Aspects of Civil Rights and Their Integration into International Social and Environmental Legislation

Anatoliy Kostruba

► To cite this version:

Anatoliy Kostruba. Aspects of Civil Rights and Their Integration into International Social and Environmental Legislation. Journal of Environmental Management and Tourism, 2018, 9 (5(29)), pp.1005-1012. 10.14505/jemt . hal-02508301

HAL Id: hal-02508301

<https://hal.science/hal-02508301>

Submitted on 14 Mar 2020

HAL is a multi-disciplinary open access archive for the deposit and dissemination of scientific research documents, whether they are published or not. The documents may come from teaching and research institutions in France or abroad, or from public or private research centers.

L'archive ouverte pluridisciplinaire **HAL**, est destinée au dépôt et à la diffusion de documents scientifiques de niveau recherche, publiés ou non, émanant des établissements d'enseignement et de recherche français ou étrangers, des laboratoires publics ou privés.

ASERS

Journal of Environmental Management and Tourism

Quarterly

Volume IX

Issue 5(29)

Fall 2018

ISSN 2068 – 7729

Journal DOI

<http://dx.doi.org/10.14505/jemt>

ASERS
Publishing

Editor in Chief

Ramona PÎRVU

University of Craiova, Romania

Editorial Advisory Board

Omran Abdelnaser

University Sains Malaysia, Malaysia

Huong Ha

University of Newcastle, Singapore,
Australia

Harjeet Kaur

HELP University College, Malaysia

Janusz Grabara

Czestochowa University of Technology,
Poland

Vicky Katsoni

Technological Educational Institute of
Athens, Greece

Sebastian Kot

Czestochowa University of Technology,
The Institute of Logistics and International
Management, Poland

Nodar Lekishvili

Tbilisi State University, Georgia

Andreea Marin-Pantelescu

Academy of Economic Studies Bucharest,
Romania

Piotr Misztal

The Jan Kochanowski University in
Kielce, Faculty of Management and
Administration, Poland

Agnieszka Mrozik

Faculty of Biology and Environmental
protection, University of Silesia, Katowice,
Poland

Chuen-Chee Pek

Nottingham University Business School,
Malaysia

Roberta De Santis

LUISS University, Italy

Fabio Gaetano Santeramo

University of Foggia, Italy

Dan Seligsteanu

University of Craiova, Romania

Laura Ungureanu

Spiru Haret University, Romania

Table of Contents:

	Cluster Management Technologies as the Tendency for Development of the Agricultural Industry	
1	Gulim Kabikenovna UKIBAYEVA, Ainura Anatolyevna KOCHERBAYEVA, Gulnara Rapikovna TEMIRBAEVA, Gaukhar Amanzholovna DAUKENOVA, Dana Sultankhanovna KURMANOVA	895
	Willingness to Pay for Existence Value of Mangrove Ecosystem in Youtefa Bay, Jayapura, Indonesia	
2	Baigo HAMUNA, Basa T. RUMAHORBO, Henderina J. KEILUHU, ALIANTO	907
	Problems of Allocation of Production Factors in Enterprises Working the Soil: Application of Cobb-Douglas Production Function	
3	Rastislav KOTULIC, Jana PAVELKOVA, Ivana Kravcakova VOZAROVA, Roman VAVREK	916
	Development of Environmental Health Literature Models in Keeping Sustainable Lubricant Ecosystems	
4	Dessyka FEBRIA, Gusman VIRGO, Riski Novera YENITA, INDRAWATI	926
	Detailization of the Facial Conditions for Sedimentation of the Yu₁² Productive Layer with the Purpose of Specificating Features of the Geological Structure	
5	Vadim M. ALEKSANDROV, Alexander V. MOROZOV, Ivan P. POPOV, Rushania G. LEBEDEVA, Irina A. BULGAKOVA	932
	Irrigation Planning in the Era of Local Autonomy: An Analysis of Existing and Alternative Model	
6	Eko SUGIYANTO, Zainul DJUMADIN, Kumba DIGDOWISEISO	947
	Perfecting the Cluster Development in the Regional Dairy Products Subcomplex of the Russian Agro-Industrial Complex	
7	E.F. ZAVOROTIN, M.S. YURKOVA, D.V. SERDOBINTSEV, E.A. LIKHOVTSOVA, L.A. VOLOSHCHUK	957
	Man, and the Arctic Environment: Parameters of Reciprocal Influence	
8	Marina L. BELONOZHKO, Oleg M. BARBAKOV, Lyudmila K. GABISHEVA	965
	Measuring Dairy Farm Efficiency in the Republic of Kazakhstan	
9	Aida BALKIBAYEVA, Zein AIDYNOV, Ayagoz ORAZBAYEVA, Yuliya SHEIKO, Dina AIKUPESHEVA	977
	Formation of Resource Potential of Agrarian Enterprises on the Principles of Ecological and Economic Security	
10	Lyudmyla KHRUMUSHYNA, Iryna KONIEVA, Yuriy SKRYPNYK, Iryna SHALYHINA	989
	Diversity of Mangrove Plant for Support Ecotourism Activities in Nature Conservation Forum (NCF) Putri Menjangan, Pejarakan Buleleng-Bali	
11	I Ketut GINANTRA, Ida Bagus Made SUASKARA, Martin JONI	997
	Aspects of Civil Rights and Their Integration into International Social and Environmental Legislation	
12	Anatoliy V. KOSTRUBA	1005

