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NON-PROPERTY RELATIONS DOCTRINE DEVELOPMENT IN UKRAINE

Abstract. *The article deals with the problems of development of the doctrine of non-property relations in Ukraine, in particular, the state of research of the sphere of personal non-property rights, information relations, intellectual property relations. Relevance and rapid development of the theory of civil law in all these areas are associated with the author's achievements in the era of the information society and the increasing awareness of people of the importance of their personality, uniqueness, singularity, and value.*

Additional relevance of the covered issues is provided by the discussion on the possibility of full consolidation of non-property obligations at the doctrinal and legislative level, which is considered by the author from the point of view of the willingness of domestic civil scholars to perceive such a construction at the present stage within the bounds of binding (contractual) law.

The condition, the main scientific approaches, tendencies of development of the system of non-property rights on the way to the recodification of domestic private law are analyzed. The attention is focused on the importance of the phenomenon of information and creativity, individual personal non-property rights for the development of civil society in Ukraine. The article describes the obligations of non-property nature from the point of view of the main features and peculiarities of binding (contractual) relations. We try to prove the timeliness and perspective of the further research of binding (contractual) relations of non-property nature for their further legislative consolidation in the Civil Code of Ukraine.

Based on the provisions of the theory of personal non-property rights, intellectual property rights, and information rights, the further rapid development of the institute of non-property rights is anticipated, the main place in which is given to personal non-property rights of an individual. Taking into account the changes that have occurred after

the adoption of the current Civil Code in these areas, recommendations for reforming the institute as a whole have been developed, as well as arguments for reforming the institute of binding (contractual) relations, taking into account the specifics of obligations of non-property nature.

In order to solve the problems of non-property relations in the future, it is advisable to conduct comprehensive studies of all the institutes: information rights, intellectual property rights, personal non-property rights in their totality in order to take into account the mutual influence and peculiarities of each of them, as well as other civil law institutes.

***Key words**: the doctrine of non-property relations, information relations, intellectual property relations, personal non-property rights, obligations of non-property nature.*

A comprehensive approach to the problems of non-property relations from a private law perspective ensures the ***feasibility*** and ***relevance*** of the analysis in civil law and civil legislation of at least three institutes that cover personal non-property rights of individuals (and, where applicable, legal entities), intellectual property rights and information rights. All of them, primarily, concern the sphere of non-property relations of individuals, both in content and form, and provide the most important rights and interests for them in the modern world.

Moreover, having enshrined information as a separate object of civil rights and the right to information as a personal non-property right, having regulated information relations including in the sphere of property rights, binding (contractual) law, intellectual property rights, corporate rights, hereditary and family international private law, etc., civil lawyers were able to unite into a single system separate norms of non-property sphere and provide them with modern interpretation and development prospects. We believe that today there is every reason to talk about the creation of a sub-branch of non-property rights in the civil law of Ukraine. This also emphasizes the ***relevance*** of the theme of this article.

Since information, information relations, and information rights play a significant role in the development of modern civil law, they also affect the binding contractual and non-contractual relations, especially when it comes to receiving, transmitting, storing, and accessing various types of information, market relations, electronic commerce, provision of information services, etc.

Consequently, the ***purpose*** of this article is to form own conclusions regarding the further development of the institute (possibly a sub-branch) of non-property rights in civil, consisting today of personal non-property rights of individuals (as well as in some cases – legal entities), information rights and non-property rights of intellectual property, predicting the ways of further development in the domestic civil law and the possibility of enshrining of obligations of non-property nature in civil legislation.

Some of the most significant works in the field of non-property relations and

non-property rights include complex monographic studies within the framework of the National Academy of Legal Sciences of Ukraine[123], as well as a number of dissertation studies on the subject of interest, which we have analyzed in detail in one of our academic publications[4].

Today, the institute of information rights is as developed in civil law as all other institutes since its development is almost as rapid as the development of information technologies and information transfer systems, and information is mentioned in almost every contract and is an essential condition for their conclusion. In this respect, domestic civil scholars have accumulated a considerable amount of experience and continue their doctrinal research and implementation of these achievements in practice.

