavior.

In this regard, we believe that the present juridical science must overcome the purely positivist views on right andattracts the new methodological facilities to research the category of abuse of rights. One of such new approaches which is gaining the popularity in jurisprudence now is the sociological approach andits particular variety-the instrumental approach. To study the problem of abuse of rights based on this approach is the item of our work.

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MATERIALS AND METHODS

The original methodological source of the research is the dialectical approach, presupposing the implementation of knowledge on the basis of the principles of historicism and interrelation of the phenomena. To achieve the aims of the research, the other common scientific and private scientific methods such as analogy, analysis and synthesis, comparison and others have been used. The main attention in this article is paid to the instrumental approach as the new methodological method for studying the category of abuse of rights.

For a long time the task of jurisprudence was to develop problems of rights' dogma. Although, the juridical science has sufficiently succeeded in this issue, you must realize that the right is not intrinsically valuable; it is worth when it plays the role of the regulator of the social behavior. Namely, the instrumental approach is exactly directed to the research of the social, effective part of right. We can agree with K.V. Shundikov, that according to the methodological approach, the instrumental theory of right is the perspective scientific research, since it allows to identify the functional aspect of the legal system and to pay attention to the problem of the effectiveness of the legal action (Shundikov, 2002).

The following basic ideas of the instrumental theory have an important methodological significance for the research the problem of abuse of rights: the research of the legal purposes, the consideration of equitable right as a legal facility; the research of the specificity of judicial activity of entities of law to form and apply the legal instruments (Filippov, 2013).

RESULTS AND DISCUSSION

The research focused at the three main issues: the concept and the nature of abuse of rights, its relation with other similar categories; the features of normative expression of the category of abuse of rights in legislation; the functional role of the norms about abuse of rights in the mechanism of legal regulation; the system of sanctions for abuse of rights, its functionality and efficiency.

Purpose of the law and the problem of abuse of rights: The idea of considering right as a legal mean is not new. Even in 19th century German lawyer R. Iering defined right as the law protected interest (Iering, 1991). French scientist Duguit (1999) considered right from the theory of solidarity and social functions. In the sphere of civil law as Domanzho (1913) noted, the idea of the solidarity modifies the concepts of guilt and liability. According to the current opinions, the latter may occur in the implementation of right, if the aim that the empowered sets for itself, does not correspond to one that has been meant by the legislator. The empowered should not use the right in all its breadth, ignoring the interests of others; he has certain obligations to the fellow creature (for example, the obligation to refrain from actions with the only purpose to cause damage to another), the disregard of which is considered as guilt and entails compensation for damages (Domanzho, 1913).

These ideas are reflected in Russian civil legislation firstly in Article 1 of the Civil Code of the Russian Soviet Federative Socialist Republic which was adopted in 1922 (The Russian Government, 1998), then in Article 5 of Fundamentals of Civil Legislation of the Union of Soviet Socialist Republic, adopted in 1961 and in Article 5 of the Civil Code of the Russian Soviet Federative Socialist Republic, adopted in 1964 (The Russian Government, 1998) as the principle of the non-implementation of right in conflict with its purpose.

Although, the legislator did not use the category "abuse of rights" in this case, in fact the legal doctrine recognized these norms as the prohibition of abuse of rights. Abuse of rights is understood in some foreign legal systems in the same way. Thus, Article 7 of the Civil Code of Czechoslovakia, adopted in 1964, provided that no one can abuse rights to the prejudice of the interests of society. According to M. Byers, the Supreme Court of Japan had stated in one of its decisions that such implementation of equitable right was not allowed which was injudicious and went out the frame when the damage became socially significant. Yugoslavian lawyer Radmila Kavachevich-Kushtrumovich determines abuse of rights as the implementation of right in contradiction with the dominant morality of society. From the point of view of Bulgarian scientist Yanko Yanev, abuse of rights is the lawful but immoral implementation of equitable right in contradiction with its purpose (Yanev, 1980).