Editor in Chief

Ramona PÎRVU

University of Craiova, Romania

Editorial Advisory Board

Omran Abdelnaser

University Sains Malaysia, Malaysia

Huong Ha

University of Newcastle, Singapore,
Australia

Harjeet Kaur

HELP University College, Malaysia

Janusz Grabara

Czestochowa University of Technology,
Poland

Vicky Katsoni

Techonological Educational Institute of
Athens, Greece

Sebastian Kot

Czestochowa University of Technology,
The Institute of Logistics and International
Management, Poland

Nodar Lekishvili

Tbilisi State University, Georgia

Andreea Marin-Pantelescu

Academy of Economic Studies Bucharest,
Romania

Piotr Misztal

The Jan Kochanowski University in
Kielce, Faculty of Management and
Administration, Poland

Agnieszka Mrozik

Faculty of Biology and Environmental
protection, University of Silesia, Katowice,
Poland

Chuen-Chee Pek

Nottingham University Business School,
Malaysia

Roberta De Santis

LUISS University, Italy

Fabio Gaetano Santeramo

University of Foggia, Italy

Dan Selişteanu

University of Craiova, Romania

Laura Ungureanu

Spiru Haret University, Romania

13	Geological Perspective for Geotourism Development in Uthai Thani Province, Thailand Vimoltip SINGTUEN, Krit WON-IN	1013
14	Formation of the Mechanism of Corporate Social and Environmental Responsibility of the Trading Company Yuliya CHORTOK, Alona YEVDOKYMOVA, Yuliya SERPENINOVA	1021
15	The Green Economy in Market-Oriented Countries: The Case of Kazakhstan Kuralay Orazgalievna NURGALIYEVA, Ainur Uyizbaevna AMIROVA, Akbayan Serikovna NURTAZINOVA	1029
16	International Regulation of Environmental Auditing in the Countries of the European Union Aizhan E. ZHATKANBAYEVA, Nazgul S. TUYAKBAYEVA, Araylym K. JANGABULOVA, Sailaubek T. ALIBEKOV, Elena V. KASATKINA, Elena A. MASLIHOVA	1040
17	Green Constitution: Strengthening Environment Principle in the Act of 1945 Netty S.R. NAIBORHU	1054
18	The Formation of the Efficient System of Ecological Enterprise Ilona YASNOLOB, Oleg GORB, Nadiia OPARA, Serhii SHEJKO, Svitlana PYSARENKO, Olena MYKHAILOVA, Tetyana MOKIIENKO	1062
19	Spending Behavior of Thai Tourists in Dan Sai District, Loei province, Thailand: Seemingly Unrelated Regression Estimation Analysis Sakkarin NONTHAPOT, Thanet WATTANAKUL, Kitiya WANGKEEREE	1072
20	The Role of Internet in Successful Marketing in Tourism Organizations Fatos UKAJ	1081
21	Analysis of Community Based Tourism Development to Increase SME Performance and Welfare Level (Case Study in West Sumatra) Edy SUPRIYADI, Haryani Hatta IHA, Achmad DJAMIL, Putra DHARMA	1086
22	Environmental Responsibility of Enterprise in Tourism and Hotel Business in Russia Mikhail A. MOROZOV, Natalia S.MOROZOVA	1095
23	Methods of Sustainable Regulation of Agricultural Enterprises at the Present Stage Baglan AIMURZINA, Mazken KAMENOVA, Ainura OMAROVA, Ainakanova BAKYTGUL, Kazkenova AIGUL, Shaikenova NURGUL	1101
24	Innovation Policy Developmet Conceptual Framework for National Resource Security Providing Olha PROKOPENKO, Vitaliy OMELYANENKO, Janusz KLISINSKI	1109
25	Approaches to the Formation of a Theoretical Model for the Analysis of Environmental and Economic Development Denys HOROBCHENKO, Viacheslav VORONENKO	1118
26	Ensuring Food Security in the Context of the Development of Integration Processes Saniya SAGINOVA, Rauza ABELDINA, Valeriy BIRYUKOV, Gulnar SAPAROVA, Alken TEMIRBULATOV, Saltanat YSSUPOVA	1130

Call for Papers Winter Issues 2018 Journal of Environmental Management and Tourism

Journal of Environmental Management and Tourism is an interdisciplinary research journal, aimed to publish articles and original research papers that should contribute to the development of both experimental and theoretical nature in the field of Environmental Management and Tourism Sciences.

Journal will publish original research and seeks to cover a wide range of topics regarding environmental management and engineering, environmental management and health, environmental chemistry, environmental protection technologies (water, air, soil), pollution reduction at source and waste minimization, energy and environment, modeling, simulation and optimization for environmental protection; environmental biotechnology, environmental education and sustainable development, environmental strategies and policies, etc. This topic may include the fields indicated above, but are not limited to these.

Authors are encouraged to submit high quality, original works that discuss the latest developments in environmental management research and application with the certain scope to share experiences and research findings and to stimulate more ideas and useful insights regarding current best-practices and future directions in environmental management.

