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TIME LIMITS OF CIVIL SUBSTANTIVE LAW AS A CRITERION FOR THE LEGALITY OF THE RELATIONSHIP

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Abstract. This article is devoted to the research of the topical issue of temporal and essential characteristics of the regulatory civil relationship. The legal definition of a legal relationship as a social interaction regulated by law is provided, the participants of which have mutually corresponding legal rights and obligations. The exercise of subjective civil rights is limited in time. The reasons for such restrictions, their nature and impact on the effectiveness of the law itself are studied in the paper. It is during the existence of the law it can be exercised, outside these limits - it is impossible. Therefore, it is extremely important to establish in each case the duration of the period during which the exercise of subjective rights is possible. This is especially important when the legislator sets the duration of the relationship in the form of necessary, reasonable and other similar periods. We believe that they are definite, and their duration is determined by the application of customs of business. The interconnectedness of the subjective substantive law of its bearer with the legal obligation of the obligated person is the quintessence of the legal relationship. The main thing is that the subjective right is exercised during the time during which it exists. After the expiration of the time for the regulatory implementation of the right, its violation begins, and therefore the effect of the protection-legal material relationship occurs.

Key words: regulatory and protective legal relationship, substantive law, term.

Introduction. The diversity of obligatory property relations and the peculiarities of their course in time require a certain classification of civil law terms that mediate certain relationships, determine the time of implementation of the person's subjective right and fulfillment of legal obligations included in the content of material obligations. knitting. In law, the time category is the term, ie the period in the objective course of time, chosen as a result of the willful act of people in order to establish the boundaries of lawful and desirable behavior of the parties. Establishing time limits for the exercise of civil rights and responsibilities provides an opportunity for appropriate action by the parties to legal relations aimed at achieving socially desirable goals. Therefore, the temporal regulation of subjective rights and responsibilities is an important means of legal influence on the behavior of participants in public relations. The socio-legal nature and legal significance of deadlines determine the rules for their establishment and definition, which, in turn, affect the application of the law on deadlines and create conditions for filling the mechanism of influence on public relations with specific content.

Deadline is a certain period of time. However, time moves in space and can not be imagined without it. Therefore, thinking about a specific period of time makes sense only in relation to the subject, the beginning and end of which it determines. In other words, outside the space of a certain phenomenon, the term loses all certainty. Thus, the legal term is an objectively existing relationship between the phenomena of the legal order, which manifests itself as a number of qualitative changes in legal phenomena, expressed in calendar time, occurring in a certain sequence with changes due to the impact of these phenomena on each other. which is reflected in human consciousness in the form of a certain number of hours, days and more. It is necessary to agree with the characteristics of terms provided by VV Luts: civil terms are a temporary form of movement of material legal relations, a form of existence and development of subjective rights and obligations that constitute their content. The expiration or expiration of the term is important not in itself, but only in conjunction with the actions of the subjects committed during its course. For example, the omission of the statute of limitations

entails the rejection of the claim not only because the term has expired, but because the plaintiff did not file a lawsuit against the defendant to protect his violated right (Luts, 1989, 40).

The aim of the study. Any subjective right is valuable only because it can be used to meet the authorized person's own needs, ie because of the possibility of exercising the right. Thus, being a subject of a certain substantive law, a person inevitably receives the appropriate degrees of freedom, within which his behavior can turn the possibilities inherent in subjective law into the necessary material result. One of the factors that restricts the freedom of the entitled person in the exercise of subjective law may be time: subjective law has certain limits not only in content or manner of its implementation, but also limited in time. In this context, it is interesting to clarify the temporal dimensions of any subjective right, since time, along with the scope of authority, is an integral part of the content of the legal relationship.

Material and research methods. We need to explore the specific relationships of private law that arise in order to satisfy the interests of participants, because it determines the effectiveness of material circulation. Indeed, in civil relations, subjective rights and responsibilities are usually formed at the will of their bearers. Consequently, the setting of the duration is also determined by the subjects themselves as a result of the expression of their will. Therefore, the legal analysis will be aimed at establishing specific and real private law interactions and the adequacy of their existing legal mechanisms.

