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Ключевые слова: гражданский долг, гражданское обязательство, гражданские правоотношения.

Key words: civil obligation, civil obligation, civil legal relations.

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THE MEANING OF PRINCIPLE OF GOOD FAITH IN EXERCISING THE RIGHT OF HONOR AND DIGNITY

The developments in social, political and economic life of Ukraine generated considerable attention in the system of legal priorities to the status of person, and to the right of honor, dignity and business reputation.

The Constitution of Ukraine recognizes the centrality of human his life and honor. Other rights juxtaposed hierarchically to a lower level.

Such legal regulation of the status of human meets the international standards and explains its sectorial regulation in national legislation at the sectorial level.

The legislator underscores the intent to harmonize the legislation of Ukraine with international standards by placing the Book "Personal non-property rights" as second, immediately after the general provisions.

The Ukrainian legislation contains the limits of realization and protection of the civil rights. This construction is based on several principles, the leading position among which occupies requirement that subjective civil rights,

under Article 509 p.3 of the Civil Code of Ukraine, must be acquired, modified and terminated in accordance with principle of good faith, diversity and justice.

The limitations and the and the content of the principle of good faith requires definition of its meaning, how it is displayed in relations, that are not peremptorily defined by legislator. The right for the honor and dignity – is phenomenon that is closely related to the person, has moral content, but fitted in fold of the civil law.

Some issues and aspects of the good faith and principles of the civil law have been subjects of scientific analyses of S.S. Alexeev, Z.A. Berbeshkina, O.B. Vengerova, K.S. Gadjiev, L.G. Grinberg, I.B. Novickiy, E.O. Kharytonov, O.I. Kharytonova, S.L. Yavich and of the other of scientists.

The issue of category of the honor and dignity wondered the researchers since ancient times.

In Twelve Tables were provided norms, that regulated “private delicts”. The most important of which is injuria, that is offense which is related to personal effort. [1; p. 207].

During the Renaissance more thoroughly were considered the category of honor and dignity by Pico della Mirandololy, Lorenzo Valla, Disiderius Erasmus, in the Middle Ages – by Artur Schopenhauer. In general the researches of the theme of honor and dignity were carried out by many philosophers (K. Marks), and by legal scholars (Y.O. Pokrovskiy).

At the current stage the honor and dignity is considered with reference to great changes in civil legislation, through which considerable attention to the human rights is paid. But notwithstanding great relevance of these questions, the correlation between good faith, moral norms and honor and dignity has been investigated not enough.

The Civil Code of Ukraine differs from legislation of SSSR and Ukrainian SSR by widespread use of concepts of “good faith” and “wisdom”, but not “justice”. In Civil Code of Ukrainian SSR 1963, was regulated only the category of an innocent buyer and owner.

In spite of the frequently use of these categories in the civil legislation, there is no definition of these terms.

The principle of good faith is the general theoretical, but occupies a special place in the system that regulates obligation.

The good faith could be defined as desire to honest definition of the rights.

Gadjaev G.A. defines the principle of good faith as method, that helps to ensure a harmony, balance of private and public interests [2; p. 58]

From that standpoint good faith is imprint of the needs of society in harmonization of commercial relations.

The main method of the branch of the civil law is the dispositive method, which guarantees to the participants free and equal will of their intention at the conclusion and establishment of the rules of behavior. So, good faith could be understood as method by which develop relation, that where established by participants of relations.

The principle of good faith is used not only as a regulator of relations, it is also a criterion for assessing compliance with the positive law of the legal norms established by the participants.

The principle of good faith is not only a method of ensuring the harmony of private and public interests, but also an objective measure, that must be used as a criterion for judges to make decisions. Good faith as an objective measure – is an ideal desirable legal relationship in which their participants, as a “good masters”, known in Roman Law, adhere to such behavior, which is contrary to the social ideal [2; p. 187].

The honor should be understood as a reflection of qualities of person in public consciousness, which accompanies with a positive assessment of society [3; p. 11]. As a set of supreme generally accepted moral principles that guide a person in his social and personal behavior, and the fact, that he is a social reflection of individual [4; p. 6]. As well as, an evaluative judgment about the person and his social value: positive public opinion about the moral qualities of a particular person (reputation) . And as public assessment of social, moral and spiritual qualities of the person [5; p. 199].

Dignity can be defined as the highest social value of human, which, from the objective point, reflects the importance of human for the society, in terms of its moral, spiritual, physical (natural) qualities, the importance of the individual as a person, regardless of membership in social group. From the subjective point of view – a person`s personal assessment of moral, spiritual, physical (natural) qualities, regardless of social affiliation to a particular social group and position in society.

That is, dignity, understood as a personal non-property good, should also be characterized, as a natural, cultural category that has social significance, which is reflected in peculiarities of the regime of their use and protection.

The right of inviolability of dignity and honor consists in prohibition to perform any actions that may violate these personal non property rights.

Most often, honor and dignity can be violated by disseminating of unreliable information. This can be done orally, in writing, with the help of works of art, with the help of facial expressions, gestures, with the help of the media, etc. The main thing is that this information relates to a certain person, is unreliable and violates these personal non-property rights.

The concept of information determines the honor. Dignity and business reputation.

Dignity – is a personal non-property right, which is information about the value of each person, recognized in society.

Business reputation – is information. That consists of knowledge about the achievements of person, the so-called “moral person”, business qualities of an individual and most often associated with the good name of human or legal entity.

Thus, the emergence of relations for protection of dignity and business reputation is possible in presence of the following facts: 1) information that is disseminated; 2) information that tarnishes the dignity and honor, business reputation of person or harms his interests: 3) information is inaccurate, i.e. information that is untrue or false.

It seems important when considering this issue to define the concept of “negative” information. Negative information that was disseminated about a person automatically receives status of unreliable, until the person who disseminated this information proves its authenticity.

“Dissemination of inaccurate information” or “dissemination of information” that defames an individual, is the first condition, that is mentioned in legislation and researches in the case of protection of honor, dignity and business reputation. The defendant in a civil case must prove, in accordance with the decision of the Plenum of the Supreme Court №7 of 28.09.90 “On the application by courts legislation governing protection of honor, dignity and business reputation of citizens and organization”, that information disseminated by him is true, and the plaintiff of obligation must prove only the fact of dissemination of information that defames him, the person against whom the lawsuit is filed.

Also this rule is enshrined in Part 1 of Art. 277 of the Civil Code of Ukraine, that enshrines the right of person, whose personal non-property rights have been violated as a result of the dissemination of inaccurate information about him and (or) members of his family, for response, as well as refutation of such information.

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Ключові слова: особисті немайнові права, добросовісність, честь, гідність, принципи.

Ключевые слова: личные неимущественные права, добросовестность, честь, достоинство, принципы.

Key words: personal non-property rights, good faith, honor, dignity, principles.

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ЗАПОВІДАЛЬНИЙ ВІДКАЗ: ПРОБЛЕМИ ПРАВОЗАСТОСУВАННЯ

Вже 17 років як існує Цивільний кодекс України, що був прийнятий на зміну Цивільному кодексу УРСР 1963 року. Надзвичайно велика кількість новел була запроваджена, деякі інститути знайшли своє друге життя у сучасному вигляді. Водночас серед запроваджених новел