The review of the category "the implementation of right in contradiction with its purpose" as a synonym to the concept "abuse of rights" is not quite true Historically, the cases of using right which have been intended to cause harm to another person are considered as abuse of rights. It is not by chance just this understanding of abuse of rights is used in the Civil Code of Germany, adopted in 1896 (further-CCG). According to § 226 CCG "The implementation of right is not allowed only for the purpose to cause harm to another person" (The Russian Government, 1998). The Article 2 of the Swiss Civil Code, adopted in 1907, establishes: "Everyone in the implementation of their rights and performing their obligations must do according to the good conscience.

The obvious abuse of rights is unacceptable". Although, in this case we mean the concept of "conscientiousness" but not the purpose of the implementation of equitable right. It is obvious that in both cases we are talking about the inadmissibility of such use of right which is illegal from the subjective side. The Court of Louisiana takes a similar position which holds the idea in its juridical decisions. Abuse of rights is possible in following conditions: the implementation of right with the purpose to damage others or with the advantageous motive of causing harm; the absence of serious and legitimate interests that need judicial protection; the use of right in violation of moral norms, honesty, justice or the implementation of the right for other purposes than those for which it was provided (Yiannopoulos, 1994).

The concept "the implementation of right in contradiction with its purpose" in contrast to the category of abuse of rights has an objective character. Because it supposes such use of right which does not correspond with the aims of the legal regulation that has been defined by the legislator and for the public interest for which the equitable rights have been provided. Besides, the factor of harm, focusing for causing is not always decisive for the analyzed concept. In the context of the Soviet legal system, the implementation of this principle made it possible to accept those actions which were not harmful but, on the contrary, they were useful for the participants of civil relations, however, they contradicted to the legal ideology of the Soviet state. For example, the sublease of the dwelling was invalid as the law does not give citizens the right of using the dwelling in order of extraction of unearned income. Obviously, there is no abuse of rights in such cases.

The category of "the implementation of right in contradiction with its purpose" has publicly legal nature and aims at ensuring the proper implementation of those equitable rights which have the political and social interest. If in the Soviet civil law, under the command economic system and socialist ideology, the existence of such principle has been explained, so the attempts to bring the conception of abuse of rights to the implementation of right in contradiction with its purpose are unobjectionable nowadays. Such comprehension, to our opinion is not conformed to the dispositive beginnings of the civil law andnegates the value of equitable right, giving to it the character of obligation rather than secured ability. In present civil law which proclaimed the principle of civil rights through their own will and in their own interest, the subjective civil right has the only aim to satisfy the interests of the researcherized person.

It is necessary to consider the relation of abuse of rights to circumvent the law. According to the decisions of the European Court of Human Rights such concepts have been repeatedly identified. So, in Emsland-Starke case, the Court concluded that to resolve the issue of abuse of rights is necessary: the presence of objective circumstances in accordance to which the aims of these norms are not achieved at the formal compliance of the requirements of norms of right; as well as the subjective element, expressing in the intention to get benefit from the norms of right by means of artificially creating the conditions which are necessary for its production (Cerioni, 2010). The analysis of the cases, in which the European Court made conclusion about abuse of rights by evading the law, indicated that the unlawful actions of the equitable right were exercised in public relations, in which public interest was obviously touched (getting customs exemption, taxation, etc.). Thus, the prohibition of the actions by evading the law and the prohibition of the law in contradiction with its purpose have the total public-legal nature that distinguishes them from private law principle of the non-abuse of civil rights.

The essence of abuse of rights; The instrumental role of the principle of non-abuse of rights: For the answer to the question "what the functionality of the principle of the non-abuse of civil law is" is necessary to apply to the characteristics of the phenomenon of abuse. As we have noted above, in European law doctrine abuse of rights is revealed through such subjective categories as the purpose of the right, honesty, etc. It is necessary to understand that the inadmissibility of abuse of rights is caused not only by the negative consequences of the implementation of right but by the awareness and wish for the researcherized person to advent such consequences. In this regard, we should agree with L. Ennektserusom, who notes, "it is prohibited not every implementation of right which harms the others. It is not possible to implement the right without damaging the others, if you really implement them" (Ennektserus, 1950). It was the viciousness of the subjective side of the legal behavior that makes it necessary to establish sanctions.

