

# Facilitating Access to Justice in the Area of Economic Competition Protection

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**Abstract:** The relevance of the study is determined by the fact that all types of competitive relations should be affected in the formation of business development programs and be based on the adoption of appropriate decisions by all parties of economic relations. The novelty of the study is determined by the fact that each of the participants in economic relations in some cases cannot receive concomitant protection, which is based on equal access to the functions and organs of justice, which are provided by public authorities as carriers of justice. The practical significance of the study is determined by ensuring fair competition to form the prerequisites for the development of the social environment.

**Keywords:** Justice, economics, attitude, equality, competition.

## INTRODUCTION

Protecting the rights and legitimate interests of such a difficult subject as a participant in economic relations by resolving economic disputes that are specific in nature is not an easy task and requires rather narrow specialization and high professionalism. This task has long been solved precisely by specialized and professional structures. Judicial protection of the rights and interests of business entities occupies a special place among other forms of protection. On the one hand, this is associated with a high level of risk in carrying out entrepreneurial activities, and on the other, with the presence of judicial authorities: a large amount of powers for such protection; ensuring enforcement of court decisions by state coercion; the ability to take preventive measures to prevent possible violations of the rights of business entities in the future (Hsu 2018). The study of the methods and order of judicial protection of the rights and legitimate interests of business entities involves first of all clarifying the essence of the concept of "protection", the content of the mechanism for its implementation. The terms "protection", "legal protection", "protection of rights and interests", "judicial protection" are repeatedly found in the norms of the current legislation and in constitutional law. The state ensures the protection of all the rights of subjects of property and business law (Schmidt 2009). To date, the fundamental regulatory legal act in the field of economic activity is an entrepreneurial agreement that establishes guarantees and ways to protect the rights and legitimate interests of business

entities, which can be divided into two groups (Ray and Wall 2017).

The first group includes general methods of protecting rights and legitimate interests, which can be applied to all business entities. The state ensures the protection of the rights and legitimate interests of business entities by: recognition of the presence or absence of a right; recognition of fully or partially invalid acts of state authorities and local authorities, acts of other entities that are contrary to law, infringing on the rights and legitimate interests of business entities or consumers; restoration of the conditions that existed before the violation of the rights and legitimate interests of business entities; termination of actions that violate the law or create a threat of its violation; application of administrative sanctions; establishment, change and termination of economic relations; in other ways provided by law. The second group includes guarantees and methods of protecting the rights and legitimate interests of subjects of investment activity, among them there are: guarantees for the protection of foreign investments in case of changes in the legislation on foreign investments; guarantees against forced withdrawal, as well as from illegal actions of authorities and their officials; compensation and reparation of damages to foreign investors; guarantees upon termination of investment activities; guarantee the transfer of profits and the use of income from foreign investment. Everyone is guaranteed protection of his rights, freedoms and legitimate interests by independent and impartial court convened in accordance with the law. In current legislation, the terms "protection", "protection of rights", despite frequent use, as a rule, are quite abstract in nature. In

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the context of the content of legislative norms, they most often mean the obligation of the state and its bodies to protect certain rights, or this refers to guarantees and measures to protect certain unshakable rights.

## LITERATURE REVIEW

The right to engage in entrepreneurial activity is a right enshrined at the level of constitutional law. In practice it may be quite difficult to distinguish between legal and illegal entrepreneurship; there are still difficulties with the remoteness of entrepreneurial activity from other activities (Gortych 2002). However, despite the existence of a legal definition of entrepreneurship, the law does not specify the content of certain essential features of entrepreneurship, in particular, such as systematicity, innovativeness and professionalism (Newman 2019). The uncertainty of both signs and types of entrepreneurial activity, which is not paid enough attention to by any regulatory act of the state, is an unacceptable fact of the legislative system, should be considered in the future, and therefore it is objectively necessary to further improve entrepreneurial legislation as a component of ensuring the effective application of legal norms, addressing gaps and certain forms of legal regulation (Wendler, Tremml and Lubert 2008).