The results of scientific research.

1. Temporal and substantive limits of the exercise of subjective law.

Strictly speaking, each subjective right as a measure of the possible behavior of the managed entity has its limits. First of all, they concern the content of the powers of the carrier in relation to the methods and procedure of its implementation. There has been and continues to be a discussion in the literature about the absence of such boundaries in the exercise of property rights. According to FK Savigny and his followers, the right of ownership by its nature is an unlimited right, it allows the subject to receive all possible benefits from the use of property, without taking into account any other circumstances. But, in fact, everything was not so clear. Legislation has not yet accepted such assumptions, especially since they do not cover all cases of property rights. Civilian scholars have also pointed out that this right is limited by law, and the owner's power over the thing must be exercised within the limits set by law (Meyer, 2000, 248). Today, the dominant thesis in civilization is that the property right of a person cannot be used contrary to the law and moral principles of society, to the detriment of the ecological state, rights, freedoms and interests of others (Porotikova, 2007, 242). Otherwise, the exercise of property rights should be classified as an abuse of rights. The relevant rule is reflected in the Civil Code of Ukraine (see Article 319 of the Civil Code of Ukraine).

As we can see, the position on the limitation of any subjective right is quite indisputable today, if the limits of the right are not established, it is impossible to exercise it. But this applies only to the existence of limits on the conduct of the authorized person on the content of the law (for example, it may be determined by law or contract) or the manner and nature of its implementation (in this regard, the limits of law must take into account the law). . As for the duration of subjective law as one of the factors influencing the limits of the conduct of the entitled person, the provision on the restriction of the right to certain terms is not general. In particular, as a rule, absolute civil rights are not legally limited in time. But, in fact, the duration of even such subjective material rights of a person is not infinite: it is determined by the time of alienation or destruction of property, death of the carrier, and so on. A separate assessment should be given to such binding substantive rights, the implementation period of which is not set or determined at the time of the claim. It is necessary to recognize the erroneous point of view of researchers who consider these mandatory rights and obligations indefinite (Stefanchuk, 2008, 74). This obligation has a deadline, although this deadline is not set by the participants, and it is related to the creditor's claim (Guiwan, 2014, 257-258). Thus, the establishment of boundaries for the exercise of civil rights is not a restriction of these rights, but the regulation of existing material

relations. Therefore, we must recognize that there is a gap in the current legislation of Ukraine on this issue, which needs to be addressed immediately.

Again, the abuse of rights can be qualified only by the actions of the right holder, which, being within the limits of subjective law, still does not meet the principles of reasonableness, good faith and justice. In normative form, this position is expressed in Art. 13 of the CCU, which deals with the illegality of acts committed within their right to harm others, cultural heritage, contrary to law or moral principles of society. This fully applies to issues of abuse of rights during its duration. Indeed, subjective law cannot exist outside the legal relationship (Saitgalina, 1999, 30), and in all its scope and duration must always correspond to the duty of a certain or indefinite circle of persons. Failure of the latter to fulfill this obligation means a violation of a subjective right, the right holder has the right to judicial protection or, in other words, the substantive right to sue, the implementation of which occurs within the statute of limitations. At the same time, in civilization there is a thesis that the entitled person has certain responsibilities related to, in fact, the exercise of his right. In general, these responsibilities are defined in Art. 13 of the Civil Code of Ukraine and are the need to exercise civil rights within the established limits. Going beyond the specified rights in the implementation of subjective rights should be regarded as an abuse of rights.

Meanwhile, the existence of a legal obligation presupposes the existence of a corresponding law. What constitutes the sphere of law (freedom) for the entitled person is at the same time the sphere of duty (prohibition) for the non-entitled person, and vice versa. In this context, this is manifested in the fact that the obligation of the right holder to exercise his rights within the established limits corresponds to the right of an indefinite number of persons to demand such conduct. And here it does not matter that the right holder may not go beyond the exercise of his right, the main thing is that such a possibility exists. A person is the owner of a certain subjective right. Guided by the scope of powers established by law, which constitute the content of this right, the subject may take actions that lead to the implementation of the authority enshrined in law. At the same time, the duty of the entitled person is not to go beyond the limits set for the subjective right itself. This applies equally to the content of the right itself and the implementation of measures for its implementation. Undoubtedly, the content of subjective law includes the term of its existence.

