DOI https://doi.org/10.30525/2592-8813-2022-3-2

TEMPORAL LIMITS OF THE REALIZATION OF THE CIVIL RIGHT OF A PERSON

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Abstract. This scientific work is devoted to the study of the topical issue of the temporal limits of subjective civil law. The main thesis is argued that the exercise of the right is possible only during its existence. At the same time, it should be noted that the exercise or non-exercise of one's civil right depends entirely on the will of the authorized person. Such implementation of the powers laid down in the law can take place through the active action of the managed person, or by requiring him to perform an action from the debtor. But the corresponding act should be carried out within the limits of the existence of the right. It is necessary to distinguish between the period of existence of the material right itself and the period of its belonging to a certain person. For example, ownership of a certain thing will exist as long as the thing itself exists. However, during this time, the owner of this property may change several times. But the change of specific owners does not affect the period of existence of civil law. Thus, it is emphasized that the time factor is necessarily part of civil relations. The work analyzes the protection of the interests of legal subjects by establishing certain limits of the exercise of subjective rights and establishing the duty of each authorized person to exercise their rights properly. The determination of the limits of the exercise of subjective rights is not considered as a limitation of these rights, but as a legal expression of the already existing equal position of people in the system of social relations. The article critically evaluates the outdated classic thesis, according to which going beyond the limits of legal equilibrium by carrying out an "untimely" civil action is an abuse of law, a special type of misconduct aimed at the realization by the subject of legal relations of his subjective interest with a negative content, which manifests itself in violation of the subjective rights of other persons. It turns out that in a temporal sense such a qualification is simply impossible. Exercising a subjective right outside the limits of its existence cannot be qualified as an abuse of the right, because the right, in fact, does not yet exist or no longer exists. Actions by a person outside the limits of permitted conduct or the validity period of the right will be considered as the actions of a person to whom the right does not belong at all. Therefore, abusing the right through "untimely" application of it during its validity is impossible, exercising the powers that were part of the right outside its time limits will be a common offense.

Key words: limits of exercising subjective right, abuse of right.

Introduction. Given the main provisions of the currently prevailing concept, which concerns the legal essence of regulatory and protective legal relations, let's try to understand in more detail the question of the terms of existence of the relevant subjective rights and their corresponding obligations. As we have repeatedly stated in other works, the term is a necessary and integral element of the content of substantive civil law (Guyvan, 2014, p. 19-23; Guyvan, 2017, p. 115-117). The legislation uses several methods of forming the duration of the legal relationship and the corresponding subjective rights and legal obligations included in it. Yes, the term of existence and implementation of the obligation can be established by its participants themselves. According to the provisions of Art. 530 of the Central Criminal Code, the terms of performance of obligations may be specified or unspecified[1]. If the obligation has a deadline for its performance, it must be fulfilled within this deadline.

[1] According to Art. 509 of the Civil Code of Ukraine, the obligation consists of the right of the creditor to demand performance (performance of a certain action or refraining from it) and the obligation of the debtor to perform such performance. Therefore, the legal definition of "obligation performance period" should be understood as a period of time during which the authorized person can exercise his right, and also as a period of time during which the obligated person must fulfill his obligation.

In the event that the specified term is not established or is determined by the moment of the demand, the debtor must fulfill the obligation within seven days from the time the creditor presents the demand to him. The specified norm of the law determines the period of existence of subjective rights and obligations of participants in civil relations in a regulatory state. Also, the duration of a certain material right can be established by law (Gorbas, 2009, p. 38; Guyvan, 2005, p. 12). Yes, the period during which the protective right to a lawsuit is exercised, as a rule, has a normative design.

