REVISTA INCLUSIONES

UNIVERSIDAD E INVESTIGACIÓN: AL SERVICIO DEL ORBE

Revista de Humanidades y Ciencias Sociales

Volumen 7 . Número Especial
Octubre / Diciembre
2020
ISSN 0719-4706

REVISTA
INCLUSIONES M.R.
REVISTA DE HUMANIDADES
Y CIENCIAS SOCIALES

CUADERNOS DE SOFÍA
EDITORIAL

REVISTA INCLUSIONES M.R.
REVISTA DE HUMANIDADES Y CIENCIAS SOCIALES

CUADERNOS DE SOFÍA EDITORIAL

REVISTA INCLUSIONES M.R.
REVISTA DE HUMANIDADES Y CIENCIAS SOCIALES

CUADERNOS DE SOFÍA EDITORIAL

REVISTA
INCLUSIONES M.R.
REVISTA DE HUMANIDADES
Y CIENCIAS SOCIALES

CUADERNOS DE SOFÍA
EDITORIAL

Editorial Cuadernos de Sofía
Santiago – Chile
OBU – C HILE

Indización, Repositorios y Bases de Datos Académicas

Revista Inclusiones, se encuentra indizada en:

CATÁLOGO

BIBLIOTECA UNIVERSIDAD DE CONCEPCIÓN

REVISTA INCLUSIONES M.R.
REVISTA DE HUMANIDADES Y CIENCIAS SOCIALES

CUADERNOS DE SOFÍA EDITORIAL

ISSN 0719-4706 - Volumen 7 / Número Especial / Octubre – Diciembre 2020 pp. 86-105

NOTION OF MEANS OF SECURING THE OBLIGATIONS IN MODERN CIVIL LAW OF THE RUSSIAN FEDERATION

Ph. D. Egor S. Trezubov
The Kemerovo State University, Kemerovo, Russian Federation
Peoples Friendship University of Russia, Russian Federation
ORCID 0000-0003-2607-0405
egortrezubov@mail.ru

Fecha de Recepción: 16 de junio de 2020 – **Fecha Revisión**: 26 de junio de 2020

Fecha de Aceptación: 29 de septiembre 2020 – **Fecha de Publicación**: 01 de octubre de 2020

Abstract

At the modern stage of development of the Russian civil law, the practice of the obligation relations uses the means of securing the obligations, which are directly enshrined in the law, as well as non-named means, which are aimed at “strengthening” the legal relationship, the additional protection of the rights and interests of a creditor. Many means of securing the obligations, which are named in the Civil Code of the Russian Federation and other laws, are not forming a proper institutional system, they differ in an effect of influencing the debtor and other persons as well as in the functional purpose. Because of poor condition of a contractual discipline in the country the creditors have to implement in the legal practice the different function-oriented means of protecting their rights, and even additional measures of operative influence, which are often called non-named means of securing the obligations in the literature. Within this research, by means of dialectical and system-structured methods of the research, and a functional-analytic method, in order to reveal the general characteristics a comprehensive analysis of the means of securing the obligations is conducted in order to reveal the general characteristics of such a legal institution. A conclusion is drawn that the means of securing the obligation can be only an accessory obligation, which is functionally aimed at strengthening the creditor’s position by means of providing it additional property, procedural guarantees or a performance substitute in the event of the debtor’s default in the basic obligation.

Keywords

Means of securing the obligatio – Suretyship – Pledge – Independent guarantee – Security payment

Para Citar este Artículo:

Trezubov, Egor S. Notion of means of securing the obligations in modern civil law of the Russian Federation. Revista Inclusiones Vol: 7 num Especial (2020): 86-105.

Introduction

The Russian obligation law contains the named and non-named means of securing, which is permitted by a provisional rule of Article 329 of the Civil Code of the Russian Federation, which provides for an open enumeration of frameworks including the a penalty, pledge, distraint of the debtor's property, surety, an independent guarantee, an advance, security payment. Other security mechanisms can be agreed upon by the parties by virtue of a freedom-of-agreement principle, and they can be provided for at a regulatory level. So, the economic turnover widely uses a practice of personal and property insurance as a security of the creditor's interests, which is supported by the RF Supreme Court.[1] E.R. Usmanova sorts out the title means of securing the obligations as independent means, when noting that any legal relationship, within which the title to property, which serves as a property to be secured, belongs to the creditor in the period till the debtor performs its obligation, is the means of securing[2]. R.S. Bevzenko said that other legitimate forms of the title securing are a security assignment, which is provided for by the standards of Chapter 43 of the Civil Code of the Russian Federation, and the redemption leasing (which supposes that the seller and the leaseholder is the same person). However, in the domestic law enforcement practice and the civil doctrine[3] there is no unanimity of opinions about essence and permissibility of separate forms of the title securing, in particular, an issue about permissibility of the security purchase-sale, which supposes the creation of the creditor's title to a certain property of the debtor as a security of an obligation of the latter is solved ambiguously even in the practice of the RF Supreme Court.[4]

---

[1] Judicial review on the civil cases, which are related to settlement of disputes about performance of credit obligations (approved by the RF Supreme Court Presidium on 22.05.2013) (Paragraph 4), Bulletin of the RF Supreme Court. 2013. num 9;
The resolution of the RF Supreme Court Plenum dated 27.06.2013 No. 20 "On application by the courts of the laws on voluntary insurance of the citizens' property", Paragraph 37, The Bulletin of the RF Supreme Court, num 8 (2013)
However, the researchers do not always agree that the insurance should be recognized as a security obligation. So, K.A. Novikov rules out this possibility in principle (K.A. Novikov "Accessority of security obligations and the security-obligation rights", Herald of Economic Justice of the Russian Federation, num 1 (2015): 107 – 120), and A.G. Arkhipova said that there was a security function of insurance only in the interests of a beneficiary, and not the insured. So, this author believes that a security obligation is insurance of the responsibility, a leasing of rent item, but the insurance of a business risk or a pledged item, and the personal insurance does not have security features, since it is designed to protect, first and foremost, the insured itself, to grant compensation in the event of incurrence of its responsibility. However, considering that the accessority features are not displayed in full in relation to the main obligation the scientist characterizes the insurance as the means of securing the obligation within the meaning of Article 329 of the Civil Code of the Russian Federation only in case when there are direct prerequisites, which are agreed upon by the relations parties (G. Arkhipova "Is the insurance the means of securing the obligations?". Herald of Economic Justice of the Russian Federation, num 8 (2018): 65-87).

[2] E. R. Usmanova, Title security of civil obligations. The author's abstract of dissertation of Candidate of Juridical Sciences (Moscow, 2017)

[3] R. S. Bevzenko, Title security and doctrine of accessority. On securing the obligations: collected articles to the 50-th anniversary of S.V. Sarbash (Moscow, 2017)

[4] R. S. Bevzenko, "Security purchase-sale and pledge. Commentary to Decision of Court Collegium of Civil Cases of the RF Supreme Court date 09.01.2018 No. 32-KG17-33", Bulletin of Economic Justice of the Russian Federation, num 8 (2018): 4 – 16.
The cited author draws a conclusion that it is possible to apply the security title or other forms of the title securing as means of securing.

The means of securing the obligations, which are a private-legal institution, are aimed at optimizing the activities of the subjects of a civil legal relationship, including in the sphere of the business. It is evident that the balance of interests of the parties to the civil legal relationship can be achieved not only be legal mechanisms, such as implementation of a risk-oriented approach[5] in the enterprise's activities or creation of conditions of the information security[6], but also by means of creating the legal frameworks, one of which is the securing of the obligations. The authors are convinced that an economic and property factor, which makes it possible to minimize the creditor's losses in the event of the debtor's default must form the basis for the institution in question.

