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**TESIS STANISLAV DMITRIEVICH**

**ABUSE OF RIGHTS IN THE PERFORMANCE OF AN INDEPENDENT  
GUARANTEE**

Specialisation: 5.1.3 Private law (civilistic) sciences

**Abstract**

of the dissertation for the degree of Candidate of Legal Sciences

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**Relevance of the research topic.** The development of commodity-money relations requires the development of mechanisms to ensure the fulfillment of obligations and give stability to economic turnover. One of the ways to fulfill obligations in Russian civil law is an independent guarantee. The independent guarantee was adopted from international experience, where it has been successfully applied and is being applied to reduce the risk of default by counterparties. However, there are also abuses in the relations for the execution of an independent guarantee, which is the subject of this study. Abuse of the right in the execution of an independent guarantee creates risks for all participants in the relationship: for the guarantor, the beneficiary and the principal.

*Socio-economic aspect.* Due to the abuse of rights in the performance of an independent guarantee, the statement of unfounded claims or refusals to pay, the number of legal proceedings increases and business costs increase. The possibility of unfair behavior by the parties to an independent guarantee undermines the credibility of such a method of securing obligations as an independent guarantee. Abuse of rights in the performance of an independent guarantee creates the risk of failure to enter into the secured obligation, which can lead to a slowdown in the implementation of economically important projects. The use of independent guarantees is especially relevant in the context of sanctions, when the use of methods to secure obligations for the parties is an opportunity to protect themselves from negative consequences. In addition, independent guarantees are actively used in public procurement, which confirms the relevance of the study of abuse of rights when using this tool.

*Law enforcement aspect.* The use of independent guarantees to ensure the fulfillment of obligations both in Russia and abroad is increasing. In 2023, the number of independent guarantees issued to public procurement participants in Russia increased by 14% compared to 2022, and the total amount of guarantees issued amounted to RUB 1.16 trillion.<sup>1</sup> The growing use of independent guarantees

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<sup>1</sup> Banks issued 1.16 trillion rubles in guarantees to participants in public procurement // Pravo.ru URL: <https://pravo.ru/news/249604/> (accessed on 11.01.2025).

leads to an increasing number of disputes related to their improper performance. In 2023, about 1,500 cases were considered in the courts, and in 2024 – about 1,700. Judicial practice is currently ambiguous and contradictory, which requires a decision. Courts interpret the principle of guarantee independence in different ways. The main problems include difficulties in the process of proving abuse of rights in the execution of an independent guarantee, difficulties in assessing the behavior of the parties due to the lack of legally established criteria for abuse of rights, long periods of consideration of such disputes, including due to the delay in the process of reviewing claims by the parties. These aspects lead to a negative impact on banking practices. Banks are forced to tighten requirements for beneficiaries in order to reduce their risks. In 2026, in a Review of judicial Practice, the Supreme Court of the Russian Federation drew attention to the incorrect qualification of the guarantor's behavior by lower courts, recognized it as an abuse of law and pointed out an erroneous interpretation of legal norms<sup>2</sup>. This once again confirms the lack of a unified approach and well-established criteria for qualifying the behavior of the parties to relations under an independent guarantee as an abuse of law

*Law-making aspect.* The main problems associated with abuse of the independent guarantee by the parties are unjustified claims of the beneficiary, delaying payment by the guarantor, creating obstacles to the execution of the guarantee by the principal, which violates the balance of interests of the parties to the independent guarantee. The legislation does not clearly regulate the verification of documents provided by the beneficiary, which creates grounds for abuse on the part of the guarantor. This circumstance makes it relevant to find a balance between the principle of guarantee independence and prevention of unfair behavior of participants in relations for the execution of an independent guarantee. There is also a contradiction between the principle of guarantee independence and protection from abuse by the parties. In this regard, it is necessary to introduce clear criteria for abuse

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<sup>2</sup> See: Review of Judicial Practice of the Supreme Court of the Russian Federation No. 1 (2026) (approved by the Presidium of the Supreme Court of the Russian Federation on March 25, 2026, No. 5A/2026) // SPS "Garant".

of rights, fixing signs of abuse of rights in the performance of an independent guarantee by the principal, guarantor and beneficiary.

*The doctrinal aspect.* Despite the prevalence of such a method of ensuring the fulfillment of obligations as an independent guarantee, there are currently no comprehensive studies of the problems of abuse of law in the context of an independent guarantee, which confirms the relevance of the topic. The doctrine does not have a unified approach to determining the limits of the principle of guarantee independence, nor does it develop criteria for abuse of law and a standard of bona fide behavior of the parties to relations in the execution of an independent guarantee.

