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National And Foreign Experience In Determining The Conclusion Of Civil Law Contracts

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ABSTRACT

The emergence of rights and obligations between citizens and legal entities is based on a specific event or phenomenon. Such events are called legal facts in civil law. Article 8 of the Civil Code of the Republic of Uzbekistan lists the types of such legal facts, according to which civil rights and duties arise from contracts and other agreements provided by law, as well as from contracts and other agreements that do not contradict the law. The contract and its structure are the basis for the creation of civil rights and obligations as a legal fact. The conclusion of a contract is primarily an expression of the will of the parties. [3]

This article describes in detail the concept of contract and its importance in the context of market relations, the types and content of contracts, the conclusion of contracts, freedom of contract.

KEYWORDS

Civil law, legislation, contract, civil code, contract terms, foreign experience, freedom of contract.

INTRODUCTION

Civil law is a fundamental, important and integral part of the field of law. Although the elements of this science are related to the emergence of humanity, the emergence of the

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term "civil law" dates back to ancient Roman times. The term "civil law" is derived from the Latin jus civile (civil law) in the ancient Roman legal system - "civil law", which means Roman citizens - the law of the Quirits (cives) and the law of the state (city) (civitas). Later, the terms of private Roman law (Zivilrecht, droit civil, civil law) entered the modern legal system. The development of commodity-money relations in European countries and the need to improve the legislation governing economic relations necessitated the legal system of these countries to take as a model the rules governing property relations regulated in ancient Roman private law. [6]

The concept of a contract and its importance in the context of market relations as required by Article 8 of the Civil Code, contracts are one of the foundations for the emergence of civil rights and obligations between the parties. Undoubtedly, special attention is paid to contracts today. Because in contracts, in other legal facts, the will of the parties is fully expressed. The parties to the contract decide independently with whom, how much, when to conclude the contract, due to which the money, goods, items to be delivered, in what terms, in what means of transport, in what form the payment will take place. They are free to enter into contracts, and coercion to enter into a contract is not allowed.

MATERIALS AND METHODS

The content of the principle of freedom of contract is enshrined in Article 354 of the Civil Code. According to him, citizens and legal entities are free to conclude a contract. What this means is that no one can force them to sign a contract. The contract is concluded at the discretion of citizens and legal entities. Of course, the reasons (motives) that motivate them to enter into a contract can be different: to meet their needs, to seek profit, to achieve the goals and objectives set out in the founding documents, and so on. Occasionally, other third parties may request, offer, or request a contract. However, in any case, the decision to enter into a contract is made by a citizen or legal entity independently, on a voluntary basis. At the time of concluding the contract, the citizen (head of the legal entity, representative) must be clear-minded, mentally normal, self-governing, able to see the consequences of their actions. If the disturbances in the internal mental state of the subject, in his mind, are forced to enter into a contract due to external influences, such a contract is not considered valid. It can be said that this is a specific legal guarantee of real freedom of contract. Practice shows that the freedom to conclude contracts, the mutual interest of the parties, the strength of contractual discipline in the contract (ie, in the vernacular, "the value of the contract is more than money"), the broader definition of property liability than administrative-command liability attracts full use of the tool (contract). [6]

The importance of contracts can be explained in detail. But their contracts strengthen the payment discipline, stimulate the activities of the parties in all respects, which in turn increases the responsibility of the parties, improves the receivables and payables of the economy, and ultimately ensures the stability of the parties. This, in turn, is a guarantee of an abundance of goods, services and capital in society. In this regard, in order to create a fast and effective legal mechanism of the industry, to ensure the conclusion and implementation of contracts, the country has adopted the Law

"On the legal framework of business entities", monitoring the conclusion and implementation of contracts. These, in turn, help make contracts work faster and more realistically.

A contract is a mutual agreement between two or more persons aimed at establishing, modifying or revoking civil rights and duties. The term contract has three meanings: legal fact; a legal relationship of material interests based on any legal fact; it is used in the sense of a document that reflects what individuals (citizens and organizations) mutually agree on. Here it is seen and studied as a legal fact in its first meaning. The contract serves as the basis for the establishment, modification or termination of the legal relationship. But the action of the contract is not limited to this. If other legal facts result in the establishment, change or termination of a legal relationship as a general rule, the contract, unlike these legal facts, regulates the actions of the parties to the legal relationship within the limits established by law, except for the establishment, modification or termination of the legal relationship. defines the rights and duties of the participants of the legal relationship. During the legal relationship established by the contract, the contract also provides an opportunity to verify the legality of the actions of the parties. [4]

The main feature and condition of the concept of a contract is the mutual agreement of the parties to achieve a certain result. Although the rights and obligations of the parties under the contract are different, they give a single legal result, for example, the right to use an item is obtained, etc.

