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CHARACTERISTICS OF TEMPORAL EVALUATION CONCEPTS OF CIVIL LAW

Abstract. Purpose. The purpose of the article is to identify and implement temporal evaluation concepts in civil law.

Results. Technically defined time-based concepts and time-based evaluations are identified. The category of “concept of temporal evaluation” and the purpose of their application in law are revealed. Temporal evaluation concepts are evaluation concepts not defined by law relating to the time limits for the existence of certain legal phenomena, procedures, actions and conduct that shall provide for the free choice of the conduct of the party to the civil relations by means of a free evaluation within the specific law application situation, but in the manner and limits prescribed by law. Their presence in law is related to the need to define clearly the time limits for the existence of particular legal phenomena: subjective rights, legal obligations, legal guarantees and legal status, etc. When searching for temporal evaluation concepts for their depiction and classification, it is necessary to distinguish them from technically defined temporal concepts, which also are present in legal regulations.

Conclusions. Technically defined temporal concepts are calculated using the metric properties of time (when referring to the duration of time) or by specifying a point in time or event that is clearly known to occur (but it is not always known exactly when it takes place). In turn, evaluative temporal concepts, as already mentioned, are based on a social understanding of time, specified during law application in the light of specific circumstances. The temporal categories in civil law, somehow related to time, enable to determine the correct time interval, have their own specificities, and therefore cannot be replaced by a general philosophical category of time. The description of temporal evaluation concepts enables to understand their essence, their application specificities, impact on the legal relationship, which will further serve as starting points for the classification of related unifying criteria, accordingly, this article will be the basis for further research on the topic.

Key words: evaluation concepts, temporality, legal time, temporal evaluation concepts, time limits.

1. Introduction

Civil legal relations shall in any case be governed by a time-limit established by the provisions of the Civil Code of Ukraine and other civil legislation. The effective civil legal relations will depend, in particular, on the clear regulation of the temporal criteria, which in turn requires the improvement of their legislative regulation. An obstacle to achieving this goal is the proliferation of temporal evaluation concepts in civil law, which complicates law application. Given that the basis for the improvement of legislation is, in a certain way, the theoretical work of legal scholars and the scarcity of research in this area, the description of the temporal evaluation concepts of civil law is increasingly relevant.

In general, evaluation concepts in law have been under study throughout the existence of legal science. In this context, the focus should be on the works by scientists, such as: S. Vilni-

anskyi, M. Baru, V. Zhrebkin, T. Kashanina, M. Lukyanenko, V. Kosovych, D. Levina. However, most of the studies by these authors show the dynamics and theoretical issues of interpreting only individual evaluation concepts in law, while the issue of temporal evaluation concepts in science is uncertain.

Therefore, the *purpose of the article* is to identify and implement temporal evaluation concepts in civil law.

2. General characteristics of temporal evaluation concepts

Temporal evaluation concepts are evaluation concepts not defined by law relating to the time limits for the existence of certain legal phenomena, procedures, actions and conduct shall provide for the free choice of the conduct of the party to the civil relations by means of a free evaluation within the specific law application situation, but in the manner and limits

prescribed by law. Their existence in law is related to the need to define clearly the time limits for the existence of certain legal phenomena: subjective rights, legal obligations, legal guarantees, legal status, etc.

When searching for temporal evaluation concepts for their depiction and classification, it is necessary to distinguish them from technically defined temporal concepts, which also are present in legal regulations.

Technical definition is one of the most essential features of law expressed in the clarity, unambiguity and conciseness of legislative provisions, makes the public order strict and accurate, and allows avoiding arbitrary interpretation and application of legal provisions (Babaev, 2004, p. 205). Their presence in law is related to the need to define clearly the time limits for the existence of some legal phenomena: subjective rights, legal obligations, legal guarantees and legal status, etc. Technically defined temporal concepts are calculated using the metric properties of time (when referring to the duration of time) or by specifying a point in time or event that is clearly known to occur (but it is not always known exactly when it takes place). In turn, evaluative temporal concepts, as already mentioned, are based on a social understanding of time, specified during law application in the light of specific circumstances.

3. Forms of the expression of temporal evaluation concepts

An analysis of the Civil Code of Ukraine makes it possible to conclude that temporal evaluation concepts are expressed in the following forms:

1. *“From the moment”, “at the moment”* are the most used in the provisions of the State Civil Code of Ukraine, in particular: in Article 25, part 2 of the Civil Code of Ukraine, the civil legal capacity of a natural person arises at the moment of his/her birth; in Article 91, part 4 of the Civil Code of Ukraine, the civil legal capacity of a legal entity arises from the moment of its establishment; in Article 451, part 1 of the Civil Code of Ukraine, intellectual property right to performance arises from the moment of its first implementation; in Article 631, part 2 the treaty enters into force from the moment of its conclusion.