**The degree of development of the research topic.** At the moment, the Russian doctrine lacks a comprehensive study of abuse of law in the context of an independent guarantee. There are works that either deal with the problems of independent and bank guarantee, or abuse of the right. Thus, independent and bank guarantees were considered, in particular, by L. A. Biryukova<sup>3</sup>, L. A. Vakhrushev<sup>4</sup>, M. V. Voloshina<sup>5</sup>, D. A. Gavrin<sup>6</sup>, P. G. Rezgo<sup>7</sup>, S. V. Melnichenko<sup>8</sup>, Yu. V. Petrovsky<sup>9</sup> and others. The works of such authors as A. V. Volkov<sup>10</sup>, A. E. Naumov<sup>11</sup> and others are devoted to the study of abuse of law. At the same time, all the listed

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<sup>3</sup> See: Biryukova, L.A. Civil Law Regulation of Relations Related to the Use of a Bank Guarantee: Dissertation for the Candidate of Legal Sciences Degree: 12.00.03 / Biryukova Lyudmila Anatolyevna. - Yekaterinburg, 2003. P. 36.

<sup>4</sup> See: Vakhrushev, L.A. Independent Guarantee of Dissertation ... Candidate of Legal Sciences: 12.00.03 / Vakhrushev Leonid Aleksandrovich – Yekaterinburg, 2018. – 246 p.

<sup>5</sup> See: Voloshina, M.V. Bank Guarantee: PhD Thesis in Law: 12.00.03 / Maria Viktorovna Voloshina. - St. Petersburg, 2003. P. 90.

<sup>6</sup> See: Gavrin, D.A. Guarantee as a Means of Ensuring the Performance of Obligations: PhD Thesis in Law: 12.00.03 / Denis Aleksandrovich Gavrin. – Yekaterinburg, 2007. P. 172.

<sup>7</sup> See: P. Rezgo.G. N. Problems of civil law regulation of bank guarantee relations in the Russian Federation: dis. ... kand. jurid. sciences': 12.00.03 / Rezgo Pavel Georgievich. - Moscow. 2003. St. 37-38.

<sup>8</sup> See: Melnichenko, S. N. V. N. Independent guarantee in the legislation on the contract system of the Russian Federation dis. ... candidate of Law: 5.1.3 / Melnichenko Sergey Vasilyevich – St. Petersburg, 2022. - 427 p. ill.

<sup>9</sup> See: Petrovsky Yu. N. V. N. Bank guarantee in Russian civil law: dis. ... kand. jurid. sciences': 12.00.03 / Petrovsky Yuri Viktorovich. Yekaterinburg, 2001. St. 170-171.

<sup>10</sup> See: Volkov A. N. V. N. Abuse of civil rights : problems of theory and practice: dis. ... Doctors of Law. sciences': 12.00.03. / A. N. V. N. Volkova; - Moscow, 2010. - 423 p. ill.

<sup>11</sup> See: Naumov, A.E. N. Abuse of law: a theoretical and legal aspect of the dissertation of the Candidate of Law Sciences: 12.00.01 / Naumov, Alexander Evgenievich– Moscow, 2010– 144 p.

dissertation studies consider certain aspects of an independent guarantee or abuse of law, but do not consider questions about the abuse of law by subjects of relations from an independent guarantee. A fragmented approach prevails in research. In most cases, researchers limit themselves to considering the unfair behavior of the beneficiary, while there is no comprehensive analysis.

**The object of the dissertation research** is the social relations of participants in civil turnover that arise in connection with the abuse of the right in the performance of an independent guarantee.

**The subject of the study** is the provisions of the doctrine and judicial practice, as well as the legal regulation of abuse of rights in the execution of an independent guarantee.

**Objectives and tasks of the dissertation research. The purpose of the dissertation research** is to solve a scientific problem, namely, to form a holistic view of the institution of abuse of law in the performance of an independent guarantee.

In the process of achieving this goal, the following tasks were set and solved:

1. To identify the peculiarities of the institution of abuse of rights under an independent guarantee;
2. Identify signs of abuse of the right in the context of an independent guarantee.
3. Determine the essence and concept of abuse of rights in the context of an independent guarantee;
4. Analyze the correlation of the principles of independent guarantee with the general principles of civil law;
5. Identify forms of abuse of rights in the execution of an independent guarantee;
6. Analyze the civil liability of subjects of the independent guarantee for abuse of the right;
7. Identify ways to protect the rights of a bona fide party to a relationship arising from an independent guarantee.