We have repeatedly stressed that the development of information relations within the framework of civil law can be hindered only by a lack of common sense and short-sightedness. Information should remain in the Civil Code of Ukraine[5] as a separate object of civil law, and as a right to information, that is, as a personal non-property right, and as a work of art – the form represents the content of information of a high level of intellectual and creative work of the human mind in the field of intellectual property law, since virtually all objects of creativity are information with specific signs of originality, novelty, or others. The realization of the above depends on a progressive, humane, intellectually supported and harmonious way of development of the information society in which we live.

Both information and legal relations in the field of intellectual property and personal non-property rights are of a civil nature. This was confirmed not only in science but also in life, as it turned out that the most effective way to implement and protect the rights of participants in these relations is civil law. As for personal non-property rights of individuals (and legal entities), now the overwhelming majority of our compatriots are convinced that the greatest value in the world is the personality of each individual human being (person), who pays enormous attention to self-improvement, spiritual growth, while the non-material, non-property, personal are of no less importance,. Hence the rapid growth of self-esteem of modern human beings, the

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[1] Личные неимущественные права: проблемы теории и практики применения: сб. статей и иных матерыалов /Под ред. Р. А. Стефанчука. – К: Юринком Интер, 2010–1040с. – (Серия «Актуальные проблемы гражданского права);

[2] Правова система України: історія, стан та перспективи: у 5 т. – Х.: Право, 2008. – Т.3: Цивільно – правові науки. Приватне право / за аг. Ред.. Н. С. Кузнєцової. – 640с. – С. 183–208;

[3] Правова доктрина України: у 5 т. – Х.: Право, 2013. Т.3: Доктрина приватного права України /Н. С. Кузнєцова, Є. О. Харитонов, Р. А. Майданик та ін..; за заг. ред.. Н. С. Кузнєцової. – 760с. – С.367–385.

[4] Правова доктрина України: у 5 т. – Х.: Право, 2013. Т.3: Доктрина приватного права України /Н. С. Кузнєцова, Є. О. Харитонов, Р. А. Майданик та ін..; за заг. ред.. Н. С. Кузнєцової. – 760с. – С.367–385.

[5] Цивільний кодекс України від 16.01.2003 р. № 435 – ІУ // Відомості Верховної Ради України (ВВР), 2003. – № 40–44. – Ст.356.;

feeling of freedom and self-respect. Every person in the information society wants to show his or her self, to demonstrate it to others in the best way, but at the same time to preserve his or her uniqueness, so it demands respect for himself or herself as a supreme value. Since personal non-property rights have an absolute nature, this institute is located among the institutes of other absolute rights – property rights, intellectual property rights. In addition, civilists always emphasize that the social significance of personal non-property rights is much higher than the rights existing in the material sphere of society. These are the spiritual basis of society and serve as a prerequisite for ensuring the freedom of property, freedom of contract, freedom of entrepreneurship, etc., and therefore precede the real, binding rights. The validity of these conclusions was confirmed by practice. However, non-property rights should be analyzed along with other human rights, taking into account the fact that they are an integral part of the unified system of rights, which are administered by a person in accordance with his or her interests and which he or she possesses.

It is well known that the Civil Code of Ukraine and other laws may also provide for other personal non-property rights of an individual. For instance, part 3 of Article 270 of the Civil Code of Ukraine states that the list of personal non-property rights established by the Constitution of Ukraine, the Civil Code of Ukraine and other laws is not exhaustive, which is confirmed by international legal acts in the field of human rights. Hence, it is possible to draw an important conclusion that the Ukrainian legislation is focused not only on the modern stage of development of civil relations but also on the future.

Among the most interesting problems, which were discussed by domestic civilists in the last 15 years after the entry into force of the Civil Code of Ukraine, one should mention, first of all, the problems of combining the principles of civil society and personal non-property rights; the problems of the harmonization of the legal system of Ukraine with those of the world in the process of ensuring the rights, freedoms and legitimate interests of citizens; the problems of the objects of these rights from the point of view of their possible negotiability. In addition, it is necessary to highlight the problems of dividing non-property rights into personal non-property rights, associated with property and personal non-property rights, not associated with property, as well as the problems of classification of non-property rights and the formation of a single comprehensive view of them. It is also impossible to ignore a number of issues related to the codification of personal non-property law in Ukraine; as well as non-material goods as specific ones with their inherent features; problems of personalization of individuals; methodological problems of the system of personal non-property rights; contractual regulation of personal non-property relations, problems of personal non-property rights from the point of view of international private law and a number of others.

