РОЗДІЛ 6. АКТУАЛЬНІ ПРОБЛЕМИ ЦИВІЛЬНОГО ТА СІМЕЙНОГО ПРАВА

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TEMPORAL PRINCIPLES OF PROTECTION OF VIOLATED SUBJECTIVE CIVIL LAW

Summary. *The work is devoted to the research of the topical issue of the temporal dimensions of the implementation of regulatory civil law and its relationship with the duration of the right to protection in case of violation, including by filing a claim. The historical progress of science on interpretations of public perception of the period of existence of the right to protection is studied. The position that has long been prevalent in science, that at the time of violation the subjective right is transformed into the right to sue, and exists in this state for a specified period, and then with the expiration of the statute of limitations is reasonably criticized. However, the evolution of current legislation has led to a change in the concept and this time, because it was impossible to explain the rule of due performance of a long-standing obligation after the expiration of the statute of limitations (Part 1 of Article 267 CCU). Therefore, currently the most acceptable thesis is that the statute of limitations extinguishes only the right to sue, and not the subjective substantive right itself, ie the continuation of the subjective substantive right deprived of judicial protection after the expiration of the statute of limitations. Voluntary performance by the debtor at this time is due, and the debtor is not entitled to demand the return of the performance. But*

for the effectiveness of this legal construction, it must be added that it is not the violated regulatory law that continues to exist, but the protection law, which has lost its coercive capacity to implement. Therefore, the voluntary exercise of this right will be appropriate.

Introduction

Given the generally accepted concept of the division of civil law into regulatory and security, the question of the duration of the relevant subjective rights and their corresponding responsibilities is relevant. Since the term is a necessary and integral element of the content of substantive civil law, certainty in this regard will also provide certainty in the application of the necessary legal tools. Currently, the issue of timely exercise of subjective law is very relevant. In particular, the temporal relationship between the right of action and regulatory law is important. The effectiveness of the application of certain legal norms governing the course of certain terms, unfortunately, is not the main criterion for establishing the scope of the legal institution. Therefore, we must conduct a scientific study of this issue, because the seriousness of the question of the possibility of the existence of regulatory substantive law with the expiration of the statute of limitations requires serious attention. Therefore, it is necessary to analyze the question of the duration of the very subjective right for which the creditor claims judicial protection, and the relationship of this temporal factor with the time of existence of the protection right aimed at protection. If we accept the once popular thesis that the regulatory right ceases with the expiration of the statute of limitations, then we could talk about the termination of the right to judicial protection in connection with the termination of the subject of protection. But, in fact, it is not.

The statute of limitations has gradually acquired the legal significance it still has today – the period during which a person can exercise his substantive right to receive judicial protection of the violated civil right or interest by filing a lawsuit by him or another authorized person. This change in the assessment of the legal nature of this period could not but be reflected in the scientific perception of the relationship between the emergence and termination of the period of existence of the claim and the duration of the subjective right that received the violation. The question of the existence of a certain subjective right outside the statute of limitations has always been quite relevant and, as the historical analysis of his research

shows, difficult. Of course, civil studies of these connections took place within the framework of the only generally accepted concept we have criticized, according to which the power to sue was considered an element of the subjective right itself, and acquired the ability to enforce after the offense. Within this concept, the scientific analysis of the duration of substantive law in view of the expiration of one of its integral elements – harassment – quite logically led to incorrect conclusions.

1. General concept of the time of exercise of the right to protection

The current legislation also contributes to the assertion of an erroneous legal position, some of which explicitly state the existence of regulatory law in a person who not only cannot exercise it due to the duration of the offense, but generally missed the deadline to pursue his protective claim. For example, after the expiration of the statute of limitations on the requirements of the owner to return the property after the lease, the enforcement of this claim is impossible, he does not cease to be the owner, but the property remains with the untitled owner, who acquires ownership under the statute of limitations p. 3 Article 344 of the Civil Code of Ukraine.

However, it is clear that the commented theory is not able to cover all cases of protection of the infringed right, for example, it concerns issues, related to the protection of property rights. The latter can exist both in a regulatory state, which has an absolute character, and in a state of the right to protection, which is mediated within the framework of protective obligations. In this case, the violation of property rights, for example, is not associated with the loss of possession, does not terminate the regulatory right, which continues to exist for all other entities except the infringer. In turn, due to the violation of regulatory property rights, it can be protected by coercion. However, the commented theory of the continued existence of the violated right both after its violation and after the expiration of the statute of limitations does not fit into the specific realities, which are that as a result of one violation there may be several different in content and form of exercise of protective powers. judicial protection.

There are also unsubstantiated cases when the right to sue (the statute of limitations) does not begin from the moment when the commissioner realizes the violation of his right (say, when the right to sue arises from the time of receipt of information about the offender).

What is the state of subjective substantive law from the moment of violation to the beginning of the statute of limitations? After all, the law has already lost its regulatory characteristics, and has not yet acquired security. Despite the fact that civil law has taken some steps to determine the share of property owned by the untitled owner (acquisition statute of limitations, mechanism for protection of property rights, etc.), a significant period of time the property holder may remain a person who does not have, and often even deprived by law, the ability to exercise property rights (for example, a person who received property from the owner, but did not return it during the statute of limitations - Part 3 of Article 344 of the CCU). All these and other problems do not make it possible to consider satisfactory the described theory of the continued existence of regulatory subjective law both before and after the expiration of the claim period.

At the same time, the legal construction, according to which the substantive subjective right is terminated with the expiration of the claim period, is even less balanced and rational. Thus, criticizing the theory of repayment of subjective substantive law at the end of the statute of limitations precisely in connection with its inability to comply with the rule of Part 1 of Art. 267 of the CCU, we seem to agree with the supporters of another legal approach, according to which the regulatory law with the coincidence of the statute of limitations continues to exist, but being deprived of appropriate coercive protection. In fact, this is not the case. Let us be critical of both points of view.