According to Art. 509 of the Civil Code of Ukraine (CCU), the obligation consists of the right of the creditor to demand performance (performance of a certain action or refraining from it) and the obligation of the debtor to perform such performance. Therefore, the legal definition of "obligation performance period" should be understood as a period of time during which the authorized person can exercise his right, and also as a period of time during which the obligated person must fulfill his obligation. At the same time, a whole series of doctrinal studies and practical comments boils down to the fact that the subjective rights and corresponding duties of the participants in binding relations can be exercised outside the specified temporal coordinates (Gruzdev, 2001, p. 22). In other words, the expiration of the established terms of existence and exercise of the right does not affect the possibility of its realization. This, for example, concerns the rule of articles 764 of the CCU (and others of a similar nature), which provide for the possibility of using the leased property within one month after the expiration of the contract, if the lessor does not object to it (Kruk, 2011, p. 97). Such approaches practically nullify the significance of the civil term as an element of law and distort the real nature of actual relationships. Also, their disadvantage is that they establish the content of the legal relationship "retrospectively", which eliminates the certainty of the latter. We have strongly opposed and continue to oppose such an approach, but it nevertheless has a place in law enforcement and doctrine. Therefore, there is an obvious need to consider the temporal characteristics of regulatory and protective terms more carefully (Guyvan, 2021, p. 45).

In this context, one of the defining directions of the development of law is the regulation of the terms during which subjects can exercise their civil rights and obligations, protect the violated right. Adequate to real relationships and balanced approaches in establishing the duration of relationships contribute to the stability of civil turnover, eliminate uncertainty regarding the powers and duties of its participants in a temporal plan, guarantee the possibility of timely obtaining legal protection. Therefore, the terms ensure the strengthening of contractual discipline, stimulate the activity of counterparties in civil relations when they exercise their subjective rights and legal obligations, and guarantee control over the fulfillment of obligations.

The aim of the study. The study of terms in civil-law relations from the standpoint of a comprehensive approach is not only relevant, but also an extremely necessary issue. In modern conditions, questions about civil law terms are gaining more and more importance. After all, by and large, any civil term or term is nothing more than a measure of determining the social value of a specific legal relationship, a constituent part of the content of subjective rights and legal obligations included in it. The duration of these or other regulatory rights of the subjects of material turnover establishes the limits of normal (from the point of view of timeliness) of their implementation and determines the temporal factors for the qualification of a civil law violation. In this context, the author set the goal of clarifying the temporal dimensions of civil subjective law, since time, along with the scope of powers, is an integral component of the content of the legal relationship.

Research material and methods. The work examines the aspects of limiting the duration of terms in civil legal relations from the position of a comprehensive approach. This is not only an urgent, but also an extremely necessary issue. After all, by and large, any civil term or term is nothing more than a measure of determining the social value of a specific legal relationship, a constituent part of the content of subjective rights and legal obligations included in it. Legal analysis is aimed at establishing specific and real private law interactions and the adequacy of existing legal mechanisms. At the

same time, the author used general scientific and special scientific methods of cognition, in particular, formal-legal, analysis and synthesis, systemic-structural, comparative-legal, prognostic. Through their application, the social relations formed in the realm of their temporal regulation in unity and interrelation were investigated, the regularities of their development were revealed, in particular regarding the establishment and limitation, and the dynamics of the development of legislation in the researched area were also considered.

Results of scientific research.

1. General issues of the duration of subjective law.

During the period of validity of the subjective civil law, a person can exercise the powers included in the content of the right. In binding legal relations, the authority of the creditor, as a rule, can be exercised by demanding appropriate active behavior from the obligated entity. At the same time, one cannot fail to note that certain subjective rights can be realized only through the active behavior of the authorized person, while his authority corresponds to someone's specific obligation regarding passive behavior (Stefanchuk, 2006, p. 11; Borisova, 2014, p. 14). This way of exercising the right is characteristic of real relations, it is also inherent in the so-called law-making (secondary) powers, which are implemented through a unilateral act of their bearer (Majdanyk, 2003, p. 11; Grynko, 2011, p. 138).

