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CRITICAL ANALYSIS OF THE NORMATIVE RULE ON THE INTERRUPTION OF THE STATUTE OF LIMITATIONS WHEN FILING A LAWSUIT: TERMINATION OF THE STATUTE OF LIMITATIONS

Abstract. This work is devoted to the study of the current scientific issue of the interruption of the statute of limitations with the filing of a civil lawsuit. Therefore, the ***purpose of the research*** is to clarify the real nature of the claim and its impact on the possibility of further re-appeal to the court.

Research methods. When conducting legal analysis of the relevant issue, such general and special scientific methods of cognition as dialectical, formal-legal, historical-legal, analysis and synthesis and comparative-legal were involved.

Results. The author argues that the concept of interrupting the statute of limitations and initiating a new course of any lawsuit is downright outdated and inconsistent with the real nature of the statute of limitations. After all, with the proper filing of a lawsuit, the right to sue, which is enshrined in the claim, is realized by going to court. Under Ukrainian and international law, the right to protection can be exercised only once. A properly filed lawsuit must be considered, and a decision must be made on it. The current legislation does not contain such legal constructions that would allow to talk about the re-protection of the same right after the process. Nor can the position that a new course should begin when the violation continues after the interruption cannot be supported. The fact is that from each violation may arise only one right to sue, the content of which is a substantive claim. Since it has already been implemented, no other claim can arise, so there will be no new statute of limitations.

Conclusions. Therefore, it can be concluded that re-filing the same claim is essentially impossible. What is the term with the lawsuit interrupted? The filing of a lawsuit interrupts the statute of limitations for some of the claims for which the right to sue has not been exercised. However, such a legislative construction should be interpreted only narrowly: it is not a part of the same claim not covered by the claim, and not any claims of the creditor. And as a general rule, filing a lawsuit within the statute of limitations leads to early termination of the right to sue due to its exhaustion.

Key words: interruption of the statute of limitations, repayment of the right to sue, termination of the term.

1. Introduction

The statute of limitations begins from the time when the holder is aware of the violation of his right. There can be only one limitation period for the same overdue obligation. This course ends after the expiration of the established term. However, in some cases the period from the beginning to the end may be longer than indicated in Articles 257 and 258 of the Civil Code of Ukraine. As a general rule, any term, including statute of limitations, expires continuously. However, during the statute of limitations, which has already begun, circumstances may arise that affect its course. This is a possibility established by law in the presence of certain circumstances of suspension and interruption of the statute of limitations (Articles 263, 264 of the Civil Code of Ukraine). It should be borne in mind that the terms "suspension", "interruption", normatively related to the statute of limitations, do not mean interruption or suspension of time as a form of existence of matter. It is only a question of the possibility of crediting certain periods of time to the statute of limitations. Therefore, these legal categories are nothing more than special ways of calculating the duration of the substantive right to sue. It can be seen

that the legislative introduction of mechanisms to suspend and interrupt the statute of limitations is a compensatory structure aimed at protecting the interests of the creditor, built to balance the obvious, at first glance, the focus of the ancient institution to protect the debtor.

2. The uncertainty of the legal definition of "interruption of the statute of limitations"

If the issues concerning the suspension of the statute of limitations are not problematic at all, the normative provision of its interruption is quite debatable. The law defines an exclusive list of circumstances that entail the interruption of the statute of limitations. They are listed in Article 264 of the Civil Code of Ukraine (further – CCU): these are the actions of a person that testify to the recognition of his duty and the proper filing of a lawsuit. There is a long-standing controversy in science about the meaning, legal content and consequences of the impact of these circumstances on the adjustment of the procedure for calculating the statute of limitations by interrupting it. However, this applies both to factors related to the recognition of debt (to a lesser extent and exclusively to the manifestations of outward signs of such recognition), and related to the filing of a lawsuit (the main controversy here).

