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SOME ESSENTIAL FEATURES OF DIFFERENT CIVIL LAW TERMS

Abstract. *This scientific article is devoted to the study of the topical issue of establishing the characteristics of civil law terms of regulatory powers of the holder of subjective law and the issue of distinguishing these temporal factors from similar manifestations, but different in nature of the terms of protection of the infringed right. But the similarity of mechanisms is aimed at different consequences. Although both regulatory and protective rights are intended to provide a new material relationship as a result of their exercise, the outcome is different. In the first case - this is a new regulatory legal interaction with the participation of the creditor, in the second - obtaining the right to apply to the defaulting debtor of state judicial influence and the exercise of protection and enforcement powers under duress. The paper critically studies the existing scientific concepts on the application of ancient regulatory tools in some respects, in particular in insurance and tort liability. The personal position of the author is expressed, who defends the thesis that the infliction of harm is not a circumstance that prevents the exercise of the relevant right to compensation, namely this right does not immediately become protective. The insured event only establishes the beginning of the relevant regulatory right to demand insurance payment. This power corresponds to the insurer's obligation to pay the money within a specified period. And only in case of violation of this obligation there is a protective right of claim, which may take the form of a substantive right to sue or claim.*

Keywords*: cut-off period, statute of limitations, regulatory relationship.*

Differences in civil law terms are due to their specific functions in regulating public relations. The great diversity of civil law terms and normative mechanisms for their definition and establishment inevitably called for the application of a significant number of classification schemes. Each researcher of the issue has tried and is trying to make a detailed division of civil terms on various grounds. It is believed that the smaller the scattering of time for specific factors of their formation, action, impact on the mediated relationship, the more successful the study. In our opinion, the analysis of the essence of the temporal factors of civil subjective law in the context of the construction of classification schemes has long been aimed at

finding or even inventing differences between different material terms. Meanwhile, they all have a similar legal nature, the same essential structure, so the systematization of terms should be aimed at uniting them within the qualification groups on the grounds of commonality with the subsequent formation of a coherent legal system as a means of establishing links between concepts and classes. projects [1, p. 238].

In scientific works, the issues of temporal certainty during the implementation of regulatory and protective interactions have been studied by many scientists. They analyzed the temporal component of a person's right to perform their own productive actions and demand the necessary behavior from the counterparty, both during proper execution and after the offense. However, certain interactions, especially in the field of practical implementation of the subjective powers of the right holder in time, remain insufficiently studied. Therefore, there are many disputes and disagreements, in particular regarding the clarification of the temporal boundary, when the regulatory status of material relations ends and the right to protection arises, including by filing a claim and exercising the right to coercion with the help of a court. These aspects of the normalization of the relevant relations have been the subject of side research by scientists such as V.M. Gordon, E.O. Krasheninnikov and A.V. Voshatko, but the scientific development is not complete, moreover, some of the conclusions of scientists deserve criticism, so it is to achieve certainty in this matter and the purpose of this work. The aim is to develop a general concept of the protective legal relationship, which has the function of terminating the offense and eliminating its consequences. To this end, the interaction of subjects at the level of protection of law in terms of regulation of certain absolute civil relations is being developed.

In this context, special attention needs to be paid to the study of the specifics and features that distinguish the essentially temporal characteristics of regulatory and protective civil relations. At the same time, the regulation of cut-off terms and their separation from the terms of protection of the right should acquire the most meticulous analysis. Only on the basis of a detailed study of the legal content of a

particular power exercised within a specified period, it is possible to draw a line between these two different legal categories of purpose. The common point that characterizes the usual (ordinary) period for the implementation of the law and the cut-off period is that they determine the time established by law or the participants themselves to implement the lawful conduct of the parties to the regulatory relationship. In both cases, the possibility of exercising civil law is associated with the active initiative of the creditor, which he must take within the established temporal limits. After the expiration of this period, the realization of the right is impossible, and the subjective right is terminated. If the validity of the right is limited in time, accordingly limited by the term and the possibility of the creditor to perform these actions. With the expiration of the right ceases and the corresponding obligation, which in this case was the need for passive behavior of the debtor. Therefore, failure to act does not allow the entitled entity to achieve the goal of civil law - the realization of its substantive law.

Historically, deadlines have been tried to compare with the statute of limitations (statute of limitations). Initially, such a comparison of these two temporal phenomena took place within the concept of the unity of subjective civil law in the regulatory state (before the offense) and the state of the right to sue (after the violation). It was pointed out that this term is an integral part of subjective civil law and, accordingly, civil law, as any change is a change in the relationship itself [2, p. 22, 25]. This was again justified by the fact that the term of the right is related to the time of its existence as a whole, including the period of possible violation, while the statute of limitations concerns only the duration of the right to enforcement, which is part of the law or is itself effective law in a certain state.