Along with personal non-property and information relations, intellectual

property relations continue to develop in Ukraine. An important role in this process is played by the Civil Code of Ukraine, the provisions of which have regulated these relations in detail and logically, consistently and with a view to the future. Comprehensive regulation of non-property relations within the framework of intellectual property rights is impossible now without the application of the norms of the current Civil Code of Ukraine.

Meanwhile, in the process of development of the national doctrine of civil law, among many others, the issue of admissibility of non-property obligations arose. Having been further debated, it still occupies the thoughts of Ukrainian civil scholars, but life makes its own adjustments and provides new arguments in favor of the need to recognize not only as possible but also as a necessary condition for the further development in obligatory law the recognition of obligations of non-property nature. An invaluable breakthrough in the history of codification of civil law has been made, when the developers of the Civil Code of independent Ukraine [1] enshrined the second Book on personal non-property rights of individuals in it, and virtually gave a blessing to the opportunity to actually realize and protect one' s non-property rights not only to individuals but also to legal entities. Now it is possible, in our opinion, to raise the issue of securing non-property obligations at the level of the Civil Code of Ukraine. And we should not only talk about the absence of prohibitions on non-property obligations in civil law, although this argument should be taken into account.

In the understanding of civil scholars the obligation is, first of all, a civil legal relation by virtue of which one person (debtor) is obliged to make a certain action in favor of another person (creditor), in particular: to transfer property, to do a job, to pay money, etc., or to refrain from a certain action, and the creditor has the right to demand from the debtor to fulfill his obligation. From the above definition, which is familiar to the civil law representatives of many countries, we can conclude that the obligation is usually understood as a legal relationship, which has the most important attribute – it is distinguished by its property nature. This is a classic of civil law, which became an axiomatic truth in the Soviet period of development of Ukraine, to which we are accustomed to in the process of studying civil law. This position is undoubtedly present today, as a number of authors, again and again, prove the possibility of the existence of only property obligations, mediating the movement of material assets in the form of goods from one person to another, suggesting that "…the unconditional extension of the construction of the civil liability to non-property relations threatens the invasion of "legal leverages" in the domestic and morally-ethical relations, the blurring of the clarity of property equivalents on which an obligation is based".[1]

[1] Гражданское право: учеб.: в 3-х т. Т.1 / С.С. Алексеев, И.З. Аюшеева, А.С. Васильев [и др.]; под общ. ред. С.А. Степанова. – М.: Проспект; Екатеринбург; Институт частного права, 2010. – 640 с. – С.486.

Such fears do not entail such grave threats, which are referred to by the authors. Both domestic and ethical relations will not lose anything, but rather will gain from the spread of the construction of civil law obligations on the legitimate property relations, in addition, an increasing number of examples from everyday life testifies to the readiness of society and its individual representatives – individuals and legal entities – to perceive as a good opportunity to rely on a clear legal structure of the binding law in their moral and ethical attitudes. Therefore, even recent opponents of such a construction note that "…both the freedom of contract, and the absence in the current legislation of direct bans on "non-property obligations", and the rapid development of relations not directly related to property (information, preliminary, organizational, etc.) determine the need for legal regulation of these relations, including the use of the legal structure of obligations … It seems that in the near future civil law will extend the design of obligations to non-property relations. Of course, with certain exceptions and peculiarities, in particular, on the order of compulsory fulfillment of obligations in kind.[1]

Even a brief analysis of the main arguments of the opponents of non-property obligations reveals their shortcomings, so a growing number of contemporary civilists are joining the position of the proponents of non-property obligations, while recognizing the importance and the global nature of changes in the understanding of the essence and role of intangible non-property goods in civil turnover. The elements of such positive changes are noticeable even in the sense of the articles of the Civil Code of Ukraine. For example, experts in the field of inheritance law consider the content of Article 1305 of the Civil Code of Ukraine to be another confirmation of this possibility. Many examples are also provided by representatives of the intellectual property sphere. For example, an author of works of art may oblige heirs or other rightsholders after his death to exhibit paintings at exhibitions, to acquaint the public with the content of his works and the like.

