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THE TEMPORAL ASPECT OF EXERCISING A SUBJECTIVE RIGHT AND FULFILLING A LEGAL OBLIGATION

This article is devoted to the study of the nature of the flow over time of the essential elements of the legal relationship – subjective law and legal obligation. In this case, the movement of civil relations is studied taking into account the main principle of modern property turnover – the proper performance of obligations, the essence of which is that the performance must be carried out properly by the parties in accordance with the terms of the contract and the law. The urgency of this issue is given by the fact that the legal position on the duration of subjective law as one of the factors influencing the limits of the conduct of the entitled person, as well as the restriction of the right to certain terms – has become established. It is emphasized that the exercise of subjective civil rights is always limited in time. As a rule, the term of existence of the subjective right coincides with the term of realization of the right and therefore the concepts of "existence" and "realization" of the subjective right have identical meaning. The content of the practical application of the rule on the implementation of subjective substantive law during its existence can be reduced to a scientifically sound principle of civil rights. In other words, the realization of subjective law is possible only within certain limits that characterize its content, duration and nature of implementation. In this case, the limits of the exercise of the right are determined not only by its content, established in accordance with the legal requirements contained in specific legislation, but also the time frame of existence. Any actions committed by a person outside the duration of his right should be considered an offense. Therefore, acts committed by a subject of law outside the period of their existence, even if they correspond to the scope of authority of the person, should be considered as the commission of actions that do not constitute the full content of the law, i. e. as their commission without proper grounds. As a result, the right may be denied due to non-belonging to the person. Therefore, the presentation of claims by the authorized person outside the exercise of the right (say, after the expiration of the contract) will entail the impossibility of its implementation.

Key words: *subjective civil law, temporal boundaries, abuse of law.*

Formulation of the problem. Legal relations are regulated by law and protected by the state public relations, the participants of which act as bearers of mutually corresponding legal rights and obligations [1, p. 479]. It develops both in space (through the realization of its essential elements) and necessarily in time. Almost every fourth article of the Civil Code of Ukraine in one form or another traces the influence of the time factor, in some way indicates the consequences associated with the expiration or due date. Time is closely related to the internal characteristics of a person's subjective right and determines the period of existence of this right. In the legal norm, the temporal element, as a rule, manifests itself as a direct indication of the term or term, but may have a different form, for example, when it is indicated about the timeliness and reasonableness of performance, and so on. It is no exaggeration to say that it is through the establishment of substantive legal deadlines that the subjective rights of participants in civil relations are determined. The question of time limits in civil law has always been the subject of meticulous attention of science.

One of the main principles of modern property turnover is the principle of proper performance of obligations, the essence of which is that performance should be carried out by the parties properly in accordance with the terms of the contract

and the law, and in the absence of such conditions and requirements – in accordance with business customs. turnover or other requirements that are usually imposed (Article 526 of the Civil Code of Ukraine, Part 1 of Article 193 of the Civil Code of Ukraine). It is as a result of proper performance that the interests of the creditor are most satisfied. The attribute of performance of the obligation under the contract is the parties, term and place of performance. The question of the terms (terms) of fulfillment of the obligation by the counterparty under the contract in the regulatory regime is very important, because from determining the moment from which the debtor's obligation to perform a certain obligation and the moment at which such obligation ends, i. e. from setting the term of performance of the obligation depends on the possibility of further exercise by the creditor (creditor) of his subjective right and, ultimately, its protection. Nowadays, the position on the limitations of any subjective right is quite indisputable in civilization, if the limits of the law are not established, it is impossible to exercise it. But, unfortunately, the position on the duration of subjective law as one of the factors influencing the limits of the conduct of the entitled person, as well as on the limitation of the right to certain terms – has become established.

Analysis of recent research and publications. In scientific works, issues of temporal influence on the possibility of realization of subjective law within the regulatory legal relationship have been studied by such scholars as M.M. Agarkov, V.P. Gribanov, O.S. Joffe, V.V. Lutz, S.M. Bratus, Z.V. Romovska, P.M. Rabinovich, S.O. Slipchenko, etc. In these works, an analysis of the temporal component of a person's right to perform their own productive actions and demand the necessary behavior from the counterparty. However, the main problems of the organization of interaction of subjects in time at the level of the authorized – the obliged person remain unsolved. In particular, the place of terms in the holistic system of factors that determine the proper exercise of the right and distinguish it from abuse, based on its purpose and the nature of the legal impact on the mediated relationship. Unfortunately, the term in civil law is mainly not in the context of its impact on the content of subjective law, but as a separate socio-legal phenomenon. And this, one way or another, leads to an isolated analysis and a possible narrow assessment of its legal essence. This work is aimed at achieving certainty in this issue.