A completely different picture emerges if we consider the right to sue as an element of another legal relationship aimed at protecting an already violated subjective right. In this case, the substantive right to sue is also a certain independent subjective right. And it has the same internal characteristics as any subjective regulation. Thus, the term as the limit of the existence of a subjective right is an integral part of it and for the protection right, expressed in the form of a claim, it is a mandatory attribute. We have considered in detail the relevant scientific

developments in other studies, where more specifically focused on the grounds, effectiveness and inappropriateness of the comparison of cut-off and statute of limitations [3, p. 189-191; 4, p. 109-118]. The artificiality of such an analysis was noted in those works. Again, it is unlikely to be useful to compare the consequences of the end of these periods to determine the effectiveness of certain protection and legal consequences that occur in the event of failure to exercise the relevant subjective civil law. But given the roughly identical nature of the exercise of powers within the statute of limitations and the statute of limitations, such a comparison may not only be appropriate but also necessary.

Both the exercise of regulatory powers during the preclusive period and the exercise of protective powers - claims during the statute of limitations, are not aimed at the specific satisfaction of property or other interests of the commissioner. Both substantive rights are intended to result in the acquisition of a new substantive relationship. In the first case - this is a new regulatory legal interaction with the participation of the creditor, in the second - obtaining the right to apply to the defaulting debtor of state judicial influence and the exercise of protection and enforcement powers under duress. Both of these subjective rights, which exist within the regulatory cut-off and protective statute of limitations, are exercised through unilateral action. In both cases, the person obliged under this legal relationship must act passively - to bear the fact of possible and actual exercise of his authority by the creditor and not to prevent him from doing so. In the end, both of these substantive rights are realized as a result of a single exercise, after which they are terminated prematurely, as is the term that mediates their duration.

The serious similarity of legal mechanisms for regulating subjective substantive rights, limited by time limits and prescription, and hence the temporal characteristics, often leads to confusion of individual social relations and their unjustified classification as regulatory or protective, when, in fact, they are different in nature. Such errors are observed both in doctrine and in law enforcement practice. For example, in the literature it has been suggested that the six-month period during which the tenant of the dwelling in case of temporary disposal retains the right to

use it, refers to the statute of limitations [5, p. 28]. This approach is wrong, and in fact it is not. Whether or not a tenant commits an act that indicates the use of housing within six months is no longer a protective power. Firstly, because no one violated his right (and this is the main thing), and secondly, because this act can not be recognized as the implementation of the claim, the duration of which is mediated by the statutory time mechanism. The same can be said about the attribution to the old six-month period of acceptance of the inheritance [6, p. 82].

Quite often, errors in determining the nature of a legal relationship that is in a certain state are caused by an incorrect assessment of the moment when an individual offense actually occurred, and consequently, the regulatory relationship ended and a protective relationship arose. In particular, EO Krasheninnikov, quite rightly believing that the depositor's requirement to the bank to issue a deposit is a regulatory right, and the protective power of the same content arises only in case of refusal to meet the above requirement within the prescribed period [7, p. 52-53], for some reason substantiates the relationship that arises in insurance in a completely different way. He points out that the protective power (and hence the statute of limitations) for claims against the insurer begins from the time of the insured event, while postulating the possibility of a protective claim for insurance payment not from the time of the offense, but from a neutral event (insured event), the onset of a certain date [8, p. 56-57].

In our opinion, this thesis is erroneous. Let's take a closer look at this issue. The scholar criticizes the thesis that the only basis for a lawsuit in a binding relationship is an offense. He notes that such circumstances may be other facts, such as objectively illegal acts, lawful actions and events that can not be classified as an offense [9, p. 15]. At the same time, the sign of equality between the concepts of "illegal act" and "violation of the law" is obviously unjustified. The principle according to which the subjective right of a person can be violated not only by illegal, but also by lawful actions, as well as as a result of a case, has been in force in civil law for a long time. Another thing is that the right to sue as a result of such a violation does not always arise, which is regulated, for example, by Part 4 of Article 1166 of the CCU. The rule of the specified article is reference and directs us

to other acts of the legislation of Ukraine. In particular, in accordance with the provisions of Art. 1170 of the CCU, the owner may file a claim for compensation for damage to the authorities, which by their lawful decision (adoption of the law) violated his right of ownership. In other cases, the legislator does not consider it necessary to provide protection to the violated subjective right in view of the absence of the violator or his illegal behavior or the fault of the commissioner.