However, the real controversy arises when doctrinal analysis comes to the rule of Part 2 of Art. 264 of the CCU, which indicates the interruption of the statute of limitations in the event of a lawsuit. Let's start with the fact that in the literal sense of this rule, any lawsuit, even made improperly or unreasonably interrupts the statute of limitations. In fact, this is certainly not the case. Civil science has long determined that a statute of limitations is interrupted only if the claim is properly filed (Novitskiy, 1954, pp. 191–192; Pushkar, 1982, p. 211). Such an act refers only to those claims that were subsequently accepted for consideration by law enforcement agencies. This is about the way the commented provision of the law is interpreted in scientific works and commentaries (Sergeev, 2001, pp. 53–54), but this rule does not directly follow from the normative act, which is a shortcoming of the latter, which needs to be corrected. Moreover, the provision on the interruption of the statute of limitations by a properly filed lawsuit was contained in the main civil document of 1963 (Part 1 of Article 79 of the Civil Code of the Ukrainian SSR).

However, this is not the key challenge of the area under. The fact that our civilization and law enforcement practice lack understanding of the juridical content of this legal superstructure is of greater concern. This leads to differences in the legal nature of the commented rule and, most sadly, common and unjustified errors in its practical application. In the civil law literature, most lawyers state quite succinctly: the statute of limitations is interrupted by filing a lawsuit against the debtor, without analyzing the legal purpose of the new course starting from the moment of interruption, and its other consequences (Samoylenko, 2003, pp. 10–11). As a result, the literature has widely spread obviously incorrect expressions: "When a lawsuit is filed, a new statute of limitations begins under the same requirements for the same debtor" (Kharitonov, 1999, p. 157). Sometimes we even can find a statement that this new term continues regardless of the resolution of the litigation on the merits, i. e., when the decision will be made (Sviatohor, 2002, p. 8).

In practical application, the abstractness of the constructed syllogism and its ineffectiveness have repeatedly manifested itself. However, despite the illogical nature of the new statute of limitations after filing a lawsuit, some researchers still try to justify it with reference to the provisions of procedural law on the suspension of the process. There is, in particular, the view that filing a lawsuit leads to a break in the statute of limitations (in fact, its suspension) until the end of the proceedings (Pushkar, 1982, p. 212). According to another approach, a person needs to be given a new statute of limitations to protect his or her violated right, let us say in commercial litigation, if the proceedings are terminated without considering the merits by leaving the claim unconsidered, given that the case is not subject to civil litigation (Horovets, 2005, p. 108). In this context, we should also mention the thesis of O.S. Ioffe and his followers: after the end of the process, a new course of limitation begins (Ioffe, 1967, pp. 338–339; Sviatohor, 2002, p. 8; Pushkar, 1982, p. 212).

If we accept these positions, we will certainly reach to the absurd conclusion: the trial also takes place within the statute of limitations. At least a certain part of the trial, because in the case of lengthy proceedings, suspension of proceedings and several revisions of court decisions, it may turn out that the final court decision, which should protect civil law, will take place outside the new statute of limitations. As you know, the statute of limitations is a period for filing a claim, not the term of judicial protection - the forced implementation of the right of the individual. Threfore, a completely legitimate question arises: why do we need a new limitation course after the substantive right to sue was properly fully realized during the previous one? This question usually confuses researchers who are talking about interrupting the statute

of limitations in the event of a lawsuit. At best, they ignore it or offer completely unacceptable interpretations. Thus, many publications on this topic argue that the new accounting of the statute of limitations should be done from the moment of the elimination of circumstances that led to the suspension of proceedings, or from the moment of leaving the claim without consideration, and so on (Ilinykh, 1973, p. 13).

In general, these concepts boil down to the fact that with the filing of a lawsuit, the statute of limitations does not end but is interrupted, and a new course begins first. Let us disagree with this statement. Let us ask the question: what is the subject of the new limitation course, which will begin from the moment the process is resumed? It cannot recognize the creditor's right to judicial protection, as he has already exercised it by filing a lawsuit. Nor can it be a claim of the successor, as he enters the process after the predecessor has exercised the right to sue and acts within the powers that belonged to the latter. In our opinion, the above construction is created largely artificially: it does not reflect the real need for legal regulation of indirect relations, does not correspond to their real essence (Guyvan, 2019a, pp. 86–87).