We can state the normatively established rule: a person must exercise his right within the prescribed period. The construction of legal regulation is quite interesting: a person has a right, however, he can realize it only for a limited period of time. Often in doctrine and law such a situation is characterized as the presence of the entitled person of a certain obligation to properly exercise their rights (Gribanov, 1992, 44), in particular its implementation over time. The question of whether a person authorized to exercise civil rights has so-called creditors' obligations has been repeatedly considered in the civil literature. There are some differences in the practical solution of the question of the qualification of a particular act as the exercise of a subjective right or the implementation of the creditor's obligation. It is unfortunate that these disputes are not resolved by case law, on the contrary, it often mixes together different concepts, in fact identifying them. However, the thesis about the burden of the entitled person to use his inherent right properly is indisputable (Volkov, 2010, 15).

But if we consider the abuse of rights as illegal behavior, we certainly come to the question of the legal consequences of such acts. Here again, the generally accepted interpretation that this act leads to the possibility of restriction or refusal to protect the right is obviously not enough. In general, such legal relations have not been studied in the civil literature. So, does this situation apply to the general rule of protection in the event of a breach of duty by the right holder? We believe so. As the law does not contain any reservations about these relationships, a legal mechanism specific to the protection of the violated subjective right should be applied. Therefore, any person whose rights and interests have been violated by another person's improper exercise of his or her right may obtain his or her compulsory protection by compensating for the damage caused. Confirmation of

this is found in the doctrine and legislation of some foreign countries, which have long introduced compensatory liability for damage in case of abuse of rights (harassment) in the form of its compensation (Pokrovsky, 1998, 119).

At the same time, it should be noted that the commission of certain actions that do not derive from a person's subjective civil law (committed outside its content or duration) is not identical to the illegality of the act. Actions may be considered illegal if they contradict legal requirements. However, if the acts, although not based on the proper person's subjective law, but do not conflict with the law, meet the criteria of personal interest and do not harm the environment, other right holders, etc., their commission is not liable to the person who carried them out. However, it is impossible to agree with the point of view of some scholars on the need to recognize such actions as lawful (Gribanov, 1992, 31).

According to the provisions of civil law, the exercise of a right outside its existence in such cases should be considered illegal, and the requirements of the person who had such a right to enforce it should entail a refusal to protect the right. At the same time, one cannot agree with the position (Joffe, Gribanov, 1964, 80-85) that refusal to protect the right is a sanction against the entitled person, as such measures of influence do not meet the generally accepted criteria established by law for protection measures. or civil liability. Therefore, compensatory sanctions should be applied for abuse of rights or acts outside the law in the event of material damage to the rights or interests of society or an individual protected by law, which should be prescribed by law.

2. The procedure for exercising subjective rights.

Subjective substantive law in the process of its implementation simultaneously implements several general civil principles. Among them - the most important of the inherent functions of civil law: regulatory and protective. Accordingly, regulatory and protective law are integral parts of legal law. Thus, relations mediated by substantive law can be regulatory or protective in nature, and regulatory and protective legal relations are interdependent and closely related. Regulatory are the relations through which the order of correct, proper behavior of the subjects of civil relations is established, they are aimed at achieving a certain positive result (Kharitonov, 2008, 138). Protective relations are aimed at protecting the achievements, they provide a legal opportunity to stop the violation of subjective law, eliminate the negative consequences of such violations (Dzera, Kuznetsova, 2002, 85).