The existence of the security frameworks itself is a consequence of the obligations' basic property - autonomy of the participants' will. Any fluid relative legal relationship in comparison with absolute legal relationship becomes apparent even in the names of the parties to the obligation: the creditor (from Latin "credo" – belief, confidence) can only hope on honesty and solvency of an obliged debtor. The historical development of the obligation relations is related to the economic meaning of the security frameworks of various kinds, as an effect of "stimulating" the debtor to meet the creditor's demands was achieved at an early stage by means of a debt bondage, mutilation and other inhumane ways of moral and physical influence upon the debtor personally or indirectly through its close persons, at later stages of development of social relations the property guarantees appeared, which allowed the creditor to receive a cost equivalent of what is not received from the debtor.[7] Some "means of securing", which are traditional for the Soviet reality, but which had obviously nothing to do with the laws, are used in the everyday life even now – when entering into sports equipment lease agreement, the "pledging" by the leaseholder of its document certifying its identity is widespread, though the lessor cannot levy execution upon this document, and it is not entitled to retain those documents.

K.N Annenkov proposed meaning by the security "the means or ways, which are aimed at strengthening the obligation, in other words, at making them more reliable in relations", at receiving a certificate under them by the oblige[8]. According to a fair statement made by D.I. Meyer, such "artificial methods" are necessary in the turnover "for imparting to the law of obligation the firmness, which it lacks essentially in comparison with the property law".[9] Any legitimate mechanisms, "which make the debtor to perform the agreement accurately", can be such incentives.[10]

---

[5] M. N. Dudin; E. E. Frolova; N. A. Lubents; V. D. Sekerin; S. V. Bank & A. E. Gorohova, "Methodology of analysis and assessment of risks of the operation and development of industrial enterprises", Quality - Access to Success, num 17 (153) (2016): 53-59.

[6] E. E Frolova; T. A. Polyakova; M. N. Dudin; E. P. Rusakova & P. A. Kucherenko, "Information Security of Russia in the Digital Economy: The Economic and Legal Aspects", Journal of Advanced Research in Law and Economics, vol: 9 num 1 (2018): 89-95.

[7] V. A. Belov, "Theoretical problems of teaching about the means if securing the performance of obligations", Russia's law: experience, analysis, practice, num 12 (2006): 24-32.

[8] K. N., Annenkov, System of Russian civil law. Volume 3: Rights of obligation (St. Petersburg, 1898).

[9] D. I. Meier, Russian civil law (in 2 parts). According to revised and enlarged 8th edition, 1902. The third revised edition (Moscow: Statute, 2003). Access from the Internet-resource "Classics of the Russian law" Computer information desk of the legal system "Consultant Plus". http://civil.consultant.ru/elib/books/45/page_59.html#74 (the address date is 13.01.2019).

[10] D. I. Meier, Russian civil law (in 2 parts). According to revised and enlarged 8th edition, 1902. The third revised edition (Moscow: Statute, 2003). Access from the Internet-resource "Classics of the Russian law" Computer information desk of the legal system "Consultant Plus". http://civil.consultant.ru/elib/books/45/page_59.html#74 (the address date is 13.01.2019).

In the late Soviet period of development of the domestic civil law the efforts were made to differentiate the measures securing the proper performance of the obligation, which actually urged the debtor by means of a risk of incurrence of additional measures of responsibility, and the measures giving rise to the protective obligations, which are related directly to violation by the debtor of its basic obligation.[11] It goes without saying that now those concepts are very far from the reality. At present the Russian civil law does not have a universally recognized formed conception about a notion and a system of the means of securing the obligations. The laws do not contain a legal notion of securing the obligation, meanwhile, in the everyday life, and in the professional legal sphere this expression is used to name the various ways of activities, which are aimed at achieving a certain goal, and the lawmaker only tries to, in some cases, regulate how it is possible to achieve a relevant security goal.[12]

To study the means of securing the obligations in the system is not typical of the Russian civil law for a number of reasons. Firstly, even the means of securing the obligations, which are named in the law, differ from each other in the mechanisms of influencing the debtor and in the methods of achieving the final goal – to make practicable (at least, in a greater degree) the creditor's right to receive from the debtor the performance of the obligations[13] or compensation of losses from failure to perform the obligations.[14] Secondly, the legal practice creates a great number of measures of influence on the debtor and guarantees of securing the protection of the rights and legal interests of the creditor in the obligation, which is not prohibited by the provisional rule of Article 329 of the RF Civil Code, but it dilutes the boundaries for researching the "means of securing the obligations" institution. In this connection, when studying the whole aggregate of the means of securing the obligations in a wide economical and legal aspect as a system, the methods of a comparative and system analysis, which are based on the techniques of revealing the common features of separate private ways, are unlikely to be suitable.

In 1980 S.Ya. Sorokina defined the means of securing the obligations as measures of influencing upon a debtor or another obligor, which consist in forcing it to perform the obligation by means of a threat of incurrence of adverse consequences for it and which serve as an addition source of meeting the creditor's demands after an offence is committed, a partial or full payment against a non-performed obligation.[15] This author considered the means of securing as measures of responsibilities, this position was also supported in a sense in the papers by other domestic authors.[16] One of the first modern Russian scientists, who, in his research, tried to study the named means of securing the obligations in the system, B.M. Gongalo, sorts out the following constituting signs of the means of securing:

[11] F. F. Shpanagel, Civil aspects of securing the timely performance of obligations. The author's abstract of dissertation of Candidate of Juridical Sciences (Sverdlovsk, 1983) y V. S. Konstantinova, Civil security of performance of the economic obligations. Author's abstract of the Doctor of Juridical Sciences (Sverdlovsk, 1989).

[12] Kh. Weber, Securing the obligations. Translation from German (Moscow: Walters Kluver, 2009).

[13] M. I. Braginsky & V. V. Vitryanski, Contractual law. The first book: General provisions. the third edition, ster (Moscow: Statute, 2011).

[14] Civil law. Important problems of theory and practice: in 2 volumes. Volume 2 under the general editorship of V. A. Belov (Moscow: Publishing House Ureit, 2017).

[15] S. Ya. Sorokina, Means of securing the performance of the civil obligations between socialist organizations and their efficiency. The author's abstract of dissertation of Candidate of Juridical Sciences (Tomsk, 1980).

[16] I. I. Pustomolov, Means of securing the obligations as a form of legal responsibility: Dissertation of Candidate of Juridical Sciences (Tula, 2002).

they have an additional nature, a common functional purpose and a property content.[17] K.A. Novikov, in his dissertation, sorts out many signs of the means of securing the obligation: 1) they have to do with a certain property benefit; 2) the creditor receives a security on the gratuitous basis; 3) an uncertain goal of the security boils down to a voluntary deprivation of a security obligation debtor of certain assets in discharge of the creditor's demands, which are related to a violation of the basic obligation; 4) the means of securing gives rise to the obligation legal relationship, 5) which is in accessory connection with the basic obligation[18].

The other papers, which are known to the Russian civil law, cover the research of certain means of securing the obligations without their system connection with other security frameworks. The format of this research is unlikely to make it possible to characterize all the frameworks, which are named in the law, or which are applied in practice, but it is possible to sort out the foundational signs of any means of securing the obligation.