**Methodological foundations of the study.** The methodological basis of the dissertation is a combination of both general scientific and special legal research methods. General scientific methods such as induction, deduction, analysis, synthesis, and generalization were used in the study. Among the special legal methods, the following were used: comparative law, historical law, formal law method, legal modeling method, as well as the method of interpretation of law.

**Information base of the study.** The list of sources and literature used by the author in the research of the dissertation topic includes: 195 sources of Russian scientists; 7 sources in foreign languages; 3 international legal regulations; 11 regulatory legal acts of the Russian Federation; 123 materials of Russian judicial practice; 9 materials of judicial practice of foreign countries; 1 source related to electronic sources. resources.

**Scientific novelty of the dissertation research** is determined by the study of the peculiarities of the manifestation of the institution of abuse of law in the performance of an independent guarantee and consists in substantiating the theoretical provisions and definition of the concept of abuse of law in the context of an independent guarantee.

Scientific novelty consists in determining the features of the institution of abuse of law in the performance of an independent guarantee, identifying the system of signs of abuse of law in the context of an independent guarantee, determining the correlation of the principles of an independent guarantee with the general principles of civil law, systematizing the forms of abuse of law on the part of the principal, guarantor and beneficiary, determining the criteria for assessing the integrity of the behavior of the parties to an independent guarantee. The dissertation is one of the first monographic studies devoted to the institution of abuse of law in the context of an independent guarantee. The paper also systematized ways to protect the rights of a bona fide party in obligations under an independent guarantee.

**Arguments to be defended.**

1. 1. The advisability of introducing into scientific circulation the concept of abuse of rights in the performance of an independent guarantee has been proven.

This concept should be understood as a civil offense consisting of the knowingly intentional and bad-faith use of a subjective right by the guarantor, principal or beneficiary in a situation of legal uncertainty for an illegal purpose, including the filing of claims without grounds or in violation of the requirements of the guarantee, actions contrary to economic feasibility, the use of a guarantee for purposes not related to securing an obligation, violating the rights and legitimate interests of other persons, society or the state as a whole. *This regulation applies to items 7, 9 of the passport of the scientific specialty 5.1.3 "Private law (civil) sciences".*

2. Specific signs of abuse in the context of an independent guarantee are identified, which include: making claims in the absence of grounds or in violation of the guarantee requirements, actions contrary to economic feasibility, using the guarantee for purposes not related to securing the obligation, and a special subject structure. The identification of this system of signs will allow us to bring the judicial practice on the issues of qualifying the subject's behavior as an abuse of law in the context of an independent guarantee to uniformity, which will help stabilize economic turnover and predict the consequences of actions of the parties to an independent guarantee. *This regulation applies to items 7, 9 of the passport of the scientific specialty 5.1.3 "Private law (civil) sciences".*

3. It is proved that the specifics of relations arising from an independent guarantee make it necessary to recognize as a principal in Russian law not only the debtor under the main obligation, but also another person who has assumed obligations to the guarantor under the terms of the guarantee agreement. The extension of the principal's status creates a more flexible mechanism for ensuring the fulfillment of obligations in case of abuse by the guarantor and / or beneficiary, allowing claims to be made against the abused party not only to the debtor under the main obligation, but also to third parties. *This regulation applies to items 6, 9 of the passport of the scientific specialty 5.1.3 "Private law (civil) sciences".*

4. Qualifying signs of abuse of the right by the beneficiary in the performance of an independent guarantee are substantiated. These features include the beneficiary's receipt of performance from the principal under the main obligation

or receiving compensation for non-performance or improper performance of this obligation and the absence of a secured obligation specified in the independent guarantee terms at the time of filing a claim against the guarantor. These features form the basis for a uniform approach to classifying the actions of the beneficiary as an abuse of the right. *This regulation applies to items 3, 7, 9 of the passport of the scientific specialty 5.1.3 "Private law (civil) sciences".*

5. A classification of forms of abuse of the right by the guarantor is developed, depending on the stage of the legal relationship under an independent guarantee:

1) when issuing a guarantee (deliberate use of valuation concepts to indicate the documents required for submission; excessive requirements for documents that are not determined by the nature of the secured obligation and reasonable needs to verify the grounds for submitting a claim; use of ambiguous wording when determining the terms of the guarantee; issuing a guarantee without a request from the debtor, and other forms);

2) when considering the beneficiary's claims (failure to notify the principal of receipt of the claim from the beneficiary; failure to transmit copies of documents submitted by the beneficiary to the principal; consideration of the claim outside the established time limit; meaningful evaluation of documents instead of formal verification of external signs; unjustified suspension of payment and other forms);