In legal science, there are many approaches to defining the concept of "defense" (Bradford *et al.* 2019). Protection refers to the activities of authorized state and non-state bodies to restore violated civil rights and interests protected by law, as well as the prevention of civil wrongdoings (Stern and Stewart 1996). In pre-revolutionary civil law, self-help was seen as the legitimate use of one's own physical strength (McAfee, Mialon and Mialon 2008). The same situation is true for entrepreneurial relations, which are aimed at generating profits and generating income, and self-defense is often perceived as the only way to solve emerging problems, which is completely inconsistent with global trends (Johnson 1997, First, Fox and Hemli 2012). There is a similar position according to which the protection of the rights of business entities from violations by state authorities means the realization by business entities of the right to protection from violations by public authorities by the use of specially authorized official bodies or a business entity provided by law with independent means of protection in order to restore the violated rights (Baker 2002). Protection as a material and procedural institution is a set of norms that determine the forms, terms and methods of restoring

violated rights and interests, as well as their protection from violations (Dalko and Wang 2016).

The cited result of economic injustice and the destruction of fair economic activity depends on the consumer's awareness of his actions when purchasing goods or compliance by business entities with conditions of fair competition related to their condition on the market (Carstensen 2016). For example, in the United States, it was found that when many cases or even standardized contracts are concluded, parties, especially private consumers, are not familiar with the meaning of the provisions included in them or are unable to negotiate these provisions through an unequal market position, which leads to dishonesty of the contract or part of it (Leibenluft 2015). The provision of civil law is that fraud occurs if a party denies the existence of circumstances that may interfere with the transaction, or if the party is silent about their existence, cannot satisfy either consumer rights or economic arbitration practice (Ping *et al.* 2000).

Some scholars identify protection with protection of rights. For example, giving a definition of the concept of "protection", they are actually talking about protecting rights. In particular, the protection of the rights of business entities is the introduction of a system of legal, organizational and technical means to ensure the implementation of the rights of business entities and prevent their violations (Markovits 2016). However, it is difficult to agree with this point of view, since it does not actually consider a situation where the rights of the subject are violated (Lemley 1998). The point of view according to which the defense is considered as an integral category of legal protection, and not an identification with the latter, seems more reasoned (Foer and Stutz 2012).

In modern conditions, when there is a reinterpretation of the court as a public authority, its role in administering justice in economic matters, a clear definition of the essence of the category of "judicial protection" through the prism of the mechanism for the implementation of the constitutional right to protect the rights of business entities, considering the objectives and specifics of economic litigation (Fromm and Skitol 2005). Entrepreneurs also have the right to assert their rights by using the mechanism of constitutional legal protection. Legal entities and individual entrepreneurs quite often use this mechanism to defend their rights and interests protected by law.

## MATERIALS AND METHODS

Enterprises, institutions, organizations, other legal entities, citizens engaged in entrepreneurial activity without forming a legal entity and which in the established manner have acquired the status of a business entity, have the right to apply to the court in accordance with the established jurisdiction of cases to protect their violated or disputed rights and interests protected by law, as well as for the application of measures aimed at preventing the offense. The legislator relates to the protection of the rights of business entities and the protection of already violated or disputed rights, as well as the adoption of measures aimed at preventing violation. In this case, we are talking about the protection of both rights and interests protected by law. The judicial form of protection of subjective rights, despite the similarity with the judicial form of protection of civil rights, differs significantly from the latter: the form of activity established by law for the court is most suitable for the consideration and resolution of economic disputes, fully considering the impact of the court on the economy. Thus, in the process of implementing the economic and judicial form of protection of subjective rights, not only a specific economic dispute is considered, but also an impact on the economic activity of entrepreneurs who are parties to the dispute as a whole.