Materials and methods

This research is aimed at revealing the constituting characteristics of the means of securing the obligations in the Russian civil law. The research is conducted by means of dialectical and system-structured methods, and a method of functional analysis. As the paper is mostly theoretical, its practical meaning is secondary, the author researches the basic Russian doctrinal sources on the issues of securing the obligations, and the acts of casual and official interpretation of the RF Supreme Court and the RF Supreme Commercial Court, which preserved their importance. The Author made a hypothesis that in the civil circulation there are means of securing the obligation in a wide (economic) sense and in a narrow (civil) sense. As a practice of the civil legal relationship makes the parties implement in the business practice various frameworks, which are aimed at protecting the creditor's interests in the event of the debtor's default, a great deal of frameworks appear, which are named the means of securing in practice. Meanwhile, in the obligation law, the means of securing are forming an institution, of which the common legal regulation is typical, which is predetermined by a reason for creation of a relevant legal relationship, as well as the connectedness of the basic and security legal relationship in dynamics. In this connection this article is structured into three instructive sections. The first section explains why the author chose the term "securing of the obligation", and not "securing of performance of the obligation", although the second option is provided for in the text of Chapter 23 of the RF Civil Code. The terms, which the author chose, are preferable in an aspect of the common teaching about the legal relationship and they take into account the necessity to achieve the main goal of any security obligation – "strengthening" of the basic obligation, making the creditor more confident in satisfying its own interest, reduction of the risks of unfavorable consequences of the debtor's default. The second section deals with the characteristics of the means of securing in an economical, wide sense. Those means, which often are not obligations, can be a measure of responsibility or a measure of operative influence by nature, which the author calls "function-oriented means of securing the civil obligation". The second section explains why it is impossible to apply the common legal regulation to those function-oriented means because there is no system connection. The third section reveals the systemic characteristics of the means of securing the obligations and draws conclusions

[17] B. M. Gongalo, Teaching about securing the obligations. Issues of theory and practice (Moscow: Statute, 2004).

[18] K. A. Novikov, A notion of the means of securing the performance of obligations in the civil law. Author's abstract of the Candidate of Juridical Sciences (Moscow, 2012).

about possibility or impossibility of recognition of the means of securing the obligations, which are named in Chapter 23 of the RF Civil Code, as such.

Substantiation of the terminology: "Securing the obligations" or "securing performance of the obligations"?

Legal definition of Chapter 23 of the RF Civil Code implies that the institution in question is named "the means of securing performance of the obligations", and not "means of securing the obligations". The authors do not use the wording, which is in the law, deliberately, since they believe that it is incorrect[19]. As a matter of fact, the meaning of security obligations cannot be boiled down to the proper performance of the basic obligation, since, as a result of the securing, the creditor can satisfy its own interest by means of bringing to responsibility of the person, which is the third in relation to the debtor, while levying execution upon the solitary property of the debtor or the third person, in other words, by means of receiving the performance substitute. Meanwhile, apart from the functional orientation of the relevant security framework to stimulating the debtor to perform its obligation properly and/or to giving the creditor a property equivalent to meet its demand, the security obligations must meet other signs too. As it was said, the scientists have different opinions in that: some try to rank some or other legal remedies with the security obligations, others, on the contrary, try to narrow down the relevant enumeration, when excluding even the named means of securing from it.

If to consider this issue only in an aspect of economic importance of the legal relationship, the enumeration of legal means, which secure the obligation, can include a great number of relevant frameworks: from the insurance and relations of the financial lease to mechanisms of bringing the persons controlling the debtor to the subsidiary responsibility on a legal entity's debts (a so-called effect of "piercing corporate veil"). Taking into consideration freedom-of-agreement principle, "as a security of an obligation", it is possible to create other obligations, which, at first sight, may not have an unconditional connection with each other. The focusing only on the function-oriented characteristic of the means of securing the obligations (a security function) makes it possible to enlarge their enumeration not only through measures of responsibility, but also measures of encouragement[20], which is unlikely to be reasonable. The provisional rule of Article 329 of the RF Civil Code does not provide for the absolute freedom for the participants in the legal relationship when creating the means of securing the obligations, in this connection it is necessary to establish a generic difference of all the security means from other mechanisms, which are aimed at additional protection of the creditor's interests, which will make it possible to define those legal relationship, which can be ranked with the means of securing the obligations. Respectively, apart from acknowledgement of an economic functional orientation of the relations in question, it is necessary to establish other constituting signs, which make it possible to attribute a remedy to the means of securing the obligations.

In accordance with Article 307 of the RF Civil Code in virtue of an obligation the debtor is obliged to carry out an action in favor of the creditor: to transfer any property, to implement any work, to render a service, to make a contribution to joint activities, to pay money, etc., or to abstain from an action, while the creditor is entitled to demand the creditor

[19] B. M. Gongalo, Civil security of obligations. The author's abstract of dissertation of Doctor of Juridical Science (Yekaterinburg, 1998).

[20] E. G. Komissarova & D. A. Torkin Non-named means of securing the obligations in the civil law (Moscow: Aspect Press, 2008).

to perform its obligations. This standard opens an obligation (relations, and not an obligation) in terms of the domestic civil law, as a synonym of legal relationship, in virtue of which a person (or several persons) is entitled to demand another person (or several persons) to carry out a certain action or to abstain from carrying out an action.[21] An obligation is a legal expression of an action or the aggregate of actions (failure to act) of the obligor, which correspond to the creditor's subjective right. In virtue of Paragraph 2 of Article 307 of the RF Civil Code the obligation arises out of an agreement, delictual, unjust enrichment or other grounds.

According to Article 309 of the RF Civil Code the obligations must be performed properly in accordance with their conditions, regulatory requirements, but if there are no such acts – in accordance with the codes of business conducts or other normal requirements. The civil legal relationship has some elements in its structure. The pre-revolutionary Russian civil lawyers sorted out four elements – a subject, an object, a right and an obligation[22]. In the Soviet period, when uniting two last elements, the legal relationship structure included three parts – a subject, an object and content[23]. The civil law doctrine has a lot of arguments in relation to a theoretical basis of the legal relationship and inclusion of some elements in it. So, R.O. Khalfina included a real behavior of participants, except from an object, in the legal relationship's elements[24]. S.S. Alekseev, when sorting out and object and a subject, determined the content of the legal relationship in legal as well as in material sense, including in it a real behavior of subjects,[25] which consists only of the rights and obligations[26].

The modern literature often states that the civil legal relationship has a subject composition, an object of orientation of their activities and a proper behavior of the participants. It appears that the arguments about names of those elements are of no importance for the purposes of this research. If we recognize the legal relationship of the parties and the content of their activities in relation to an object as important elements, an issue of a proper way of performing the obligations stands no longer: an obligation can be performed properly (just performed) only in accordance with the law or the agreement by an obliged party and only in an established way. Therefore, the use of the means of securing the obligation is the use of an approved "compensation" in exchange for proper performance, since an effect of securing consists in termination of a right of the creditor's demand for the demand in an initial obligation.[27]

Even in the cases, when this is a natural form of performing the obligations by the surety, it does not become the debtor or a co-debtor in the secured obligation, but, in addition

[21] V. A. Belov, "To the issue of correlation of notions of an obligation and an agreement", Civil law review, num 4 (2007): 239 – 258.
[22] G. F. Shershenevich, Selected papers: In 6 volumes. Volume. 4 including general theory of law (Moscow: Statute, 2016).
[23] O. S. Ioffe, Selected papers on the civil law: From history of the civil thought. Civil legal relationship. Criticism of theory of "economic law" (Moscow: Statute, 2000 (Series "Classics of Russian civil law") y O. S. Ioffe & M. D. Shargorodsky, Issues of theory of law (Moscow, 1961).
[24] R. O. Khalfina, General teaching about legal relationship (Moscow, 1974).
[25] S. S. Alekseev, General theory of law: textbook (Moscow: TK Velbi, Publishing House "Prospect", 2008).
[26] S. S. Alekseev, General theory of law: textbook (Moscow: TK Velbi, Publishing House "Prospect", 2008).
[27] E. S. Trezubov "To the issue of a legal nature of security obligations", Bulletin of Kemerovo State University, num 2-2 (62) (2015): 211-214.

to that, it has a right to offer the creditor to perform an obligation instead of the debtor in kind according to the rules of Article 313 of the RF Civil Code.[28] The Plenum of the Supreme Commercial Court of the Russian Federation decided that, by so doing, the surety properly performs a non-monetary obligation for the debtor as the third person, which the latter hired, but this substantiation is incorrect, since in this case the surety's obligation will be natural – the creditor is not entitled, in a legal procedure, to demand the surety to perform the debtor's obligation in kind, and if the surety performs the obligation in a non-monetary form voluntarily, it will have a right of counter demand to the debtor, which is based on the subrogation rules (Article 365 of the RF Civil Code). Any meeting of the creditor's demand in a monetary or natural form boils down to compensation of losses to it, which are caused by violation of the secured obligation.[29]

In the event of failure to perform or improper performance of the obligation, the creditor will be entitled to demand the debtor to perform the obligation in kind as well as to make up the losses incurred, to pay the approved compensation, other forms of the civil responsibility are possible too. So, it is important to differentiate the measures of operative influence, the measures of responsibility and the means of securing the obligations.

