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PERIODS (TERMS) IN LEGAL REGULATION MECHANISM OF CIVIL RELATIONS

The role of periods and terms as time categories at different stages of the mechanism of legal regulation of personal property and non-property (civil) relations is studied in the paper; the author's position that being a time form of development of civil legal relations, a form of existence and exercise (fulfillment) of subjective rights and duties, civil legal terms do not occupy an independent place in the general system of legal facts and produce legal consequences only in connection with of action and events is substantiated.

Key words: legal regulation mechanism, period, term, legal facts, civil rights and obligations, statute of limitations.

The dynamic development of economic processes and social transformations in modern Ukraine is based on the active use of time as an objective category and related concepts of “period”, “term”, “timely” and so on.

What place these categories occupy in the mechanism of legal regulation of civil relations – personal non-property and property, based on legal equality, free expression of will and property independence of their participants?

In legal literature different opinions have been mentioned on the nature and elements (stages) of the mechanism of legal regulation of social relations. Without analyzing these opinions, it should

be noted that most researchers agree that the mechanism of legal regulation includes the following elements (stages): 1) a regulatory basis; 2) legal facts; 3) legal relations; 4) acts of realization of rights and obligations; 5) protection of violated rights of legal relations subjects.

A common prerequisite for the emergence and existence of corporate relations is the granting by law corporate legal capacity of their subjects, that is, the ability to have and exercise corporate rights and obligations.

General temporal parameters of legal relations functioning are determined primarily by legal norms. Provisions on periods are contained in the norms of the

Civil (Civil Code), Commercial (Commercial Code), Land (Land Code) of Ukraine, in numerous other normative-legal acts, as well as in the norms of other social regulators (business customs, legal practices, etc.) governing civil relations of their participants. Limited in time are not only legal relations as a whole, but also subjective rights and obligations which make up the content of these relations. The legal rights and obligations established in the legal relations provide for the possibility of their subjects to take certain actions aimed at achieving legitimate goals. Therefore, the regulation of action in time of subjective rights and obligations is an important mean of legal influence on the behavior of participants in civil relations.

The terms regulate the civil turnover, stabilize the civil legal relations, contribute to the timely and qualitative satisfaction of the needs of their participants, provide for timely protection of the violated subjective rights and interests of the participants of civil relations.

Provisions on periods and terms permeate almost all sub-spheres and institutions of civil law. The issue on periods and terms is important methodologically not only for civil law, but also for understanding the relevant time concepts while applying the rules of family, land, environmental, commercial and other fields of law.

Different levels and forms of matter's movement correspond to certain forms of time reflection. The papers by philosophers have convincingly proved the possibility of the existence in the world of various spatio-temporal forms, which

differ from other forms in that they are necessary conditions for the existence of numerous classes of material objects. Such forms include social space and social time.

Social time is a form of social matter existence, a form of social being. Social processes and phenomena, human activity in general occur in time. They develop in a certain sequence and have some duration. These features are inherent to all phenomena of the material world. The specificity of social time as a form of social matter movement is that it is imprinted by the dialectical connection of existing only of objective and subjective, necessity and freedom in society. Social connections and relations, constituting the content of social time, arise on the basis of the activity that people do. Although the spatial-temporal forms determining them appear objectively, the awareness of the latter by humans in the context of society becomes one of the important factors in the scientific management of social processes.

The question on the role and place of periods in the mechanism of legal regulation can be considered in several ways: a) period as the moment of origin (beginning) or termination of legal relations; b) term as one of the conditions that determines their content; c) term as a criteria of the legitimacy (timeliness) of the behavior of legal relations participants, etc.

In civil law literature, while analyzing periods, the latter are most often identified in view of their place in the system of legal facts. Legal facts generally are considered as such facts of real-

ity that a law refers with the occurrence of certain legal consequences, such as the occurrence, changing or termination of rights and legal obligations.