Presenting main material. Civil law relations of their participants may 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, regulatory is a legal relationship under 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 performing the necessary actions by the obligated subject. 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 authorized person and the responsibilities of another. Such claims, which do not have a 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 form of only an objective possibility, so it is not part of the content of the regulatory relationship.

A legal relationship is a set of rights and obligations of counterparties. Subjective law can arise as a result of a person's will. For example, by concluding a property lease agreement, the parties create by their actions the right to use and own certain property. However, it can occur outside the will of the entitled person, for example, the right of a citizen to inherit, the right to compensation for damage, etc. [2, p. 117]. On the contrary, the realization of subjective law always occurs as a result of specific volitional actions of the person, aimed at transforming into reality the inherent possibilities of behavior in law. Moreover, in one rule it is impossible to fully reflect the order of behavior, taking into account the specific features of individual cases. And although any rule tries to achieve the greatest possible degree of generalization, it always remains one or another element of abstraction. S.M. Bratus noted that the legislative specification of subjective law still does not cover all its possible manifestations, as the rule of law remains a general rule of conduct [3, p. 80–81]. This is not about specific outward expressions of possible behavior, which is the content of subjective law, but about options for actions aimed at the implementation of subjective law. Therefore, despite the fact that civil law determines the general order of conduct of the entitled person, it is often its special regulation

within the same type of relationship. These actions reflect not only the will of the entitled person, but also the specific features of the case.

The exercise of subjective civil rights is limited in time. Thus, quite often the period of realization of the right is established by the relevant rules of law, i. e. in fact the normative order determines the limits of the exercise of a person's right. As a rule, the term of existence of the subjective right coincides with the term of realization of the right and therefore the concepts of "existence" and "realization" of the subjective right have identical meaning. In particular, this is typical of the warranty period, during which a person has the right to use a quality product and identify its shortcomings. Accordingly, the omission of the specified warranty period terminates not only the ability to take action to further make claims to eliminate deficiencies, but also the very existence of such a person's authority. The form of implementation of the principle of justice, good faith and reasonableness is the order of implementation of its requirements in the behavior of the subjects of civil turnover, in the relationship between them. In material relations, the implementation of the principle of fairness and reasonableness, as a rule, is associated with the establishment of the limits of subjective material rights of counterparties [4, p. 11]. The content of the practical application of the rule on the implementation of subjective substantive law during its existence can be reduced to a scientifically sound principle of civil rights. By its legal force, this principle is to enshrine in law the general obligation of any entitled person to exercise his powers only within the content of the relevant subjective substantive law [5, p. 12]. In other words, the realization of subjective law is possible only within certain limits that characterize its content, duration and nature of implementation. There is no doubt that the limits of the exercise of the right are determined not only by its content, established in accordance with the legal requirements contained in specific legislation, but also the time frame of existence [6, p. 28–29]. Any actions committed by a person outside the duration of his right should be considered an offense.

Therefore, it is extremely important to establish in each case the length of time during which the exercise of a subjective right is possible. In the vast majority of cases, such a task is not difficult: the time of existence of the right is set by law or with the consent of the parties. However, in contrast to the provisions of criminal or administrative law, which quite clearly define the scope of permitted (prohibited) conduct, including its duration, civil law, based on the principle of permissiveness, often (and this is dictated by the specifics of the subject of regulation) contain permits of a general nature. In the Civil Code of Ukraine such terms as necessary, reasonable, as soon as possible, etc. are widely introduced [7, p. 467]. This, in turn, implies the need for judicial interpretation of these terms in the event of a dispute. However, as rightly pointed out by M.S. Malein, judicial discretion is not a competition of the law, it is itself a manifestation of the will of the legislator, who normatively provided for the expediency of such discretion from the point of view of society [8, p. 56].

However, the problem of proper exercise of substantive law only within the limits (including time), which are established by law or with the consent of the parties, continues to be relevant. Some modern researchers argue that legal relations are a form of law enforcement, as a consequence of a special legal form of legal influence – legal regulation, a tool for the transition of general models in the plane of specific behaviors – subjective rights and legal obligations for these subjects. objects [9, p. 60–61]. The severity of this problem, in particular with regard to temporal certainty, is added by the sometimes ill-considered and frankly unsuccessful legal acts issued by the authorities. It is enough to cite such documents adopted at the level of laws of Ukraine. Thus, the law establishes some amorphous, quasi-legal possibility of exercising the lessee's right to use someone else's property for up to one month after the content of this right has expired – the end of the lease agreement. This approach seems rather strange and illegal, especially given that when the landlord, even on the thirtieth day after the expiration of the contract announces its termination, the transaction will be terminated from the expiration of its term. That is – retrospectively. And monthly use will be illegal. Then he openly views the abstractness of the constructed syllogism and its practical complexity, and sometimes ineffectiveness.