Journal of Environmental Management and Tourism is indexed in SCOPUS, RePEC, CEEOL, ProQuest, EBSCO and Cabell Directory databases.

All the papers will be first considered by the Editors for general relevance, originality and significance. If accepted for review, papers will then be subject to double blind peer review.

Deadline for submission:	30 th November 2018
Expected publication date:	December 2018
Website:	https://journals.aserspublishing.eu/jemt
E-mail:	jemt@aserspublishing.eu

To prepare your paper for submission, please see full author guidelines in the following file: [JEMT_Full_Paper_Template.docx](#), then send it via email at jemt@aserspublishing.eu.

DOI : [http://dx.doi.org/10.14505/jemt.v9.5\(29\).12](http://dx.doi.org/10.14505/jemt.v9.5(29).12)

Aspects of Civil Rights and Their Integration into International Social and Environmental Legislation

Anatoliy V. KOSTRUBA

Vasyl Stefanyk Precarpathian National University, Ukraine

priminterpar@yahoo.com

Suggested Citation:

Kostruba, A.V. (2018). Aspects of Civil Rights and Their Integration into International Social and Environmental Legislation. *Journal of Environmental Management and Tourism*, (Volume IX, Fall), 5(29): 1005-1012. DOI:10.14505/jemt.v9.5(29).12

Article's History:

Received August 2018; Revised August 2018; Accepted September 2018.

2018. ASERS Publishing©. All rights reserved.

Abstract:

The paper examines the aspects of the formation of a legal situation in which civil rights and obligations can not only emerge but also modify and terminate on various grounds. The relevance of the study is determined by the fact that civil rights and responsibilities usually rely on basic normative acts, which formalize the structure of public relations. The problem calls for further investigation of the doctrinal aspects of the emergence, modification and termination of civil rights and obligations. Within regulation of social relations rights and responsibilities can also emerge in the absence of a relevant framework and get shaped in the course of the development of the legal system of the state. The purpose of the article is to offer classifications and to discuss the sustainable ways of regulation of civil rights and obligations for the state and participants of the legal process. The subject of the study is civil rights and duties within the legal environment for their implementation. Our interest is in the description of the conditions for improving the structure of the legal environment and the sustainable development of civil society in the future. The results of the research describe the directions and the forms of development of long-term legal regulation in the social state system and its integration into international social and environmental legislation.

Keywords: civil rights and duties; the emergence; modification; termination

JEL Classification: K33; K32.

Introduction

Civil rights and duties emerge along with the development of society and statehood: they to ensure that active members of society can exercise their vision for their fulfilment both as individuals and collective. One can claim that civil rights and duties emerge only through the delegation of certain powers to the state, but it is important to remember about parameters for establishing and developing civil rights and responsibilities can vary, and if neglected they can get out of control and turn into destabilizing factors. State regulation applies to all legal rights including, first of all, social and environmental rights.

The article is highly relevant because it offers a comprehensive analysis of the compliance and implementation mechanisms for the environmental obligations and considers preventive measures against violation of the rights and legitimate interests of citizens. According to the expert opinions, the existence of legal restrictions in Constitution and legislation is one of the necessary conditions for ensuring the rights and interests of subjects (der Have 2018). Legal theory and practice devise a variety of ways and methods of keeping law and order by the state institutions of law enforcement or the norms of morality. Quite often, duties are seen as the levers delineating the limits of the rights. Duties and obligations are relative elements of restrictive law exerting a legal impact on the public consciousness, will and behavior of people. From the environmental protection perspective, the goal of prohibitory duties and obligations is to ensure environmental safety requirements and to

maintain the ecological balance. That's why the environmental rights and responsibilities have educational value and contribute to the development of the environmental sense of justice in society and individual (Kataeva 2015).

In modern conditions, legal theory is increasingly interested in the effective legal mechanisms for the implementation of environmental rights, because it can be difficult to determine responsibility in the field (Hallberg 2017). Democratic societies recognize human rights and freedoms as the highest value, and the right to the environmental security is considered one of the central. For this reason, the state is involved in developing and sustaining an appropriate system of environmental rights and responsibilities. The state must implement and enforce legal framework under which citizens have the opportunity to fully exercise their rights and freedoms as well as fulfil their duties. As a rule, the goal of state environmental policy is to guarantee a safe environment and to provide environmental information. However, there are some theoretical and practical problems related to the understanding of the environmental rights and duties because there is a lack of theoretical investigation into the subject. The environmental law should be examined as an important part of the civil law that leads to the development of civil rights and duties. The selected point of investigation makes the conducted research exciting and relevant.

1. Literature Review

Legal experts insist that the smooth functioning of societies can be ensured with the establishment of specific legal norms, rules and frameworks (Damane 2017). In other words, social relations should be regulated in legal ways that require a legal mechanism for securing the rights and duties of legal subjects. The issue determines the theoretical significance and practical importance of the research into the legal aspects of civil relations (Scharaw 2018). There is some legal literature written on national cases, but most of the issues remain unexplored. It is time to address the problem and clarify the aspects of the origin, termination and transformation of public relations (Damane 2017). The above mentioned determined the purpose of the article which is to establish and describe the aspects of the emergence, termination, and modification of civil legal relations. We emphasize the doctrinal aspects because they influence the governmental and administrative decision-making when social and environmental interests are involved (Buley *et al.* 2016).