Legal facts are classified according to different characteristics. One such feature is the relation of law to these facts. In accordance with the specifics of the matter and method of legal regulation inherent in each sphere of law, its rules and institutions provide for certain types of legal facts. Such classification contributes to clarify the content of the spheres of law and to distinguish them. Regardless of their sphere, legal facts are divided into actions and events on the basis of their relation to the will of the subjects. If actions (inactivity) are performed according to the human's will and are acts of conscious behavior, then events are phenomena that in their development do not depend on the will of people. In addition to the traditional classification of legal facts on the basis of volition feature into actions and events, the opinion was expressed on the expediency of separating a group of legal facts-states, and depending on their duration, to distinguish: a) facts of a single action; b) continuing legal facts-states.

It should be noted that the classification of legal facts on the basis of their duration is quite acceptable, since it contributes to a deeper studying of them, in particular in view of their effect over time. Actions and events themselves can have different duration in time. The question on classifying states as a separate type of legal facts has its own history in science and remains debatable. Examples of frequently mentioned facts-

states (marriages, family relations, etc.) are nothing but legal relationships that have arisen as a result of certain legal facts-actions or events (including marriage). Regarding the separation of activity and its results into a separate group of legal facts, it can be warned that the activity consists of individual actions of people and their collectives, some of which are given legal importance by the law, that is, recognizing as legal facts.

The list of legal facts-grounds for the emergence of civil rights and obligations (Article 11 of the Civil Code) due to the civil law principles of analogy of law and the analogy of law (Article 8 of the Civil Code) is not exhaustive.

Legal periods are most often regarded as events, referring to the passage of time (period). For example, O. O. Krasavchikov allocated time movement in a separate group of absolute legal events, the occurrence and action of which are not caused by the willful activity of people [1]. The same assessment legal period obtained in the Ukrainian textbooks on civil law [2]. Denying O. O. Krasavchikov, who argued that over time, a person can not oppose his/her activity, because one exists in time, V. P. Hrybachev correctly emphasized that a person actively uses time in one's activity.

Given the role that time plays in the emergence, changing, exercising and protection of civil rights, V. P. Hrybanov concluded that legal periods in the system of legal facts of civil law occupy an independent place, along with legal events and legal actions and represent something in between by their nature [3].

Comparing different views on the

legal nature of periods in law, it is important, first of all, to determine the relation of periods to the will of subjects civil legal relations. A period as a predetermined time or a length of time limits the duration of the subjective rights and obligations. Because these rights and obligations are most often caused by the will of their carriers, so are the will's nature that have a period that limits their effect in time. Specific periods of implementation, and especially periods of protection of civil rights are set by the provisions of the law. However, the law itself has a willful character as a legal expression of state will. The mechanism of action of normative prescriptions is most often "switched on" (except the occurrence of legal events) through the implementation of conscious and purposeful willful actions (deals, acts of public authorities, etc.), which influence on the dynamics of civil legal relations.

The period can be determined by the parties of the legal relations themselves, established by court decision. The willful nature of this period cannot be doubted. If no period is specified through the mentioned way, the parties are guided by the time criteria set out in the law. Periods set by the law become obligatory to subjects of legal relations either because the law forbids them to change according to the agreement of the parties (such as limitation), or because the parties have not used the opportunity given to them to set the period at their own discretion (e.g. to increase warranty period).

Thus, civil law periods are a temporary form of civil law relations development, a form of existence and exercise

(fulfillment) of subjective rights and obligations that make up the content of legal relations. Subjective right and obligation represent the ability or necessity to commit or withhold certain actions by their bearers. The content of the period is either an action or an event (events also occur over time, and may have a certain duration). Outside of these facts, the setting and existence of periods are meaningless. That is why the onset or expiration of the period takes on significance, not in itself, but in combination with the events or actions for which the period is set. From the mentioned above it can be concluded that the periods do not occupy an independent place in the general system of legal facts, along with legal actions and legal events. Time is peculiar to the first and the second as a form. Therefore, acting as a temporal form in which events and actions (inactivity) are occurred, periods produce legal consequences only in relation with actions and events. Taking it into account, a period is defined as the time point with the onset or end of it is associated with event or action (inactivity) that is legally relevant [4].