The problem of both directions of research was, first of all, that all scientific concepts developed in civilization on this issue were reduced to one or another justification of the regulatory mechanism established by law, and given the existing inviolable normative rule to adjust the content of specific social relations. So, we've got some pretty big but ineffective theories. For example, the thesis of the continued existence of regulatory law after the coincidence of the statute of limitations cannot be supported by anything, except for the rule of Part 1 of Art. 267 of the CCU, according to which the debtor who performed the obligation after the expiration of the statute of limitations, is not entitled to demand the return of the performed, even when he did not know about the expiration of the statute of limitations. Using this rule as a dogma, the researchers logically came to the wrong conclusion: the obligation (and hence the relevant subjective rights and legal obligations that are part of its content) begins from the moment of its origin and will last until committed or

terminated. After all, since in Part 1 of Art. 267 of the CCU refers to the fulfillment of an existing obligation, it does not end with the coincidence of the statute of limitations.

The second concept, which was aimed at legally substantiating the inexpediency and ineffectiveness of the existence of subjective civil law, deprived of the ability to be enforced, also practically reduced to adapting its basic provisions to the specified regulations on the proper performance of the obligation. Ultimately, this has led to a generally promising area of research leading to inconsistency and confusion. In our opinion, the main mistake here was to change the legal message and legal conclusion in the study of this temporal phenomenon.

Any legal analysis must be based not on the state of the normative superstructure, which is a secondary manifestation, but on a careful study of the essence and legal nature of the material relationship. And only the assessment of its internal properties will allow us to conclude: since the civil relationship, and hence the subjective right, continues to exist after the expiration of the statute of limitations (loss of the possibility of its judicial implementation), so the debtor's performance is due, and the latter is not has the right to demand the return of the execution with reference to the fact that he did not know about the expiration of the statute of limitations, as enshrined in law. Thus, the legislation reflects the actual essence of social relations, researched and scientifically substantiated, and not vice versa.

But another, no less important drawback of these two areas is that they carried out a legal analysis of the commented temporal coordinates within the existence of a protected (regulatory subjective) right. The fact is that the modern development of civil doctrine allows a completely different assessment of the real nature of the relationship. According to the new civil concept, the subjective substantive law is realized within the regulatory legal relationship, and in case of violation of the latter there is a new separate protective obligation, within which there is, in particular, a claim, the duration of which is determined by the statute of limitations. Today, this theory has an undeniable dominance in civilization [1, p. 26].

One of the shortcomings of the commented legal approaches is also the fact that their apologists considered only judicial protection to be appropriate, ie in fact the autonomous existence of other protection rights of a person other than the right to sue was denied. At the same time, it is obvious that judicial protection does not exhaust the protective property of the law. Therefore, according to the law, the

authorized person can protect his substantive right with the help of other legal tools: operational measures, administratively, etc. After all, appealing to a debtor with a non-judicial claim that can be satisfied by the latter is also a kind of exercise of subjective protection law. At the same time, it is logical to assume that their implementation after the expiration of the statute of limitations is possible only if the existence of the substantive protection right itself.

Therefore, in the study of commented public relations, it should be borne in mind that civil law provides not only judicial mechanisms to protect the violated civil law [2, p. 38–39]. In most cases, there are no regulations on non-judicial remedies regarding the period of their implementation: the law does not restrict the creditor's use of such remedies in time. And this can mean only one thing: the right to exercise the protection authority, which is part of the relevant protection obligation, exists for the duration of the civil protection law itself, except when the law explicitly establishes a special term of its validity. Thus, the implementation of security measures with the help of non-judicial jurisdictions, the use of permitted operational influence on the infringer outside the statute of limitations is a legitimate way to protect the violated substantive law. The violated substantive right after the expiration of the statute of limitations does not remain completely unprotected, although the degree of its protection is somewhat reduced.

Therefore, not only the content of the current civil law norms, but also the very essence of the commented relations do not give grounds to link the duration of the protected subjective right with the time of existence of the protected one. For example, the overdue right to receive payment under the contract of sale cannot exist in the regulatory regime and is terminated. From the time of the offense there is another – protection and legal relationship, the content of which includes various subjective rights of the carrier, aimed at terminating or compensating for the consequences of the violation, including identical in content regulatory protection right to demand performance in kind: pay freight costs. These protective powers can be exercised in various ways: voluntarily by the protagonist taking active action or by the debtor, by applying jurisdictional or non-jurisdictional measures provided by civil law. If a person has chosen a judicial method of exercising his or her protection right, he or she has the right to obtain it if he or she exercises his or her substantive right to sue (claim). Such exercise of the right is characterized by a certain

established duration of the relevant authority – statute of limitations, after this period the right to sue is terminated, and with it does not arise the right to enforce the protection claim. As you can see, only one power is exercised during the statute of limitations – harassment, and its course cannot be qualified as a time of implementation of a regulatory obligation or a protective legal relationship.

This legal approach makes it possible to assess the rule of Part 1 of Art. 267 CCU. First, as we have convincingly shown, the statute of limitations does not regulate the duration of the regulatory relationship, so its expiration in no way affects the absence of regulatory subjective law. Secondly, the end of the statute of limitations does not terminate the protective subjective right that began from the moment of the offense, but only establishes the temporal coordinates for the element of this right – the claim, the implementation of which during the statute of limitations provides further judicial protection. Therefore, it is quite obvious that with the expiration of the statute of limitations, the duration of the protective subjective right of the commissioner continues, which at the same time loses the ability to enforce. Therefore, the relevant security obligation of the defaulting debtor, aimed at terminating or compensating for the violation, may be voluntarily performed by him after the expiration of the statute of limitations, for example, by voluntary transfer of funds. And it is this fulfillment of the long-standing security duty was meant when constructing the rule of Part 1 of Art. 267 of the CCU, such implementation by virtue of a direct indication of this rule will be appropriate.

Finally, given the modern views on protection rights as separate from the regulatory independent powers of the person, the question of the existence of a violated subjective right after the expiration of the statute of limitations becomes quite simple. The statute of limitations does not apply to regulatory civil law at all, as the latter is exercised through the voluntary performance by the obligor of his duty properly. Instead, the possibility of enforcement of the claims stated in the lawsuit is an element of another – protective subjective civil law. This right at a certain stage of its existence has a coercive capacity, which is exercised through a state jurisdiction. It is this possibility of protection law and personifies the right to sue in the material sense (claim), which is subject to satisfaction. After the expiration of the claim, the protection right of its holder continues to exist, no longer having a claim.