There are many studies devoted to the violation of the law and legal consequences as well as civil rights protection. For the most part, the reviews identify three grounds for the protection of public rights: violations, non-recognition and contestation (Skogly 2017). Some experts focus more on non-recognition and contestation of civil rights (Akinwunmi -Othman 2017) and write that the non-recognition of civil law is a passive violation of the public right while the contestation reflects such a condition of paralysis of the legal system unable to respond to the legitimate problem (Paul 2016). Generally speaking, the author of the article agrees with the experts provided there is an understanding that it is difficult to find clear-cut legal cases dealing with modification and termination of constitutional rights exclusively. Theoretically, all laws should be designed to protect civil rights in response to their violation, non-recognition and contestation, but in practice, the legal methods can be misused and abused: for example, a violation of the principle of freedom of contract in civil legal relations (Stasi 2016). Additionally, the contractual relationships between the parties can be legally amended and terminated to protect one of them in the situation of non-recognition or contestation of their civil rights (Grünberg 2017). For example, the parties of the sale contract may insist on the right of the seller to change and terminate the legal relationship in the event when the buyer refuses to pay for the goods under the contract or in the event when the buyer requests the court to recognize a sales contract invalid (Battjes 2016). Apart from several examples, the civil legal framework that deals with violations are more developed compared to the non-recognition and contestation of civil rights (Stoll 2018).

Legal praxis reserves the possibility to protect property rights by changing and terminating the legal relationships (der Have 2018). In many countries, such types of changes and termination of the legal relationship are recognized and practiced including the termination of the contract and the unilateral cancellation of the contract as legitimate means of defending property rights (Walter 2017). Mandatory protective legal means intend to defend the interests of the owner as a party to contractual relations and, in its essence, the applied provision is opposed to legal ways of protecting the absolute rights of persons and organizations that are not in contractual or other legal obligations (Stoll 2018). Contractual legitimate interest resides with the protected party (Stasi 2016). The application of mandatory legal means of protection also takes place when the debtor fails to fulfill the obligation stipulated in the contract or law (Zeegers 2016). Legal compulsory means of protection are specific (der Have 2018): for example, the cancellation of the property lease due to the failure of the lessee to pay the rent is a measure of protection of the property rights of the lessor (Montilla 2017). Consequently, the change and termination of legal relations as a legal compulsory mean for the protection of civil rights can be seen

as a reaction to a breach (failure or improper performance) of the contractual duties. The violation of the contract usually calls for the protection of the property rights (Murray 2016).

2. Methodology

The method of legal investigation was used in the article together with the analytical method to differentiate the general and particular legal aspects of civil rights and obligations. We also applied the method of strategic modelling to determine the directions for the development of the legal field. All methods were helpful with an investigation of the environmental rights and classification of social relations.

3. Results and Discussion

The discussion of the results should start with a brief description of the grounds for the emergence (termination, modification) of civil legal relations in general and legal circumstances in particular because they characterize the condition of social relations and legal regulation that directly or indirectly affect the rights and interests of the individuals, state and other social and public participants. While examining the concept of the legal facts, it is necessary to pay attention to a fundamental difference in the approaches to determining the values in the fields of private and public law.

In the field of public law, legal facts must be precisely defined according to the norms of legislation while the civil law does not require individual regulatory application unlike in administrative law. Apparently, the legal facts constitute a complex variety of circumstances with different degree of legal significance, and that's why there is a need for classification. The value and weight of legal facts are determined depending on the nature of the circumstances. Legal events involve the emergence of legal relations; modifying legal effects can change the existing legal ties, terminating legal facts cause the termination of existing relationships. It is necessary to distinguish among three categories of legal facts: legal facts that prevent the emergence or transformation of law; legal facts that suspend the right; and legal facts that restore the right.

Also, legal facts can be subdivided into:

- 1) private law and public law (based on the field);
- 2) positive and negative (based on the legal presence or absence);
- 3) established and unformed (based on documentation);
- 4) primary and secondary (based on the status);
- 5) material and procedural (based on the evidence).

The offered classification of legal facts is not exhaustive and allows for further elaboration. In our opinion, the broad groupings of legal facts should pay attention to the presence and nature of the intent, meaning the purpose of the subject for the origin, termination or change of legal relations should be considered since it is the most common case in domestic and international law.

According to the criteria mentioned above, we can establish two separate groups of legal facts in general and particular law: actions and events. The classification resembles the one applied to international law. Activities are usually divided into:

- 1) Legitimate actions that do not conflict with the rule of law, actions that are permitted or not directly prohibited by the rule of law;
- 2) Illegal actions (offences, crimes) that conflict with the provisions of law.

At this point, it should be mentioned that legitimate cause of action is also classified according to various criteria. Without discussing all real possibilities, let us focus on the topic of the study: aspects of social relations.

A specific type of legal acts that generate rights and obligations are administrative acts (governing acts), issued by the authorities or local government and subjects of public law. The state assigns governmental power to the state regulating and governing institutions. They generate governmental, legal relations between the body that issued the act and the parties to whom this act is addressed. Civil ties based on administrative acts often involve the general public.

