ASPECTS OF CIVIL LAW, ECONOMIC LAW OF LIABILITY FOR NON-PERFORMANCE OF CONTRACTUAL OBLIGATIONS IN THE ROMANO-GERMANIC AND ANGLO-SAXON SYSTEMS

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Ortikova Zarina Shukhrat kizi
Master of Tashkent state university of law,
At the Faculty of International Arbitration and Dispute Resolution

ABSTRACT

The article analyzes aspects of civil law, economic and legal liability for failure to fulfill contractual obligations in the Romano-Germanic and Anglo-Saxon systems. As well as their role and significance, signs as a source of law in the countries of Romano-Germanic and Anglo-Saxon (common) law. The author believes that in the countries of the Romano-Germanic legal family, liability for failure to fulfill contractual obligations should be considered as an atypical source of law.

Keywords: *legal family, sources of law, contract, private law, Romano-Germanic law, Anglo-Saxon law, atypical sources of law.*

АННОТАЦИЯ

В статье анализируются аспекты гражданско-правовой, экономической и юридической ответственности за неисполнение договорных обязательств в романо-германской и англо-саксонской системах. А также их роль и значение, знаки как источник права в странах романо-германского и англо-саксонского (общего) права. Автор считает, что в странах романо-германской правовой семьи ответственность за неисполнение договорных обязательств следует рассматривать как нетипичный источник права.

Ключевые слова: *правовая семья, источники права, договор, частное право, романо-германское право, англо-саксонское право, нетипичные источники права.*

INTRODUCTION

It is difficult to imagine the development of modern law without knowing the essence of the contract. Unfortunately, the study of this category has become the subject of close attention on the part of scientific theorists relatively recently. Based on the fundamental nature of the theory of state and law, it is possible to assume that

it is this science that is called upon to develop and investigate important legal categories, which include the contract.

The main thing in the question of understanding the contract as a legal category is the study of the essence of this phenomenon, since the essence determines the content. "Essence and phenomenon are universal objective characteristics of the objective world, in the process of cognition they act as stages in the comprehension of an object" more precisely, in the content of the phenomenon.

Essence, from the point of view of philosophy, is the internal content of an object, expressed in the unity of all the diverse and contradictory forms of its being. In turn, the content presupposes a certain form. Content and form are philosophical categories, in the relationship of which the content, being the defining side of the whole, represents the unity of all the constituent elements of the object, its properties, internal processes, connections, contradictions and tendencies, and the form is a way of existence and expression of content. The term "form" is also used to refer to the internal organization of content.

Thus, knowledge of the essence of the contract can be considered through the analysis of its "constituent elements" as an object of study. Such elements may be signs of a contract. By itself, the sign is a certain characteristic feature that is characteristic of an object that characterizes its main properties. In addition, the selection and analysis of general and special features of an object or phenomenon makes it possible to identify this phenomenon or object in a number of similar ones.

The question of the signs of the contract is quite multifaceted, due to the different understanding of the contract and its nature in modern legal literature. In particular, a different understanding of the contract, its essence and features exists in the Romano-Germanic and Anglo-Saxon legal families; therefore, the study of the features of the contract must be carried out taking into account the characteristics of a particular legal family.

DISCUSSION AND RESULTS

Thus, according to the concepts of the contract that exist in the Romano-Germanic legal family, a contract understood as "a paid and free agreement of two or more persons on the establishment, change or termination of civil rights and obligations". From the point of view of the civil legislation of the Republic of Uzbekistan, a contract understood as "an agreement of two or more persons on the establishment, modification or termination of civil rights and obligations". In terms of meaning, the definition proposed by the legislator differs from the doctrinal definition

of the concept of a contract, in particular, in a set of basic features. Among which are: freedom of expression of the will of the parties, coordination of individual expressions of the will of the parties, equality of the will of the parties, equivalence (reciprocity of rights and obligations of the parties). These signs follow not only from the analysis of the very definitions of the concept of a contract, but also from the basic principles of civil law, including freedom of contract, equality of participants in a civil legal relationship, etc.

Let us look at each of these features in more detail.

1. Freedom of expression of will of the parties. This feature includes the main questions that the future subjects of the contract must determine before entering into a contractual relationship, namely:

- Is it worth signing a contract?
- What model of the contract should be adopted;
- With which subjects it is worth concluding an agreement;
- What conditions should be accepted at the conclusion of the contract.

The parties are free to resolve these issues, that is, no one can influence the will of the subjects that determine the terms of the contract, and whether or not to conclude the contract.

However, freedom of contract is not absolute. The freedom of one subject limited by the similar freedom of another subject. A conscious perception of one's needs and the ability to satisfy them by personal labor made the individual free, but only relatively free, since it is impossible to live in society and not depend on it, not obey the established rules.

2) Coordination of individual expressions of will of the parties. This sign is, perhaps, the most important, reflecting the specific nature of the contract, and is composed of two main principles that can only be considered in aggregate, namely, the individuality of the will of the parties, the coordination of individuality.

A process – “agreement, which involves three main stages”, precedes the final goal:

The first stage is the initiation of the process of forming consent, which carried out by one of the parties to the contract, striving to achieve its goals with certain individual intentions. At this stage, methods of reaching an agreement that are acceptable to both parties are being developed and are being implemented.

The second stage is coordination, where an action strategy developed to achieve agreed interests and goals. When an agreement reached, such interests and goals

become a priority. At this stage, the individual intentions of the parties transformed because of the negotiation process, which is the most important way to agree.

The third stage is the consolidation and implementation of agreed actions in a contractual act, which contains the already agreed and transformed individual expressions of the will of the parties, agreement on all significant issues and becomes a guide to action.