Real protection of specific violated (disputed) rights and interests recognized by law should be carried out in such a way that it does not harm the economic condition of the business entity as a whole. Thus, in the process of protecting the rights and legitimate interests of business entities, it is necessary to consider the importance of implementing specific principles and characteristics of economic proceedings inherent in it from the moment a special procedure for the consideration of economic disputes is occurred, in particular, the need for a quick settlement of a dispute. It is known that in modern economic realities, even when an appropriate decision is made to protect the violated right, subject to untimely resolution of the dispute, a business entity may suffer significant economic damage. It seems that this specificity of the consideration of disputes arising from entrepreneurial relations should be reflected in the definition of "judicial protection of the rights and legitimate interests of business entities".

## RESULTS AND DISCUSSION

Particular attention should be paid to the analysis of such a category as the "legitimate interests" of

business entities. Since it has been established that in addition to subjective rights, "interests protected by law" are subject to judicial protection, it is necessary to determine in which cases interest is ensured by subjective law, and in which – through its "protection". The most common is the point of view according to which "interests are not directly included in the content of subjective law they are something external to it. Between subjective law and interest, there is a relationship between the goal and the means, where the goal is interest and the means are subjective law".

One of common views is to define interest as a benefit. At the same time, we do not agree with this meaning, since the benefit is always associated with some kind of property acquisition, but the law does not only concern property, such as personal non-property interests. Analyzing the concept of "interest", it is indicated that "interest" can be correctly understood only by clarifying the nature of interaction of people, groups of people, classes or the whole society with the material conditions of their existence and other factors of social life. The nature of this relationship is such that the material and other conditions of society are not directly related to the behavior of people, but through creation, when such conditions are transformed in the minds of people into factors of conscious motivation of their will. As a result, interest is defined as a need, which has taken the form of conscious motivation and manifests in life in form of desires, intentions, aspirations and also in relationships that people enter into in the process of their activity. Various legal acts determine the criteria for misrepresentation: certain methods for presenting information, the possibility of the consumer having certain associations related to the product that are not true, exaggeration, ambiguity, and unreliability of the product. As a result of such misrepresentation, the consumer will purchase products that he may not need or that actually does not meet his requirements, at a higher price or lower quality. This will lead to an unfair redistribution of funds to unconscientious business entities, distortion of competition and damage to consumers and bona fide entrepreneurs.

Economic activity without the consumer – a natural person is simply impossible, because it is not abstract and legislation or business practice does not provide for the separation of buyers into individuals and legal entities separately. The actual exclusion of the individual consumer from the circle of subjects of economic relations creates a blank spot in the codification of these relations and does not correspond

to actual relations. In the process of researching the category of “interest” in legal science, various justifications were put forward in the essence of the category of “legitimate interest”. Some researchers believe that these are interests that have not been directly fixed in legal rights and obligations, but are subject to legal protection. Or “legitimate interest” is seen as that which is beneficial to the subject, but within the framework of the law, or as the individual’s desire for legitimate behavior.

The subject of judicial protection in civil proceedings is determined by legal interest – this is the simple legal permissibility (actual possibility) of the subject, comes from the substantive rule or is deduced from the general principles and meaning of the legislation, not ensured by the establishment of a specific legal obligation of other individuals, but at the same time it is provided with a guaranteed possibility (satisfaction) of going to court for protection in case of its violation or infringement by these individuals. A legitimate interest is the legal category of arbitration procedural law and civil procedural law, which covers all cases where substantive interests are not mediated by subjective rights. These include, in particular, the interests of which the person submits a petition in connection with the unlawful assignment of public debt to him; interests that have not received a “legal shell” in the form of legal norms; interests that are not yet framed by subjective law, and the like. Such interests are consistent with the law (objective law) and are subject to judicial protection (in arbitration). That is, legitimate interests, together with subjective law, are recognized as objects of judicial protection by the arbitration procedural law.