The administrative acts can be described as follows:

- 1) a legal act of administration is a form of governing;
- 2) a legitimate act of administration is a decision that establishes the obligation to perform specific actions by a government body, official and unofficial parties, or public;
- 3) a legal act of administration results in legal documents issued by the authorized agencies;
- 4) a legal act of administration has prescriptive nature, and its legal content in most cases represents legal prescriptions enforced by law.

Some authors combine the approaches mentioned above and define a governing administrative act as a legal document (an external expression of the action) of a state power adopted by an authorized government agency or its official with the purpose of carrying out administrative functions and tasks.

Based on the preceding, the administrative acts result in legal actions enforced by the authorized bodies with the purpose of establishing, changing, terminating rights and obligations in regulatory and legal relations, by applying the norms of law or by adopting separate administrative acts. Depending on legal provisions (or legal content), legal administrative acts can be divided into normative and separate. Since we are interested in the category of "a legal act of governance" regarding defining its value and the grounds for the emergence of the civil rights and duties, it is necessary to describe types of possible public relations that can arise. Taking into account the "regulatory - protective" dichotomy of public relations, let us note that the legal action cannot serve as a foundation for enforcement of civil rights because the latter is always a consequence of the offence, while the legal administrative acts are public acts carrying some power.

However, the statement that a legal administrative act of governance can establish regulatory, civil relations is not enough because it does not clarify the aspect of legal civil ties and does not explain the difference from other civil situations. In expert opinion, the main difference is that legal administrative acts regulate specific kinds of local public relations and serve as an intermediary between the civil and administrative parties. The "binary" nature of administrative and social relationships contributes to the definitional confusion within different fields. Some scholars claim that social relationships are merely a prerequisite for the emergence of property relations but should not be considered as a part of property relations while their opponents insist that social relationships at a certain stage of their development may turn into property relations. Thus, they argue that such relations are based exclusively on "power and subordination" of parties to the norms of the administrative, financial and other branches of law but not to the standards of civil law.

Such heated debates took place long ago, but they are relevant regarding the institutional relations, which are governed by administrative regulations but not by the civil law, which is the case in the modern domestic economic legislation. It explains why the public rule does not apply to property relations based on administrative subordination of one party to the other party unless otherwise provided by law. It is the norm according to which the regulation of property relations in the economic sphere is managed. To a large extent, the described problem calls for the investigation of the scope of actions and correlations between general and special laws. Taking the circumstances into account, the affiliation of organizational relations must be established before further discussion of its relevance for administrative, civil, and economic legislation.

If the term "organization" needs to be defined, then we refer to the following legal encyclopedia's definitions:

- 1) A property of any material object, which is manifested in the structure.
- 2) The social function of society that creates civil, economic and other systems and ensures their dynamic balance and development;
- 3) The social function of public administration. In this sense "organization" means a component of administrative activity to exercise specific social functions (facilities management), governmental bodies (apparatus), control (enforcement), as well as the overall management of the system;
- 4) A social fabric, the totality of people, their groups, formally or informally united for everyday activity to implement certain programs or goals, the solution to tasks on the basis of common interests and legislative or otherwise established rules and procedures (civil organization, trade union organization, religious organization, charitable organization, commercial organization, etc.);
- 5) An institution performing assigned functions, solving a specific range of tasks within the framework of the relevant structure (bank, school, etc.)
- 6) Permanent or temporary associations, unions of states (countries) formed to realize shared goals, tasks, interests.

Taking into account the above definitions of the "organization", one can argue that "organizational activity" deals with the ordering of a particular system and regulating its activities. Such function can be described as managerial in the broad sense: organizational relations are management relations based on subordination and controlled by the public legal norms. In the full sense management, relations do not exclude but rather presuppose public relations. Such organizational ties include various civil relations associated with the business (e.g. supply contract for capital construction), with corporate ties and delegation of authority (e.g. the representation contract), the sale and other property rights (e.g. inheritance) and others.

The relations mentioned above have the following characteristics:

- 1) they are organizational because they combine regulatory and organizing functions

2) they are civil because they manage the property and other rights and duties of participants in public relations. Therefore, they are subject to the norms of civil law;

3) they are not self-sufficient, they "serve" civil ties acting as means. Thus, organizational public relations can have different meaning and focus depending on the stage of the development of property or individual relationships in society;

4) The organizational civil ties and public relations proper are not the same. In some cases, organizational relations are prerequisite for the origin, change or termination of a civil relationship between entities, while in other cases, organizational relations are part of existing civil legal relations;

5) They are inherently regulative and, in some cases, (e.g. in the process of organizing economic activities) overlap with the administrative relations;

6) There are specific reasons for the emergence of civil organizational ties. In most cases, they arise by the conclusion of the contract or in the process of its execution. Also, they can occur as a result of a legal act (management act, administrative act, etc.) that deals with emergence, modification or termination of such relations. Moreover, participants can proactively form such civil ties (e.g. testator, who leaves a will as the basis for the emergence of specific hereditary legal relations in the future).