No means of securing the obligations imply the proper performance of the obligations to the creditor. The nature of security obligations consists in the fact that the creditor, the debtor and the guarantying person realize the probability of failure to perform the basic obligation by the debtor beforehand. So, when granting the security, the surety (like another guarantying person) assumes all the risks of the debtor's default. The security transaction is aimed at indemnifying the creditor against impossibility of performance by the debtor of its obligations. Thus, the security transaction is designed to insure the creditor from a risk of the debtor's default.[30]

Discussion

Function-oriented means of securing the civil obligation

The Russian civil literature does not have a unity of approaches to determining the functions of the means of securing the obligations, for which reason there is no an established view about their notion and kinds.[31] Evidently, the system is formed by neither

[28] Resolution of the Plenum of the Supreme Commercial Court of the Russian Federation dated 12.07.2012 No. 42 "On some issues of settlement of disputes related to suretyship", Paragraph 12 Economy and life, num 34 (2012).

[29] R. S. Bevzenko, Innovations of judicial practice in the sphere of suretyship. Commentary to resolution of the Plenum of the Supreme Commercial Court of the Russian Federation dated July 12, 2012 num 42 "On some issues of settlement of disputes, which are connected with the suretyship". Herald of the Supreme Arbitrazh Court of the Russian Federation, num 12 (2012): 86 – 100.

[30] Decision of the RF Supreme Court dated 14.06.2016 N 308-ЭС16-1443 in case A61-2409/2010. Computer information desk of the legal system "Consultant Plus". Judicial practice.

[31] The authors, who research the obligations and means of their securing (securing of the performance) express different points of view, when substantiating that it is impossible to attribute some measures to the relations in question. In particular, S.V. Sarbash does not attribute the pledge and distraint, which are named in Chapter 23 of the RF Civil Code, to the means of securing the obligations, since he considers them as restricted property rights. See: S.V. Sarbash, Elementary dogmatics of obligations: textbook. S. S. Alekseev Research center of the private law under the RF President, Russian school of private law. – the second edition (Moscow: Statute, 2017).
When noting that a penalty is only a measure of responsibility, which is not a source of meeting the creditor's demands, S.Ya. Sorokina insists on exclusion of this institution from the system of the

the means of securing the obligations, which are named in Chapter 23 of the RF Civil Code, nor the non-named means, which the parties can create independently, which makes the formation of a doctrinal teaching about securing the obligations more difficult.[32]

V.P. Gribanov supported the possibility of attributing the measures of operative influence to the means of securing the obligations.[33] While opening a notion of the measures of operative influence, V.S. Em said that their main function consists in "stimulating the participants in civil law transactions to perform their obligations properly", so any measure of operative influence, which remains means of protection of the creditor's interests, "serves as other means of securing the proper performance of the obligations**"**, which is not mentioned in Article 329 of the RF Civil Code.[34]

While denying this idea B.M. Gongalo said that the means of securing the obligations must not establish a special procedure of its performance and they must be applied only at a stage of performing the obligation, that's why he rules out the possibility of recognizing the measures of operative influence as the means of securing the obligations.[35] E.G. Komissarova and D.A. Torkin said that the security measures must stimulate the debtor as well as provide for the property consequences in the event of violation of the basic obligation. The said authors acknowledge that not only obligations but also the measures of operative influence, in which a compensatory function is inherent, can serve as security measures.[36]

---

means of securing of performance of the obligations. See.: S.Ya. Sorokina, Means of securing the performance of the civil obligations between socialist organizations and their efficiency. The author's abstract of dissertation of Candidate of Juridical Sciences (Tomsk, 1980).

The same opinion about impossibility to acknowledge any measure of civil responsibility as a security measure, is expressed in modern publications. See. I.I. Puchkovskaya "Penalty is not the means of securing the performance of obligations". Lawyer, num 7 (2013): 36 – 40; Yu.P. Swit, Separate peculiarities of securing the performance of obligations with financial recovery: in collection Collected scientific and practical articles of the second International scientific and practical conference "Important problems of business and corporate law in Russia and abroad" (April 22, 2015 Moscow). E.A. Abrosimova, V.K. Andreev, L.V. Andreeva and others; under the general editorship of S.D. Mogilevsky, M.A. Egorova (Moscow: The Russian Presidential Academy of National Economy and Public Administration. M.M. Speransky Law Department, Justitsinform, 2015).

K.A. Novikov said that such obligations, which are named in Chapter 23 of the RF Civil Code, as a penalty, advance, independent guarantee cannot be acknowledged as security obligations. See. K.A. Novikov "Accessority of security obligations and the security-obligation rights". Herald of Economic Justice of the Russian Federation, num 1 (2015): 107 – 120.

When speaking about the functional orientation, E.R. Usmanova substantiates the sorting out of a special category of the title securing, and she attributes it to the obligations, which are aimed at securing the legal relationships from the sale-purchase agreements with a reservation about retaining the seller's title, lease with an option to purchase, financial lease, security assignment of the right of demand and sale and repurchase agreement. See E.R. Usmanova, Title security of civil obligations. The author's abstract of dissertation of Candidate of Juridical Sciences (Moscow, 2017).

[32] Civil law. Important problems of theory and practice: in 2 volumes. Volume 2 under the general editorship of V. A. Belov (Moscow: Publishing House Ureit, 2017).

[33] V. P. Gribanov, Exercise and protection of civil rights. The second edition, stereotype (Moscow: Statute, 2001).

[34] Russian civil law: textbook: in 2 Volumes. V.S. Ем, I.A. Zenin, N.V. Kozlova and others.; executive editor is E.A. Sukhanov, the second edition. Vol: 1. General Part. Property law. Inheritance law. Intellectual rights. Personal non-property rights (Moscow: Statute, 2011).

[35] B. M. Gongalo, Teaching about securing the obligations. Issues of theory and practice (Moscow: Statute, 2004).

[36] E. G. Komissarova & D. A. Torkin, Non-named means of securing the obligations in the civil law (Moscow: Aspect Press, 2008).

The security in the civil relative legal relationship has the following goals: 1) stimulates the debtor to properly perform its own obligation (a so-called security function 2) creates additional possibilities of satisfying the creditor's interests in the event of the debtor's default (a guarantee function), 3) it stimulates the debtor and guarantees the creditor's interests simultaneously. Depending on the functional orientation, the measures are sorted out, which, firstly, secure the obligations, secondly, secure the protection of the creditor's property interests when the debtor violates its obligation, thirdly, simultaneously secure the obligations and protection of the creditor's interests with the debtor's default.[37]

When speaking about the functional orientation of the security, B.M. Gongalo[38], M.I. Braginsky and V.V. Vitryanski[39], V.A. Belov[40] said that in order to attribute a legal remedy to the security category, it is enough to achieve one of the goals – a stimulating goal, a guaranteeing goal or both those goals. The abovementioned corresponds to the economic feasibility of the security means, since, when securing the obligation, the parties to a transaction, first of all, mean the creation of conditions to obtain a property result, and not existence of the relative legal relationship.[41] A broad idea about the means of securing as function-oriented measures, which are aimed at creating preferences for the creditor and making it more confident in meeting its own demands, which are related to failure to perform or improper performance by the debtor of the obligation, correspond to the economic realities. Meanwhile, an attempt to create a system idea about function-oriented security measures (the security measures in terms of economy) is not valuable, there is not a comprehensive connection between such means, they often exist in isolation from a strengthened obligation. Here it is enough to remember the abovementioned example about the "pledge" of an identity card in the sports equipment lease, or to remember the measures of a debt bondage or pledging, which are traditional for historical development of the law at an early stage. In the long run, any sanctions and incentive measures including quasi-legal measures stimulate the debtor to perform the obligation. Apart from that, only the security-oriented obligations, which are not designed to grant the property guarantees to the creditor if its rights are violated, do not imply the achievement of an effect of restoring the violated right, it means that they are only regulatory by nature.