As we see, the violation of the law (offense) and wrongful conduct are correlated as a result and its cause, and the wrongful act does not always violate someone's subjective civil rights, as the violation of the law is not always the result of such behavior, it can be violated as a result other circumstances. D.I. Meyer pointed out that an offense should be understood as a legal act directed by its author to restrict another person in the exercise of the right [10, p. 213]. A similar point of view that the offense is certain actions of people that lead to violations of the law were inherent in other civilians [11, p. 319]. As we can see, there is no assumption in the scientific literature that a violation of the law can occur only in the case of wrongful acts. Undoubtedly, both lawful and unlawful acts, if they have led to an offense, must be committed intentionally or negligently. However, with their legitimacy, of course, we can not talk about guilt.

Continuing further research on this issue, we can not disagree with the authors, who point to the practical possibility of violation of subjective rights as a result of the event [12, p. 8]. This is quite obvious. For example, a flood or an early ice drift can significantly affect the state of civil relations, which, of course, will result in a violation of the rights of a person, such as a consignee under a contract of carriage. And here we come to the main question, can there be a right to sue for the event? As logic suggests, no. But proponents of another theory still point to this possibility and as the most obvious example cite a protective legal relationship, which includes a requirement to pay the sum insured, which, in their opinion, arises from the time of the insured event.

To answer this question, it is necessary to first determine whether the requirement to pay the sum insured is a protection and legal authority of the person,

as well as whether he can get the form of a claim? After the occurrence of the insured event, the insured has the right to claim from the insurer the amount of the insurance indemnity stipulated by the contract or the law. If, assuming that the insured does not apply to the counterparty within the prescribed period, he subsequently loses the opportunity to do so. This is a classic case of a regulatory obligation, which arose from the time of the suspensive condition and the term of which is determined at the time of the request of the commissioner (Article 530 of the CCU). The only feature is that the right to apply to the insurer is limited by the time specified in the contract or regulations.

Thus, the insured event gives rise to a regulatory right, which corresponds to the regulatory obligation to make an insurance payment. And only in case of non-fulfillment of the specified obligation in the term established by the contract or rules of insurance there will be a violation of the specified subjective right. It is from this moment that the insured has a protective power, which can be enforced through the court [13, p. 36-37]. Moreover, the insurer's failure to fulfill this obligation gives rise to not one but several protection and legal requirements (which, of course, can be enforced by a jurisdiction through the implementation of claims): yes, the insured may demand payment of the sum insured, compensation for improper damages etc. It is obvious that he could not present such security requirements to the counterparty immediately after the occurrence of the insured event. Thus, the basis for the emergence of a person's right to protection and the right to sue is not the occurrence of a stokh event, but the violation by the insurer of the regulatory subjective right of the insured to receive insurance benefits.

One of the reasons that seems to have also influenced the erroneousness of the commented concept is the incorrect definition of the subjective composition of the relations under study. In turn, this was facilitated by the incorrect definition of the essence of the mechanism of legal protection, the definition of the civil right or interest that is protected by the protection and legal implementation of this requirement, and its carrier. Thus, E.A. Krasheninnikov argues that the recovery (including court) from the insurer of insurance indemnity is a means of protection of regulatory subjective civil law or legally protected interests of the insured in

connection with the negative consequences of the insured event [14, p . 59]. This statement deserves a critical assessment for at least two reasons. First, the insured event is not always related to the violation of the insured's right. For example, if the insurance contract provides for the payment of funds when the insured or another person reaches a certain age, then such an event can not be classified as an offense. Secondly, when the insured event really violates the right of the commissioner, it is obvious that the insurer is not the entity that violated this right.

The offender may be another person (not the insurer), or such an entity may be absent. According to the logic, the protection requirement and the state coercion by means of which the protection authority is exercised should be directed against the person who violated the law. In other words, the protection of the violated right is aimed at burdening the infringer, who is a party to the protection and legal relationship that arises as a result of the violation of the right. Therefore, if the right of a person is violated by another entity, with which, of course, he is not in a contractual relationship, the commissioner has a tort right to claim the latter, but not the insurer. In turn, the protection and legal requirement for the latter becomes possible only when he commits an offense, which will consist in non-performance of the obligation imposed on him under the insurance contract. Therefore, claims against the insurer are a means of protecting the right to receive payment, and not the right to eliminate the negative consequences arising from the insured event. This is all the more true because the amount of compensation for these consequences and insurance payments do not always coincide.

Thus, we can conclude that the insured event is not a circumstance that prevents the exercise of the relevant right to receive insurance funds, and this right does not immediately become protective, as is sometimes indicated in the literature. The insured event only establishes the beginning of the relevant regulatory right to demand insurance payment. This power corresponds to the insurer's obligation to pay the money within a specified period. And only in case of violation of this obligation there is a protective right of claim, which may take the form of a substantive right to sue or claim.

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