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STATUTE OF LIMITATIONS AS A PERIOD OF JUDICIAL PROTECTION OF THE VIOLATED RIGHT.

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ИСКОВАЯ ДАВНОСТЬ КАК СРОК СУДЕБНОЙ ЗАЩИТЫ НАРУШЕННОГО ПРАВА.

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АННОТАЦИЯ

Данная статья посвящена исследованию научного вопроса о продолжительности материального права на защиту своего субъективного права в случае его нарушения. В статье проведен анализ правовой сущности исковой давности в гражданском праве. Исследовано содержание субъективного права лица на правовую защиту посредством применения исковой давности и соответствие сущности отношений и нормативного правила о применении давности. Отстаивается тезис, согласно которому следует отграничивать правовые понятия срока на защиту и исковую давность. Первое из них необходимо рассматривать как общее явление, тогда как второе – это лишь элемент правомочия субъекта по предъявлению искового притязания. Давность не определяет продолжительности правозащитных действий, лишь ограничивает во времени одно-единственное полномочие правообладателя – обратиться в суд. Поскольку сегодня в цивилистической доктрине бесспорной считается тезис, согласно которому истечение исковой давности не влечет прекращение материального правоотношения, изучена проблема прекращения юридического обязательства и соответствующего субъективного права. Установлено, что после окончания исковой давности материальное право не может быть принудительно осуществлено, но оно, не прекращаясь по содержанию, приобретает так называемый «натуральный» характер.

В работе проанализированы подходы цивилистов к решению поднятой проблемы, предоставлена научная конкретизация и уточнение концепции относительно порядка взаимодействия общих темпоральных характеристик охранительного правоотношения, возникающего с момента нарушения права и заканчивающегося после прекращения правонарушения, и исковой давности, определяющей только длительность притязания: устранение последствий происходит уже после окончания ее течения. В данном смысле высказана критика позиции, что срок существования гражданского права, а значит и период его защиты, ставится в зависимость от решения суда, которым удовлетворены или не удовлетворены требования о защите данного права. На самом деле это не так. Вступление в силу судебного решения, которым кредитору отказано в удовлетворении исковых требований в связи с пропуском давностного срока, как и окончание давности, имеют одинаковый результат: эти юридические факты не прекращают охранительного обязательственного правоотношения. Обязанность должника совершить деяние в пользу кредитора продолжается, что в свою очередь означает легитимность добровольного исполнения после судебного отказа в иске из-за истечения давности. Кроме того, указанный подход не решает вопрос, как вычислять время существования права, когда управляемое лицо вообще не обращается в суд за его защитой. Предлагается отделить правовой механизм искового производства и его темпоральные критерии от общего процесса защиты права. При этом следует учитывать, что после истечения исковой давности погашается материальное право на иск, но самое субъективное право продолжает существовать. Также в работе сделано уточнение этого известного постулата: продолжается существование не регулятивного правоотношения, а охранного.

ABSTRACT

This article is devoted to the study of the scientific question of the duration of the substantive right of a person to protect his subjective right in case of violation. The article analyzes the legal essence of the statute of limitations in civil law. The content of the subjective right of a person to legal protection through the application of the statute of limitations and compliance with the essence of the relationship of the normative rule on the application of the statute of limitations. There is a thesis according to which it is necessary to distinguish legal concepts of term for protection and statute of limitations. The first should be considered as a general phenomenon, while the second is only an element of the subject's authority to sue. The statute of limitations does not determine the duration of human rights actions, it only limits in time the only power of the right holder - to go to court. Since the thesis that the expiration of the statute of limitations does not entail the termination of the substantive legal relationship seems indisputable in civil doctrine today, the problem of termination of legal obligation and the corresponding subjective

right has been studied. It is established that after the expiration of the statute of limitations, the substantive law cannot be enforced, but it, without ceasing in content, acquires the so-called "natural" nature.

The paper analyzes the approaches of civilians to solving the problem, provides scientific concretization and refinement of the concept of the interaction of general temporal characteristics of the protective relationship, which arises from the moment of violation and ends after the cessation of the offense, and the statute of limitations. occurs after the end of its course. In this sense, the position is criticized that the term of existence of civil law, and hence the period of its protection, depends on the decision of the court, which is satisfied or not satisfied the requirements for the protection of this right. In fact, this is not the case. The entry into force of a court decision denying a creditor a claim in connection with the omission of the limitation period, as well as the expiration of the statute of limitations, 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. In addition, this approach does not solve the question of how to calculate the duration of the right, when the entitled person does not go to court to protect it. It is proposed to separate the legal mechanism of litigation and its temporal criteria from the general process of protection of rights. It should be borne in mind that after the expiration of the statute of limitations, the substantive right to sue is extinguished, but the subjective right itself continues to exist. Also in the work the specification of this well-known postulate is made: the existence of not a regulatory legal relationship, but a protective one continues.

Ключевые слова: исковая давность, правонарушение, срок защиты права.

Key words: statute of limitations, offenses, term of protection of rights.