---

[37] B. M. Gongalo, Teaching about securing the obligations. Issues of theory and practice (Moscow: Statute, 2004). Access from the computer information desk of the legal system "Consultant Plus". Legal commentaries.

[38] B. M. Gongalo, Teaching about securing the obligations. Issues of theory and practice (Moscow: Statute, 2004). Access from the computer information desk of the legal system "Consultant Plus". Legal commentaries.

[39] V. V. Vitryanski said that legal remedies, which are designed to strengthen the creditor's position in the obligation, can be acknowledged as the means of securing the performance of the obligations. When criticizing an effort to acknowledge the means of operative influence (a right of refusal from the reciprocal performance of obligations, which is provided for by Paragraph 2 of Article 328 of the RF Civil Code), the scientist attributes, for example, the mechanisms of responsibility of the third persons together with the debtor to the means of securing in question. It is evident that any means of bringing an additional person to responsibility on the debtor's debts fulfill only a guaranteeing function. See M.I. Braginsky & V.V. Vitryanski, Contractual law. The first book: General provisions. the third edition, ster (Moscow: Statute, 2011).

[40] V. A. Belov, "Theoretical problems of teaching about the means if securing the performance of obligations". Russia's law: experience, analysis, practice, num 12 (2006): 24-32. Access from the computer information desk of the legal system "Consultant Plus". Legal commentaries (accessed date is 19.01.2019).

[41] E. G. Komissarova & D. A. Torkin, Non-named means of securing the obligations in the civil law (Moscow: Aspect Press, 2008).

Thus, apart from the functional orientation of a way to strengthen the creditor's position, a security function, it is necessary to sort out other systemic signs of the means of securing the obligations.

Systemic characteristics of the means of securing the civil obligations

Security of the obligation creates a special obligations legal relationship between the creditor and a person, who secures the debtor's obligation by any means, which are named in Chapter 23 of the RF Civil Code. I.G. Panayotov said that the means of securing the obligations were the civil measures of impelling the debtor to perform the obligation in favor of the creditor by means of joining of an additional obligation to the basic (main) obligation in virtue of the law or the agreement.[42] When saying that "the primary purpose of the means of securing the obligations consists simultaneously in preventing a violation of the contractual discipline, stimulating the debtor to perform the obligation properly and creating additional possibilities for the creditor to meet its demands if the obligations are violated", S.Ya. Sorokina states a comprehensive legal nature of those means, which integrate the organizational, regulatory and protective qualities and features.[43] This position, which was voiced as early as in 1980, is still important, but while reading the dissertation by S.Ya. Sorokina, the author does not have the impression that the scientist tried to build a sequential and hard and fast system of the means of securing the obligations.

B.M. Gongalo defines the means of securing the obligations as "the security property measures, which are established by the law or the agreement, and which exist in the form of accessory obligations stimulating the debtor to perform its obligation and (or) otherwise guaranteeing a protection of the creditor's property interest in the event of the debtor's default".[44] In a similar way the German civil lawyer Kh. Weber said that the means of securing must provide for such contractual structures, through which the creditor comes to have a right, which can be exercised if the debtor performs an obligation improperly.[45]

B.M. Gongalo said that the measures, which serve the interest of the parties to legal relationship as well as other persons, cannot be acknowledged as the security obligations. The scientist believes that the means of securing must be accessory in relation to the main legal relationship, and they must guarantee only the creditor's interests in the secured obligation.[46] K.A. Novikov also insists on the accessority as a compulsory characteristic of any security obligation. He believes that such displays of the asseccority feature as the accessority in terms of implementation and the accessority of volume of demands are the constituting displays. K.A. Novikov characterizes the means of securing (performance of) the obligations[47] as "an obligation legal relationship, which is aimed at gratuitous appropriation of the debtor's material benefit on account of satisfying the creditor's demands,

[42] I. G. Panayotov, Securing the obligations: (Penalty, pledge, advance, suretyship): Lection for students of All-Union Law Correspondence Institute (Moscow, 1958).
[43] S. Ya. Sorokina, Means of securing the performance of the civil obligations between socialist organizations and their efficiency. The author's abstract of dissertation of Candidate of Juridical Sciences (Tomsk, 1980).
[44] B. M. Gongalo, Teaching about securing the obligations. Issues of theory and practice (Moscow: Statute, 2004).
[45] Kh. Weber, Securing the obligations. Translation from German (Moscow: Walters Kluver, 2009)
[46] B. M. Gongalo, Teaching about securing the obligations. Issues of theory and practice (Moscow: Statute, 2004).
[47] The cited author uses the terms, which is in Chapter 23 of the RF Civil Code – "securing the performance of the obligations".

which are included in the content of the violated secured obligation or exist in the form of the protective legal relations, which are connected with its violations, together with the security obligation itself".[48] In other words K.A. Novikov believes that the means of securing an obligation must be functionally connected with the basic legal relationship and consist in providing a performance substitute, which terminates the creditor's demand to the debtor on the basic obligation fully or partially. Professor V.A. Belov, on the contrary, said that the accessority feature is not a constituting sigh of the security obligation.[49] E.G. Komissarova and D.A. Torkin also said that the means of securing the obligations may not be accessory, but they may have exceptionally binding nature, and simultaneously they can comprise a potential of measures of operative influence and measures of civil responsibility,[50] in connection with which, apart from the measures, which are named in Chapter 23 of the RF Civil Code the means of securing the obligations include the measures, which stimulate the debtor to the performance and create the property consequences if the basic obligation is violated.[51]

In virtue of the general rule of Article 329 of the RF Civil Code an interrelation is established between the basic and securing obligations, which is connected with following the fortune of the basic legal relationship. Paragraph 3 of Article 329 of the RF Civil Code (before the changes made by Federal Law No. 42-FZ dated 08.03.2015) contained the rule, in virtue of which invalidity of the basic obligation entails the invalidity of the obligation, which secures it, and, on the contrary, Paragraph 2 of Article 329 of the RF Civil Code say that invalidity of an agreement on securing the performance of an obligation does not entail the invalidity of this obligation (the basic obligation). This display is traditionally named an accessority feature. The current version of the RF Civil Code transformed the said rule – now if the basic obligation is invalid, only consequences of this invalidity are secured. In addition, Paragraph 4 of Article 329 of the RF Civil Code as amended by the Federal Law dated 08.03.2015 No. 42-FZ say that termination of the basic obligation under the general rule (*unless otherwise required by law or agreement*) entails the termination of an obligations, which secures it. The abovementioned directory reservation cannot be perceived as a reservation permitting a full departure from the accessority rules, but, as a matter of fact, Paragraph 4 of Article 329 of the RF Civil Code enshrined a possibility of permissibility of refusal from the rule of accessority of termination, it is impossible to fully rule out the dependence of the security obligation on the basic obligation.[52] The authors believe that the accessority feature is critical, and, in a special way, it emphasizes the functional relation between the basic and security obligations, a consideration of the security creation. At a modern stage of development of the Russian civil law, a goal of applying the accessory security in the private law relations is quite understandable – to protect the creditor's property interests in the event of failure to perform or improper performance by the

[48] K. A. Novikov, "Accessority of security obligations and the security-obligation rights", Herald of Economic Justice of the Russian Federation, num 1 (2015): 107 – 120.