A civil law contract is concluded mainly for the formalization of property relations. In some cases, the contract also formalizes personal and non-property rights and obligations. This is typical for contracts related to creative activity in the field of creation of works of literature, science and art, for example, a publishing contract, a play, a screenplay and other contracts. Such agreements not only define the property rights and obligations of the parties, such as liability for infringement of copyright terms and conditions, but also personal and non-property rights, such as whether the author may appear anonymously in his work or allow changes to the text. also defines rights.

The contract is divided into unilateral, bilateral and multilateral agreements, depending on the mutual distribution of rights and obligations between the parties involved. One of the parties to a unilateral contract has only a right and no obligation, while the other party has only an obligation. For example, in a loan agreement, the borrower has an obligation to pay the amount received on time to the lender and the creditor has the right to demand it. In a bilateral agreement, both parties have independent rights and obligations. An example of such a contract is a contract of sale. Under this contract, the seller has the right to demand the price of the goods sold and is obliged to hand over the goods sold to the buyer, and the buyer is obliged to pay the price of the goods received and has the right to demand the purchased goods. Most civil contracts are bilateral, that is, in addition to the above-mentioned contract of sale, the supply of goods, lease of property, contract, and other contracts. There are also multilateral agreements in which the parties are three or more. Such conditions are characterized by the fact that at the same time each party has

certain rights and obligations. For example, franchising, leasing agreements [5].

First of all, it should be noted that according to Article 1 of the Civil Code of the Republic of Uzbekistan, civil legislation recognizes the equality of participants in the relations regulated by them, inviolability of property, freedom of contract, unauthorized interference in private affairs, the unimpeded exercise of civil rights. based on the need to ensure their recovery and their judicial protection.

Contract and tort law. In the English-American legal system, contract and tort are important and fundamental concepts. There is no general part of the right of obligation that applies to any obligation. The general part still exists only in contract and tort law, not in legal form, but in doctrinal form. There is also no abstracted (formalized) concept of obligation. The focus is on delicacy and contract. There is also no formal classification of liabilities. The basis for the formation of obligations is the contract, quasi-contractual obligations (similar to the contract) - unreasonable enrichment, acting without assignment in the interests of others, and tort.

An agreement under English-American law is a promise of redistribution that provides for the possibility of seeking protection in a sanctioned court. Hence, the contract implies the satisfaction of alternative claims: in order to obtain the right of claim, the creditor must first have promised the debtor this or that. This leads to the rule that the parties will not bind each other until the offer (offer to enter into a contract) is accepted (with some exceptions). You can freely withdraw it until the offer is accepted. In the continental legal system, however, we see a different situation: the person who sent the offer is, to one degree or another, related to that offer.

The condition of alternative executions prevents the existence of unjust, free-standing contracts. For this reason, separate contracts (constructions) called "with a seal" are concluded, which allow debtors to impose obligations even in the absence of alternative execution. Of course, mutual submissions (alternative executions) can be made only on the basis of the agreement of the parties, but in this case, the existence of an alternative execution, not an agreement, is crucial. Contract law develops in response to practical needs. There is no formal classification of contracts. Certain types of contracts arising according to practical needs are regulated by separate laws, which in one way or another are explicit and cannot be distinguished by the same criteria. Liability for breach of contract is determined on the basis of the principle of infringement: the debtor is liable regardless of the guilt for the breach committed by him. This follows from an important rule of Anglo-American law under which a debtor may terminate a contract at any time with full compensation for damages to the creditor.

Another reason why English -American law focuses on contract law is that there are no doctrines on transactions that have been developed to a certain extent in this legal system. For this reason, the norms on transactions are expressed in the law of the contract. The right to tort is manifested as a set of specific torts developed by jurisprudence. There is no general delicacy, only its doctrinal models. A tort is defined as the infliction of harm to a person or property. There is also no official classification of specific delicacies.

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In short, the conclusion of a contract is primarily an expression of the will of the parties. By concluding a contract, two or more parties agree on the creation, modification or termination of civil rights and duties. For example, by concluding a contract of sale, the seller has the right to demand payment for the goods, but the ownership of the goods is terminated, and vice versa, the buyer has the right to claim the goods, as well as the right to pay for the goods.