M. V. Batyanov does not agree with a clear position, considering that V. V. Lutz analyzes the period only as a form of existence of phenomena of real reality, which have legal meaning, and does not differentiate the course of the period and its end (onset). Period can act in law as, for example, a temporal characteristic, which can hardly be regarded as a form of any phenomenon. However, in a further statement M. V. Batyanov states that any legal period is always con-

sidered in connection with a particular legal phenomenon as a peculiar point of attachment to it. Therefore, the period cannot be regarded as a legal fact, because in the opposite approach it should be attributed to legal facts-states. However, in such a case, the legal consequences are not caused by the period itself, but by the phenomenon or process to which the period occurs. By itself, the duration of period isn't available to cause any independent legal consequences [5].

As M. D. Pleniuk rightly points out, the period is a separate legal phenomenon that is closely linked with one or another legal facts (actions or events). Unlike a legal fact, which is an independent category, the period (term) does not exist by itself, but is a temporary reflection of the existence of certain actions or events (legal facts) [6].

In Ukrainian legal terminology, along with the concept "period" (which reflects a certain period in time (e.g. year, month), the concept "term" is often used to refer to a specific point in time, such as a calendar date or a specific event that should come. Therefore, the Civil Code of Ukraine separately defines the terms "period" and "term". According to Article 251 of the Civil Code, a period is recognized as a period of time, with the end of which a certain action or event having legal significance is connected. In that case period is calculated by years, months, weeks, days or hours. The beginning or the end of a period could also be defined by an indication of an event that must inevitably occur. A concept of a term defines a moment in time that is associated with an action or event of le-

gal significance. Term is defined by a calendar date or by an indication of an event that must inevitably come.

P. D. Guivan, analyzing the definition of the period, which is given in Part 1 of Art. 251 of the Civil Code, considers it to be imperfect, because it gives a wide range for its interpretation. The author states the position that the beginning or end of the period cannot be considered as a legal fact in the classical sense of the circumstance as such, which leads to the emergence, change or termination of subjective civil rights and obligations, and proposes to set out Part 1 of Art. 251 of the Civil Code in the following wording: "The period is a certain period of time, the onset or expiration of which determine the limits of existence (exercise) of the subjective right of a person". Accordingly, the part 2 of Art. 251 of the Civil Code also should be changed [7, p. 140–141].

However, it should be noted that, first, the period could be linked not only to subjective civil law, but also to a subjective civil obligation, which is not mentioned in that definition of the period, and, second, the onset and the expiration of the period cannot be considered as a limit of the existence or the exercise of the subjective right of the person, because, as a general rule (with the exception of truncated ones), the expiration of the period provided for the exercise of a right or of a duty, does not cause the automatic termination of that right or duty, because their ability remains for implementation and defense during a specified period of time in an expeditious, demanding or order of court hearing of a

dispute.

Emphasizing the necessity to distinguish the concepts “period” and “term”, it should be noted at the same time about their interaction, combination in the regulation of certain civil relations. Thus, according to Art. 530 of the Civil Code of Ukraine, if the obligation set a period (term) for its fulfillment, it must be fulfilled within that period (term). An obligation, the period (term) of which is specified by an indication of an event which must inevitably occur, should be enforced upon the occurrence of that event. If the period (term) of the debtor’s obligation has not been set or determined at the time of the claim, the creditor has the right to demand its execution at any time. The debtor must fulfill such an obligation within seven days from the date of the claim, if the obligation of immediate execution does not follow from the contract or acts of civil legislation.

The vast majority of property and personal non-property relations governed by the provisions of the Civil Code and other acts of civil legislation are relations, which ensure the proper conduct of the subjects of these relations, the normal exercise of their subjective civil rights and the fulfillment of civil obligations.

Periods (terms) in a regulatory legal relations are periods (terms) for the exercise of subjective civil rights and the fulfillment of obligations.