What happens when, during the existence of the subjective right, the equated subject, empowered to perform actions, did not perform them during the time of existence? In science, there is a point of view that the non-use of the right during its validity should also be considered the exercise of the right (Agarkov, 1940, p. 47-48). In fact, it may consist, for example, in the fact that the creditor of the testator, having failed to submit claims to the heir within the six-month period, has given up his material right, thus realizing it. The roots of this theory go back approximately 150 years to the classical Russian civics (by the way, one of the most progressive and developed for its time), which operated with rules about the possibility of a person waiving a subjective right in the event of its long-term non-use. But one can hardly agree with this statement today. After all, the content of the specified right implies the need to take active actions for its implementation, and only such actions, if they took place during the period of existence of the right, lead to its implementation. In another case (failure to perform actions or their performance outside the limits of the existence of the right), there is no reason to talk about the realization of the right: no changes in the legal status and actual behavior of the person have occurred. At the same time, it should be noted that the exercise or non-exercise of one's civil right depends entirely on the will of the authorized person. So, during the statute of limitations, she can apply to the court for the protection of the violated right, but for certain reasons she has the right not to apply the coercive mechanism of protection[2].

In civil studies, most scientists define subjective law as a measure of possible or permissible behavior of the authorized person (Borisova, 2011, p. 103). At the same time, Ioffe in his time formulated the concept of subjective law in a slightly different way: as a legal means of ensuring certain behavior of the obligated person, which conditions for the authorized person the possibility of carrying out his own actions (Ioffe, 2000, p. 669). Indeed, in most cases, the relevant actions of the obligated person must be performed for the benefit of the authorized person, without waiting for the latter's request. Let's take, for example, a monetary obligation: the debtor must transfer the funds to the creditor during the payment period from the moment the obligation arises. This is also characteristic of protective legal relations, first of all, because all these relations are binding, regardless of whether absolute or relative material rights are protected by them. In the literature, the opinion is expressed that this construction of relations leads to a shift in the emphasis of the legal meaning towards

[2] By the way, the fact that the implementation or non-implementation of a subjective right depends on the will of the authorized person is not always understood and reproduced in legislation and law enforcement practice. Thus, in certain normative acts, it is emphasized that the creditor must exercise his right (in particular, the protective right to sue), which, in fact, contradicts general civil principles.

the terms of the performance of legal obligations (Luts, 1989, p. 42). However, we cannot rule out situations when the realization of a subjective right occurs as a result of the positive actions of the bearer, while the obliged person must accept the action and not prevent its execution. Therefore, subjective law encompasses two elements in their interconnection: the possibility of determining one's own behavior and the requirement of proper behavior from the bearers of legal obligations.

2. Temporal limits of subjective law.

No matter how the subjective substantive law is considered from a doctrinal point of view, in every legal relationship there are directly or indirectly formulated rules regarding when it should be implemented or an obligation fulfilled, and regarding the time of the onset of certain consequences due to certain circumstances. For example, the seller has the right to enter into a contract of sale even before he receives ownership of the goods, but the transfer of the thing will take place only after he acquires ownership, because the law says so (Guyvan, 2003, p. 109-110). The contractor must submit the results of the work within 20 days from the moment of payment of the advance payment, as it is stipulated in the concluded contract. The custodian must return the thing at the request of the depositor even before the end of the storage period (Article 953 of the CCU). Interested persons may challenge the dispatch in court within six months from the date of receipt of the dispatch (Article 291 of the Merchant Shipping Code of Ukraine). Therefore, the time factor is necessarily part of civil relations.

Given the need to maximize the possibility of realizing a subjective right, the terms of its existence are set for one or another duration. In other words, when determining these terms, the legislator is guided by the need to satisfy the interests of the person to whom the right belongs. However, the interests of other persons and society are also taken into account. Depending on the state of social relations, public and private interests, the terms of existence of subjective rights may be set differently, they may also change over time depending on their public and private significance. If the legislator believes that the quick implementation of a specific subjective right will contribute to the certainty and stability of material relations, the law establishes relatively short periods of existence of the subjective right. When the nature of the legal relationship has less influence on the general characteristics of civil circulation, the terms of exercising the right are established by legislation for longer periods or are determined by the parties to the legal relationship themselves, taking into account its features. So, in particular, a party that does not have the right to refuse the contract (a public entity) or that is a monopolist, when concluding a contract, having received a protocol of disagreements from the counterparty, is obliged to submit to the court within twenty days the disagreements that remained unresolved, otherwise proposals of the other party are considered accepted (Part 7 of Article 181 of the Economical Code). The total duration of the statute of limitations is set at three years, however, with the agreement of the parties to the legal relationship, this term can be increased (Article 257, Part 1 of Article 259 of the CCU).