3. Criticism of the concept of interruption of the statute of limitations in any lawsuit

All these theoretical constructions, which in their idea are designed to directly justify ineffective legal tools, deserve critical evaluation. They are primarily related to the appointment and procedure for calculating the new limitation period, which should start from the moment of interruption. Thus, can the same substantive right to judicial protection be exercised twice (or more times) if it has already been properly exercised? Obviously not. A properly filed lawsuit must be considered, and a decision must be made on it. The current legislation does not contain such legal constructions that would allow talking about the re-protection of the same right after the process. The decision of the court on the merits of the dispute (no matter how many times it is reviewed, no matter how long the trial is, the right to judicial protection is considered realized at the time of the initial claim, from this period the duration of public procedural legal relationship is calculated) resolves protection and removes dispute. Therefore, some researchers flatly indicate the absence of any statute of limitations after filing of lawsuit and in the process of litigation. According to I.B. Novitskiy, the court decision responds to the plaintiff's request, and it eliminates the need to file a new lawsuit, and at the same time eliminates the question of statute of limitations (Novitskiy, 1954, p. 190). The closure of the proceedings leads to the same consequences. As for the termination of the process as a result of leaving the statement of claim without consideration, the current legislation explicitly indicates the non-application of the rule on changing the procedure for calculating the statute of limitations in this situation.

Nor can the position that a new course should begin when the violation continues after the interruption cannot be supported. The fact is that from each violation may arise only one right to sue, the content of which is a substantive claim. Since it has already been implemented, no other claim can arise, so there will be no new statute of limitations.

The common understanding in the literature of civil law that the filing of a lawsuit interrupts the statute of limitations and begins a new course of action on the same requirements to the same defendant is nothing but a residual element of the previous mechanism of legal regulation of these relations. The fact is that under Russian law of pre-revolutionary times, the statute of limitations was considered a way to repay unrealized substantive law (Engelman, 2003, p. 398). According to this concept, the right, the implementation of which the holder does not take active action, is gradually extinguished. Given that at that time there was no division into regulatory and protective legal relations, this rule applied to all substantive subjective rights. Sometimes it extended to procedural relations: for example, failure of procedural actions by the plaintiff after the initiation of proceedings in the case after a certain statute of limitations terminated not only the right to defense, but also the protected civil law. Therefore, a person's authority to defend his violated subjective right was revoked not only in the case of prolonged failure to file a lawsuit, but also when he did not follow the already filed lawsuit in the official places. It is logical that a new long-standing course was needed to calculate the ten-year period of absence. But even according to this theory, the new course of the statute of limitations began not from its interruption, but only from the time when the movement in the case ceased, i.e., from the moment of the last action of the plaintiff. At the same time, the time of active proceedings could not be included in the new course, as the authorized person was not inactive (Engelman, 2003, pp. 457, 462).

If this rule were applied today, it would be logical to introduce a provision on the new statute of limitations after filing a lawsuit, but only from the moment from which the active actions in the law enforcement process ended. However, modern legislation has established other material and procedural consequences of the plaintiff's unjustified refusal to participate in the case, and the term is not a key cri-

terion for the exercise of a person's procedural right to participate in the dispute. The current civil theory unequivocally estimates the statute of limitations not as a time to repay the substantive law, but as a term for the exercise of protection and legal authority to obtain judicial protection of the violated subjective right. This significantly changes the evaluative approach to determining the role of the statute of limitations. The exercise of the right to judicial protection, which arose after the violation, may occur if the entitled person has applied to the court within the established (statute of limitations) period. In this case, the statute of limitations does not apply to the period of enforcement of the claim by the court, but only regulates the duration of the claim.

4. Construction of a modern adequate mechanism for interrupting the statute of limitations

We must agree with the position set out in the literature that the current stage of the development of private law puts on the agenda the issue of exemption of the Civil Code of Ukraine from structures that destroy its integrity, violate the principles of its systemic nature as a pivotal act of private law (Kuznetsova, Kokhanovska, 2016, p. 51). In the context of this study, the primitive interpretation of the normatively established rule, according to which the interruption and the new course of the statute of limitations appears after the filing of a lawsuit, does not correspond to the inner essence of the relationship governed by it. As we have convincingly proved, there are no legal and substantive grounds for interrupting the statute of limitations on the same claims against the same infringer with the filing of a lawsuit. However, Part 2 of Art. 264 of the CCU still highlights such an interruption. Consequently, the question arises: is filing a lawsuit aspect interrupting the statute of limitations, and does such an action entail the termination of this period? We have to admit that modern civil doctrine is not able to unambiguously assess these differences between the two commented phenomena. Is there really such a discrepancy? Maybe the truth is somewhere in the middle and takes into account the arguments of both polar points of view? Let's try to determine how and under what conditions the statute of limitations is interrupted and whether it is interrupted at all.