And the wording of Part 3 of Art. 267 of the CCU, according to which the expiration of the statute of limitations (according to the doctrinal definition – the term of the right to sue) does not extinguish the subjective protective authority (claim), until requested by the defendant. The latter is a participant not in a material legal relationship, but in a completely different way in essence – a procedural one, which is regulated by the norms of public law, and, in the end, may never arise at all. Therefore, according to the idea of our legislator, the material right to sue, even after the expiration of the term for its implementation, exists for as long as you like, and sometimes – forever. Unfor-

tunately, such illegal approaches of the legislator are not an exception, and no matter which of the numerous examples we turn to, in each case the discrepancy between the abstract construction of the normatively established rule and specific life situations is striking.

Such approaches practically nullify all the theoretical constructions that have been made by scientists about the illegality of the implementation of subjective substantive law outside it. Meanwhile, these doctrinal developments deserve attention. All researchers agree that the exercise of law outside its borders does not meet the principles of civilization. But then the differences begin: some scholars cover such a violation with the concept of “abuse of rights” [10, p. 16], others do not agree with this. We support the next position: the use of a right outside its scope cannot be qualified as an abuse of a right, because in fact no right exists anymore. To abuse a right, you must own it. Since this manifestation in the absence of law is a behavior contrary to law, it falls under the definition of a common offense [8, p. 63].

Consider this question from a temporal point of view. Acts committed by a subject of law outside the period of their existence, even if they correspond to the scope of a person’s powers, should be considered as the commission of actions that do not constitute the full content of the law, i. e. as their commission without proper grounds. As a result, the right may be denied due to non-belonging to the person. Unfortunately, this issue is not regulated in our legislation (moreover, as indicated above, there are rules of the opposite nature that allow the implementation of the law outside its content). What, then, should be understood as an abuse of rights? This question is answered in numerous scientific studies, and such an answer is quite correct. The basic postulate here is usually the doctrinal definition that the exercise of civil rights should take place in accordance with their purpose. That is, according to the purpose for which the right is called, it must be aimed at a specific result. This goal, directing the behavior of the right holder, is manifested in the substantive rights [11, p. 79–84]. Thus, scientific thought eventually combined these two concepts: “abuse of law” and “exercise of law contrary to its purpose”. When considering disputes, the court must refuse to protect the right when the case file indicates that a citizen or legal entity has committed actions that may be qualified as an abuse of rights, in particular actions aimed at harming others. The law (Part 6, Article 13, Part 7, Article 319 of the CCU) also indicates the possibility of refusing to protect civil law in the event of its implementation contrary to the purpose.

However, such an understanding was not formed in civilization immediately. There has been and continues to be some controversy in the literature about the very possibility of abuse of rights and denial of protection if the right holder acts within the framework of his right. In particular, M.M. Agarkov rejected such influence on the right holder, and considered the criteria of improper use of the right unreliable. He argued that since the right is granted to a person, his actions within the law correspond to its purpose and purpose [12, p. 435]. Some modern researchers, already guided by new approaches to the restriction of substantive rights, also deny the possibility of abuse of subjective rights as well as exceeding the limits of its implementation [13, p. 84]. After all, according to these scientists, the very reduction of a person’s freedom to the framework of a material obligation is already a restriction. S.M. Bratus, on the contrary, pointed to the real possibility of abuse of rights and insisted on the introduction of an adequate legal response. After all, the degree of concretization of subjective law, expressed in a certain legal norm, is not so significant as to clearly define the exclusive list of permissible actions and to prevent the manifestation of initiative in the commission of other acts. Therefore, the relevant rule of law remains a general rule of conduct, which leads to the need to establish criteria for assessing the legality of certain actions of the right holder in relation to their compliance with its purpose. At the same time, the author noted that the basis of these criteria should be the compliance of certain actions to implement their rights to the moral principles of society [3, p. 80–81, 84]. It is clear that in this case the significance of the subjective factor increases significantly, the role of judicial discretion increases, which is not desirable.