In relation to law, the interests of a production association are divided into three groups: legal interests (directly legally protected; the legality of which follows from the general provisions of law); illegal interests (protected by law through indirect institutions; the legality of which follows from the general provisions of law); interests, with their objective discrepancy of which to common interests that can be judged by their presenting features, but which turned out to be legal, through the imperfection of legal regulation, the indifference of law in the fight against their manifestations. Regarding the separation of interests into public and private and their correlation in the aspect of protecting the rights and legitimate interests of business entities, it is necessary to take into account that ensuring a harmonious combination of private and public interests is the main task of legal regulation, since the law should ensure both public and private

interests, their combination in achieving a specific goal, and the contract allows you to further take into account the specific interests of the parties. Ignoring public or private interest in the field of economic activity leads to negative consequences, and ultimately to drastic changes in public life. In recent years, the desire to abandon state control and rely solely on a self-regulating economy have reduced attention to public interests and amplified private interests. The unfortunate result of hoping for spontaneous market self-regulation in various sectors of the economy was the breakdown of economic ties that had existed for many years, a catastrophic decrease in production volumes, high unemployment rates and, as a result, a drop-in living standard and increase in social tension in society.

In legal science, it is common to separate the interests into constitutional and unconstitutional. It should be noted that despite the fact that the term “interest” is used in constitutional law quite often, constitutional law does not mention directly the interests of entrepreneurs. Constitutional law enshrines the right to entrepreneurial activity not prohibited by law, and does not mention the interests related to it either in terms of their implementation or in the aspect of protection. In general, this approach is no exception and takes place in the constitutions of many countries. For example, the Constitution of Switzerland repeatedly uses the term “interest” (in particular, it refers to public interest, Swiss interest, regional interest, substantial interest), but the interests of entrepreneurs are not mentioned. A similar approach is observed in the Constitution of the Federal Republic of Germany. At the same time, the position of the legislator of the People’s Republic of China deserves attention, in the Constitution of which the interests of entrepreneurs were directly reflected. So, in Art. 8 states that the state protects the legitimate rights and interests of the collective economic organizations of the city and village. In Art. 18 of the PRC Constitution, it is expressly established that the legal rights and interests of foreign enterprises located in China and other foreign economic organizations, as well as mixed enterprises, are protected by the laws of the People’s Republic of China.

According to the degree of legal guarantee, interests mediated by subjective law differ from interests that are legitimate in the sense that they do not contradict the law. If the degree of protection of mediated interest by subjective law is characterized by the right to demand proper behavior from the relevant

obliged entities, then interests that are not mediated by subjective law are not fully guaranteed. Legal recognition of such interests shows a manifestation in granting the subject the right to act at its discretion for their implementation, but to the extent not violating the interests of other entities.

## CONCLUSIONS

There are grounds for recognizing the existence of a special variety of interests – procedural interest in civil and arbitration processes, which is opposed to material, that is, property protected by civil law, and personal non-property interests. If a citizen or organization has an interest in obtaining a judicial decision of a civil law issue, he has the right to file a legal action. Even if the claim is inconsistent, the court does not have the right to refuse to accept the statement of claim. The protection of a procedural interest in obtaining a court decision is not always associated with the requirement of the presence of any property or related personal non-property interests. Procedural interest may be defined by the objective need for judicial recognition of rights and therefore may be attributed to objective interests. Based on the analysis, we can propose the following definition of interest protected by law: legal interest is reflected in objective law or arising from its general meaning, the desire of a business entity to achieve economic and social results that are protected by the state. Based on the foregoing, it is proposed that the judicial protection of the rights and legitimate interests of business entities must be understood as the activities of the judicial authorities carried out in accordance with the established jurisdiction and court jurisdiction, aimed at restoring violated rights and legitimate interests of business entities, as well as preventing crime through fair and timely consideration of this category of disputes.