Given the preceding, organizational civil relations can be defined as specific civil legal relations that ensure a certain course of civil action by the regulatory efforts of the subjects of civil affairs. The option of delegating the rights and duties is a prerequisite for the emergence of civil rights and obligations. However, the investigation of organizational civil relations cannot be complete without further classification and description of its types. Even though it is possible to employ many criteria to the classification, we suggest using the grounds for the origin and dividing organizational civil relations into:

1) arising from public acts (e.g. an administrative action, provisions of a legislative act, court act, government property-transfer order, the guardian appointment decision, parental representation decision, the court's decision to recognize the person as missing or deceased, etc)

2) arising from acts of subjects of private law. It can be a one-sided decision by proactive participants in civil relations (e.g. a power of attorney, etc).

3) arising from civil law contract (e.g. a particular agreement, a preliminary contract), any civil law contract which gives the parties the right to control (e.g. the customer has the right to check the progress and quality of work of the contractor), or provide information (e.g. the contractor is obliged to warn the customer about circumstances that may interfere with the work).

Depending on voluntary or imperative aspects, it is possible to classify organizational civil relations into:

1) Mandatory organizational civil relations, characterized by the presence of elements of state regulation or management. As a rule, one of the participants in such a relationship has controlling power (e.g. state body, management body). Mandatory organizational civil relations are prerequisites for the emergence, change, and termination of other public legal relations. They also can be used to implement and supervise the civil rights and duties (e.g. state registration of business entities, the appointment of a guardian, trustee, record of marriage, etc.). The intent of participants of civil legal relations is essential in the framework defined by legislative acts. At first glance, state registration of business entities is governed by the norms of regulatory legislation, but they are also subject to civil legislation because the state registration is a part of the procedure to create legal entities of private law and a prerequisite for the emergence of their legal entity. Therefore, it is incorrect to attribute these relations solely to the scope of administrative law;

2) Voluntary organizational civil relationships, characterized by the initiative of the participants in civil legal ties to ensure implementation of civil rights and obligations. Such relations redistribute the rights and responsibilities of participants in civil legal ties and organize conditions for the practical application (e.g. delegating rights and obligations).

Depending on the scope of application, organizational civil relations can be divided into:

1) those that arise in civil relation (conclusion, modification and execution of the contract, inheritance, the compensation for damages, etc);

2) those that arise in economic relations (the creation and registration of business entities, corporate legal relations in business entities, etc.)

3) those that arise in family relations (the registration of acts of civil status, the establishment of guardianship or guardianship, adoption, etc);

4) those that arise in other areas of legislation (land, housing, environmental, etc). By default, they act like the rules of civil law (land property rights; mortgage, renting, civil liability for technical violations).

Depending on the stage of development of civil relations, the following organizational civil relations can be distinguished:

1) those that arise before the establishment of specific civil rights and obligations (before contracts, representation authority, marriage registration, drafting a will, etc);

2) those that arise in the presence of specific civil rights and obligations (exercising the authority of the representative, rights of parties of a civil contract, the inheritance, custody and guardianship).

Depending on the content and focus of organizational efforts, it is possible to differentiate the following types of public regulatory, legal relations:

1) preliminary (generative) relations, characterized by an announcement about and development of property relations (e.g. navigation agreement, transportation contracts, individual agreements of air transportation companies)

2) delegating relations, characterized the delegating power to certain parties to implement certain types of actions on behalf of others (for example, the election of the governing body of a non-governmental organization, issuing and revoking the power of attorney, etc)

3) controlling relations, characterized by allowing one subject to control the other (e.g. the right of the customer to monitor the quality of work performed by the contractor, etc)

4) informational relations, characterized by an obligation to provide information (for example, the duty of the landlord to notify the renter about the eviction, the responsibility of the attorney to inform the principal).

At the same time, it is worth noting that in legal practice legal relations are not clear-cut and often share several of the above-mentioned characteristics.

It is important to promote the education about the civil rights in society and to encourage public participation in civil relations. Legal practice connected with legislation should design and implement the recommendations for improvement.

In legal praxis, the violation of the law is not a reason to change and terminate the legal relationship, but it calls for appropriate methods of protection and legal consequences. Similar to the contractual obligation, the violated right is not exercised if it is taken from whom it belongs. It can happen because of obstacles created by the violator (e.g. the obligation of the buyer to pay for the goods is violated). Such violation may serve as the basis for the seller to terminate the contract unilaterally. The seller has a right to refuse the contract of sale in the event of the buyer's refusal to accept and pay for the goods. Another example of a violation is the interference with an owner's right to use the apartment by the seller. However, could both cases be considered grounds for changing or terminating legal relations?

In our opinion, in the latter case, the violation of rights may be recognized as grounds for changing or terminating legal relations by the general principle of freedom of contract. In other words, the violation of civil rights may be a ground for changing or terminating the legal relationship that arose on the basis of the contract. In such case, a severe violation can be grounds for change and termination of the legal relationship. For example, the bank can exercise the right to unilaterally terminate the loan contract in case of borrower's misuse of funds. The contract of a real estate sale (apartment, house) can contain the obligation of the seller to vacate and deregister from the property within a certain period, usually from two weeks to one month, from the date of signing the contract. Failure of the seller to comply with the contractual obligation leads to a violation of the buyer's property and housing rights resulting in losses (maintenance expenses, rent expenses) and other restrictions. Under the circumstances, it is reasonable to include in the sales contract the right to terminate the contractual relationship of purchase and sale in the event of the seller failure to deregister from the registration records and stipulate the refund of money and compensation for the damages and losses paid to the buyer. Consequently, the basis for changing and terminating a civil legal relationship can be a violation of both the obligatory (relative) and the real (absolute) rights.