Taking into account all the above and, based on the analysis of the nature of the relationship under study, we will certainly come to the conclusion that there is a protective subjective civil law outside the statute of limitations. It is a mistake to say that the creditor can no longer demand anything from the debtor, and the debtor is not obliged to do anything [3, p. 84]. On the contrary, the performance of his duty by the obligated person is the realization of the material right of the creditor. On the other hand, it is unfair to conclude that there is no defense mechanism after the expiration of the claim period. The protective legal relationship contains a non-litigation requirement against the debtor. Such a requirement is not extinguished by prescription and its voluntary implementation by the latter means the protection of the violated civil right after the expiration of the statute of limitations.

As we have already seen, the expiration of the statute of limitations does not terminate the duration of the protection and legal relationship that arose as a result of the offense. But the feedback between these legal categories, in principle, is possible, so in the literature has become quite a classic view that in cases where the existence of subjective law ends, there is no need to protect it, and therefore terminates the right to judicial protection of such a right [4, p. 182]. Let us not completely agree with this statement and here's why. The exercise of any right involves the implementation of the specific powers embedded in it, and the powers can be quite diverse. Thus, the lessee under the lease agreement within the regulatory interaction has the right to use the property, can sublease it, the landlord has the right to receive rent, require maintenance, and so on. All these civil subjective rights have a certain term, which is determined by the term of the contract. The term of the right to receive rent is also important for these relations. However, after the expiration of the agreement, all the mentioned subjective rights in the regulatory state lose their validity.

For example, the content of the obligation to use the leased property is the right of the lessee to use it at its discretion and the corresponding obligation of the lessor to refrain from obstacles to such use; accordingly, the content of the obligation to transfer the property is the right of the lessee to demand the transfer of the thing and the obligation of the lessor to make such a transfer. After the expiration of the contract, these obligations cease to be valid. What happens to the possibility of protecting such rights after that. First, it

is necessary to determine whether there has been a violation of substantive law during its validity. If not, then the right to sue the entitled person did not arise, and therefore there can be no question of its implementation. If the substantive law during its existence was violated and from that moment the statute of limitations began, the question of the possibility of judicial protection after the termination of this right becomes less clear.

Article 16 of the Civil Code of Ukraine defines a certain list of ways to protect civil law by a court. Depending on which of these methods is chosen, the question of the possibility of protecting an already terminated substantive right in the event that it was violated during its existence should be answered. If the protected right has ceased as a result of such a violation (for example, the destruction of a thing terminates the right of ownership), it is clear that such remedies as recognition of the right, termination of its violation, enforcement in kind cannot be considered adequate. They cannot be used due to the lack of protection of the protected object. And in this sense, the thesis of the termination of the right to sue with the termination of the subjective right itself is correct.

But this does not mean that this right loses its ability to defend. It can be protected by the implementation of another in the content of the claim. For example, if the right to protection of a substantive right is exercised by compensating for the damage (damage) caused by the violation, the right to such protection is not extinguished by the expiry of the obligation itself. Therefore, we can talk about the protection of a non-existent right. And it's a different matter when the tenant's obligation to pay for the use of the property is not fulfilled in time. In this case, from the time of violation of the relevant civil law, a new substantive right of protective content arises, it is it that acquires the claim security and can be enforced. In this case, the content of the security authority will include the requirement to perform the duty in kind.

It is necessary to say a few words about the duration of the protective coercive capacity of the requirements arising from the additional obligations. As a general rule, it is fair to conclude that these claims are also extinguished with the expiration of the statute of limitations, and the relevant protection law, which derives from the protection law obligation, can be exercised voluntarily or otherwise out of court. However, it should be borne in mind that the statute of limitations on additional claims is terminated not only as a result of its

own expiration, but also as a result of the expiration of the statute of limitations on the claims of the main obligation. However, in any case, the loss of the enforceability of the protection claim arising from the breach of an additional obligation shall not be terminated.

2. On the ratio of the duration of protection of the right with the statute of limitations

The literature has also suggested that the temporal limit of the subjective right should be considered not the time of expiration of the statute of limitations, and the moment of rejection of the claim in connection with this circumstance [5, p. 42]. The authors of this thesis particularly emphasized the need to apply this approach to the creditor's right to receive money. V.P. Grybanov held the same position. He justified it by referring to the fact that the statute of limitations is a significant factor only when the case is heard in court. Only during such consideration the court can establish the facts of interruption or suspension of the statute of limitations, consider the reasons for the seriousness of its omission. At the same time, while criticizing the provision on the termination of a subjective right with the expiration of the statute of limitations, he made the term of the right dependent on the moment of the court decision on the refusal to protect the right. In his opinion, the court's refusal to protect the right entails the loss of the substantive subjective right [6, p. 253].

Let's just say that it was not about any refusal of the claim (because the refusal to satisfy the claim due to the fact that the right did not belong to the plaintiff, there can be no question of its termination after the court decision), but only on the refusal related to the non-renewal of the statute of limitations. From this, the scholar concluded that the voluntary performance of the debtor, carried out before such a court decision, should be recognized as the performance of his duty under the existing obligation. But, as you know, the law indicates the impossibility of returning the executed, regardless of when the execution took place: before the court decision, or after. The author comments on the latter situation less successfully: since the obligation was terminated after the court waived the claim due to the expiration of the statute of limitations, a new relationship arises between the debtor and the creditor upon voluntary performance.

As we can see, the commented theory makes the term of civil law dependent on the decision of the court, which is satisfied or not satisfied the requirements for the protection of this right. If we

evaluate the problem from this point of view, we will definitely come to the conclusion that the obligation exists throughout the court proceedings and its continued existence depends entirely on whether the court recognizes the statute of limitations as expired. At the same time, within the framework of the commented approach, the question that will inevitably arise under this legal justification remains unresolved: what about the existence of the right when the entitled person does not apply to the court for its protection at all? The author does not answer this question.