Civil law relations of their participants can be carried out only on the basis of regulatory norms, if the activities of persons in the field of civil circulation are lawful. In other words, a regulatory relationship is one in which the normal substantive and legal interaction of its participants. In fact, such a relationship is a legal relationship between the parties to civil relations, which is determined by the rules of civil law and is designed to ensure the realization of rights and responsibilities. The authority due to the authorized person is exercised by him / herself independently or by taking the necessary actions by the obligated entity. For example, under a contract, one party (the contractor) must perform certain work for the customer, and the latter must accept and pay for it. The activities of each of the parties to the agreement, if it takes place within the lawful conduct specified by law or contract, are mutually expected and therefore normal. But, despite the normal course of regulatory relations, their content includes certain requirements of the entitled person and the responsibilities of another. Such claims, which have no claim, are not subject to the statute of limitations. And the possibility of coercive measures provided for in the agreement is abstract. Therefore, the probability of coercion has the appearance of only an objective possibility, so it is not part of the content of the regulatory relationship.

The characterization of regulatory and protective powers as a cause and effect proposed in the literature hardly deserves support (Osokina, 1990, 37). In fact, their interconnectedness is manifested in another way. The protection and legal relationship arises not as a result of the existence of the regulatory, but as a result of its violation by the obligor. However, such a violation does not always

occur, so not every regulatory right of a person is accompanied by the further emergence of his right to protection.

The essence of the regulatory civil relationship is to ensure the possibility of exercising their subjective rights by the entitled person and the performance of legal obligations by the obligated person. However, one of the main features of the method of civil law regulation is the method of protection of civil rights. This means that in the case of an offense there is a legal protection of subjective rights, including through the use of coercion. It has been rightly noted in the literature that the sign of judicial protection is common not only for civil rights, some rights arising from labor, family, land, administrative relations can be protected in court (Joffe, 2000, 537). However, we repeat, for civil law relations (it would be more correct to say - for private law) the claim protection of the violated subjective right is general, while for other listed areas it is rather ancillary.

What happens to the regulatory relationship in case of violation. There is no unity of scientists on this issue. According to the established tradition of the Soviet times, the protective property, ie the possibility of the right to be protected, is inherent in the subjective law itself and is one of its inalienable powers. A similar approach was manifested in the pre-revolutionary period. Thus, YS Gambarov pointed out that the protection of civil law by its bearer is an element of the structure of any subjective right. Its "formal moment" is realized in the form of a lawsuit, objection, application of permitted arbitrariness, etc. All these methods of protection are sanctions, without which the law can not do, but they should not be confused with the subjective law itself (Gambarov, 2003, 390).

Soviet scholars also mostly followed a similar paradigm: M.A. Gurvich, S.N. Bratus, M.M. Agarkov, O.S. Ioffe, B.B. Cherepakhin and other authors postulate that after the violation of the material legal relationship is transformed, the subjective right passes into a state of maturity of the claim (claim), takes the form of a substantive right to sue. The basic principles of this theory were expressed most fully MA Gurvich: in the case of an offense, the subjective substantive law goes into the so-called "tense" state, ie the stage of the right to sue, the subjective right acquires the ability to enforce with the help of a state jurisdiction, and this is the essence of protection substantive law (Hurwich, 1949, 145). Therefore, according to this doctrine, in addition to the right to own actions of the right holder and the power to demand a certain action from the obligor, the subjective right also includes the possibility of protecting the right in case of violation by coercion.

In this case, the possibility of protecting the violated right was understood as its enforcement (Unger, 1892, 354). In this regard, for the most part, there were no controversies among scientists. But then they arose and gained the level of serious discussions. Some believed that after the cessation of the possibility of coercive judicial protection, the protected right itself ceases (Meyer, 2000, 323), others pointed to the continued existence of the latter, but in a weakened (irrevocable) state without the ability to further its enforcement. 1998, 310). Proponents of the concept of the inalienability of the coercion of law argued that the loss of such a property automatically means the destruction of the law itself, which can not exist without one of its essential features. Instead, scholars who argued for the transition of the right to a state of claim in case of its violation, mostly did not see the end of the statute of limitations as a threat to the subjective right, believing that it now returns to non-state and thus continues. to exist, forever deprived of the ability to enforce.