As you know, the objects of civil relations are things, property rights, work results, services, other tangible or intangible goods. In relation to these objects, participants in civil relations have certain rights and obligations (Khodyko, 2017, p. 85-86). The terms of existence of the specified rights are closely related to the terms of existence of objects. So, ownership of a thing can be exercised as long as it exists. Objects of civil rights (this applies not only to things) can be consumable or non-consumable, that is, destroyed (ceased) as a result of their one-time use, or not. Therefore, the question of the terms of viability of such objects of civil rights that cease to exist at the moment of their use (service, electric and thermal energy, etc.) requires special attention of researchers. It is also necessary to distinguish the period of existence of the material right itself and the period of its belonging to a certain person. For example, ownership of a certain thing will exist as long as the thing itself exists. However, during this time, the owner of this property may change several times. This happens on the basis of deeds, court decisions, etc. But the change of specific owners does not affect the period of existence of civil law.

The exercise of subjective rights consists in the use by the right holder of the opportunities laid down in the law as its content. Their implementation occurs, as a rule, as a result of committing lawful actions (Kuznetsova, 2014, p. 254-255). Therefore, it is quite logical that the hypotheses of most legal norms contain the rules of lawful behavior, and precisely such behavior is the result of the implemented or implemented right (Kharitonov, 2016, p. 9). Subjective rights are realized mainly in regulatory legal relations, although sometimes for their implementation it is necessary to use the mechanisms inherent in protective relations.

If a subjective right is a measure of the possible behavior of an empowered person given by civil law (the right to own actions) and the right to demand specific behavior from other people, then the social value of such a right of a person is manifested in the reality of its implementation to meet the needs of the right holder (Stefanchuk, 2006, p. 11). The established civil tradition defines the indicated term "measure" not as a quantitative indicator that characterizes the extent of a person's powers, but as a delineation of the boundaries within which an authorized person can act (Tsyban, 2017, p. 78). In view of this, the given classic definition of subjective law, in our opinion, should take into account all the criteria of lawful behavior of a person provided by the law and, in particular, the established terms for taking appropriate actions. Therefore, as an important conclusion, the exercise of a subjective right is possible only if it occurs within the time limits established for this purpose. One of the legal forms of securing the interests of the subjects of the right is the establishment of certain limits of the exercise of subjective rights and the establishment of the obligation of each authorized person to exercise his rights properly. The determination of the limits of the exercise of subjective rights should not be considered as a limitation of these rights, but as a legal expression of the already existing equal position of people in the system of social relations, a legal guarantee, a legal guarantee of this effective equality (Kalyuzhny, Tsapenko, 2019, p. 59).

So, let's consider the temporal characteristics of the limits of the exercise of subjective law. As V.P. Grybanov rightly pointed out, the subjective right in its content and the freedom guaranteed by the law for the purpose of real exercise of the right by its bearer cannot be unlimited (Grybanov, 2000, p. 22). In modern Ukrainian civics, a similar position is held by the meter V.V. Luts. In particular, he points out that every freedom in a state-organized society has its limits, defined by law (Luts, 2001, p. 19). With regard to binding material rights, the scientist also notes that the freedom of contract cannot be unlimited: it exists within the framework of current regulations, customs of business turnover, and the actions of the parties must be based on the principles of reasonableness, good faith and justice (Luts, 2004, p. 151). Therefore, the realization of a subjective right is possible only within certain limits that characterize its content, term and nature of implementation. Such limits are established by legislation, deeds and represent a certain mechanism of permitted legal behavior of an authorized person. At the same time, the act that establishes the order of behavior may or may not determine its specific manifestations. Thus, establishing in the contract the need for the debtor to pay the funds under the monetary obligation on the 10th by transferring them to the creditor's current account clearly establishes the actual manifestation of the creditor's right to receive a certain amount on his account on that date. Conversely, the legal right of the owner to own, use and dispose of the property belonging to him is not specified by indicating the appropriate type of behavior of the right holder.