What does abuse of rights do to be vicious from the subjective point of view? According to Russian and German legal doctrine it is necessary to come to the conclusion that such factor is the purpose of right. However, it should be noted that the aim is one of the final determinant of the behavioral act. One more profound fact is an interest. G. Hegel noted that nothing is done besides the interest. The interest has the objective-subjective nature. According to I.I. Lukashuk, the cognition of needs and the formation of interest is a

subjective process. Its objective side is determined first of all by the fact that based on the objective need. There is also another objective side: the interest is formed by taking into account its implementation in the existing objective conditions. As a result the awareness of needs has some subjective character, comprehension by the subject of its interests may greater or less differs from the objective needs and optimally certain interests (Lukashuk, 2000). If we proceed from the instrumental understanding of equitable right as a legal means of the implementation the interests, it becomes evident that this means can be used improperly and can meet the destructive interests.

It has already been suggested that now in marketing economic paradigm and the appropriate dispositive model of civil lawful regulation, we cannot talk about the value of subjective civil rights predetermined by the state. Civil law is the sphere of realization of the individual interests, in fact, it is the sphere of the expression of the selfishness of the entities of law. That is why the Civil Code of the Russian Federation (hereinafter, the Civil Code) establishes the principle of the civil rights at its own discretion, their own will and in their own interest. However, civil selfishness must have reasonable scopes. The interaction between entities of law should implement on the balance of the interests. In this sense, the equitable right has a certain purpose (though not direct) which is lied to maintain this balance.

Abuse of rights is the behavior that violates this balance. At the same time, considering the behavior of the entity of law abusing rights, we must consider not only the nature of its interest and actions of their implementation but also the interests and behavior of the injured party. In other words, abuse of rights can't be studied in isolation but only as an element of conflict interaction of the entities of law. The conflict approach allows us to evaluate the behavior of both parties to the conflict. According to equitable comment of S.A. Belyatskina the criteria to distinguish abuse of rights is not always easy to find but that is to be found in the weighting of interests. Abuse of rights is possible when the selfish interests of the researcherized person and their implementation have led to the violation of rights and interests of the other party of relations. The focus of these interests may be different and not always associated with the only purpose to harm another person. So, Michelangelo Temmerman, analyzing Belgian judicial practice in cases of abuse of rights, notes that this concept covers all the cases of right implementation under which the right holder deliberately chooses the most unprofitable for others from equally beneficial ways. The right holder also chooses the cases where right is exercised without a reasonable and sufficient interest, while the harm caused to others is not equal to benefit received by the right holder; at last, in cases when the right holder implementing its right establishes reasonable expectations on the part of third persons andit doesn't fulfill them. Thus, the cases where the right holder implementing its right creates a reasonable expectation from the concerned persons but then don't execute them. Thus, abuse of rights can pursue as the injury interest and as the others which are often quite legitimate. However, in the latter case, the realization of the legitimate interests is made at the expense of infringement of the contractors' rights and for the acquisition an unfair advantage by the right holder. And, you should consider what interests and rights are injured for the qualification of abuse of rights. If a person tries to gain an advantage in the field of public law by the implementation of his right, he harms the interests protected by public law andin this case we cannot talk about abuse of rights. Such action may be treated as the actions avoiding the law or as the direct offense. Abuse of civil right exists, if private interests protected by civil law are harmed.