In general, the word “moment” has several meanings. In medieval times, for example, a “moment” was a unit equal to 1.5 minutes or 1/40 of an hour (Vikipediia: vilna entsyklopediia, 2021). In Ukrainian, the interpretation of this concept means a certain period, a stage in life, in the development of something (Rusanivskiy, 2010).

In law, the moment can be defined as the beginning or end of a certain action, of interaction between legal entities, objects, provi-

sions, facts, processes, phenomena, etc. This notion records their occurrence, modification or termination by reference to a certain legal fact (from the moment of signing, at the moment of birth).

2. *“Immediately”* is used, in particular, in: Article 337, part 1 of the Civil Code of Ukraine, a person who has found a lost thing shall immediately inform the person who has lost it, or the owner of the object, and return the found thing to that person; in Article 557, part 1 of the Civil Code of Ukraine, the debtor who has fulfilled an obligation secured by a guarantee shall immediately inform the guarantor; in Article 644, part 1 of the Civil Code of Ukraine, if an offer to conclude a contract has been made orally and no time limit has been specified therein, the contract is concluded, when the person to whom the proposal has been made shall immediately declare its acceptance.

With regard to time, immediate action is considered a special (highest degree) manifestation of urgency (Bratel, 2017, p. 32). In modern Ukrainian, “immediate” is interpreted as being done, straightaway, without delay; urgently (Busel, 2005, p. 750). Specifically, such an indication in a certain civil law provision implies the immediate, prompt performance of the action, obligation and duty provided for in it.

3. *“Temporarily”* is used, in particular in: Article 99, part 3 of the Civil Code of Ukraine, the powers of a member of an executive body may be terminated at any time or it may be suspended from the exercise of powers; Article 379, part 1 of the Civil Code of Ukraine, the dwelling of a natural person is a dwelling house, an apartment or other dwelling designed and suitable for permanent or temporary residence in it; Article 597-4, part 2 of the Civil Code of Ukraine, the agreement on trust may provide for the user’s right to lend an object of trust to third parties.

“Temporal” means continuing, existing or acting for some time” (Busel, 2005, p. 1450). The use of such temporal concept in civil law provisions provides for the limitation of a certain action, event which the provision shall regulate by a timeframe that will always have a beginning and an end.

4. *“Permanently”* is used, in particular: in Article 29, part 1 of the Civil Code of Ukraine, the place of residence of a natural person is the dwelling in which he/she resides permanently or temporarily; in Article 243, part 1 of the Civil Code of Ukraine, the commercial representative is the person, who permanently and independently acts as the representative of entrepreneurs when they conclude contracts in the field of entrepreneurial activity;

in Article 816 of the Civil Code of Ukraine, the tenant and the persons residing permanently with him.

In the “Explanatory dictionary of the modern Ukrainian language”, the category “permanent” means “continuous all time, without interruption or disconnection; constant, uninterrupted; always present, which constantly accompanies anyone, anything; obligatory, mandatory; intended for long-term; not temporal” (Busel, 2005, p. 1084). A similar definition is given in the “Dictionary of the Ukrainian language” (Bilodid, 1970–1980). From this interpretation it should be concluded that the category “temporal” is opposite to the category “permanent”. However, in some civil law provisions, the category “continuously” is used with certain temporal limitations, which will be further discussed in detail.

5. “*Timely*” is used, in particular: in Article 255, part 2 of the Civil Code of Ukraine, written applications and notifications submitted to the liaison office before the end of the last day of the period shall be considered timely; in Article 538, part 2, para. 2 of the Civil Code, a party who knows in advance that he or she will be unable to perform his or her duty shall notify the other party in timely manner; in Article 815, part 3, the tenant shall be obliged to remit rental payments in timely manner.

Most frequently, the category “timeliness” arises when there are different terms established by law which, inter alia, describe the legal procedure (Bolokhov, 2013, p. 31). According to the “Explanatory dictionary of the modern Ukrainian language”, “timely” means “happening when necessary, in due time; which meets the needs, requirements of the given moment; relevant, actual” (Busel, 2005, p. 1300). The category “timeliness” is to serve as a technical legal requirement for a sequence of significant actions in the implementation of provisions.