It should be noted that at present there is no consensus on the specific requirements interrupting the statute of limitations when filing a lawsuit, and how, in fact, to understand the concept of "filing a lawsuit for part of the claim"? In our opinion, the existing differences are caused by insufficient awareness of the legal nature of such a legal phenomenon as statute of limitations. Let's try to carry out its scientific analysis once again. The statute of limitations is the time of existence of the protective subjective substantive right – the claim. Any subjective right, including that covered by the statute of limitations, has a carrier and a counterparty to whom the legal claim is addressed. Therefore, the interruption and the beginning of a new course of existence of a certain right means that the procedure for calculating the duration of this particular relationship with the same subject composition changes. On the other hand, the realization of the claim (the right to sue in the material sense) is done by applying to a judicial authority (filing a lawsuit). Such an appeal, made by an authorized person in the prescribed manner, simultaneously terminates the protection of the right to sue, because the latter can be made only through its one-time implementation. Accordingly, the period of claim ends prematurely.

Therefore, filing a lawsuit interrupts the statute of limitations on some of the claims for which the right to sue was not exercised. However, such a legislative construction should be interpreted only narrowly: it is a part of the same requirement not covered by the lawsuit. For example, the debtor owes the creditor UAH 1,000, but the latter is suing only for the recovery of UAH 600. Consequently, the claim for recovery of the remaining funds (UAH 400) begins to be delayed again from the time of filing the lawsuit due to the interruption of the statute of limitations. Other claims continue to be repaid as a general rule, although they have a common basis for implementation. For example, filing a lawsuit for the performance of duty does not affect the statute of limitations on the claims of the same right holder for damages or penalties, although these claims have a common ground – the offense and the statute of limitations for them may well have begun simultaneously.

Taking into account all the above arguments, we can conclude the following. After the expiration of the statute of limitations, the protection right, even if not exercised, continues to exist, despite the fact that the claim is lost due to its non-realization. Otherwise, both the statute of limitations and the subjective right itself are terminated in connection with its implementation (execution) (Article 599 of the CCU). Thus, we see that filing a lawsuit either does not affect the statute of limitations for the relevant requirements, or leads to an interruption (Part 2 of Article 264 of the CCU) or termination of the statute of limitations. Given the above, we can note the following mechanism of influence on the calculation of the statute of limitations in case of filing a claim by the entitled

person, which requires appropriate reflection in civil law: 1) the statute of limitations is terminated; 2) the statute of limitations is interrupted when filing a lawsuit in the prescribed manner in the circumstances provided for in Part 2 of Art. 264 CCU.

As evident, regardless of the course of further consideration of the case and its effectiveness, the proper filing of the lawsuit terminates the statute of limitations at the request of a certain person of the same content and to the same debtor, and does not interrupt it. Even in the case of refusal to satisfy the claim due to the expiration of the statute of limitations, the right to protection (substantive right to sue) is considered terminated not from the moment of entry into force of the court decision (Tsikalo, 2004, pp. 3, 12), but from the expiration of the statute of limitations. This fact of expiration of the statute of limitations and the corresponding termination of the protection right is only fixed by the subsequent court decision. Moreover, it would be expedient to address this issue more widely in view of the uncertainty about the existence of a particular legal relations. Unfortunately, the civil law contains rules according to which the legal status of a party to the relations is determined not at the time of its entry into them, but later. In other words, the circumstances that appeared after some time have a decisive influence on the content of the legal relationship, which arose earlier, and the term of its existence. For example, this applies to the specified regulatory rules on the rejection of the claim due to the omission of the statute of limitations or leaving the claim by the court without consideration.

In these cases, the introduced procedure makes it possible to construct rules that allow the use of reverse mechanisms in determining the content of subjective law in the previous period: the omission of the statute of limitations after its nominal duration or the fact that the statute of limitations continued to expire. It should be noted that this approach is undesirable and quite dangerous. After all, it leads to a violation of one of the basic principles of civil law– the certainty of the content of the legal relationship at the time of its validity.