Speaking about the features of legislative holding the idea of non-abuse of rights it is necessary to bear in mind the fact that the formation of interest and selection the necessary right for its implementation is a subjective process. It follows that the legislator can't foresee all the possible cases of using the equitable right andexposes them to the detailed regulation. It seems to be a fundamental difference in the legal regulation of offenses and the prohibition of abuse of rights. The offense covers those acts which are originally identified by the legislator as socially harmful anddirect prohibitions against them are established. To limit the implementation of equitable rights in the same way is not possible. The implementation of right should be assumed conscionable until proven otherwise. Thus, the task is to develop means to counteraction of individual cases departing from the principle of conscientious implementation of right. It is necessary to talk not about the prohibition of abuse of rights but about the consolidation the idea of non-abuse of rights in law. The legislator should only define the principles and general criteria with the help of which the Court will identify the cases of abuse of rights. In most law orders which legally fixed the idea of non-abuse of rights in one way or another, the appropriate rules are estimated, that is why it often becomes the target of criticism of the opponents of judicial discretion. However, this situation is due to the circumstances above outlined is objective. The right can't regulate in details and can't forbid what is unable to predict, especially in the sphere where freedom and initiative are fundamental principles. Therefore, the rules of abuse of rights in civil law act as a

corrective mechanism (Lenaerts, 2010) which allows not to cancel dispositive beginnings of regulation of civil relations to respond to individual cases of its dishonest using.

The system and the functionality of the sanctions for abuse of rights: As we have seen, abuse of rights is an element of legal conflict and it leads to balance disruption of interests of the entity of civil law (by direct harm or creating unjustified advantages). On this basis, the overall directivity of all legal sanctions which are applicable to unfair right holder, should consist in return the legal relationship to its original balanced state. In Russian legal science for a long time there is the debate about the types of legal sanctions, the correlation the protection measures to the responsibility measures. However, the distinction of these measures is not seen so principle. And the protection measures and measures of responsibility always perform a dual impact, depending on which the effect is aimed. For the person who violates rights, the measures of state impact express conviction and sentence, to the victim-recognition and protection of the violated rights and interests. As abuse of rights is socially undesirable type of legal behavior, the legal sanctions which are entailed by abuse of rights, have always expressed a certain conviction of the researcherized person. For example, such major sanction for abuse of rights as the refusal to protect the rights bears a negative meaning on the basis of its wording. At the same time you must realize that the private law has not punitive function, so the element of conviction is not decisive. The most important is the protective function. Ultimately, the protective measures and the liability measures aim at protecting the rights and interests of the victim, so in a broad sense they are the protection measures.

In Article 10 of the Civil Code there is not an exhaustive list of possible sanctions for abuse of rights. The defaulting implementation of right may entail full or partial refusal of protection of rights, the restitution and other legal measures. The specific measures are contained in the other legal acts of the civil legislation of the Russian Federation.

Based on the functional significance, all the security measures using by abuse of rights should be divided into two groups: measures of preventive and preclusive nature and measures of restorative nature. The first group includes following legal consequences: the refusal of the protection of right and its variants; the preclusion of acts violating the right or threatening to violate; the deprivation of the equitable right. The second group of measures includes: compensation for material and moral damages; restoring the situation that existed before the violation of law; invalidation of an act of the researcherized person (Matantsev, 2012).

The preventive measures are applied in cases where abuse of rights has not caused the harm to the rights and interests of another person yet but create the real threat of its occurrence andare aimed at preventing the occurrence of such harm. The measures of the preclusive nature in future have the aim to stop defaulting actions which have actually caused harm to another person. In many cases, the using of these measures are enough to stop the violation of right and appropriate legal conflict. However, in cases where the desistance of unfair actions can't lead to the elimination of violations of right, it is required to use the restorative measures. Such measures can be used both independently and in conjunction with the preclusive and preventive measures.