6. “*In case of necessity*”, is used, in particular: in Article 1295, part 3 of the Civil Code of Ukraine, the testamentary executor cannot refuse to exercise his powers in case of necessity to take urgent measures, which being delayed may cause damages for the heirs; in Article 914, part 1 of the Civil Code of Ukraine, the carrier and the owner (holder) of freight may conclude a long-term agreement in case of necessity to carry out regular transportation.

Necessity is a system of connections and relations that leads to change, progress, development in a rigid direction with rigid results. In other words, necessity is a link that necessarily leads to an event (Vikipediia: vilna entsyklopediia, 2021).

In philosophy, a necessary phenomenon is one that is uniquely determined by a certain field

of reality, assumed on the basis of knowledge of it and insurmountable within it (Onatskyi, 1962, p. 1123). Furthermore, necessity arises when the conditions, causes and grounds that determine the existence of a given phenomenon converge in a certain way. The way determines the sequence of connection between the phenomena. Therefore, necessity is a combination of conditions, causes and grounds in a certain way that determines the existence, occurrence, development and functioning of certain phenomena (Inozemtseva, 2014, p. 116).

Using the category “necessity” as a temporal estimation concept, it should be noted that it arises only at a certain time and continues, exists for some relevant interval, so it is always characterized by the moments of beginning and termination. Necessity may have not yet arisen, or it may have already passed (Rabinovych, 1999, p. 13).

7. “*Before / until*” are used, in particular: in Article 124, part 2 of the Civil Code of Ukraine, a member of a general partnership shall be liable for the partnership’s debts, whether they occurred before or after his/her/its joining the partnership; in Article 938, part 2 of the Civil Code of Ukraine, if the period of storage in the storage contract is not fixed and cannot be determined on the basis of its conditions, a deposittee shall be obliged to store an object until the time when a depositor claims the object back.

In Ukrainian, morphological and semantic properties of “*do*” [before, till] is a preposition, a link-word which, together with the genitive case of nouns, as well as some numerical and pronouns, expresses the relation between the objects, relation between action, state or feature and subject matter (Vikipediia: vilna entsyklopediia, 2021).

In the context of temporal evaluation concepts, the category “before / till” can be interpreted as a lexico-semantic time component only indirectly oriented to the reflection of ontological time, since it is used in the sentence and is aimed at the expression of temporal features of an action. That is, if in a civil law provision, the preposition “before / till” are used in a temporal meaning, then they usually used in the construction “a duty to be performed defined by the provision” – “before, till” – “a certain act which must precede the performance of the duty specified in the wording of the provision”. Therefore, the category “before / till” is generalized and always specified by a certain action in the wording of the very provision.

8. “*After*” is used, in particular: in Article 777, part 1 of the Civil Code of Ukraine, after the expiry of the contract, a tenant that diligently fulfils his/her/its obligations pur-

suant to the rent agreement shall have a preferential right to the other persons to conclude a new rent agreement; in Article 836, part 1 of the Civil Code of Ukraine, if after the termination of the contract, the user failed to return an object, the lender shall have the right to claim its forced return and reimbursement for the damage caused; in Article 919, part 2 of the Civil Code of Ukraine, freight not released to the recipient at his request within 30 days after expiration of the delivery period shall be construed as lost, unless a longer period is established by the agreement or the transportation codes (statutes).

Similar to the category “before/until”, the temporal concept “after” can be characterised. It is also generalized and specified in the text of the very provision. In the dictionary, the word is interpreted as “in some time; then, later.” It is used in determining actions, events, etc., followed by another action, event, etc. (Busel, 2005, p. 982). The design of the use of the temporal term “after” in a civil law provision will be as follows: “a duty defined by the provision to perform” – “after” – “a certain act that has occurred (or should have occurred) before the performed duty specified in the provision”.

9. “Reasonable time” is used, inter alia: in Article 564, part 2 of the Civil Code of Ukraine, the guarantor shall consider the creditor’s claim together with the documents attached thereto within the time established in the guarantee, and, in its absence, within a reasonable time, to establish the conformity of the requirement and the documents attached thereto with the terms of the guarantee; in Article 690, part 2 of the Civil Code of Ukraine, the seller shall be obliged to accept (remove) the goods not accepted by the buyer (recipient) or to dispose of them within a reasonable time; in Article 704 of the Civil Code of Ukraine, if the agreement does not establish the term for the goods delivery to submit them to the buyer, the goods shall be delivered within a reasonable time after the buyer’s claim is received.