3) in case of payment under the guarantee (late payment; unjustified refusal of the guarantor to make a payment, including cases where the refusal is motivated by circumstances not provided for by law, and other forms). *This regulation applies to items 3, 7, 9 of the passport of the scientific specialty 5.1.3 "Private law (civil) sciences".*

6. A classification of ways to protect the rights of a bona fide party in obligations under an independent guarantee is developed. Classification of ways to protect the rights of the principal includes preventive and restorative methods of protection. Preventive measures include the suppression of actions that violate the right or create a threat of its violation. In turn, suppression of actions can be

implemented by filing a claim against the beneficiary in order to recognize its claim under the guarantee as unfounded and filing a claim against the guarantor for recognition of payments made under the guarantee as illegal. Recovery methods include recovery of losses from the beneficiary if the beneficiary's claim for payment to the guarantor was unfounded. The economic feasibility of the proposed classification is manifested in the fact that it creates a two-level protection system that allows both to prevent unfair claims and to compensate for the consequences of such claims. *This regulation applies to items 7, 9 of the passport of the scientific specialty 5.1.3 "Private law (civil) sciences".*

**The theoretical significance of the study** lies in the fact that the author, revealing the problems of abuse of law in the context of an independent guarantee, conducted a comprehensive study of this phenomenon as it is understood and applied in Russian and international private law. The paper describes not only the current regulation of abuse of law in the context of an independent guarantee, but also examines the development of this institution, which is valuable from the point of view of the development of the theory of Russian private law. The article describes the peculiarities of the institution of abuse of rights under an independent guarantee, analyzes the relationship between the principles of an independent guarantee and the general principles of civil law. For the first time, a systematization of forms of abuse of rights by the guarantor in the performance of an independent guarantee is carried out, criteria for unfair behavior of the beneficiary and ways to protect the rights of a bona fide party in obligations under an independent guarantee are identified.

The theoretical provisions and conclusions contained in this paper can be applied to further development of this problem. The results of the dissertation research can be used in the educational process to develop and conduct lectures and practical classes on the course "Civil Law".

**The practical significance of the study** lies in the fact that the developments presented here can be further used by the legislator and judicial instances to improve the current legal regulation of abuse of law in the context of an independent guarantee, as well as to develop new, more optimal and relevant approaches to its

application from a practical point of view. The dissertation research systematically reveals and sets out the features of abuse of law in the context of an independent guarantee, defines the criteria for unfair behavior of the parties to an independent guarantee. This study may be of interest to practicing lawyers who work in the banking sector in general and with independent guarantees in particular.

**The degree of reliability and approbation of the research results.** *The conclusions and provisions contained in this paper are presented and discussed at scientific and practical conferences:*

1. III International Scientific and Practical Forum "Law and National Security" in the section " State security and human well-being through the prism of civil law norms "(report on the topic: "Some problems of protecting rights under obligations of foreign companies, including guarantees, during economic sanctions").

2. IV International Scientific and Practical Conference " Problems of Ensuring the Rule of law: History and Modernity "(Khvostovsky Readings).

3. International scientific and practical Conference "Traditions and Innovations in Law", dedicated to the memory of Professor, Corresponding Member of the Russian Academy of Sciences Gennady Vasilyevich Maltsev (XII Maltsev Readings).

*List of the author's publications.* The main provisions submitted for defense in the framework of the dissertation research are reflected in the following publications:

*Articles in peer-reviewed scientific publications that should publish the main scientific results of dissertations for the degree of Candidate of Sciences, for the degree of Doctor of Sciences:*

1. Tesis S. D. Comparative legal analysis of the independent guarantee and its analog in the Russian Federation and the Republic of Kazakhstan / S. D. Tesis // Law and Economics. – 2023. – № 9(427). – Pp. 74-79.

2. Tesis, S. D. Possibility of refusal of the principal-consumer from the execution of the contract on the issuance of an independent guarantee / S. D. Tesis / / Law and Economics. – 2024. – № 8(438). – P. 45-50.

3. Tesis S. D. Nedobraschestnoe povedenie garanta pri vypolnenii nezavisimoy garantii: problemy pravovogo regulirovaniya i sudebnoi praktiki [Unfair behavior of the guarantor in the execution of an independent guarantee: problems of legal regulation and judicial practice]. – 2025. – № 3 (118). – P.59-65.

**Structure of the study.** It is defined by the goals, objectives, and range of problems under study. The dissertation consists of the following structural elements: introduction, three chapters combining six paragraphs, conclusion and bibliographic list. The main conclusions of the study are presented in the dissertation in paragraphs.