5. Conclusions

Despite the obvious fact that after the realization of the claim it ceases to exist, the literature continues to express views on the interruption of the statute of limitations on the same requirements to the same debtor in the event of a lawsuit (Lebedeva, 2003, p. 180). In fact, there can be no subjective substantive law that cannot be exercised under any circumstances. After the proper filing of the claim, i. e., the commission of the action by which the right to sue is exercised, re-filing an identical claim against the same person is not possible (a lawsuit left unconsidered in the future is equated to an improper one). If the phenomenon itself does not exist, then there is no period of its existence in space. From this point of view, it is necessary to critically evaluate the concept of "renewal of the statute of limitations", which is found in the literature (Romaniuk, 2018, p. 11). It is quite logical that after the termination of the right to sue, the period of existence of the right ceases – the statute of limitations. Therefore, based on the conclusions of the study, it is essential to agree with the thesis that after the filing of a lawsuit, the statute of limitations can not expire, because it loses its legal essence. This regulatory mechanism should reflect the Ukrainian civil law: the statute of limitations on the same requirements for the same defendant is terminated with the filing of a lawsuit. In addition, it is a clear need of the time to adjust the legislation in this area, which must result in the introduction of a rule to terminate the statute of limitations after the lawsuit is filed properly (Guyvan, 2019b, pp. 121–125).

Therefore, Chapter 19 of the Civil Code should be supplemented by an article entitled "Termination of the statute of limitations" in the following version: "The statute of limitations is terminated if one of the below vents occurred in the course of its duration: 1. Terms specified in Art. 257–259 of CCU ended. 2. Filing a claim by the creditor in full against all debtors. 3. Voluntary performance of a security obligation during the statute of limitations. 4. Termination of overdue obligation in a manner other than performance" (Guyvan, 2012, p. 326).

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КРИТИЧНИЙ АНАЛІЗ НОРМАТИВНОГО ПРАВИЛА ПРО ПЕРЕРИВАННЯ ПОЗОВНОЇ ДАВНОСТІ В РАЗІ ПРЕД'ЯВЛЕННЯ ПОЗОВУ: ПРИПИНЕННЯ ДАВНІСНОГО СТРОКУ

Анотація. Статтю присвячено дослідженню актуального наукового питання про переривання позовної давності з пред'явленням цивільного позову. Відтак ***метою роботи*** є з'ясування реальної сутності позовного домагання та його впливу на можливість подальшого повторного звернення до суду з позовом.

Методи дослідження. Під час проведення правового аналізу зазначеного питання були використані такі загальнонаукові та спеціально-наукові методи пізнання, як діалектичний, формально-юридичний, історико-правовий, порівняльно-правовий, а також аналіз і синтез.

Результати. Автор обстоює тезу, що концепція щодо переривання позовної давності та початку нового перебігу під час будь-якого пред'явлення позову є відверто застарілою та такою, що не узгоджується з реальною сутністю позовної давності. Адже в разі належного пред'явлення позову якраз і відбувається реалізація закладеного в позовному домаганні права на позов шляхом звернення до суду. В українському та міжнародному праві встановлено, що здійснити право на захист можна лише один раз. Належно пред'явлений позов має бути розглянутий, за ним обов'язково приймається рішення або ухвала. Чинне законодавство не містить таких юридичних конструкцій, які давали би змогу говорити про повторний захист того ж права після закінчення процесу. Також не може бути підтримана думка, згідно з якою новий перебіг має початися, коли після переривання продовжується порушення. Річ у тім, що з кожного порушення може виникнути лише одне право

на позов, змістом якого є матеріально-правова вимога. Оскільки вона вже реалізована, інша позовна вимога виникнути не може, відтак не буде існувати й новий перебіг давності.

Висновки. Отже, повторне подання того самого позову неможливе за своєю природою. Який же строк із позовом переривається? Пред'явлення позову перериває давність за частиною вимог, щодо яких право на позов не було реалізоване. Однак таку законодавчу конструкцію варто тлумачити тільки звужено: ідеться про не охоплену позовом частину однієї й тієї ж вимоги, а не про будь-які вимоги кредитора. А за загальним правилом пред'явлення позову в межах позовної давності призводить до дострокового припинення права на позов у зв'язку з його вичерпаністю.

Ключові слова: переривання позовної давності, погашення права на позов, припинення строку.

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