In general, neither practice nor civil law provides for established practice or criteria for calculating a reasonable time, which clearly demonstrates that the concept is evaluative. The temporality of the concept is characterized by the limitation of certain time-limits within which an act determined by the relevant provision of law shall be performed. However, the very provision, which specifies the use of the concept

of “a reasonable time” does not directly define the limits of such period, which in practice leads to conflicts in the future. The implementor of law must determine, on the basis of factual circumstances and on the basis of certain guidelines, which time is reasonable, since the legislator states this as incorrectly as possible.

10. “Urgent need”, “urgent case”, “urgent necessity”, “urgent actions” are used, in particular: in Article 776, part 2, para. 2 of the State Civil Code of Ukraine, major repairs shall be conducted within the period prescribed by the agreement. If such period is not determined in the agreement or the repair is *urgent*, it shall be conducted within a reasonable time; in article 352, part 3 of the Civil Code of Ukraine, in case of the *urgent* need to create conditions for the monument of history and culture preservation, an action for its buyout may be filed without the warning; in Article 250, part 3, a representative cannot refuse to perform actions assigned by a proxy, if these *actions are urgent* or such that are aimed at prevention of inflicting losses to a person whom he/she represents, or to any other persons; in article 284, part 5 of the Civil Code of Ukraine, in *urgent* cases, upon a real threat to the life of a natural person the medical aid is provided without consent of a natural person or his/her parents (adoptive parents), a guardian, a tutor.

As follows from the mentioned provisions, the word “urgent”, used in different wordings, makes them temporal. In the dictionary, it is defined as not to be postponed; to be performed, decided immediately (Busel, 2005, p. 734). In the context of implementing procedural legal facts, the urgency is linked to the need to take a certain action as soon as possible.

4. Conclusions

The given examples of the use of temporal evaluation concepts are not exhaustive and can be found in civil law provisions independent of the field of legal relations regulated by law. The temporal categories in civil law, somehow related to time, allows determining the correct time interval, having their own specificities, and therefore cannot be replaced by a general philosophical category of time. The description of the temporal evaluation concepts enables to understand their essence, their application specificities, impact on the legal relationship, which will further serve as starting points for the classification of related unifying criteria, accordingly, this article will be the basis for further research on the topic.

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ХАРАКТЕРИСТИКА ТЕМПОРАЛЬНИХ ОЦІНОЧНИХ ПОНЯТЬ ЦИВІЛЬНОГО ПРАВА

Анотація. *Метою статті* є виокремлення та здійснення аналізу темпоральних оціночних понять у цивільному праві.

Результати. Розрізняють формально визначені часові поняття та часові оцінні поняття. Розкрито категорію «поняття часової оцінки» та мету застосування цих понять у праві. Тимчасові оціночні поняття – це не визначені законодавством оціночні поняття, які стосуються часових меж існування певних правових явищ, процесів і дій та забезпечують самостійний вибір поведінки учасника цивільних відносин шляхом вільної оцінки в межах конкретної правозастосовної ситуації, дозволених законом. Їх існування у праві пов'язане з необхідністю чіткого визначення часових меж існування тих чи інших правових явищ: суб'єктивних прав, юридичних обов'язків, правових гарантій, правового статусу тощо. У процесі пошуку тимчасових оціночних понять для їх характеристики та класифікації необхідно відрізнити їх від формально визначених часових понять, якими також наповнені нормативно-правові акти.

Висновки. Формально визначені тимчасові поняття розраховуються з використанням метричних властивостей часу (коли йдеться про тривалість часу) або шляхом вказівки на певний момент часу чи подію, про яку точно відомо, що вона відбудеться (проте не завжди точно відомо, коли це станеться). Своєю чергою оцінні часові поняття, як уже зазначалося, ґрунтуються на соціальному розумінні часу, яке конкретизується під час правозастосування з урахуванням конкретних обставин. Темпоральні категорії в цивільному праві тією чи іншою мірою пов'язані зі строком, забезпечують можливість правильного визначення часового проміжку, мають свою специфіку, тому не можуть бути підмінені загальною філософською категорією часу. Характеристика темпоральних оціночних понять дає змогу зрозуміти їх суть, особливості вживання, вплив на правовідносини, що надалі буде слугувати відправними точками для класифікації певних об'єднуючих критеріїв. Відповідно, стаття стане основою для подальших досліджень вибраної тематики.

Ключові слова: оціночні поняття, темпоральність, правовий час, темпоральні оціночні поняття, часові межі.

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