Violation of the civil law is an unlawful act that is defined by the intent of a party or parties of a legal relationship to terminate the relations or violate the terms. Unlike the doctrine, where the violation of the law is considered an unlawful act by a person who intends to abuse or terminate an individual civil right of another person or restricting the freedom of its implementation in full or in part, the civil law does not provide an exact definition of a public law violation. The concept "breach of obligation" helps to understand the term "violation of civil law," reducing it to only two types of breach of obligation: a failure to perform and a violation of the terms (improper performance). Sometimes in the court, the specific term "violation" is carelessly substituted for euphemisms "non-fulfilment" or "improper performance", which have different legal semantics creating loopholes for the breach of the obligation resulting in termination of the legal relationship. Similar moves take place in the event of a financial material breach of the contract if one of the party is substantially deprived of economic gains

expected as a result of the fulfillment of the deal. It should be noted that such benefits can be miscalculated because the full and proper performance of obligations under the contract depends on the real life circumstances.

This ambiguous definition of a violation (breach) of the contract is often criticized because it generates confusion and misunderstanding. Moreover, the exact meaning should be in line with the norms of civil legislation so the proposed version of the definition of the notion of the material breach of the contract cannot be universal in all types of contractual obligations. The limited application of the definition is explained its evaluative character, which is not defined by law and must be established considering the circumstances of a particular case. Even though the notion of a material breach existed before the Vienna Convention (1980) and there is a significant number of judicial and arbitration precedents, clarification of the concept of a material breach of contract leaves much to be desired.

Conclusions

The need for more exact and practical interpretation of a breach of contract is evident from the cases when some violations are considered essential: for example, by giving the right to the grantor to demand the termination of the agreement if the gifted party has not fulfilled a certain obligation. Another example involves a material breach of the contractual requirements for the quality of the goods (the defects which affect disproportionate expenses, persistent irreparable defects) grants the buyer the right to refuse the contract and demand refund for the paid products. A failure to pay rent for three months is considered a material breach of a lease and gives the right to the landlord to terminate a lease. Significant defects in performed work by the contractor provides the customer with the right to refuse the contract and claim damages. Sometimes the material breach of the contract involves the possibility of changing and terminating the legal relationship, not after the violation happened but even if it is expected. For example, the right of the customer to refuse the contract agreement and claim damages can be realized if the contractor does not start the work promptly or does not perform it according to the schedule.

The case mentioned above when the customer has a right to cancel the contract is justified by the threat of civil rights violation in the future, which we suggest considering as a separate basis for the protection of civil rights. The reasoning mentioned above can also apply to many provisions of civil law as a basis for changing or terminating the legal relationship: for example, if there are apparent grounds for believing that the party will not fulfil or complete its obligations within the fixed period, the other party has the right to refuse the contract. The above aspects for the origin, modification or termination of the relationship involve a potential for human rights violations and can be considered as a justification for updating and optimizing the civil law provisions based on violation, non-recognition and contestation of civil rights. After the examination of the legal aspects, we can arrive at the conclusion that although civil organizational relations can arise on the basis of different legal facts of civil law (public acts, unilateral transactions, contracts), the most common grounds for their emergence are regulatory acts involving application and implementation of the civil rights and duties.

References

- [1] Akinwunmi-Othman, M.N. 2017. Human Rights Law, Civil Society Organizations and Transnational Law. In: *Globalization and Africa's Transition to Constitutional Rule: Socio-Political Developments in Nigeria*. Cham: Springer International Publishing. DOI:10.1007/978-3-319-56035-9_6
- [2] Battjes, H. 2017. Territoriality and Asylum Law: The Use of Territorial Jurisdiction to Circumvent Legal Obligations and Human Rights Law Responses. In: Kuijer M., Werner W., (eds), *Netherlands Yearbook of International Law 2016: The Changing Nature of Territoriality in International Law*. The Hague: T.M.C. Asser Press. DOI:10.1007/978-94-6265-207-1_11
- [3] Buley, N.V., et al. 2016. Public Administration and Municipal Governance and Its Significance for a Modern Democratic Society. *International Journal of Economics and Financial Issues*, 6(S8): 220-224.
- [4] Conte, A. 2016. States' Prevention and Responses to the Phenomenon of Foreign Fighters against the Backdrop of International Human Rights Obligations. In: de Guttry A., Capone F., Paulussen C. (eds.), *Foreign Fighters under International Law and Beyond*. The Hague: T.M.C. Asser Press. DOI:10.1007/978-94-6265-099-2_15
- [5] Damane, L. et al. 2017. *Private Law. The Law of the Baltic States*. Cham: Springer International Publishing. DOI:10.1007/978-3-319-54478-6_6