## REFERENCES

- Baker, Jonathan. 2002. "Mavericks, mergers, and exclusion: Proving coordinated competitive effects under the antitrust laws". *New York University Law Review* 77(1):135-203.
- Bradford, Anu, Adam Chilton, Katerina Linos and Alex Weaver. 2019. "The global dominance of European competition law over American antitrust law". *Journal of Empirical Legal Studies* 16(4): 731-766. <https://doi.org/10.1111/jels.12239>

- Carstensen, Peter. 2016. "The complexity of conversing about entrepreneurship, innovation, and antitrust". *Antitrust Bulletin* 61(4): 494-497. <https://doi.org/10.1177/0003603X16673947>
- Dalko, Viktorija and Michael Wang. 2016. "Why is insider trading law ineffective? Three antitrust suggestions". *Studies in Economics and Finance* 33(4): 704-715. <https://doi.org/10.1108/SEF-03-2016-0074>
- First, Harry, Eleanor Fox and Daniel Hemli. 2012. "The United States Competition Law System and the Country's Norms". In *The Design of Competition Law Institutions: Global Norms, Local Choices*. Oxford: Oxford University Press. <https://doi.org/10.1093/acprof:oso/9780199670048.003.0008>
- Foer, Albert and Randy Stutz. 2012. *Private Enforcement of Antitrust Law in the United States*. Washington: American Antitrust Institute. <https://doi.org/10.4337/9780857939609>
- Fromm, Jeffery and Robert Skitol. 2005. "Micro law: Update on the antitrust ghost in the standard-setting machine". *IEEE Micro* 25(5): 77-79. <https://doi.org/10.1109/MM.2005.99>
- Gortych, Joseph. 2002. "Antitrust and intellectual property". *Optics and Photonics News* 13(2): 12-13. <https://doi.org/10.1364/OPN.13.4.000012>
- Hsu, Shang-Lin. 2018. "Antitrust and inequality: The problem of super-firms". *Antitrust Bulletin* 63(1): 104-112. <https://doi.org/10.1177/0003603X18756145>
- Johnson, Bankole. 1997. "Converting new antitrust guidance into action". *Medical Group Management Journal* 44(1): 22-26+62.
- Leibenluft, Robert. 2015. "Antitrust and provider collaborations: Where we've been and what should be done now". *Journal of Health Politics, Policy and Law* 40(4): 847-874. <https://doi.org/10.1215/03616878-3150100>
- Lemley, Mark. 1998. "Will the Internet Remake Antitrust Law?". In *Globalization of Intellectual Property in the 21st Century*, edited by K. M. Hill. Seattle: CASRIP, University of Washington School of Law.
- Markovits, Richard. 2016. "Economics and the interpretation and application of US and EU antitrust law". *Antitrust Bulletin* 61(1): 3-83. <https://doi.org/10.1177/0003603X15625126>
- McAfee, Randolph, Hugo Mialon and Sue Mialon. 2008. "Private v. public antitrust enforcement: A strategic analysis". *Journal of Public Economics* 92(10/11): 1863-1875. <https://doi.org/10.1016/j.jpubeco.2008.04.005>
- Newman, John. 2019. "Procompetitive justifications in antitrust law". *Indiana Law Journal* 94(2): 501-544.
- Ping, Lin, Baldev Raj, Michael Sandfort and Daniel Slottje. 2000. "The US antitrust system and recent trends in antitrust enforcement". *Journal of Economic Surveys* 14(3): 255-306. <https://doi.org/10.1111/1467-6419.00111>
- Ray, Amy and Christopher Wall. 2017. "Antitrust". Pp. 1-28 in *Litigation Services Handbook: The Role of the Financial Expert*, edited by R.L. Weil, D.G. Lentz, E.A. Evans. New York: John Wiley & Sons. <https://doi.org/10.1002/9781119363194.ch31>
- Schmidt, Hedvig. 2009. *Competition Law, Innovation and Antitrust: An Analysis of Tying and Technological Integration*. Cheltenham: Edward Elgar Publishing.
- Steren, John and Bruce Stewart. 1996. "Antitrust implications of alternative delivery systems". *Official Publication of the Clinical Laboratory Management Association* 10(5): 561-567.
- Wendler, Michael, Bernd Tremml and Michael Lubet. 2008. "Antitrust law in the European Community". Pp. 377-385 in *Key Aspects of German Business Law, Fourth Edition*. Berlin: Springer-Verlag. [https://doi.org/10.1007/978-3-540-68577-7\\_30](https://doi.org/10.1007/978-3-540-68577-7_30)

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