Like previous theories, this one is also unable to solve the problem of what obligation the debtor still performed after the expiration of the statute of limitations. The law refers to an obligation that has expired. So this is the same commitment as before. This is the view of other researchers: after the expiration of the statute of limitations, the substantive right to sue is extinguished, but it is the subjective right that continues to exist [7, p. 67]. However, they also had some difficulties in substantiating the nature of substantive law, not endowed with the ability to enforce. And only new civil studies have opened up opportunities to address this issue.

In fact, both the expiry of the limitation period and the entry into force of a judgment denying the creditor claims in connection with the omission of the limitation period have the same effect: these legal facts do not terminate the protective obligation. The debtor's obligation to act in favor of the creditor continues, which in turn means the legitimacy of voluntary enforcement after the court has rejected the claim due to the expiration of the statute of limitations. By the way, the fact that the omission of the statute of limitations is an independent ground for refusing to satisfy the claim once again further confirms that its expiration does not affect the existence of the violated subjective right. Otherwise, the expiration of the statute of limitations would automatically mean the expiration of the protected right, which would lead to a different justification for the rejection of the claim – in the absence of the plaintiff's subjective right.

However, despite its general inconsistency and inconsistency, this legal construction provides an impetus for a more detailed analysis of the temporal nature of a person's subjective right in the period from the moment of filing a lawsuit to a court decision that was denied due to the expiration of the statute of limitations. In the case of timely filing of a claim, the duration of the claim (statute of limitations) is terminated prematurely due to the exhaustion of the right and the

impossibility of its re-implementation. The protection right, which arose at the moment of violation of the regulatory material relation, continues to exist and can be realized by application of judicial coercion. However, if the court finds that the statute of limitations on the relevant claims has expired and on this basis refuses to satisfy the claim, it will actually mean that the coercive capacity of the protective claim was lost at the time of filing the claim. In other words, nothing changes at all, just the fact of missing the time for judicial protection was recorded “retrospectively”. Therefore, the consequences of the debtor’s voluntary performance of his overdue and overdue obligation after the expiration of the statute of limitations will not differ from those that occurred in the case of performance of the same obligation after the court decision. The latter situation is fully covered by the legal mechanism governing the general rule on the validity of protective obligations deprived of coercive power.

Thus, the expiry of the limitation period and the expiry of the possibility of obtaining judicial protection as a general rule does not affect the existence of a subjective right. However, scientific proposals on the inexpediency of the continued existence of so-called natural rights, deprived of the possibility of judicial protection, as we have already said, remain relevant, especially for economic turnover. This thesis finds its supporters in modern conditions, even though researchers are increasingly aware of the fact that in the natural state after the expiration of the statute of limitations continues to be not regulatory but protective subjective right of the authorized person. Thus, it is now widely believed that the rule of the continued existence of a subjective right after it has lost its capacity to enforce is valid if its other temporal coordinates are not established by law. In other words, some scholars believe that the legislator in some cases followed the path of termination of substantive law as a result of the expiration of the statute of limitations on the relevant requirements.

Indeed, legislation of this kind, which determined the fate of a long-standing subjective right and the corresponding obligation not in favor of their holders, took place, and, by and large, continues to exist today. It is a question of transfer to the property of the state of the property unreasonably received by the business entity. For example, the Regulations on Accounting Reports and Balance Sheets, approved in 1951, stipulated that the amount of accounts payable by socialist organizations for which the statute of limitations had expired should be transferred to the budget, and in relations between cooperatives

and public organizations to the debtor's profits. At the same time, overdue receivables were subject to write-off to the loss of the business entity that missed the statute of limitations. However, the repayment of the debt after the expiration of the statute of limitations did not release the debtor from the obligation to transfer accounts payable to the budget. But the defect of this approach was immediately apparent as soon as this rule was compared with another – the impossibility for the debtor to demand the return of the performance after the expiration of the statute of limitations.

As we can see, at the same time there was a mechanism arising from the termination of a long-standing subjective right (this could explain the withdrawal of debt in favor of the state) and legal tools justifying the fulfillment of an existing long-standing obligation, which was, in fact, mutually exclusive. This rule was reflected in the Soviet normative act, which regulated the procedure for drawing up financial statements and balance sheets, approved by the resolution of the Council of Ministers of the USSR from 29.06.1979. In the same way, the fate of long-standing property rights was regulated - the law and law enforcement practice was dominated by the theory of transformation of things not demanded before the expiration of the statute of limitations into the category of ownerless and their transfer to state ownership. The theoretical explanation of this approach was given the following meaning: since in Soviet law there is no institution of acquisitive prescription, the fact of ownership of property, no matter how long it lasts, does not give rise to the owner of property rights. If the holdership lasts more than three years, then in connection with the repayment of property rights, the property passes to the state. Thus, it was established that the property, in respect of which the statute of limitations expired, acquires the status of state as ownerless. Judicial practice has developed in a similar direction. The highest courts of the USSR and the RSFSR have repeatedly recognized state-owned objects in connection with the loss of property rights by prescription.

However, a detailed study of the effectiveness of these prescriptions shows that they have never been very effective. Moreover, the introduction of such a mechanism is impossible now, when freedom of enterprise and inviolability of property rights are reduced to the rank of constitutional provisions. Therefore, the rules of modern law, for example, paragraph 11 of Art. 10 of the Law “On the State Tax Service in Ukraine”, according to which the tax authority has the right

to collect in favor of the state in court unreasonably received by business entities, does not apply to the termination of the subjective right in case of certain circumstances coercive protective property of the right, or the expiration of the deadline, etc.). These powers may be exercised in the case of certain frauds or other offenses not related to the normal exercise or protection of a subjective right.

As another example of the influence of normatively established rules of conduct on the duration of subjective substantive law, certain provisions of the current tax legislation and, in particular, the Tax Code of Ukraine are usually cited. In fact, tax regulations do not explicitly state that the expiration of the statute of limitations is associated with the termination of civil law, but its expiration affects the possibility of exercising such a right, which some researchers consider as a special regulation of repayment [8, p. 62–63]. In particular, the tax law establishes that a debt for which the statute of limitations is overdue is considered bad. This circumstance allows the creditor company under certain conditions (creation of a provision for doubtful debts) to write off this debt with its attribution to the costs of the entity. Instead, the debtor must include his accounts payable, which have acquired the status of bad debts due to the expiration of the statute of limitations on the requirements for its recovery, to his income. Thus, the literature suggests that the legislation has created certain conditions for the termination of overdue obligations by participants in economic relations: the old substantive law can be attributed to the liabilities of the enterprise, and the long-term debt – to the acquired assets, which affects the tax relations of these sub projects.