[49] V.A. Belov, "Theoretical problems of teaching about the means if securing the performance of obligations", Russia's law: experience, analysis, practice, num 12 (2006): 24-32. Access from the computer information desk of the legal system "Consultant Plus". Legal commentaries (address data is 19.01.2019).

[50] E. G. Komissarova & D. A. Torkin, Non-named means of securing the obligations in the civil law (Moscow: Aspect Press, 2008).

[51] E. G. Komissarova & D. A. Torkin, Non-named means of securing the obligations in the civil law (Moscow: Aspect Press, 2008).

[52] Contractual and obligation law (general part) article-to-article commentary to Articles 307 - 453 of the Civil Code of the Russian Federation. V.V. Baibak, R.S. Bevzenko, O.A. Belyaeva and others.; executive editor is A.G. Karapetov (Moscow: M-Logos, 2017).

debtor of its obligation. It is inadmissible to ignore a goal of creation by the parties of the strengthening legal relationship. Many authors, who indicate that non-accessory means of securing the obligations may exist, cite the standards of the RF Civil Code on an independent guarantee, which the lawmaker attributed to the relevant means, as a substantiation, since, in virtue of Paragraph 1 of Article 368 of the RF Civil Code, the guarantor undertakes to pay the beneficiary, at the principal's request, a certain amount of money in accordance with the conditions of the guarantee issued regardless of validity of the secured obligation. Apart from that, in virtue of Paragraph 1 of Article 370 of the RF Civil Code the guarantor's obligation to the beneficiary does not depend, in their relations, on the basic obligation, as a security of performance of which it is issued, on the relations между between the principal and the guarantor.

In the modern Russian legal literature, an independent (bank) guarantee is often acknowledged as abstract (non-accessory) means of securing the obligations[53], but there are other approaches, for example, V.A. Below indicates the accessory nature of the guarantee.[54] Conditional dependence of the guarantor's obligation on the principal's obligation to the beneficiary in in evidence in the judicial practice too. So, as far back as in 1998 the Presidium of the Supreme Commercial Court of the Russian Federation[55] said that the guarantor is entitled not to perform the beneficiary's demand if there are evidences of termination of the basic obligation in connection with its proper performance, about which the beneficiary knew before making a written demand to the guarantor.[56] This position is of current importance even now.[57] The content of the standard of Article 376 of the RF Civil Code in the current version also indicates some restricted displays of interdependence between the basic obligation and the independent guarantee. While noting the consideration of an independent (bank) guarantee on causes of its issuance *as a security of the principal's*

[53] The author often say that an independent guarantee is the non-accessory means of securing the obligations, in spite of a certain interrelation with the secured obligation, and only this independence differs the guarantee from the suretyship. See, for example, N.Yu. Chelysheva "Legal nature of independent guarantee and its place in the system of civil obligations". Civil law, num 2 (2018): 23 – 26.

[54] V. A. Belov, "Theoretical problems of teaching about the means if securing the performance of obligations", Russia's law: experience, analysis, practice, num 12 (2006): 24-32. Access from the computer information desk of the legal system "Consultant Plus". Legal commentaries (address data is 19.01.2019)

[55] Information letter of the Presidium of the Supreme Commercial Court of the Russian Federation dated 15.01.1998 No. 27 "Review of practice of settlement of the disputes, which are related to applying the standards of the Civil Code of the Russian Federation on bank guarantee", Paragraph 4. Herald of the Supreme Arbitrazh Court of the Russian Federation, num 3 (1998).

[56] N. V. Soboleva said that the guarantor's possibility to refuse to pay the funds at the request of an abusing beneficiary, which has already received performance from the debtor under the basic obligation, by reference to Article 10 of the Civil Code of the Russian Federation, does note establish a dependence of the guarantee obligation on the fortune of the basic obligation, since in this case a chicanery is one of restrictions in implementing the beneficiary's legal right. See N.V. Soboleva, Bank guarantee as the means of securing the performance of obligations and practice of its application in the bank activities. The author's abstract of dissertation of Candidate of Juridical Sciences (Tomsk, 2005).

[57] Review of the judicial practice of the Commercial Court of the North Caucasus District on the issues of applying the laws on an independent guarantee. Approved by the Presidium of the Commercial Court of the North Caucasus District on 28.04.2018 (as revised on 24.08.2018), Paragraph 5. Access from the Internet network: http://static.consultant.ru/obj/file/doc/obzor_sud280818_2.pdf#utm_campaign=nw&utm_source=consultant&utm_medium=email&utm_content=body (address data is 19.01.2019)

obligation, K.A. Novikov insists that it is not the means of securing the obligations, and the only goal of this material-abstract obligation is the effecting of a usual money payment at the beneficiary's request, which is not stipulated by a fact that the principal debt exists.[58] It is impossible to agree with this position, since, firstly, the dependence of creation is dictated by a consideration of the transaction, which is enshrined in the law, secondly, according to the business habits of the bank practice, the documents, which are enclosed by the beneficiary to the guarantee payment demand, are confirming the creation of the creditor's right of demand under the secured obligation. So, even with a conditional regulatory abstractedness of an independent guarantee the business habits strengthen the interdependence of a guarantee and the secured obligation. Apart from that, an independent guarantee corresponds to other signs of the means of securing, which the authors sort out

One of the reasons for close interrelation of the basic and security obligations is the lack of an independent goal of entering into the security relations. The availability of suretyship, pledge, independent guarantee, security payment, etc. itself in isolation from the existence of the basic obligation is deprived of consideration. It is evident that the security function cannot be recognized as such a goal.

Statement about a goal of existence of the security obligation as an obligation, which is designed to guarantee the restoration of the creditor's violated rights on the basic obligation makes it possible to conclude that such obligations implies the creation of the protective legal relationship[59], but frequently in those relations the offender is not a debtor. The legal relationship, in which the means of securing the obligations are implemented, is regulatory, since they arise out of a lawful action[60], but the authors believe that a sense of the means of securing boils down to a possibility to implement a mechanism of forced restoration of the creditor's violated right. Professor T.V. Shepel said that a specific character of the protective legal relationship is connected simultaneously with a fact of violation of the creditor's rights, necessity of their restoration and dependence on the basic, violated obligation.[61]

Since the security is given, the obligation is considered as secured, or the regulatory legal relationship is created, but creation of the creditor's right of demand and, respectively, creation of protective legal relationship is connected with a fact of violation by the debtor of the creditor's rights in the secured obligation. R.S. Bevzenko explains this effect from the perspective of a concept of accessority of creation of a security obligation.[62] A characteristic of the means of securing the obligations as protective means also makes it possible to draw a conclusion about a date of creation of this legal relationship (a so-called date of "maturation" of the demand) – this is a date of violating the obligation by the debtor in the secured obligation, the date, on which the creditor comes to have the demand to the debtor under the security obligation, since such legal relationship is retrospective, in other words, it arises after the right is violated.[63]

[58] K. A. Novikov, A notion of the means of securing the performance of obligations in the civil law. Author's abstract of the Candidate of Juridical Sciences (Moscow, 2012)..
[59] D. N. Karkhalev, Protective civil legal relationship (Moscow: Statute, 2009).
[60] D. N. Karkhalev "Protective agreements in the civil law". Lawyer, num 19 (2015): 12 - 16.
[61] T. V. Shepel "Non-contractual protective obligations: state of the laws and civil doctrine". Bulletin of Tomsk State University. Law, num 29 (2018): 205 – 213.
[62] R. S. Bevzenko, "Accessority of security obligations: European legal tradition and Russian practice". Civil law review, 5 (2012): 4 – 36.
[63] D. N. Karkhalev, Protective civil legal relationship (Moscow: Statute, 2009).