Addressing the sources of modern domestic civil science, namely the works of the outstanding civilist Yo. O. Pokrovskyi, who once taught at the University of St. Volodymyr, assures that even in the times of his scientific activity "the increasing importance of the spiritual side of the human personality could not but affect two other fundamentally important issues of civil law … Jurisprudence has recently considered that actions of a non-property nature cannot be the subject of a legally valid obligation … Although…this opinion was expressed by another one (one of the initiators is Jhering), which… requires recognition of non-property obligations as well. As a result of this, at present there are two radically opposite opinions against each other in our question; the dispute be-

[1] Гражданское право: учеб.: в 3-х т. Т.1 / С. С. Алексеев, И. З. Аюшеева, А. С. Васильев [и др.]; под общ. ред. С. А. Степанова. – М.: Проспект; Екатеринбург; Институт частного права, 2010. – 640 с. – С.486.

tween them is far from over, but, perhaps, the second idea gets the upper hand as the dispute goes on".[1]

Significant changes in our perception of the world have caused the transition of mankind to the information society in this century. The sharing of information, not just rights to information, plays a key role in all processes and economies. Today, in our opinion, it is impossible not to recognize the special role of non-property information obligations in the development of civil law, as well as in all its institutes and in the field of law in general. It is impossible to find a better construction than an obligation when it is necessary to agree on the content of particular confidential information, or when it is necessary to exchange information owned by a person for other values in order to satisfy his rights and interests in many areas of life. Information remains an intangible asset. At the same time, it is today the most valuable commodity, the equivalent of which is not a price, but a value that can be expressed in monetary terms with a number of caveats, because no personal non-property good can by its nature be adequately valued in the ordinary monetary or other economic sense. A personal non-property good, which is information in its essence, cannot be matched with an equivalent monetary equivalent, the exchange for another important value for the holder (owner) of information here is often very approximate.

[1] Покровский И. А. Основные проблемы гражданского права. М.: Статут (в серии «Классика российской цивилистики»), 1998. – 353с. – С.134.

Currently, non-property obligations in Ukraine are increasingly being accepted in the area of personal non-property rights, information and intellectual property rights, family relations, inheritance and medical law, corporate legal relations, as well as in a number of leading economic sectors in which civil law plays a key role, such as tourism, as well as environmental protection and a number of others.

If we look at not only the signs of a binding relationship mentioned above but also at others, we can see that there are no strong grounds for denying the existence and active development of non-proprietary obligations. As in the traditional obligation, the debtor's obligations in these obligations are mainly of an active nature, i.e., the debtor has to take a certain action in favor of the creditor: to send (forward) information through an information system, provide access to information, give advice on eating habits for effective treatment of the patient, familiarize the tourist with the sights of the city in which he stays, respect parents and so on. There may also be abstinence from action, and not even as an auxiliary duty, as in the traditional obligation, but as a basic one, for example, to maintain quietness during certain hours in a certain city. An author who has given his manuscript to a publisher and has transferred the right to publish it may be contractually obliged to refrain from concluding the same contracts with other publishers. In the contract for medical care, the parties are free to make it clear that the patient must refrain from taking certain food harmful to his or her health condition or taking

incompatible medicines for successful treatment.

The interest of the authorized person (creditor) in the non-property obligation, as well as in the usual obligation, is satisfied mainly not by his own actions, but by the actions of the obliged person. The creditor may also be required to be active (to accept the results, etc.), but it is the debtor who performs the main actions. For example, the obligation of an advertising agency to disseminate positive information about a person, to present his or her qualities to the media in a better light, thus improving his or her business reputation, maybe an active part of specific consistent actions.