Instrumental analysis of individual legal sanctions for abuse of civil law: The refusal to protect rights is the major legal sanction for abuse of civil rights provided by Article 10 of the Civil Code of Russian Federation. The legislator itself doesn't disclose the content of this measure but in the literature the numerous attempts to determine its meaning have been taken. The Soviet lawyers Ioffe and Gribanov (1964) noted that the upper range of this sanction is the deprivation of rights in general, the lower range the refusal of a specific form of protection of right. Literally, the refusal of protection of right means the refusal of satisfaction of the right holder in protection its right. In procedural meaning this requirement can be made either in the form of the claim or as the objection to the lawsuit filed by the injured person. The refusal in protection of right as the refusal of satisfaction of lawsuit can have double meaning. Firstly, it can perform the preventive function and can be aimed at the prevention of negative consequences of abuse of rights. For example, the unfair registration of trademark of mass media which is similar to one that has been previously registered and the further claims concerning the termination of activity of the mass media because of violation of trademark rights, may be rejected in order to prevent violations of rights of mass media. Secondly, the refusal to protect the right performs the preclusive function-the termination of the abusive action.In these cases the refusal of protection of the right is applied, for example, when unfair shareholder is rejected in satisfaction of the requirement in giving the information about the company, the unfair buyer is rejected in the claim for the return of goods of proper quality. It should be noted that the actions of the entity of law, against whom abuse of rights was directed to protect their rights

and interests and to prevent their violation (for example, rejection of the seller to meet the requirements of unfair consumer) may precede the application of some requirements to the court. Denying the plaintiff in the lawsuit, the court recognizes the legitimacy of the actions of the defendant to defend its rights.

The other meaning of refusal in protecting right is acquired, when the demand of the researcherized person in protection of its rights is implemented through the objection to the plaintiff. In this case, the refusal in protection of the right can't be an independent sanction for abuse of rights, so initially the abusive subject does not appeal to the court with the demand. It is the mean that allows us to apply the necessary sanctions despite the formal lawfulness of the defendant's conduct.

The private type of refusal in protection of rights is the principle of estoppel. In a number of rules of the Civil Code there is prohibition to reference to the circumstances which serve as basis to the invalidation of the transaction, if was clear from the previous behavior that the party recognizes the real deal, despite its defects (Article 166, 173.1, Article 431.1 of the Civil Code).

It is recognized that not in all cases, the total refusal to protect the rights can have the desired effect. For example, in liability relations, where the rights of one person confronts the duty of another person, the full refusal of protection of right would mean the release from the obligation of the counteraction party which is also not conducive to the balance of interests. In this regard, the partial refusal of protection of the right is important. One of its manifestations is the possibility of reducing the penalty by the court which is being provided in Article 333 of the Civil Code if it is clearly not commensurate with the consequences of the breach. By reducing the size of the forfeits, the court does not destroy the legal relationship which have been arisen before but only balances the position of the parties. In that part for which the forfeit is reduced, the court refuses to protect the right. In that part which is awarded to the payment, the court recognizes and protects the rights of legal subjects.

The partial refusal of protection of the right may be an alternative to nugatory bonded transactions. It should be noted that application of the doctrine laesio enormis and other criteria for determining the bonded transactions may not always serve to the interests of the party liability. Of course, the balance of interests of the parties is clearly broken in the bonded transactions. However, we can't exclude the situation where challenging this transaction will be beneficial to the counteraction party and, in turn, it becomes the means of purchase benefits of the debtor to the creditor. For example, an unconscientious citizen in order to meet their needs in money and paying off the old debts can intentionally loan agreement on the terms of the high percentage, to further challenge the treaty and not to pay high interest rates. The partial refusal of protection of right may act as correcting means in such situation which preserves the loan obligation and allows both parties to meet their interests within reasonable limits.

The deprivation of equitable rights can be seen as an exceptional, extreme measure. As we noted earlier, the Soviet lawyers considered this consequence as one of the manifestations of refusal of protection of right. However, neither previous nor modern civil law doesn't consider such consequences as a common sanction for abuse of rights. However, it does not mean that this sanction is not applicable at all. A number of special legislation norms contain legal consequences which actually are the deprivation of equitable right by nature. So, according to Article 10 of the Federal Law "On Limited Liability Companies", participants in the company, whose shares make up together at least ten percent of the charter capital of the company has the right to claim the exception of the participant from the company in the judicial order which violates their duties or makes impossible or significantly impedes the activities of company by its actions (or inaction).