The possibility of exercising the right depends on a number of circumstances of the actual order. In civil science, it is customary to talk about the guarantee of law as one of its main characteristic features. This is a system of factors of objective and subjective content that create material and legal prerequisites for the realization of rights and their protection. The specified factors are, in fact, conditions for the exercise of subjective civil rights of an objective (material and legal guarantees) and subjective (conditions related to the behavior of equalized and obligated persons) nature. The objective conditions that exert an external influence on the realization of civil rights, in particular, should include the established terms of their existence. The legislation is constructed in such a way that the determination of the content of a specific civil legal requirement in relation to and a certain duty

that corresponds to it is achieved by establishing not only their material scope, but also its temporal coordinates, which are fully understood by both subjects. This does not allow the latter to arbitrarily interpret their content (Rogach, 2011, p. 145).

3. Exercising the right outside its borders. Abuse.

In legal science, there is a concept according to which going beyond the limits of legal equilibrium by using the subjective rights belonging to a person with a violation of the limits of their implementation is an abuse of law, a special type of illegal behavior aimed at the realization by the subject of legal relations of his subjective interest with negative content, which is manifested in the violation of the subjective rights of other persons and in the intentional infliction of damage on them (Tsapenko, Stepankivska, 2014, p. 31). A similar opinion, taking into account temporal factors, was expressed by scientists O.S.Ioffe and V.P. Grybanov They indicated that, under certain circumstances, the untimely exercise of one's right may be qualified as its exercise in contradiction with the purpose of achieving an impermissible result. At the same time, the term "untimely act" should be understood as an action performed during the existence of the subjective right, but its performance at a different time would lead to more desirable social consequences. Thus, a lessor under a contract with an indefinite term, who had a need for the leased property, could make a demand for the return of the property immediately after the specified need appeared, however, having learned about the repairs started by the lessee, he did so only after the repairs were completed, thus using its results. The authors consider this method of exercising subjective civil law unacceptable and recognize it as an abuse of law with corresponding negative consequences for the holder (Ioffe, Grybanov, 1964, p. 83).

Let's allow ourselves to critically evaluate this approach, because we consider this position to be incorrect. The exercise of a subjective right outside the limits of its existence cannot be qualified as an abuse of the right, because the right, in fact, does not yet or already exists. As M. Planiol aptly said, the right either ceases, or the abuse begins (Le droit cesse ou l'abus commence) (Planiol, Ripert, 1946, p. 157). Therefore, actions that correspond to the scope of a person's subjective powers outside the period of their existence should be considered no differently than the implementation of actions that do not constitute the full content of the law, that is, as their implementation without proper grounds. As a result, there may be a refusal to protect the right due to the fact that it does not belong to the person (Karnauch, 2020, p. 33-34). In this context, one cannot agree with the statement that the use of a right outside its scope is an abuse of the right (Porotykova, 2008, p. 154), since no right exists anymore. As we can see, only a violation of the procedure for the exercise of a person's right may entail the consequences specified in the legal norms. Taking actions outside the scope of exercising a subjective right will not lead to sanctions for abuse, because at the same time the person was no longer the bearer of the right. Since the term as a legal category establishes the limits of the exercise of the right in terms of its timeliness, actions by a person in violation of the stipulated term cannot be qualified as an abuse of the right.

A literal interpretation of the provisions of Ukrainian legislation allows us to conclude that the legal nature of regulatory and protective obligations is identical, in particular in terms of the temporal limits of their implementation. If we extrapolate the above provisions on the appropriateness of the exercise of the right in certain periods of its existence to protective legal relations (for example, those manifested in the exercise of the material right of a person to sue), we can come to the conclusion that applying for judicial protection in certain periods of the statute of limitations should be qualified as the exercise of a right against its purpose. For example, when the defendant is sick, etc. But one cannot categorically agree with this thesis. The time of exercise of the right within the term of existence cannot affect the choice of the method of its implementation (for example, in the example we have given so far, the defendant's illness is taken into account by other legal mechanisms, for example, by restoring the statute of limitations). By choosing the period and time of exercise of his authority within the scope and time of validity of the right, the person carries out its exercise. Exercising the

right in an improper manner, it thereby, as it were, replaces permitted forms of behavior with prohibited ones (Ioffe, Grybanov, 1964, p. 83). But the time set for the exercise of a subjective right precisely determines the limits of the right holder's possible behavior in terms of the presence or absence of a subjective right at this specific moment. After the expiration or before the beginning of the validity of the right, there can be no abuse given the fact that the person involved does not have the right, the manifestation of which he commits. Therefore, any cases of exercise of the right "at the wrong time" during its validity are not included in the concept of abuse.

