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LEGAL REGULATION OF DETERMINATION AND CALCULATION OF TERMS IN CONTEXT OF THE RECODIFICATION OF CIVIL LEGISLATION OF UKRAINE

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In context of the recodification of civil legislation of Ukraine, provisions of the current Civil Code of Ukraine are subject to careful analysis and revision. Special attention should be paid to the norms that are applied to absolutely all civil legal relations due to the fact that the Civil Code of Ukraine is built on a Pandect system of law. Among other, these include provisions on terms in civil legal relations.

In particular, Chapter 18 “Determination and Calculation of Terms” has not been amended since the Civil Code of Ukraine entered into force [1].

Such amendments are also not provided for by the Draft Concept for Updating the Civil Code of Ukraine, which proposes to adjust only the norms on the prescription of claims. [2] However, some provisions regarding the calculation of terms, in particular their expiration, are somewhat outdated. Thus, according to Part 5 of Article 254 of the Civil Code of Ukraine, “if the last day of the term falls on a day off, holiday or other non-working day, which is determined in accordance with the law at the place of performing a certain action, the day of expiration of the term is the first working day following it” [1].

Firstly, the vague wording of this norm does not allow to understand clearly which days the indication “determined in accordance with the law at the place of performing a certain action” refers to: only holidays and non-working days or also days off. Speaking about days off, defined by the law, it is worth mentioning that only Sunday is the day from which the expiration of the term shall be transferred to the first working day, because Part 2 of Article 67 of the Labor Code of Ukraine provides that the general day off is Sunday, and other days off are determined by a work schedule of a company. [3] However, with this approach, even if the last day of a term falls, for example, on a Saturday, which is a day off at the company, the last day of the term is not transferred, and a person is deprived of the opportunity to perform an action on this day. Obviously, this should not be the legislator's logic.

Secondly, the legislator does not specify whether this rule is applied to legal relationships in which, within a certain term, an action must be performed not at a company or an institution, but between individuals, such as performance of a contractual obligation by one individual to another. If we interpret this norm literally, then the rule about transferring the last day of a term from a day off to the first working day should be extended to all legal relationships without exception, including those between individuals. However, it is difficult to find justification for such its application, because the logic of adopting the relevant norm should be considered. It is obvious that this norm is aimed at protecting interests of a person who is deprived of the opportunity to perform an action on the last day of the term due to the fact that the company or the institution has a day off, holiday or other non-working day. A completely different situation arises when on such non-working day, performance must be carried out by an individual for the benefit of another individual, because in this case there is no dependence on the work schedule of a company or an institution. Therefore, the debtor is not deprived of the opportunity to fulfill the obligation.

Thirdly, Part 5 of Article 254 of the Civil Code of Ukraine also does not answer the question of whether the rule enshrined therein is applicable in case that on a day off, holiday or other non-working day determined in

accordance with the law, there is still a working day at a particular company or institution where the action is to be performed, according to its schedule. A literal interpretation leads to the conclusion that the last day of the term is still to be transferred. But in this case the purpose of this norm is lost, because a person is not deprived of the opportunity to perform the relevant action on the last day of the term, which fell on a non-working day specified by law. A counterargument might be that the person did not know that this day was a working day at a particular company, because the law defines it as a day off or a holiday or other non-working day. However, this argument is losing its relevance due to the development of digital technologies, because nowadays one can find out the work schedule of almost any company in just a few seconds using various search systems. Moreover, the legislator provides for the obligation of a person to learn the schedule of the company or the institution in Part 1 of Article 255 of the Civil Code of Ukraine: “If a term is set for the performance of an action, it may be performed before the expiration of the last day of the term. If this action must be performed in an institution, the term expires when the relevant operations in this institution are terminated in accordance with the established rules”. Therefore, it is unclear why in some cases a person must follow the schedule of an institution or a company when performing actions on the last day of the term, and in others – not.

Considering the above, the norm of Part 5 of Article 254 of the Civil Code of Ukraine, according to which the last day of the term falling on a day off, holiday or other non-working day, determined in accordance with the law at the place of performance of a certain action, is transferred to the first working day following it, is outdated and requires amendments. In particular, it is proposed to emphasize that this rule applies only to situations where the action must be taken in an institution or a company, since the ability to perform the appropriate action depends on their work schedule. In addition, it seems appropriate to remove the reference to the law in determining days off, holidays or other non-working days. Instead, it is proposed that days off and other non-working days be determined by a work schedule of a company or an institution.

Thus, Part 5 of Article 254 of the Civil Code of Ukraine is proposed to be worded as follows: “If the action is to be performed in an institution or a company and the last day of the term falls on a day off, holiday or other non-working day determined in accordance with the work schedule of this institution (company), the day of expiration of the term is the first working day following it.”

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