For some civil relations, the law provides that failure to exercise a right or an obligations during a specified period or term will result in the termination of that right or obligation. Such periods in the

literature are called truncated, or preclusive (from the Latin. *preclusio* – to suspend, to impede). The Civil Code of Ukraine and other acts of civil legislation provide for many different truncated periods. Thus, according to Part 1 of Art. 247 and Part 1 of Art. 248 of the Civil Code the period of the power of attorney is defined in the power of attorney itself. If its period is not specified, the power of attorney shall remain in force until terminated. Representation on the power of attorney shall be terminated if the power of attorney expires. Therefore, the period of the power of attorney is a truncated period, because with its expiration the right of the representative to act on behalf of the person he/she represents expires.

It should be noted that the peculiarities of truncated periods is that, they, while defining the limits of subjective right in time, are included in its content as an internally important limit of their existence. The expiration of the truncated period causes the termination of the subjective right or obligation, but it cannot be considered a premature termination of the subjective right. It is about premature termination or fulfillment of a duty in case it has taken place before the expiration. Instead, the right or obligation limited by the truncated period ceases at the time of the expiration of the period. But the truncated nature of one or another period should directly follow from the content of the relevant provision of the law or the contract.

The term “reasonable period” refers to evaluation concepts that are abundant in many rules of the Civil Code, but it

does not contain a general rule in which the meaning of this concept would be disclosed.

In common law countries (including the United States, England), a reasonable period is associated with an assessment of the actions and circumstances in which they are committed. Thus, according to the § 2 Art. 1–204 of the United States Uniform Commercial Code, defining of a reasonable period for committing an action depends on the nature and purpose of the action and the circumstances surrounding it. In English law, performance within a reasonable period is considered as being made taking into account the nature of the contract and the circumstances of the case given. What is a reasonable period is an issue of fact in each case [8].

The final, optional stage of the mechanism of legal regulation is the protection of violated civil rights and obligations of the subjects of civil law relations.

According to Art. 15 and I6 (part 1) of the Civil Code of Ukraine, every person has the right to defend his/her civil right in the case of its violation, non-recognition or contestation, as well as ones interest, which does not contradict the general principles of civil legislation. However, the possibility of demanding a competent body to protect a right or an interest provided for by the law is also not infinite in time: as a general rule, it is limited by statutory limitation periods. The purpose of the latter is not only to recognize as existing, to restore a subjective right or legal obligation or to protect them in other ways, but

also to ensure the realization of the subjective right and to satisfy the interests of the empowered person.

According to Art. 256 of the Civil Code *the statute of limitations* is a period within which a person can apply to the court for the protection of ones civil right or interest. The aforementioned provision is somewhat unsuccessful, since it gives reasons to believe that with the expiration of the limitation period a person cannot apply to court.

The statute of limitations should not be considered as a period within which a person can go to court in order to claim his/her violated right. According to Part 2 of Art. 267 of the Civil Code, the application for protection of civil right or interest must be accepted by the court for consideration regardless of the expiration of the limitation period. It is said that during the limitation period a person may rely on the compulsory defense of his/her violated civil right or interest by a court. The expiry of the statute of limitations, the application of which the party mentioned in the dispute, is the basis for denial of the claim (Part 4 of Art. 267 of the Civil Code). The term “statute of limitations” reflects the connection, on the one hand, with the form of the violated rights protection (lawsuit), and on the other – with the duration of the right protection in time (statute of limitations).

The statute of limitation is an institution of substantive, but not procedural civil law. The limitation period of the right to sue means only the possibility to obtain compulsory protection of the violated subjective right by a judicial authority. Since the interested person may

apply to the court or other body for protection of violated or disputed rights and interests protected by law at any time, Part 2 of Art. 267 of the Civil Code provides that claims for the protection of the violated right are accepted by the court regardless of the statute of limitations expiration. However, if while studying the dispute it is found that the statute of limitations have expired before the claim is filed and its application is declared by the party of the dispute, then it is a ground for refusing to satisfy it.