By the way, not all researchers support the concept of the possibility of abuse of the right. Arguing with her, adherents of another vision of this issue generally deny the possibility of abusing the subjective right, as well as exceeding the limits of its implementation (Yaroshenko, 1972, p. 30-31). The very reduction of individual freedom to the framework of material obligation is already a limitation. They oppress, reduce personal freedom, therefore, noted F.K. Savigny, deserve legal protection only to the extent that it is positively required by the necessity of civil turnover (Nolken, 1885, p. 68). E.O. Michurin (p. 64) also sees this reason for the limitation of contractual liability in individual Ukrainian laws. At the same time, supporters of this theory point out that the abuse of the right is actually a violation of specific legal prescriptions, since a person acts contrary to the established rule, and is fully covered by the provisions of specific prohibitive norms of civil legislation (Savinyi, 2011, p. 460-461). Therefore, there is no room left for the construction of abuse of rights. Therefore, actions that appear to be an abuse of law are actually committed outside the law, when a person goes beyond what is permitted and acts contrary to the law (Stefanchuk, 2006, p. 12).

Let's evaluate this discussion in more detail in the context of studying the commented link. Limitations in the obligation law were highlighted by some scientists with a socially significant goal at the general scientific level (Nolken, 1885, p. 68; Gubar, 2013, p. 8-9). In order to abuse a right, it is necessary, at a minimum, to possess it, since this manifestation in the absence of a right is behavior contrary to the right and, therefore, falls under the definition of an ordinary offense. At the same time, there is no doubt about the thesis that the implementation of civil rights should take place in accordance with their purpose (Kot, 2013, p. 135). Therefore, a person can independently choose the methods and direction of its implementation within the limits of the existence of his subjective right (including during the period of validity). Among the latter there may be those that, for example, harm other rights holders. Let's say the owner of the car parks it in a way that prevents other people from driving to their home or garages. Here, the owner acts within his rights, but his implementation harms the surrounding subjects. Such improper use of the right can be qualified as abuse. It can be caused by the following factors: regulatory regulation factors; the presence of a significant number of secondary legal acts; the presence of mostly dispositive norms in the legislation; social factors; level of education and legal knowledge; level of legal culture; moral and religious beliefs, etc. (Bakaev, 2013, p. 20). According to the current Ukrainian civil legislation, only actions related to the exercise of one's right to the detriment of other persons, cultural heritage, contrary to the law or the moral principles of society are considered illegal and punishable (Article 13 of the CCU). On the other hand, the concept of abuse of the right does not cover cases of its implementation beyond the limits (including temporal) of existence, as some scientists mistakenly believe.

Taking into account the above, we can come to some **conclusions.** Let's repeat: the limits of civil law are determined both by its content, the order of implementation, and the time of its existence. Going beyond the specified characteristics of the right holder may lead to various consequences. Thus, a person's actions outside the limits of permitted behavior or the validity period of the right will be considered as the actions of a person who does not have the right at all (Guyvan, 2020, p. 34-35). For example, continuing to use the property after the end of the lease agreement should not be classified as an abuse of rights, but as groundless actions that are not based on title. Another thing is when the use of impermissible specific forms occurs within the framework of the permitted general type

of behavior: such a situation can be characterized as a violation of the limits of the exercise of subjective civil rights. For example, the use of a land plot, which leads to the deterioration of the quality indicators of the land, is an abuse of one's material right. Harassment – the use of one's material right exclusively to the detriment of the rights of other persons must be included in the same cases. At the same time, the conducted analysis allows us to establish that the realization of one's subjective right at any moment during its validity is a completely legitimate phenomenon. Therefore, abuse of the right through "untimely" application of it during its validity is impossible.

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