Modern doctrine and legislation adhere to the thesis of the possibility of abuse of rights by its holder. At the same time, it is obvious that such abuse is an act of the authorized person “in his own right”, but these actions are directed against other protected rights and interests [14, p. 192]. In civil law, the generally accepted view is that the exercise of a subjective right is the commission of certain actions by an authorized person within the limits of his existing powers as a subject of law. If the methods of realization of the right go beyond the socially desirable directions of realization of the right established by the law, it is qualified as abuse of the right. This is largely true in the exercise of the right contrary to its purpose or to the detriment of the interests of others. In particular, the law of many countries explicitly prohibits so-called harassment: the use of a right solely

for the purpose of harming another person (see, for example, paragraph 226 of the German Civil Code). However, it cannot be accepted that abuse of rights is the conduct of the right holder contrary to its content. After all, if a person's action does not correspond to the content of the right due to him, his actions should be qualified as illegal. Such (illegal) are the actions of a person to exercise the right outside the time limits of its existence. They cannot be recognized as an abuse of rights, because at the time of exercise this right no longer belonged to the person [15, p. 80–81]. Instead, we should agree with the thesis that the abuse of a right is not related to the content of the right itself, but to its implementation [16, p. 54–55], so the commission of certain actions, both legal and illegal outside the content of the law should be classified as those that are not based on subjective law.

From the conducted research it is possible to draw certain conclusions. It cannot be accepted that the abuse of a right is the commission of certain acts by an authorized person that go beyond subjective law. Such an approach, whether we like it or not, will inevitably lead to the position that the exercise of a subjective right outside its limits or content is also an abuse of law. However, the falsity of this position is clearly highlighted in the analysis of the possibilities of realization of substantive law outside the time limits of its existence. With regard to the exercise by the authorized person of the powers that constitute the content of the subjective right, before the existence or after the end of the right, the statement of M.M. Agarkov that such actions took place outside the law and therefore can not be considered an abuse of law [12, p. 427]. It is clear that the presentation of claims by the authorized person outside the exercise of the right (say, after the end of the contract) will entail the impossibility of its implementation. A person has committed a legally significant act outside the term of existence of a certain subjective right, so it would be wrong to consider him a subject who exercises (uses) his right. Such actions should not be considered as an abuse of rights, but as illegal.

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Гуйван П.Д. ТЕМПОРАЛЬНИЙ АСПЕКТ ЗДІЙСНЕННЯ СУБ'ЄКТИВНОГО ПРАВА ТА ВИКОНАННЯ ЮРИДИЧНОГО ОБОВ'ЯЗКУ

Стаття присвячена дослідженню питання про характер перебігу в часі істотних елементів правовідношення – суб'єктивного права та юридичного обов'язку. При цьому рух цивільних відносин вивчається з урахуванням головного принципу сучасного майнового обороту – належного виконання зобов'язань, сутність якого полягає в тому, що виконання має бути проведене учасниками взаємин належним чином відповідно до умов договору й вимог законодавства у встановлений строк. Актуальності розглядуваній проблематиці надає те, що правова позиція стосовно строків існування суб'єктивного права як одного з факторів, що впливають на межі поведінки управненої особи, а також стосовно обмеження права певними строками не набула усталеного характеру. Підкреслюється, що здійснення суб'єктивних цивільних прав завжди має обмеження в часі. Як правило, строк існування суб'єктивного права співпадає зі строком реалізації права, тому поняття «існування» та «здійснення» суб'єктивного права мають тотожній зміст. Зміст практичного застосування правила про реалізацію суб'єктивного матеріального права впродовж строку його існування можна звести до науково обґрунтованого принципу здійснення цивільних прав. Інакше кажучи, реалізація суб'єктивного права можлива лише в певних межах, що характеризують його зміст, строк і характер здійснення. При цьому межі здійснення права визначаються не тільки його змістом, встановленим згідно з правовими приписами, що містяться в конкретних нормах законодавства, а й часовими межами існування. Будь-які дії, вчинені особою за межами тривалості її права, варто розглядати як правопорушення. Відтак вчинки, здійснені суб'єктом права поза періодом їх існування, навіть якщо вони відповідають обсягу повноважень особи, необхідно розглядати не інакше, як здійснення дій, що не становлять повний зміст права, тобто як вчинення їх без належних підстав. У результаті може настати відмова в захисті права у зв'язку з неналежністю його особі. Тому пред'явлення уповноваженою особою вимог за межами здійснення права (наприклад, після закінчення договору) зумовить неможливість його реалізації.

Ключові слова: *суб'єктивне цивільне право, темпоральні межі, зловживання правом.*