Liabilities exist for a specified or indefinite period of time. A debate is conceivable here. If it is generally accepted in the property sector that perpetual obligations are impossible, then in non-property obligations it is possible to do so – either for a very long term or without specifying a term. For example, the obligation of a person who has acquired a painting by a well-known artist to exhibit it for inspection at least once a year may be concluded in such a way that it remains valid even if the owners of the painting itself have changed. Meanwhile, this is not so much about the property in the form of a picture – in this case, it is its non-property content that is important – the belonging of the work to the authorship of an artist, its artistic value, the reputation of the author of the work, that is, the value, not the price of the picture at auction, and so on. The same thing happens in the sphere of haute couture. Well-known fashion houses build obligatory relations with new couturiers working for a legendary house, fulfilling their obligations to take into account in their creations sometimes elusive elements of the epoch and creative style, which is inherent to its legendary founder.

Thus, the content of an obligation may constitute the right to demand the implementation of any lawful actions of a person. This can be confirmed by the approach to understanding the object of the obligation – on the one hand, the object is considered to be the actions of the obliged person (legal object), on the other hand, the object (subject of fulfillment) of the obligation is considered to be the material (and in our case, with certain reservations it is possible to say – and intangible) good, in relation to which the obligation arises (this is both an object and property, but also an information, the result of creativity, a number of elements (constituents) of personal non-property benefits, for example, individuality, freedom, business reputation, etc.) In this case, we never talk about any economic monetary equivalent, because we are not talking about price, but about value, not about indemnification, but about compensation and the like. In other words, the practice of non-property obligations uses predominantly different terminology concerning the actual objects (and legal ones too), compensation for damages, protection of rights, leaving the usual terminology in the understanding of the subjects of the obligation, its content. For example, it is an obligation to “provide”, to “grant access” information, not to sell it, to transfer intellectual property rights, and not to buy and sell

the intangible object itself, which are the results of creativity in its essence, and especially valuable, original information that they contain, etc. In each specific case, a legal lexical group is formed to reinforce the distinctive features of non-property goods and obligations arising from such goods.

It should also be noted that many provisions of codes of ethics, rules, charters (of journalists, doctors, programmers, providers, experts, publishers, etc.) in various areas are rapidly moving into the sphere of law and, having become the subject of obligations, require civil law protection.

In our opinion, a special place should be given today to information binding relations in the list of non-property obligations. Following our reasoning in many publications that information legal relations include also legal relations of intellectual property rights, since we consider intellectual property rights in a broad sense as information of highly intellectual creative content and forming, in turn, a system of information obligations in civil law, we should pay attention first of all to the obligations that are aimed at creating and obtaining rights to information (the basis for such obligations is, for example, a contract for the provision of advisory and other information services), as well as information as an object of tort and other non-contractual legal relations arising from illegal activities, in particular, information as a separate non-property good and information as a result of intellectual creative activity.

Summing up, it should be noted that the efforts aimed at tracing and differentiating between property and non-property obligations, preventing the latter from entering the sphere of regulation of the binding law, as well as searching for problems that may prevent their occurrence at the level of legislation, would be quite sufficient to analyze every case in which today, in the modern society, and with a modern understanding of the importance of non-property objects, benefits, and legal relations, binding legal relations between different subjects (participants) are formed, and to create a theory of non-property obligations, thus to legally consolidate in the general part of the Civil Code of Ukraine, as well as in a separate section of the Book of obligations of the Civil Code of Ukraine entitled “Non-property obligations”, and to include in the list of rules of the special part provisions on specific types of non-property obligations.

Such a task is already quite real and feasible for Ukraine today, taking into account the development of the institutes of personal non-property rights, information rights, intellectual property rights, etc. Then would be able to convincingly prove the timeliness and predictive capacity of the thought of our beloved civilist: “…The strength of a legal norm is not only based on the fact that it can be enforced. In the overwhelming majority of cases, even a simple recognition by a court…of the fact that a defendant has not fulfilled his (her) (non-property) obligation, would be of great practical importance in the sense of impulsion to fulfill such obligations.”[1]

[1] Покровский И. А. Основные проблемы гражданского права. М.: Статут (в серии «Классика российской цивилистики»), 1998. – 353с. – С.136.

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