Let us recall the definition of ongoing debt to both participants of the obligatory interaction, given by S.I. Koretsky: the relationship of two persons concluding an agreement can be presented in two Latin terms – “debit” (guilty) and “credit” (trust someone). Thus, when a person who lends money to someone believes that it is a loan, and then he is called a creditor, the person who receives a loan becomes guilty – it is a debit, and then he is called a debtor [9, p. 124]. Thus, indeed, the normative allocation of bad debts to expenses will reduce the amount of taxable profit, while the amount of non-repayable financial assistance, which includes the amount overdue by the debtor, increases the debtor's income, which leads to an increase in the tax base. This raises the question of whether the write-off of debt in the sense of tax and accounting law is not a termination of the legal

relationship and the relevant subjective right, for example, debt forgiveness? The answer to this question is not obvious, so the relevant rule of the Civil Code on debt forgiveness in this context needs further interpretation.

According to the rules of tax (accounting) debt (receivables and payables, respectively, the creditor and the debtor) is a debt that is accounted for on a certain date. Accounts receivable arise either from the date of shipment of goods, or from the time of submission of work results, or from the date of write-off of funds to pay for goods (works, services), etc. [10, p. 39]. Is the moment of occurrence of receivables at the same time the initial statute of limitations? It is necessary to agree with the considerations expressed in the literature that the dates of occurrence of the debt accounted by the enterprise and the date of the beginning of the statute of limitations do not coincide [11, p. 54]. Moreover, the terms of receivables and payables established by the tax legislation do not coincide with each other. For example, the date of the receivable is the day of debiting the bank account, while the date of the receivable for the same obligation is the day of crediting the bank account for the goods.

As you can see, the basis of accounting for receivables (accounts payable) in tax law is the moment of actual performance of the obligation, while the statute of limitations is associated with the moment of violation, ie the time when the obligation was to be performed, and from the moment of realization of the fact of non-performance by the creditor. Therefore, the terms of fulfillment of obligations set out in the contract do not directly affect the terms of receivables (payables). For example, the parties to the contract of sale agreed that the money will be transferred to the seller by July 15, and the goods will arrive on August 30. In the event of non-performance of the monetary obligation, the statute of limitations for payment will begin on July 16, while receivables on this amount in the account of the seller will arise after the shipment of goods. In this case, the initial moment of the statute of limitations on claims for recovery of receivables begins not from the time of occurrence of this debt, but from the time of the offense, but it is possible that the time of such an offense will occur much earlier than the legal entity accounts receivable. Thus, the time of occurrence of receivables in accordance with the legislation on accounting, as a rule, does not coincide with the term of occurrence of the subjective regulatory obligation, it does not coincide with the initial moment of the statute of limitations.

Recent changes in tax law have not eliminated the legal inconsistencies associated with the actual loss of balance and synchronicity in the actions of the debtor and the creditor, aimed at deregistering the relevant receivables and payables as a possible step to terminate the liability. The criterion for classifying receivables as bad is now overdue, which is associated with the expiration of the statute of limitations on the relevant requirements, and hence the impossibility of recovery. The latter definition by the fiscal authorities themselves is identified with the expiration of a three-year or other special claim period, although, in fact, this is not always the case. First of all, it should be noted the legal differences between civil law and accounting and tax understanding of the concept of statute of limitations. As you know, the provisions of civil law as a general rule do not apply to tax relations (Article 1 of the CCU). However, in the acts regulating these public relations, there are indications of the legal consequences of the expiration of the statute of limitations, while the relevant institution is purely civil. Therefore, whether we like it or not, when designing mechanisms related to the payment of taxes, we must be guided by the rules of the Civil Code to determine the starting point and calculate the statute of limitations.

To calculate the final moment of its duration, it is important to calculate the initial period from which the period begins. According to the rules of Chapter 19 of the CCU, the statute of limitations on the relevant requirements begins from the moment when the authorized person learned or could have learned about the violation of his subjective right. This is a general rule of Article 261 of the CCU. As for the binding relationship, in which the term of performance of the obligation is set by the parties, the statute of limitations here begins from the time of performance of the obligation, if it has not been performed. Instead, when selling goods, the accounting often reflects the starting point of the statute of limitations on the requirements for payment for the goods from the date of its posting under the act of acceptance, transfer date of write-off from the balance sheet or the time of the contract. Meanwhile, this does not always correspond to the terms of the contract, the analysis of the content of which should be based on determining the statute of limitations for receivables. Indeed, the latter occurs after the ownership of the goods passes to the contractor, or the supplier transfers to him the act of work performed, performs services, as a result of which buyers have an obligation to counter actions (payment, counter delivery) [12, p. 2].

However, the purchase agreement may establish an obligation for the buyer to pay for a certain period after receipt of the goods [13, p. 144]. It is after the omission of this period and should begin counting the statute of limitations [14, p. 115].

In addition, as follows from the legal requirements of the relevant institution of civil law, the statute of limitations on specific requirements for the defaulting debtor is not always continuous. Under certain circumstances, it may be suspended (Article 263 of the CCU) or interrupted (Article 264 of the CCU). It is not difficult to notice that the factual data that affect the preconditions for suspension or interruption of the statute of limitations are understood and properly assessed, first of all, by the creditor, while the debtor may not even know about it. In any case, the presence of these factors will indicate a longer than nominal, the duration of the statute of limitations, which delays the implementation of the relevant tax adjustments by the creditor. But this, as a rule, will not affect the same actions of the debtor. Therefore, it is quite probable that the debtor, according to his records, must attribute the outstanding accounts payable to income, while, in fact, the mere fact of expiration of the statutory limitation period for this requirement does not mean that the statute of limitations has expired.