The Chairman of the Supreme Court of Ukraine Ya. M. Romaniuk has asked the Scientific Research Institute of Private Law and Entrepreneurship named after Academician F. G. Burchak of the National Academy of Legal Sciences of Ukraine to submit a scientific conclusion on the correct application of the provisions of Art. 17 of the Law of Ukraine “On Mortgage” in interconnection with Art. 266, 267, 509, 598 of the Civil Code of Ukraine in the disputed legal relations that arose in such circumstances.

A loan agreement was made between the Bank and N. according to the provisions of which the Bank provided N. money through a credit. In order to ensure the obligations under this agreement, N. transferred to the Bank a real estate object, a mortgage agreement was concluded on it between them.

In November 2013, the Bank filed a lawsuit to the debtor (mortgagee N.) to recover the amount of debt on the loan agreement, as well as to recover the mortgage. The decision of the court of first instance, which came into force, denied the Bank’s claim in full due to the

statute of limitations expiry. On the basis of this court decision, N. considered that his/her mortgage obligation to the Bank had ceased, and appealed to the court to terminate the mortgage.

As it can be seen from the content of the legal relations with regard to the provided loans in this case, the borrower did not repay the loan received in due time, in connection with which the Bank sued the debtor as a mortgagee to recover the amount of debt under the loan agreement and to recover the mortgage which was transferred by the debtor to the Bank in order to ensure the obligations under the contract. Due to the expiry of the limitation period, the court correctly denied the claim completely against both the main debt under the loan agreement and the claims under the mortgage agreement.

Systemic analysis of Art. 17 of the Law of Ukraine “On Mortgage” and Art. 266, 267, 509, 598 of the Civil Code of Ukraine in the context of the given case gives reasons for such conclusions. According to Part 4 of Art. 267 of the Civil Code, the statute of limitations expiry, the application of which was declared by the party in the dispute, is the basis for refusing the claim. But does the obligation with substantive-legal requirements remain valid and binding to the parties, or does it terminate? Various opinions have been expressed in literature about that issue. The main argument is the reference to Part 1 of Art. 267 of the Civil Code on the fact that the person who fulfilled the obligation after the expiration of the limitation period has no right to demand the return of the accom-

plished, even if at the moment of execution one did not know about the limitation period expiration. The so-called theory of natural obligations emerged on this basis. Natural obligations are those which do not give the creditor any right to demand their enforcement, and therefore their court protection, but the debtor misses the opportunity to return everything that was voluntarily given or paid in connection with their performance after the expiration of the statute of limitations [9].

Therefore, the denial of the claim due to the expiration of the statute of limitations does not lead to the termination of the obligation in relation to the main requirements as well as to the additional requirements aimed at securing the main obligation. There is a certain inconsistency between the general rule of the Civil Code (Part 1 of Article 267) and the special Law of Ukraine “On Mortgage” (Article 17), which does not provide for such a rule. In that situation, it should be guided by the provision of the Civil Code of Ukraine (Part 1, Art. 267), according to which the obligation on which the statute of limitations has expired is valid but without compulsory court protection (natural obligation).

In that regard, it is necessary to note the inconsistency of P. D. Guivan’s position on this issue. Thus, comparing the statute of limitations and the truncated period, the author states on one page of his book that the statute of limitations, as well as the truncated period, determines the time for realization of certain substantive legal authority, and the expiration of these periods leads to the subjective substantive law being extinguished [7, p. 200], and on another page [7, p. 213] is in solidarity with O. V. Shovkova [10] in that the violated civil right does not terminate with the expiration of the limitation period, which is confirmed by the legislative fixing of the possibility of fulfilling the obligation included in the obligation composition, after the statute of limitations (part 1 Article 267 of the Civil Code), and that only the possibility of court protection of the right is extinguished, that is, the protection obligation is terminated, the content of which includes the claim of the empowered person.

Thus, at all stages of the mechanism of legal regulation of civil relations, periods and terms as legal categories reflect their regulatory influence on the behavior of participants in these relations.

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Published: Приватне право і підприємництво. 2019. Вип. 19. С. 87–92.