Introduction. As you know, the set of subjective rights and corresponding responsibilities constitute the content of the legal relationship [1, p. 6]. The emergence of a legal relationship is associated with certain legal facts, defined by acts of civil law, and the purpose of its existence is to satisfy the material and legal interests of the participants. Therefore, the proper performance of each obligation that is part of the legal relationship is, from the point of view of civil law, a positive phenomenon that meets the interests not only of the creditor but also society, and, in turn, terminates the obligation. In fact, this is the legal purpose of regulatory relations. However, this is not always the case. As a result, subjective substantive law is violated and needs legal protection. How is the concept of protection of subjective rights revealed? Among a number of definitions, the most popular is the statement that the protection of the violated right is a set of protective measures aimed at applying coercion to the violator in order to recognize or restore the violated or disputed right [2, p. 180]. In general, the above definition formulates the substantive aspect of protection.

The purpose of the study. It has long been believed in society that the inaction of the authorized person is socially unacceptable and has certain undesirable consequences. However, this social need was not fully realized with the help of legal tools. Today, science convincingly proves the need for different legal deadlines for the implementation of subjective substantive law, because, as a rule, the legislator considers it necessary to limit the existence of a particular obligation and the relevant substantive rights and obligations that constitute its content. At present, in our civil science and law enforcement practice, discussions continue on the assignment of various specific deadlines that determine the duration of certain powers or responsibilities of a person to certain types. Therefore, the question of determining the legal essence of a civil term is becoming increasingly important. Therefore, the purpose of this work is to develop adequate temporal approaches to the regulation of civil protection relations.

Material and research methods. The concept of protection of law is multifaceted and, last but not least, it covers certain jurisdictional actions of a state body and the issuance of a court decision as a document that characterizes the effectiveness of the law enforcement process. If we turn to Article 16 of the Civil Code of Ukraine, it can be established that judicial protection of violated rights and interests of the person is carried out in the manner prescribed by law. These methods of protection of the right determine the content of the substantive legal protection requirement and the content of a possible prescription of the jurisdiction. The latter, if the claim is satisfied, is a manifestation of public activity of the law enforcement body aimed at protecting substantive law. The decision of the court, by means of which the civil law protection requirement is enforced, is the result of the activity of the jurisdictional body to assess its validity and validity together with other materials of the court case. Instead, the statute of limitations does not determine the duration of human rights actions, it only limits in time the only power of the right holder - to go to court. And, although the claim itself must be sent to the court during the statute of limitations, the court decision, which, in fact, personifies the protection, is made outside this period.

Research results and discussion. In the context of the researched question the analysis of similar and different characteristics of antiquity terms and time of existence of the subjective right is actual. Historically, in civilization, the notion of statute of limitations and the term of exercise of the right, if not identified, was recognized as quite close. Consider the influence of antiquity on the existence of substantive civil law as a criterion for distinguishing the relevant temporal characteristics. By and large, even if we do not agree with the thesis of full identification of the terms of regulatory subjective right with the terms of its protection (statute of limitations), it should be noted that the statute of limitations is also a term of exercise

through active conduct. Therefore, those scholars who in the literature advocate the concept of assessing the statute of limitations solely as the time of existence of the legal protection claim, can not help but see that in this sense the statute of limitations is actually similar to the cut-off regulatory period. subjective substantive right to protection, the latter is terminated. And although V.V. Luts points out that the statute of limitations is not inherent in the existence of subjective law [3, p. 57], it should be noted that the author is talking about the right to be protected. If we talk about the substantive protection right, personified in the claim, the time of its existence is just covered by the statute of limitations. Thus, as we see, given the nature of the impact on the limited substantive law in the case of implementation or non-implementation of the required behavior during its course, the statute of limitations and the cut-off period are quite similar.

The term is a necessary and integral element of the content of substantive civil law, certainty about the temporal dimensions of the timeliness of application of both regulatory and protective mechanisms, also provides confidence in meeting the interest of the individual in the proper exercise of its substantive law. In particular, in the field of protection of subjective law, the temporal relationship between the right to sue and the protective capacity of the law is important. Indeed, it can hardly be assumed that the protection of the infringed right of the subject ceases with the passage of time to the claim. After all, the exercise of the powers enshrined in law can take place without the use of state coercion - in an irrevocable, voluntary manner, and in this case, the rules of statute of limitations can not be applied.

In this regard, the literature has 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 due to this circumstance [4, 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. Gribanov 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 considered in court. Only at such consideration the court can establish the facts of interruption or suspension of the statute of limitations, to consider the reasons of seriousness of its omission. At the same time, 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 to refuse to protect the right. In his opinion, the refusal of the court to protect entails the loss of the substantive subjective right [5, 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 rejected the claim due to the expiration of the statute of limitations, a new relationship arises between the debtor and the creditor.

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 unclear: what about the time of existence of the law, when the entitled person does not apply to the court for its protection? The author does not answer this question.

Like previous theories, this one is not able to solve the problem of what obligation the debtor fulfilled 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 point of view of other researchers: after the expiration of the statute of limitations, the substantive right to sue is extinguished, but the subjective right continues to exist [6, 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.