The law considers abuse of rights as the ground for termination of the exclusive right to the trademark. The Article 1512 of the Civil Code provides the possibility to challenge and invalidate the provision of legal protection to a trademark if the actions of the legal owner concerning the state registration of the trademark are considered to be abuse of rights in the established order. Although in this case the legislator does not speak directly about the deprivation of the equitable right but the invalidation of the legal protection of a trademark implies the abolition of the decision on registration which ultimately leads to the loss of trademark rights.

In literature there is an opinion that such sanction as the deprivation of rights contradicts to the nature of abuse anddoes not reach the necessary public purposes as if the entity of law will be deprived the belonging subjective civil rights in the event of its abuse, it will lead that the entity of law can't use appropriately its civil right in its own interests. From this point of view it is possible to agree in the case where abuse of rights has a single character. Indeed, in such situation to deprive the owner of its equitable rights is impractical because the subsequent acts, realizing the right, can wear socially useful character. However, how to do if the right is systematically carried out with the only interest to cause harm to another person? In this situation, the injured person will have to prove the fact of abuse of rights each time and the court constantly will be forced to apply the

denial of protection of the right or other preclusive measures which obviously lose any efficiency in this situation. In such cases, it would be possible to appeal to deprivation of equitable right because the right holder has lost any social value of this right. Of course, such extreme measure may be used only in exceptional circumstances and only under the condition that abuse of rights is made with the only interest to harm and has systematic character.

An important measure of the reductive nature is the compensation for material and moral damages. The Article 1064 of the Civil Code establishes the general rule of tort: the harm which is caused to the person or his property as well as the damage which is caused to the property of the entity of law should be compensated in full by the tortfeasor. However, Article 10 of the Civil Code provides only the possibility of damages. The losses involve property damage which is expressed as the real damage and lost profits. In different situations the simultaneous payment of both types of losses or the compensation one of them can be applied. However, the issue of compensation for non-pecuniary (moral) damage is not legally decided yet. It is clear that the result of abuse of rights can set up as the moral damage to citizens and the reputational harm to the legal entities. If in the Civil Code there is a general norm on the issue of compensation of moral damage (Article 150) which may be applied in the case of abuse of rights in the absence of direct evidence of Article 10 of the Civil Code, so the possibility of compensation of reputational harm to legal entities is an open question and requires the legislative solution.

The instrumental view of the problem of abuse of rights in addition to the above problems can solve a number of other issues of theoretical and practical nature. Primarily our research allows to define more precisely the essence of the considered concept and to distinguish it from other related categories. For example, in criminal and administrative law the category of "abuse of power" is used, although it has a terminological similarity with the concept we study andit is different from its essence. The "Researcherity" as a category of public law is not identical to the understanding of the subjective civil rights as a mean of satisfying the private interest. The researcherity is always carried out within the respective competence in the public interest and has an objective purpose. On this basis, the misuse of powers is the direct violation of law, rather than the formal legitimate subjective actionsof the opportunities offered by law.

The instrumental approach to the analysis of legislation on abuse of rights allows you to specify the criteria for differentiating between categories of abuse of rights and the offense. As we have noted earlier according to the positivist perception of these concepts, the main criteria of distinction of the offense is a formal legitimacy and support for implementation of equitable right. In this study, one more aspect was revealed the offenses were defined in advance as socially harmful acts and the legislator established the direct bans against them. The implementation of law is recognized as abuse only during enforcement. Therefore, the legislator can't establish the prohibition of abuse of rights but it is aimed to consolidate the general idea of the inadmissibility of such conduct.

In light of this, new reasons for distinguishing abuse by its dominant position on the market and other competitive abuses from abuse of civil rights are appeared. Analysis of the Federal Act "On Protection of Competition" shows that all the actions described in it are belonged to those which are expressly prohibited by law, i.e., they are illegal in nature.Such legislators' approach is due to the fact that abuse does harm not only to private but also to public interest, while abuse of civil rights is aimed at harming to the private interests protected by civil law. In addition, the concept of "competitive abuse" is made as an objective, while abuse of rights is unacceptable due to the viciousness of the subjective side.