- [6] der Have, N. 2018. Extraterritorial Obligations to Prevent Beyond Jurisdiction. In: *The Prevention of Gross Human Rights Violations under International Human Rights Law*. The Hague: T.M.C. Asser Press. DOI:10.1007/978-94-6265-231-6_4
- [7] Grünberg, E. et al. 2017. Private Law. In: Kerikmäe T., Joamets K., Pleps J., Rodicna A., Berkmanas T., Gruodyte E., (eds). *The Law of the Baltic States*. Cham: Springer International Publishing. DOI:10.1007/978-3-319-54478-6_3
- [8] Hallberg, P. and Virkkunen, J. 2017. Human Rights Obligations: From Ideas to Reality? In: *Freedom of Speech and Information in Global Perspective*. New York: Palgrave Macmillan US. DOI:10.1057/978-1-349-94990-8_6
- [9] Kataeva, V.I. 2015. Interaction of the state, municipal government and the NCO with the aim of strengthening the social cohesion of society in modern Russia. *Materials of the Afanasiev Readings*, 1(13): 194-198.
- [10] Montilla Fernández, L.T. 2017. International Law Conundrum. In: *Large-Scale Land Investments in Least Developed Countries: Legal Conflicts between Investment and Human Rights Protection*. Cham: Springer International Publishing. DOI:10.1007/978-3-319-65280-1_3
- [11] Murray, D. 2018. Engaging Armed Groups Through the Development of Human Rights Obligations: Incorporating Practice, Motivation and Ideology to Promote Compliance with International Law. In: Gill TD, McCormack T, Geiß R, Krieger H, Paulussen C, eds. *Yearbook of International Humanitarian Law Volume 19, 2016*. The Hague: T.M.C. Asser Press. DOI:10.1007/978-94-6265-213-2_5
- [12] Paul, A. 2016. Human Right to Water Obligations, Corporate Entities, and Accountability Mechanisms. In: Singh N, ed. *The Human Right to Water: From Concept to Reality*. Cham: Springer International Publishing. DOI:10.1007/978-3-319-40286-4_10
- [13] Scharaw, B. 2018. Investor-State Contracts. In: *The Protection of Foreign Investments in Mongolia: Treaties, Domestic Law, and Contracts on Investments in International Comparison and Arbitral Practice*. Cham: Springer International Publishing. DOI:10.1007/978-3-319-66089-9_4
- [14] Skogly, S. 2017. Extraterritorial Obligations and the Obligation to Protect. In: Kuijer M, Werner W, eds. *Netherlands Yearbook of International Law 2016: The Changing Nature of Territoriality in International Law*. The Hague: T.M.C. Asser Press. DOI:10.1007/978-94-6265-207-1_9
- [15] Stasi, A. 2016. Specific Contracts. In: *General Principles of Thai Private Law*. Singapore: Springer Singapore. DOI:10.1007/978-981-10-2191-6_3
- [16] Stasi, A. 2016. The Law of Obligations. In: *General Principles of Thai Private Law*. Singapore: Springer Singapore. DOI:10.1007/978-981-10-2191-6_2
- [17] Stoll, P-T., Gött, H. and Abel, P. 2018. A Model Labour Chapter for Future EU Trade Agreements. In: Gött H, ed. *Labour Standards in International Economic Law*. Cham: Springer International Publishing. DOI:10.1007/978-3-319-69447-4_18
- [18] Ushakov, D., and Kharchenko, L. 2018. Environmental factors of national competitiveness in modern MNCs' development. *International Journal of Ecological Economics and Statistics*, 38(2): 141-149.
- [19] Vogiatzis, N. 2016. Frontex: Human Rights Obligations and the Role of the European Ombudsman. In: Karatzogianni A, Nguyen D, Serafinelli E, eds. *The Digital Transformation of the Public Sphere: Conflict, Migration, Crisis and Culture in Digital Networks*. London: Palgrave Macmillan UK. DOI:10.1057/978-1-137-50456-2_15
- [20] Walter, C. 2017. Victims' Rights and Obligations as Regards the Case File: Access, Disclosure and Filing Submissions. In: Tibori-Szabó K, Hirst M, eds. *Victim Participation in International Criminal Justice: Practitioners' Guide*. The Hague: T.M.C. Asser Press. DOI:10.1007/978-94-6265-177-7_7
- [21] Zeegers, K., 2016. Human Rights Obligations of the ICTs under International Law. In: *International Criminal Tribunals and Human Rights Law: Adherence and Contextualization*. The Hague: T.M.C. Asser Press. DOI:10.1007/978-94-6265-102-9_2
- [22] Zhang, X. 2018. The Relation between Right to Request Tort Liability and Right to Request Property Rights. In: *Legislation of Tort Liability Law in China*. Singapore: Springer Singapore. DOI:10.1007/978-981-10-6961-1_14

ASERS

ASERS
Publishing

Web: www.aserspublishing.eu

URL: <http://www.journals.aserspublishing.eu/jemt>

E-mail: jemt@aserspublishing.eu

ISSN 2068 – 7729

Journal DOI: <http://dx.doi.org/10.14505/jemt>

Journal's Issue DOI: [http://dx.doi.org/10.14505/jemt.v9.5\(29\).00](http://dx.doi.org/10.14505/jemt.v9.5(29).00)