Let's emphasize that, when sorting out the accessority as a systemic characteristic of the means of securing the obligations, the authors do not insist on equal display of the accessority features,[64] meanwhile, the interdependence of the basic and additional obligations, in terms of creation, volume of demands and termination, even if in a restricted volume, must exist with any means of securing the obligations. R.S. Bevzenko fairly said that the Russian laws, firstly, paves the way for formulating the multielement and flexible framework of accesority and, secondly, serves as a foundation for manipulations with some displays of the accessority principle and even for general weakening of accessority of security transactions,[65] while the law enforcement practice sets relevant pro-creditor priorities.

Apart from discussions about an additional nature of the security obligations there is a quite radical position about recognizing any security relation as an element of the same complicated obligation. V.V. Kulakov, who offers this concept, said that any totality of legal relationship, which, as a matter of fact, has one goal, is a complication of an obligation, and the means of securing the obligations, which are named in the RF Civil Code, are such means when they create a complication of the obligation structure.[66]. This concept is not supported unconditionally in the domestic science of the civil law, in connection with which an idea about an obligation as a legal relationship between the creditor and the debtor is dominating, whose content is a legal right and an obligation, which corresponds to it (a theory of "simple obligation")[67]. A theory of "complicated obligation" considers the obligation as the agreement's subject matter, as a result of which with mutual orientation of the agreement the same person acquires a status of the debtor and the creditor under the same obligation.

The authors believe that an idea about the content of an obligation as the right and the obligation, which corresponds to it, is the most convincing. In this connection we are not inclined to consider, as a sign or a feature of the security obligation, its connection with the basic legal relationship within a single comprehensive obligation or as a complication of its structure, this connection is covered by the accessority feature and the ground of creation of the security construction.

In the name itself – the means of securing the obligations – the essence is included, the functional orientation of relevant measures is marked: "to create conditions, upon which the obligations would be performed properly and (or) the creditor's property interest would be guaranteed".[68] The author believes that stimulating the debtor to perform its obligation properly, cannot be the only content of the functional orientation of the means of securing the obligation. The good faith principle, which is included in the Russian civil law, enough as it is, presumes the hard-and-fast discipline of the parties to the obligation.

---

[64] The literature said that not all the means of securing can undergo a test for all five criteria of accessority, there are sorted out (a) accessority of creation; (b) accessority of volume of demand; (c) accessority of following the basic demand; (d) accessority of termination; (e) accessority in terms of a possibility of forced implementation. See R.S. Bevzenko, "Accessority of security obligations: European legal tradition and Russian practice". Civil law review, 5 (2012): 4 – 36.

[65] R. S. Bevzenko, Accessority of security obligations (Moscow: Statute, 2013). Access from the computer information desk of the legal system "Consultant Plus" (address date is 20.01.2019)

[66] V. V. Kulakov, Obligation and complication of its structure in Russia's civil law (Moscow, 2010)

[67] V. A. Belov, "To the issue of correlation of notions of an obligation and an agreement", Civil law review, num 4 (2007): 239 – 258.

[68] B. M. Gongalo, Teaching about securing the obligations. Issues of theory and practice (Moscow: Statute, 2004).

Meanwhile, the value of the means in question consists in the fact that the creditor is guaranteed additional mechanisms of meeting its demand by means of isolating certain property of the debtor or by means of bringing another person to responsibility. In this connection, a guarantying function of the means of securing the obligation, the obligation's orientation to creating the property guarantees to the creditor to compensate the losses connected with the debtor's default must be considered as a constituting sign of the means of securing the obligation. The debtor is stimulated additionally to perform the obligation by itself through a guarantying function as in the event of its default he will owe not only to the creditor, but also to its accessary, which partially or fully "substituted" for the debtor when meeting the creditor's demand.[69] Of course, a person, who gave security, is not the debtor in the secured legal relationship, it performs its own obligation. Through a security mechanism it is possible to reach a compromise, a modification of a way and procedure of performance, and not the performance of the basic obligation properly. This performance substitute, if it is made by the third person, is a cause for termination of the creditor's right of demand to the debtor in the basic obligation and creation (pursuant to the general rule) of the right of counter demand of the security party, which performed the obligation, to the debtor.

Apart from that, a specific character of security relations itself is expressed not so much in the fact that the creditor is entitled to demand the proper performance of the obligation, as in a possibility to implement the measures of the civil responsibility. Therefore, the obligations security should not restrict the creditor's rights to remedy consequences of the failure to perform or improper performance of the basic obligation. By means of securing the creditor is guaranteed a possibility to receive not so much the performance of an obligation in kind, which can be objectively impossible frequently, as receiving of all admissible compensations including the compensation of losses.

This property effect of securing the obligation is of interest in the context of classification of the security means, which are named in the RF Civil Code, into the property (by means of isolating the property of the debtor of the third person in order to levy execution upon it) and personal (by means of involving another person) means. The pledge[70], distraint, security payment[71] and, partly, advance are considered to be the property means of securing the obligation with account taken of the rules of Chapter 23 of the RF Civil Code, since within those means the creditor is given the segregated property of the debtor or the third person, which sets the creditor, under the secured obligation, a priority to other creditors of the debtor.[72] As regards the personal means of securing the obligation, bringing of other subjects to the independent responsibility increases the creditor's changes to meet its own demands. In this connection, for the personal security means, a compulsory condition is the giving of security to the third persons. Those means are the suretyship and the independent guarantee. It is impossible to recognize a penalty as the means of securing the obligation, since the only effect of its application in the civil circulation is a fine effect, in other words, as a measure of responsibility, in an economic sense, it stimulates an honest debtor, since it, when analyzing the risks of its default, must assess a subsequent increase of the volume of

[69] E. S. Trezubov, "To the issue of a legal nature of security obligations", Bulletin of Kemerovo State University, num 2-2 (62) (2015): 211-214.
[70] V. F. Ponka, "Results of reform of the RF Civil Code in connection with the property pledge", Economic and legal issues, num 2 (2016): 41 – 43.
[71] D. N. Karkhalev, "Security payment in the obligation law", Lawyer, num 6 (2018): 9 – 13.
[72] S. V. Sarbash, Elementary dogmatics of obligations: textbook. S. S. Alekseev Research center of the private law under the RF President, Russian school of private law. – the second edition (Moscow: Statute, 2017).

the creditor's demands. But the penalty performs a guarantying function by no means, it does not set any property priorities for the creditor. The only thing, which is typical of a domestic model of the penalty is a procedural simplification in proving the possible losses, since the creditor, when exacting the penalty, is not obliged to prove a size of losses, which the debtor causes.

Conclusion

Thus, the means of securing the obligations have the following signs: 1) exceptional target orientation to strengthening the basic obligation by means of performing the security and guarantying functions, or only the guarantying function; 2) creation, in virtue of a special actual composition, which is connected, in the aggregate, with a fact of issuance of the relevant security and a fact of the debtor's default in the basic obligation; 3) they are unilateral obligations, which are accessory in relation to the basic, secured obligation; 4) a guarantying effect of the security is reached due to creation of the protective legal relationship in the event of the debtor's default, whose content is a right of preferential satisfaction of the creditor's demand through the isolated property of the debtor or the third person, or through levying execution upon the non-isolated property of the person, which is the third in relation to the basic obligation.

Only upon condition of corresponding to all the mentioned signs it is permissible to say that the institution in question can be acknowledged as the means of securing the obligation, and for regulation of the relevant legal relationship the general rules of the RF Civil Code on obligations and on securing the obligations can be applied. In the event of failure of this "test", it would be possible to apply other regulation – depending on a legal effect of the relevant means.

References

Alekseev, S. S. General theory of law: textbook. Moscow: TK Velbi, Publishing House "Prospect". 2008.

Annenkov, K. N. System of Russian civil law. Volume 3: Rights of obligation. St. Petersburg. 1898.