It should be emphasized that the conciliatory nature of the contract is its integral feature, which is pointed out by almost all researchers of the theory of the contract. Thus, the contract is inconceivable without the presence of an agreement of the parties in it.

The next sign: equality of expressions of will of the parties. This feature of the contract is highly debatable in the legal literature. Speaking about the equality of the parties as a sign of the contract in general, one should keep in mind only formal and not actual equality. The only thing in which the parties are equal is in the issue of the possibility of changing and supplementing the terms of the contract and the obligation of such agreement with the other party. If such equality in the contract violated, then this contract can no longer be considered a contract. That is why the sign of the agreement will not be a formal sign – the equality of the parties, but a real one – the equality of the will of the subjects of the agreement.

Equivalence is a constitutive feature of any contract. Equivalence in this case is the reciprocity of the rights and obligations of the parties. Moreover, such rights and obligations formed independently, within the framework outlined by law.

The legal purpose is an integral feature of the content of the contract, which, from the moment it fixed in the contract, becomes a sign of the form. Thus, the purpose of the contract is what the contract is concluded for, the result. The study of a certain result that satisfies the interests and needs of its participants.

Let us sum up some results: so, the contract is the document created by means of will of the interested participants of the public relation; this document formed based on free will, which implements the principle of freedom of contract. Each of the subjects of a private legal relationship has the right to decide for himself whether to conclude an agreement or not; the contract presupposes the reciprocity of the rights and obligations of the participants, which have a corresponding nature; the contract has a specific purpose.

Thus, a contract, from the point of view of Romano-Germanic law, is a document of a regulatory nature, generated through a free agreement between two or more subjects of law, pursuing a specific goal.

In the Anglo-Saxon legal family, ideas about the contract and its features are somewhat different. In particular, the American researcher Christopher Oskave points out that "in the Anglo- Saxon legal tradition there is a bipolar understanding of the contract, that is, the traditional understanding of the contract in common law and the modified understanding of the contract in statutory law". At the same time, he notes that the primary understanding of the contract regarded as a promise confirmed by a counter provision, that is, as a compensated "promise" transaction. In the second case, the contract understood as an agreement. Both of these ideas about the contract are built on the basis of general principles, namely: "the presence of a counter provision as an integral part of any contract, and the concept of the contract as a market instrument for creating, increasing and distributing wealth, as well as managing it".

In Anglo-Saxon law, the philosophical portrait of a contract consists of the following twelve fundamental principles: "The moral basis of the contract is a promise, a promise without a counter provision is morally fruitless, economically meaningless and legally void, only a moral promise is considered legally void. The social function and historical mission of the contract concluded in the regulation of social relations in the market of goods, works and services; the moral task of contract law is to enforce the fulfillment of private promises and to exercise beneficial functional supervision over the contract process. The illegality of the purpose of the promise has no legal significance in determining the legal purpose of the contract, the motive of the parties to the contract does not no legal significance in determining the legal validity of the contract. The main and morally correct task of civil liability for breach of contract is to compensate for the losses incurred; the contract has the force of law not only for its participants, but also for an indefinite circle of third parties, and, therefore, is a mandatory (normative) source of law for the court".

All the above principles of the contract in Anglo-Saxon law reduced to several basic positions, which, ultimately, defined as signs of a contract. Firstly, the contract, despite its private law nature, is a law for its participants and for third parties, if it drawn up in accordance with the requirements of the current substantive and procedural legislation. Secondly, the basis of the contract is a moral promise. American researcher of contract theory Robert A. Hillman points out, "There is a close relationship between the promise and the creation of a legal relationship. For that in order to give rise to a contractual obligation, the promise must be aimed at creating a legal relationship between the one who makes the promise and the one to whom the promise is made. In the absence of such an intention, the promise cannot be considered a contract".

Thus, the basis for the formation of the contract is the will of the subjects, based on trust. Thirdly, the social function of the contract is to regulate legal relations in the market of goods, works and services. In Anglo- Saxon law, the contract not in vain compared to "a locomotive that pulls the entire market with it". An important task of the contract is the regulatory impact on social relations in order to streamline them and, if necessary, apply coercion against subjects that violate contractual regulations. However, here it is worth making a small reservation. A contract can only regulate legal relations when it is a source of law. If Anglo-Saxon law recognizes such a role for the contract, then the Romano-Germanic legal tradition strongly rejects it. Here it is appropriate to think about why in the Anglo- Saxon and Romano-Germanic legal traditions there is such a different understanding of the contract as a source of law. It well known that the contract regulates social relations, that is, relations that arise in society between individuals. This not denied either in the Anglo-Saxon or in the Romano-Germanic legal families. However, in order to answer this question, it is necessary to understand what meant by the source of law in the legal traditions under consideration.

CONCLUSION

The contract is the most important tool for coordinating wills and interests used in human society, which follows from the analysis of its main features identified in the Romano-Germanic and Anglo-Saxon legal traditions. Which the presence of free will the regulatory nature of the contract the definition. In addition, consolidation of rights are important and the responsibilities of the participants and the existence of a specific purpose. This is the essence of it. As G. Hegel pointed out, "in a specific contract, there must be ideality, or universality, which contains the moment of cash".

Thus, the main purpose of the contract is to regulate social relations in order to streamline them and achieve harmony between its participants. Such regulation carried out with the help of individual legal norms that are present in the contract.

The presence of individual legal norms in a contract indirectly confirmed by such a sign as freedom of contract, which recognized by the doctrine of the Romano-Germanic and Anglo-Saxon legal families. The freedom of the contract presupposes the free expression of the will of its participants and, consequently, the formation of the contract (and all private law) as if from below.

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