The expiration of, say, a three-year period for recovery claims only indicates that the creditor has not applied to the court during that time. However, the Commissioner may have circumstances that affect the calculation of the statute of limitations (for example, those that stop the statute of limitations), which the debtor is not aware of. Therefore, the statute of limitations on the creditor's claims will continue, and the debtor at this time will attribute his debt to gross income. The same result can be achieved by different qualifications of managed and obligated persons of the same action of the debtor: the former will consider it a recognition of the obligation (and will calculate the ancient course first), while the latter does not recognize a similar characteristic of its action. As you can see, the term of assignment of bad debts by the creditor to its costs can be significantly increased, while overdue accounts payable are subject to attribution by the debtor to their income under the threat of sanctions immediately after the nominal duration of the statute of limitations. Of course, such legislative tricks to some extent help to replenish the budget, but clearly do not contribute to the achievement of certainty in the material relations between the participants in the civil circulation.

Let us now turn to the question posed above about the relationship between the described legal tools for the reflection and write-off of bad receivables and payables with the termination of the relevant economic subjective rights and legal obligations. Based on previous research, we will consider the provisions of the commented legal mechanism on the effectiveness of the material obligation after the expiration of the statute of limitations, as required by both the creditor and the debtor. The creditor may include the value of overdue receivables in his assets, but, in principle, the right not to do so, because it is his right and due to various circumstances, he may refrain temporarily or at all from this step.

At the same time, regardless of the write-off or non-write-off of overdue debt by the creditor, the debtor after the expiration of the statute of limitations under the same tax legislation of Ukraine must take certain actions that affect the occurrence of relevant tax liabilities. When its accounts payable for goods received but not paid for become hopeless, from a tax point of view, it is transformed into non-repayable financial assistance. Therefore, after the expiration of the statute of limitations on accounts payable, the buyer must accrue income. Failure to comply with this obligation is a violation of the Tax Code of Ukraine and entails the application of certain sanctions to the business entity. Such actions of the debtor, according to some researchers, terminate the substantive law in this regard [15, p. 31–32]. But this statement is unconvincing, because such a fixation of the termination of the obligation by the debtor does not always correspond to the adequate actions of the creditor, who is entitled to a reduction in income for the period. In addition, the sole termination of the obligation by the debtor, of course, is illegal.

Therefore, under tax law, the debtor must reflect the hopelessness of his obligation and this leads to certain consequences for him (increase in income), and the creditor can reduce its income tax liabilities by increasing costs. But, regardless of the commission of these actions, it would be premature to say that they indicate forgiveness of debt. It is obvious that the requirement of the law to include in the debtor's income amounts of overdue accounts payable in no way affects the existence of a binding legal relationship. After all, if the legislator had this in mind, he would have clearly stated in the law that debt forgiveness should be considered the commission by the creditor of actions that led to the attribution of overdue receivables to its costs. As you can see, such a normative instruction is not observed.

This is all the more obvious because the tax legislation does not provide for the creditor to include the amount of overdue receivables in his own expenses. Therefore, regardless of whether or not to perform certain actions provided for by tax and accounting regulations, the subjective protection right of the creditor in this regard continues to exist after the expiration of the statute of limitations, although it no longer has the ability to be enforced. As indicated, the creditor may take other non-judicial measures to influence the debtor, in addition, the obligation of the latter may be performed voluntarily and after the expiration of the claim.

Thus, it is erroneous to assume that the terms introduced by the legislator in tax law determine the temporal boundaries of the existence of subjective rights and obligations of business entities [16, p. 118]. The very fact of writing off the debt in terms of optimization of assets under tax rules or in accordance with the provisions of accounting does not mean termination of the liability, removal of overdue receivables from the assets of the entity due to the expiration of the statute of limitations does not mean provided for in Art. 605 CCU. This is a unilateral action of the creditor, which is not intended to terminate the obligation, but only documents the hopelessness of the obligation in terms of the possibility of its recovery by force. Assigning the amount of debt to income and even paying income tax does not affect the validity of the obligation, although the statute of limitations has expired. Therefore, we can confidently say about the effectiveness of the general civil rule for economic relations: the expiration of the statute of limitations does not lead to the termination of the subjective right and does not deprive the obligor of the status of the debtor.

3. Limitation in time of the protective capacity of the subjective right

As for the possibility of further termination of the legal obligation and the corresponding subjective right, which constitute the content of the legal relationship, it is possible under the general rule of Chapter 50 of the Civil Code, which lists the legal grounds for such a consequence. Among them there are no such as the expiration of the statute of limitations or the absence of this debt among the assets of the creditor, accounted for by him. In these situations, in fact, there may be preconditions for termination of the obligation, such as an agreement between the parties or debt forgiveness. But the very

postulates formulated in the tax law are obviously not enough to achieve such a consequence. Termination of the obligation by agreement of the parties must be properly executed and must be confirmed, in particular, by concluding an act of reconciliation of mutual debts agreed by the parties. Such a document should be concluded according to the rules provided for the conclusion of contracts, ie signed by authorized representatives of contractors.

Another legal basis for terminating the obligation is the forgiveness of the debt by the creditor. However, the legal tools described above for adjusting the accounting and tax accounting of economic entities again cannot be covered by its disposition. As a general rule, termination of the obligation, including debt forgiveness, deprives the creditor of the right not only to demand performance, but also to accept such performance. And not only does the debtor not have an obligation to perform, but he has no legal grounds to perform it at all, even voluntarily, because the obligation itself has ceased. If, in such circumstances, the obligation had already been considered terminated, its performance would be unjustified, as civil law does not provide for the possibility of resumption of the terminated obligation. However, the performance of obligations after the expiration of the statute of limitations and after the write-off of such debt by the creditor takes place. The customs of business turnover, which, by the way, should be applied under the new Tax Code (although this issue is currently problematic), in such a situation provide for the restoration of assets (but not civil liability) and recalculation of tax liabilities of counterparties.