Arkhipova, A. G. "Is the insurance the means of securing the obligations?". Herald of Economic Justice of the Russian Federation, num 8 (2018): 65-87.

Belov, V. A. "To the issue of correlation of notions of an obligation and an agreement". Civil law review, num 4 (2007): 239 – 258.

Belov, V. A. "Theoretical problems of teaching about the means if securing the performance of obligations". Russia's law: experience, analysis, practice, num 12 (2006): 24-32.

Bevzenko, R. S. Accessority of security obligations. Moscow: Statute. 2013.

Bevzenko, R. S. "Accessority of security obligations: European legal tradition and Russian practice". Civil law review, num 5 (2012): 4 – 36.

Bevzenko, R. S. Innovations of judicial practice in the sphere of suretyship. Commentary to resolution of the Plenum of the Supreme Commercial Court of the Russian Federation dated July 12, 2012 num 42 “On some issues of settlement of disputes, which are connected with the suretyship”. Herald of the Supreme Arbitrazh Court of the Russian Federation, num 12 (2012): 86 – 100.

Bevzenko, R. S. “Security purchase-sale and pledge. Commentary to Decision of Court Collegium of Civil Cases of the RF Supreme Court date 09.01.2018 No. 32-KG17-33”. Bulletin of Economic Justice of the Russian Federation, num 8 (2018): 4 – 16.

Bevzenko, R. S. Title security and doctrine of accessority. On securing the obligations: collected articles to the 50-th anniversary of S.V. Sarbash. Moscow. 2017.

Braginsky, M. I. & Vitryanski, V. V. Contractual law. The first book: General provisions. the third edition, ster. Moscow: Statute. 2011.

Burkova, A. Yu. “Correlation of suretyship and independent guarantee under the Russian law”. Judge, num 9 (2016): 30-33.

Chelysheva, N. Yu. “Legal nature of independent guarantee and its place in the system of civil obligations”. Civil law, num 2 (2018): 23 – 26.

Civil law. Important problems of theory and practice: in 2 volumes. Volume 2 under the general editorship of V. A. Belov. Moscow: Publishing House Ureit. 2017.

Contractual and obligation law (general part) article-to-article commentary to Articles 307 - 453 of the Civil Code of the Russian Federation. V.V. Baibak, R.S. Bevzenko, O.A. Belyaeva and others.; executive editor is A.G. Karapetov. Moscow: M-Logos. 2017.

Dudin, M. N.; Frolova, E. E.; Lubents, N. A.; Sekerin, V. D.; Bank, S. V. & Gorohova, A. E. “Methodology of analysis and assessment of risks of the operation and development of industrial enterprises”. Quality -Access to Success, num 17 (153) (2016): 53-59.

Frolova, E. E; Polyakova, T. A.; Dudin, M. N.; Rusakova, E. P. & Kucherenko, P. A. “Information Security of Russia in the Digital Economy: The Economic and Legal Aspects”. Journal of Advanced Research in Law and Economics, Vol: 9 num 1 (2018): 89-95.

Gongalo, B. M. Civil security of obligations. The author’s abstract of dissertation of Doctor of Juridical Science. Yekaterinburg. 1998.

Gongalo, B. M. Teaching about securing the obligations. Issues of theory and practice. Moscow: Statute. 2004.

Gribanov, V. P. Exercise and protection of civil rights. The second edition, stereotype. Moscow: Statute. 2001.

Ioffe, O. S. Selected papers on the civil law: From history of the civil thought. Civil legal relationship. Criticism of theory of “economic law”. Moscow: Statute. 2000.

Ioffe, O. S. & Shargorodsky M. D. Issues of theory of law. Moscow. 1961.

Karkhalev, D. N. “Security payment in the obligation law”. Lawyer, num 6 (2018): 9 – 13.

Karkhalev, D. N. Protective civil legal relationship. Moscow: Statute. 2009.

Karkhalev, D. N. “Protective agreements in the civil law”. Lawyer, num 19 (2015): 12 - 16.

Khalfina, R. O. General teaching about legal relationship. Moscow. 1974.

Komissarova, E.G. & Torkin D.A., Non-named means of securing the obligations in the civil law. Moscow: Aspect Press. 2008.

Konstantinova, V. S. Civil security of performance of the economic obligations. Author’s abstract of the Doctor of Juridical Sciences. Sverdlovsk. 1989.

Kulakov, V. V. Obligation and complication of its structure in Russia’s civil law. Moscow. 2010.

Meier, D. I. Russian civil law (in 2 parts). According to revised and enlarged 8th edition, 1902. The third revised edition. Moscow: Statute. 2003.

Novikov, K. A. “Accessority of security obligations and the security-obligation rights”. Herald of Economic Justice of the Russian Federation, num 1 (2015): 107 – 120.

Novikov, K. A. A notion of the means of securing the performance of obligations in the civil law. Author’s abstract of the Candidate of Juridical Sciences. Moscow. 2012.

Panayotov, I. G. Securing the obligations: (Penalty, pledge, advance, suretyship): Lection for students of All-Union Law Correspondence Institute. Moscow. 1958.

Ponka, V. F. “Results of reform of the RF Civil Code in connection with the property pledge”. Economic and legal issues, num 2 (2016): 41 – 43.

Puchkovskaya I. I. “Penalty is not the means of securing the performance of obligations”. Lawyer, num 7 (2013): 36 – 40.

Pustomolov, I. I. Means of securing the obligations as a form of legal responsibility: Dissertation of Candidate of Juridical Sciences. Tula. 2002.

Russian civil law: textbook: in 2 Volumes. V.S. Ем, I.A. Zenin, N.V. Kozlova and others.; executive editor is E.A. Sukhanov, the second edition. Vol: 1. General Part. Property law. Inheritance law. Intellectual rights. Personal non-property rights. Moscow: Statute, 2011.

Sarbash, S. V. Elementary dogmatics of obligations: textbook. S.S. Alekseev Research center of the private law under the RF President, Russian school of private law. – the second edition. Moscow: Statute. 2017.

Shepel, T. V. “Non-contractual protective obligations: state of the laws and civil doctrine”. Bulletin of Tomsk State University. Law, num 29 (2018): 205 – 213.

Shershenevich, G. F. Selected papers: In 6 volumes. Volume. 4 including general theory of law. Moscow: Statute. 2016.

Shpanagel, F. F. Civil aspects of securing the timely performance of obligations. The author's abstract of dissertation of Candidate of Juridical Sciences. Sverdlovsk. 1983.

Soboleva, N. V. Bank guarantee as the means of securing the performance of obligations and practice of its application in the bank activities. The author's abstract of dissertation of Candidate of Juridical Sciences. Tomsk. 2005.

Sorokina, S.Ya., Means of securing the performance of the civil obligations between socialist organizations and their efficiency. The author's abstract of dissertation of Candidate of Juridical Sciences. Tomsk. 1980.

Swit, Yu. P. Separate peculiarities of securing the performance of obligations with financial recovery: in collection Collected scientific and practical articles of the second International scientific and practical conference "Important problems of business and corporate law in Russia and abroad" (April 22, 2015 Moscow). E.A. Abrosimova, V.K. Andreev, L.V. Andreeva and others; under the general editorship of S.D. Mogilevsky, M.A. Egorova. Moscow: The Russian Presidential Academy of National Economy and Public Administration. M.M. Speransky Law Department. Justitsinform. 2015.

Trezubov, E. S. "To the issue of a legal nature of security obligations". Bulletin of Kemerovo State University, num 2-2 (62) (2015): 211-214.

Usmanova, E. R. Title security of civil obligations. The author's abstract of dissertation of Candidate of Juridical Sciences. Moscow 2017.

Weber, Kh. Securing the obligations. Translation from German. Moscow: Walters Kluver. 2009.

REVISTA INCLUSIONES M.R.
REVISTA DE HUMANIDADES Y CIENCIAS SOCIALES

CUADERNOS DE SOFÍA EDITORIAL