The problems which were brought up in this article are also useful for understanding the problem of non-abuse of rights in family relations. Leaving aside the debates about the place of Family law in the Russian legal system, we note that the family and civil relations have a genetic relationship. At once, the legislative approach in solving the problem of abuse of rights is different. In contrast to the civil law, Article 7 of the Family Code establishes the principle of the inadmissibility of the law in conflict with its purpose which as stated above is not identical to the principle of non-abuse of rights. The Family law regards abuse of parental rights as the ground for termination of parental rights. However, in the law enforcement practice abuse of parental right actually means the improper implementation of parental responsibilities which means the marital offense, not abuse of rights. In addition, deprivation of the right can hardly be regarded as only possible mean. All this needs the necessity for the reinterpretation of Russian legislation and its implementation from the position of forming the common approaches to counteraction the unscrupulous behavior in the private law sphere.

Theoretical inventions can distinguish the practical measures to improve the instruments of counteraction to abuse of rights and the amendments to the legislation. In addition to the refusal of the principle of non-implementation of family rights in contradiction to

their destination and the need to secure the principle of non-abuse of family right it should be made appropriate changes and in civil law. In particular, it seems necessary to exclude the mentions of action in in circumvention legislation from the norm of abuse of civil right. It is necessary to adopt the law of the possibility of compensation for moral and reputational damage resulting from abuse of rights.

Finally, it is necessary to improve the culture of enforcement itself. As the main subject of counteraction of abuse of rights is not so much the legislator as the Court, so it is the judicial practice that should develop the optimal approaches to abuse of rights qualification and evaluation of the effective application of any sanctions for abuse of rights. As we have seen, each sanction requires a separate functional assessment andits suitability for a particular situation. As the basic idea underlying in the basis of the practice development on the issue of abuse of rights seems to be intention to preserve the existing relationship which are transformed into a stage of conflict andto ensure the balance of the interests of its members, thereby eliminating the conflict.

CONCLUSION

The concept of abuse of rights for many centuries causes lively debates among the representatives of legal science. The complexity of this legal phenomenon is the fact that it incorporates two contradictory initially beginnings-a formal conformity to the rights, on the one hand andthe contradiction of its social nature on the other. Leaving this fact without attention has doomed us to a limited, one-sided study of the category. Therefore, knowledge of the essence of abuse of rights can only take place in view of its legal and social nature.

Abuse of rights is invalid implementation of equitable right due to that it is the mean of realization of interests which are related with harming to the protected by civil law interests of other persons.Abuse of rights can't be considered in isolation rather only as a component of the conflicting legal interaction of civil rights.

The instrumental approach allows us to expand the scope of studying the category of abuse of rights, including in the research field such problems as the purpose of the rules of civil law on the inadmissibility of abuse of rights, the social nature of abuse of rights; the functional destination of the sanctions for abuse of rights. The activity aspect of the instrumental approach allows to considerate abuse of rights as an element of legal conflict which should pay attention not only on the behavior of the entitled person but also to the victim from abuse of rights, his rights and interests andall these should be taken into account at qualifying the act as abuse of rights.

The instrumental analysis of the norms on abuse of rights can determine their functionality as a corrective mechanism used in the conditions of the dispositive principle in order to eliminate certain negative manifestations of it.

The instrumental view on the sanctions for abuse of rights allows you to make two important conclusions: Firstly, the general directivity of all sanctions is the legal resolution of the conflict, if possible, it should be done by maintaining legal relations between the parties and balance their interests. Secondly, each sanction has its direct functional purpose (preventive, preclusive, rehabilitation). The effectiveness of the measure and its suitability for solving the identified problems should be determined by the enforcer.

In conclusion we must say that the instrumental approach opens great educational opportunities as for the general theory of law andas for the branches of law. The other problems can be researched with the help of instrumental approach, in particular one can analyze the other types of legal behavior in the civil law andother law branches. Until now, a holistic doctrine of legal behavior is not yet formed in the domestic law. Its formation, with its branches-specific and new methodological tools is a promising research direction.

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