M.A. Gurvich notes that as a general rule, the transition of substantive law after the delay of its implementation in the right to sue is irreversible. It can no longer acquire a regulatory form. However, the author points to certain exceptions to this rule: it is a legislative act (moratorium) or an agreement between the parties to change the maturity of the law (161). After the deadline, the subjective right must either be exercised or become a claim. It becomes violated, the statute of limitations on the relevant requirements begins. According to Ukrainian civil law, any agreements on postponement of enforcement after the entitled person has the right to sue do not affect the statute of limitations, so the right continues to be in a state of coercion and cannot return to a non-claimable (immature) state. In

fact, from the standpoint of modern legal concepts, it is difficult to agree with such statements, even if we positively perceive the currently commented general concept. And yet let us consider in more detail the theory that has long dominated civilization.

3. Critique of the theory of a single subjective law. Temporal aspect.

The basis for the emergence of a "tense" state of subjective substantive law (its ability to enforce) was considered a certain legal fact - an offense. In short, the legal purpose of legal facts is reflected in the current version of Article 11 of the CCU: they are grounds for the emergence, change or termination of civil rights and obligations. It is in this context that legal facts have been considered and are being considered in our civilization. It is believed that actions take place in accordance with the will of the participants in civil relations, the events - outside and regardless of the will of these persons. In turn, actions can also be differentiated as transactions and offenses. This thesis, if developed further, inevitably leads to the conclusion that the offense as a legal fact is important for the emergence of coercive properties of subjective law. In some cases, it will be sufficient for the entry into force of the subjective right of a person to protection, in others - the offense is part of the actual composition, the formation of which entails this consequence. Thus, the default of the debtor's monetary obligation gives rise to a protective power of the creditor within the scope of the obligation, which arises from the time of payment. On the other hand, the claim against the carrier in international traffic arises after the formation of the actual composition, which in addition to the offense also includes the active claim of the Commissioner and the passivity of the debtor within the prescribed time.

Thus, according to the commented theory, the facts that cause the maturity of the claim are the circumstances associated with the occurrence of the conditions and term of the material claim (Hurwich, 1949, 157). In particular, the omission of the term of the obligation gives the subjective right a coercive right and the continued existence of such a right automatically means its violation by the obligor. After the expiration of the term of the substantive law is either terminated as a result of its implementation, or continues to exist in violation. In the latter case, it receives a claim. Finally, it is emphasized that the expiration of a term or condition (for conditional obligations) is the basis for the right to judicial protection (Hellwig, 1912, 513), and the corresponding capacity for coercion is an element of the most protected power and can not be detached from the right itself.

This state of subjective law, which has become coercive as a result of its violation, has been called the right to sue in the material sense. At the same time, the content of the subjective right itself as a result of its violation does not change in any way both in terms of the scope of powers and in terms of duration. The law does not change, it simply acquires a new property - to be realized by judicial coercion. Externally, this state of subjective law, according to scholars who advocate this concept, is personified in a new legal relationship of the protective type, the content of which is the forced implementation of civil law against the will of the obligor. The same subjects remain involved in this relationship. Thus, despite the rather ambiguous opinions expressed in the literature on the essence of the substantive right to sue in the context of its relationship with subjective civil law, the definition of subjective law as a measure of possible conduct of a entitled person (right to own actions), the right to demand specific behavior from others and to protect the right in case of violation.

After the violation of the subjective right, it acquires a claim and can be enforced. The stay of civil law in the state of the right to sue in the material sense is limited by the statute of limitations. These periods do not relate to the duration of the substantive law itself or to the period during which the person may institute legal proceedings, they only determine the period of time during which the subjective right becomes coercive. However, the loss of the subjective right of one's security (for example, after the expiration of the statute of limitations or after the plaintiff's waiver of the claim, which entails the termination of the proceedings and the subsequent inability to go to court with the same claim) does not mean termination of civil law.