In view of the above, it remains to be recognized that in order to terminate the obligation to forgive the debt, it is necessary to take quite clear actions that indicate such termination, and cannot be further interpreted differently by the parties. By analogy with the provisions of Art. 601 of the CCU and in accordance with the practice of application of this provision, the decision of the creditor to terminate the obligation must be set out in a statement addressed to the other party. Moreover, this approach must be general, because, although the relationship between individuals is less documented, they have the same legal meaning, the example of the possibility of termination of debt forgiveness, in particular, with the expiration of the statute of limitations applies to them. Therefore, it would be appropriate to amend the norm of Art. 605 of the Civil Code of Ukraine and state it, for example, as follows: "The creditor shall notify the debtor in writing of

the termination of the obligation to forgive the debt. The obligation shall be deemed terminated if the debtor does not express his objections within a reasonable time after such notification".

Thus, under any circumstances, the expiration of the statute of limitations does not affect the existence of a protective substantive legal relationship. After the expiration of the statute of limitations, the property of the claim to be enforced expires, but this does not affect the existence of the claim itself. Substantive law is not terminated, just as the claim itself is not terminated, although it can be satisfied only voluntarily [17, p. 87], or in other non-jurisdictional ways. This once again confirms the erroneous position of those authors who consider the existence of law impossible, because it cannot be realized through state coercion. Indeed, at first glance, it seems illogical to have a claim that is not provided by legal protection. But, as we see, the violated substantive law after the expiration of the statute of limitations does not remain completely unprotected, although the degree of its protection is reduced.

However, the indispensable companion of this approach is the following question: how long will there be a protective legal obligation, which is the content of such a relationship, and the corresponding subjective law, which is the content of the obligation? Will it be indefinite, or do some circumstances affect the validity of the obligation? After all, despite the differences from previous theories in determining which right (requirement) is exercised through the use of judicial coercion, and much greater internal coherence, this position is actually reduced to the above conclusions about the continued existence of subjective law, not secured by coercion protection. Therefore, if we do not limit the term of this protection right, then after the passage of time to ensure its enforcement, we must state the fact that the property relationship has so-called in-kind obligations that have lost coercive ability to implement (under Roman law such an obligation from the civil deprived of claim protection).

We believe that these are the questions that civil scientists have tried to solve, denying the existence of substantive law after the expiration of the statute of limitations and arguing about the possibility of restoring the already terminated law in certain circumstances. After all, it is quite difficult to explain the expediency of indefinite civil relations. Indeed, a situation where subjective civil law continues to be unenforced and enforcement is impossible only adds to legal uncertainty. However, objectively, these attempts were doomed to

failure because they were based on an incorrect legal basis, because the research was conducted within the wrong concept, according to which both regulatory law and claims are elements of the same subjective substantive law. But now the long-standing problem, even taking into account the latest civil developments, remains open and relevant. It is unfortunate that with the cessation of conceptual attempts to justify the expiration of subjective substantive law after the expiration of the statute of limitations, any doctrinal research on the duration of long-standing protection rights of a person has ended. Therefore, we must state the complete absence of relevant civil developments.

Meanwhile, it should be noted that the question of the duration of the protective subjective right (for example, a monetary obligation) is extremely important. Unfortunately, the civil doctrine has not developed serious conclusions that would be the basis for proper legal regulation, so the problem remains. In practice, this results in uncertainty of the period during which the authorized person may consider himself a creditor and his counterparty a debtor. After all, the presence of the latter's duty (even if deprived of compulsory security) for an indefinite period of time to voluntarily fulfill a long-standing obligation does not contribute to stability and certainty in civil relations. This applies not only to legal relations involving individuals, but also legal entities. It would seem that in the latter case, the share of obsolete debt is regulated by tax law: after the expiration of the statute of limitations, the debtor must include the amount of debt to their income, and the creditor may reduce them by this amount. However, as shown above, these actions do not mean the termination of the right, and this is explicitly stated by law, without denying the possibility of adjusting the transactions in the event of further voluntary performance of the duty.

Thus, the automatic rejection of even those scientific developments that, at first glance, seem unbalanced, is wrong: in every doctrine there is a rational grain that should be separated from the Internet surrounding its quasi-legal constructions. From this standpoint, the theoretical positions of scholars who defended the theory of the termination of the existence of substantive law with the loss of this essential characteristic of this right – the possibility of enforcement – deserve a more serious analysis. Indeed, it is impossible to agree with the conclusions about the connection between the period of existence of subjective substantive law (whether regulatory or protective). But the very question of the

inexpediency of the eternal existence of such a right, of course, deserves attention. After all, if we agree that after the expiration of the statute of limitations, subjective civil law continues to exist, then in the absence of statutory grounds for termination of the obligation, it will exist indefinitely.

Of course, this situation does not add stability and balance to civil relations, and the current civil law does not regulate this issue. It should be noted that at one time there were assumptions about the possibility of the existence of an independent period of statute of limitations of subjective rights, not directly related to the duration of the right to protection, which begins only from the moment of the offense. The law is able to die a natural death – to remain homeless, to be forgotten. However, it continues to be counted among the living, which creates uncertainty about the strength of the fact that took its rightful place. Therefore, there must be a moment that puts an end to such uncertainty, the statute of limitations, so to speak, erases the right that has died [18, p. 14]. Yes, this theory has not been further developed. Given these issues, the efforts of civil scientists to theoretically justify the timeliness of any subjective right deserve support. However, again, the linking of the period of protection of the subjective right to protection to the duration of its ability to enforce is clearly unsuccessful.

So, the problem of limiting the lifetime of natural protective relationships is real. How can it be solved? Here the perception of this issue on the basis of a similar comparison with the ancient civil law institution is strongly suggested. We will take as a basis the indisputable thesis, according to which the main reason for the introduction of any term is the satisfaction of a certain public interest, society needs certainty and order, including in relations between participants in civil circulation [19, p. 686–687]. The need to introduce a statute of limitations at one time was caused by the fact that the existence of unlimited time to apply coercion to a debtor who has not fulfilled his duty, just deprives society of such certainty, which in turn provokes his protest [20, p. 222]. The economic basis of law, which corresponds to the public need, disappears [21, p. 28–29].