What is the relationship between the cessation of claims and the presence of a person violated regulatory law, and how it manifests itself in the decision of the law enforcement agency? Implementing the doctrinal provision on the priority of legal outcome, researchers point out that regardless of the merits of the creditor's claim, if the statute of limitations is missed without good reason, the claim should be denied due to the omission of the statute of limitations [7, p. 223; 8, c. 252]. This thesis should be agreed with, with the proviso that its application may have exceptions. As you know, the statute of limitations begins only after the violation of subjective civil law. It is for his protection that a person goes to court. However, a violation of the law and the related limitation period may occur when the right really belongs to the plaintiff, it is violated and the violation was committed by the defendant. Otherwise, the claim can be considered completely unfounded, regardless of the deadline for its filing. Then M.Ya. Kirillova's thesis that the meaning of restoring the statute of limitations appears only when the court finds that the subjective substantive right belongs to this person and is violated by the defendant seems quite correct. After all, in the absence of a substantive right of a person or in the absence of violation of this right by the debtor, there can be no question of restoring the statute of limitations, because

it simply does not arise [9, p. 11]. Therefore, the issue of restoring the statute of limitations until the end of the judicial investigation of the material component of the dispute cannot be considered.

In fact, both the expiration of the statute of limitations and the entry into force of a judgment denying a creditor a claim 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 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 end 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 inconsistencies and inconsistencies, this legal construction provides an impetus for a more detailed analysis of the temporal nature of a person's subjective rights between the time of filing a lawsuit and a court decision dismissing the claim 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. Protection law, which arose at the time of the violation of the regulatory substantive relationship, continues to exist and can be exercised through the use of 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 enforcement capacity of the protective claim was lost at the time of filing the claim. In other words, nothing is changing, just the fact that time was lost for judicial protection was recorded "in retrospect." 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 effectiveness 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 remains 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 continuing the 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, has taken place, and, by and large, continues to exist. It is a question of transfer to the property of the state of the property unjustifiably received by the business entity. For example, the Accounting and Balance Sheet Regulations, 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 credited to the debtor's profits in relations between cooperatives and public organizations. At the same time, overdue receivables were written off against the loss of a business entity that missed the statute of limitations. However, 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, there was a mechanism for terminating a long-standing subjective right (this could explain the withdrawal of a debt in favor of the state) and a legal instrument justifying the fulfillment of an existing long-standing obligation, which was, in fact, mutually exclusive. This rule was reflected in the Soviet normative act regulating the procedure for drawing up accounts and balance sheets, approved by the USSR Council of Ministers on June 29, 1979. It stated that the amounts of accounts payable for which the statute of limitations expired were to be transferred to the budget.

The fate of long-standing property rights was regulated in the same way - the theory and transformation of 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 possession of property, no matter how long it lasts, does not give rise to the owner of property rights. If the ownership lasts for more than three years, then due to 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 have repeatedly recognized state 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 that freedom of enterprise and inviolability of property rights are reduced to the rank of constitutional provisions. Consequently, the rules of modern law no longer regulate the termination of the duration of the subjective right in the event of certain circumstances (expiration of the coercive protective property of the law, or the expiration of the deadline, etc.). These powers may be exercised in the event of certain frauds or other offenses not related to the normal exercise or protection of a subjective right.

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 [10, 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 period, 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 binding relationships 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, 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 can not be considered adequate. Their use is not possible 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 expiration of the obligation itself. Therefore, we can talk about the protection of a non-existent right. And it's a different matter if the tenant's obligation to pay for the use of the property is not fulfilled in time. In this case, from the time he violates the relevant civil law, a new substantive right of protective content arises, it is he who acquires security and can be enforced. The content of the protection authority will also include the requirement to perform the duty in kind.

Some **conclusions** can be drawn from the current research. The thesis about the existence of a protective subjective civil right beyond the statute of limitations is well-founded. Therefore, it is erroneous to claim that the creditor can no longer demand anything from the debtor, and the debtor is not obliged to do anything when the material requirements have expired statute of limitations. On the contrary, the performance of his duty by the obligor is the realization of the creditor's substantive right, and the right to protection can be formulated as the right holder has the opportunity to apply law enforcement measures not necessarily judicial in nature to restore his violated right.

Jurisdictional and non-jurisdictional are two different protection mechanisms. The possibility provided by law to apply to the competent state bodies cannot be attributed to exclusive methods of protection of property rights. This also applies to notarial or administrative protection of a person's civil rights or interests. At the same time, a characteristic feature of the judicial method is the use of a claim form, which has the property to be repaid over time. The protection of a subjective right is closely linked to the existence of the right itself: the right to a protective claim can be exercised only when the creditor is authorized to require the obligor to take certain actions or refrain from them. Outside the existence of substantive civil law, there is no possibility of its violation, and hence protection. Of course, a person may waive his or her subjective right, may not exercise his or her right to protection, but he or she may not be able to renounce the ability to have such a right.

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