Thus, historically, most civilian researchers have held the view that the possibility of judicial protection of the infringed right is an integral feature of the law itself, its intrinsic nature. The differences between them within the commented concept of belonging to any subjective right property to coercion was only that some authors considered such a property inherent in the subjective right from the time of its emergence, noting that it acquires the ability to realize from at the time of the offense, others argued that it is the subjective right with the offense passes to the state of claim, transforming and gaining the ability to defend. In other words, the opinions of her supporters differ on the question of when this property arose

Thus, B.B. Cherepakhin believes that the ability to enforce is an integral element of subjective law since its inception (Cherepakhin, 2001, 282). Instead, according to Russian pre-revolutionary civilians, the right to sue does not manifest itself as positive, as long as the subjective right is exercised unhindered (Engelman, 2003, 401). Slightly modified, but essentially with the same internal content, the construction of subjective law was built by researchers of this issue at the beginning of the Soviet period. In particular, M.P. Ring also argues that the ability of a subjective right to protection arises only after a violation (Ring, 1955, 73).

In the end, the latter point of view proved to be more convincing and productive. Thus, the prevailing theory is that such a property does not arise automatically in civil law from the time of its existence, but is acquired only in the case of other persons committing acts that violate the regulatory obligation. It is after the violation of a subjective right or failure to fulfill one's duty (which, after all, is the same violation of the right) that it becomes tense, ie it becomes coercive. It should be noted that even in Soviet times, attempts were made to move away from the classical understanding of the right to sue as an element of the very subjective right. Yes, IM Bolotnikov pointed out that in subjective law there is only the possibility of the right to sue, which either terminates with the termination of the legal relationship, or becomes the right to sue in case of violation. The author defined the right to sue as the right to enforce the claims of a person arising from the violation of subjective rights (Bolotnikov, 1964, 6). However, the author failed to take the next logical step regarding the fact that the implementation of the protection and legal requirement provides protection of the violated protected right. In the end, this led him to the traditional conclusion at the time that the subjective right and the right to sue had been violated in the substantive sense.

Despite the fact that in modern civilization other, more progressive models of civil law interactions have emerged, which arise in case of violation of regulatory law (Krashennikov, 1987, 52-54), this legal concept, although in a slightly modified form, has a significant number of supporters and now. Thus, V.M. Protasov proposes to consider the rights and obligations that have arisen as a result of the offense, as an anomalous stage in the development of regulatory relations. According to the scientist, these rights and responsibilities are not part of the new relationship, because its participants remain the same subjects. However, the author rejects the possibility of using coercion within the regulatory relationship, pointing out that this relationship does not mediate measures of state coercion, there is no place for law enforcement and it can be implemented only on a voluntary basis (Protasov, 1991, 76-77). P.P. Kolesov holds a similar position: the method of protection is regulatory in nature, because it is always associated with a material claim, which is the subject of the claim and follows from the substantive legal relationship (Kolesov, 2004, 24). L. Litovchenko defends the thesis of reconciling the old concept with the new vision of the subjective right to protection as a separate protection legal relationship (Litovchenko, 2014, 22-23). In our opinion, all these are half-steps, modern civilization has already firmly developed new paradigms, which should be taken into account in further scientific and legislative activities.

Conclusions. Thus, it is quite obvious that the violation of subjective law is not the transformation of the legal relationship, its transition to the so-called "tense" state, and the emergence of a completely new - security. This relationship has its temporal and essential features. We must agree

with the position expressed in the literature, according to which the subject of enforcement is not violated subjective right, and the corresponding protective requirement: the court enforces not the right that was violated, and the requirement to stop such violation (Krashennikov, 1995, 3- 8). Conversely, it is impossible to support the thesis according to which the violated subjective right is realized within the framework of protective legal relations. In fact, this is not the case. Within these relations, the right is realized, which is part of the content of the protective relationship. This is not a violated (protected) right, but a protective one. Of course, the protection authority may have the same meaning as the protected one (although this is not always the case), but in any case the protection of the violated regulatory right is the implementation (including through the courts) of the protection right.

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