Of course, both the creditor and the debtor must know and be aware of the moment when the relevant protective power – the claim – has expired. In order to ensure the stability and certainty of material turnover, this issue is also in the public interest. However, unfortunately, some regulations of the latest civil law, instead of ensuring the unambiguity and transparency of specific temporal factors

that determine the limits of the existence of law, err on the contrary. What is worth a short story Part 3 of Art. 267 of the Civil Code: the statute of limitations is applied by the court only on the application of a party to the dispute. Apparently, by introducing this rule, the legislator hoped that all questions about whether or not the subjective right ceases after the expiration of the statute of limitations will disappear, but it turned out the other way around. After all, if we adhere to the point of view of compulsory protection of the right to protection after the statute of limitations, we must agree that the validity of substantive law after the expiration of the statute of limitations depends on the will of the debtor and can last forever. But this is nonsense, which will be discussed in more detail in the next section of this work.

Security relations arise only in the case of violation of substantive law by the obligated person and are an independent type of civil relationship aimed at terminating the offense and eliminating its consequences. Such relations are terminated after the protection of the infringed right or after the expiration of the term established for this purpose (if such terms are established). The duration of the protection relationship is not related to the expiration of the statute of limitations. Thus, we can argue that with the coincidence of the statute of limitations terminates not the regulatory or protective substantive law, and the right to sue in the substantive sense, which was part of the protective legal relationship that arose in violation of substantive law. It is the protective obligation that continues to exist, becoming irrevocable.

Conclusions

As you know, scientific and socially significant justification for the introduction of a limited period of existence of the substantive right to sue (statute of limitations) was carried out in order to simultaneously satisfy the interests of society and the interests of a particular person [22, p. 406]. Of course, the introduction and regulation of such a restriction, at first glance, gave the impression that this institution serves only to protect the interests of the defendant, in its application all the advantages on the part of an unscrupulous violator, and all the troubles on the side of a careless creditor or owner [23, p. 447]. But, despite these obvious shortcomings, the statute of limitations was still introduced. And this was done in order to achieve the social interest in the duration of the relevant protection authority. Today, there are virtually no scholars and rulemakers who would deny the expediency of

introducing temporal restrictions to exercise the subjective right to sue. This mechanism allows to achieve a certain stability of the mediated relations, to eliminate uncertainty about the existence of the creditor's right, to ensure the motivating, stimulating, disciplining nature of material interactions. All these circumstances, of course, are positive factors for achieving greater stability of property turnover in society.

However, almost all of the above circumstances, which have become decisive in the introduction of the statute of limitations, have an undeniable impact on the certainty of the protective relationship, which has lost its coercive protective properties. Therefore, the normative or contractual prescription of the protection law, which has lost its coercive capacity, will undoubtedly be in the interests of both society as a whole and the believer himself. After all, the fact that the latter lost interest in the right due to him manifested itself in the failure to pursue the claim during the statute of limitations, failure to apply established by contract or law operational measures to influence the violator and so on. It is quite logical that the stability and certainty of civil material turnover requires the establishment of certain criteria for the termination of the natural protective subjective right and the definition of time limits for its expiration.

We have already appeared in the literature with the relevant proposals, on occasion we will cite them again. "We believe that some other socially acceptable point of reference should be identified, according to which the social interest in the existence of the most long-standing subjective right is completely lost. It is proposed to indicate such a period of five years after the expiration of the statute of limitations for the relevant requirements. However, given the social purpose of certain subjective rights, this period may be different or differentiated on certain grounds. But the fact that the maximum duration of a long-standing subjective right must be established, in our opinion, is obvious. This will contribute to both the certainty of material turnover and the stabilization of the relationship itself" [24, p. 185].

Taking into account the research conducted in this chapter, we can draw some generalizing conclusions. The long-standing debate in civil doctrine as to whether or not substantive law itself is terminated with the expiration of the statute of limitations is no longer so acute. The vast majority of scholars now believe that the expiration of the statute of limitations does not affect the existence of regulatory law, with which it is possible to agree. At the same time, almost all researchers are talking about the validity of the most protected right, and this fact

is associated with the rule set out today in Part 1 of Art. 267 CCU. The following argument is made: it is due to the fact that the violated subjective right continues to exist after the statute of limitations has expired that the voluntary performance of the duty is proper and cannot be reversed.

As already mentioned, we cannot agree with this generally accepted thesis. Article 267 of the Civil Code of Ukraine and similar norms of other codes refer to the voluntary fulfillment not of the regulatory obligation of the debtor, but of what arises for him from the security obligation. As you know, the content of the protection law may include both the requirement to perform the duty in kind, and the requirement to pay a penalty, termination of legal relationship, compensation for material and moral damage (Article 16 of the CCU). Accordingly, the debtor has a certain obligation that corresponds to each of these requirements: to act in kind, to pay a penalty, to compensate for non-pecuniary damage, and so on. This obligation, performed after the expiration of the statute of limitations, is referred to in the commented legal norm, so the implementation of any of these requirements through the voluntary actions of the debtor will be appropriate.

In this case, the person who fulfilled the obligation after the expiration of the statute of limitations has no right to demand the return of the enforceable, even if at the time of execution did not know about the expiration of the statute of limitations. It is clear that only the existing obligation can be fulfilled after the expiration of the statute of limitations. The rule of law, which deprives the debtor of the right of recourse (sometimes figuratively referred to in the literature as a “weak form” of legal sanction), is a legal guarantee of protection of the creditor under a valid obligation, although not secured by a claim. Thus, the long-standing protective legal relationship continues to exist, it is impossible only to enforce the obligation, which, in fact, is confirmed by the possibility of its voluntary fulfillment. Agree, the terminated obligation cannot be fulfilled.

However, it is hardly possible to support the thesis that the substantive law after the coincidence of the statute of limitations generally loses the opportunity to be protected by the implementation of the protection relationship. Indeed, judicial protection of a subjective right outside the statute of limitations is not possible. But going to court is not the only way to protect a violated right. We believe that civil law today provides the creditor with ample opportunities to protect the infringed right in addition to resolving the

dispute. Accordingly, the statute of limitations does not apply to such protection relations (appeals to other jurisdictions, self-defense of the law, application of sanctions of an operational nature, etc.). The only important thing is that at the time of such actions aimed at protecting the violated civil law, the substantive protective law itself must exist. And the coincidence of the statute of limitations on court claims under such a right, again, does not terminate the subjective substantive law, giving it a so-called natural character.

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