As a legal fact, the process of concluding a contract is reflected in the expression of the will of the parties and the compatibility of their wishes, and this is understood from the essence of the construction of the contract, that is, the agreement of the two parties. Any condition that must be agreed upon at the request of one of the parties shall be recognized as an essential condition. Since the contract is a document that represents the will of the parties, it must, of course, agree on the circumstances that each party deems necessary. Such a condition is required to be reflected in the contract as an important condition, regardless of its significance and content for the contract. For example, in a product delivery contract, the buyer may require that the product be delivered on a specific day of the week and at what time of day, and agree with the seller. In this case, such a condition becomes the main condition of the contract for the supply of goods. The fact that a condition that is important to the relevant contract is not expressed in the text of the contract means that the contract has not been concluded. A contract without an essential condition may be declared invalid by a court at the request of an interested party. A contract that does not contain important conditions is considered invalid as an agreement with content that does not meet the requirements of the legislation (Article 116 of the Civil Code). There is no special need for the contract to reflect the circumstances that are recognized as a normal condition of the contract. Since such conditions are provided for in the legislation or can be determined even after the conclusion of the contract, their non-inclusion in the contract does not create a certain legal consequence. For example, the method of delivery of the product, the place of fulfilment of the obligation, and so on. In particular, the contract for the repair of housing does not require the inclusion of the place of performance in the contract, and this can be done at the address where the house is located, or the place of performance can be determined in accordance with Article 246 of the Civil Code [3].

RESULTS AND DISCUSSION

In addition to the important and common conditions, random conditions may also be taken into account when concluding a contract. Typically, random conditions do not affect whether a contract is valid or invalid once it has been entered into. The fact that a random condition is not reflected in the contract also has no legal effect.

A contingent condition is a condition of a contract that the parties agree to in addition to the usual terms of the contract and express the nature of their relationship and specific requirements for the subject of the contract, the order of performance of the contract, liability for non-performance. For example, if the lessee continues to use the property after the expiration of the lease, the lease is deemed to have been renegotiated for the same period of time, with a prior notice period for the

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termination of the lease. Where the content of a particular type of contract is specified in the legislation, the parties will have to include this condition in the contract. This rule, defined in the fifth part of Article 354 of the Civil Code, is an imperative norm and the parties are not allowed to deny it. The imperative norm of the law may explicitly prohibit the conclusion of this or that condition or the conclusion of a contract, or an instruction that a particular condition or agreement is not valid in itself (Article 332, part 2, Article 333, part 4 of the FC) [7].

However, the imperative norm may take the form of a recommendation by defining the rights of the parties and may limit the parties' deviation from this recommendation. In this case, the impossibility of deviating from the rule written in the imperative norm can be expressed directly in the text of the norm (in this case, the recommended norm is a direct legal prohibition) or may arise from the essence of the norm. The imperative norm may prohibit the denial of any terms in the content of the contract or prohibit certain forms of such denial. For example, according to Article 21 of the Law of the Republic of Uzbekistan "On Consumer Protection", the terms of the contract, which restrict consumer rights and contradict the legislation, are considered invalid. If the consumer is harmed as a result of their use, this damage must be compensated by the manufacturer (seller, executor). The seller (executor) has no right to force the consumer to purchase additional goods or use additional services for a fee, as well as to charge for services not provided. This norm stipulates that the conditions restricting consumer rights are not valid.

CONCLUSION

At the same time, this norm does not prohibit conditions that expand consumer rights, giving it a priority. Due to the fact that the terms of the contract are not stipulated by the agreement of the parties, in the cases provided by the applicable norm, the parties may mutually agree to cancel its application or set a different condition than provided for in it. In the absence of such an agreement, the terms of the contract are determined by the dispositive norm. If the terms of the contract are not determined by the parties or by a dispositive norm, the relevant terms are determined by the business practices that may apply to the relationship between the parties. Adherence to certain procedural principles, rules and customs in the contracting process serves to prevent conflicts that may arise in this process. For this reason, the procedure for proposing and responding to a contract differs from the structure of the contract to be executed and to be executed in the future. For example, when a gift contract is executed with a structure and it is not required in writing, it is done by accepting the gift item. If the gift is promised in the future, the contract must be in writing. In all cases, the conclusion of a contract means the formalization of the agreements of the parties and the formulation of their wishes. This process reflects the terms, procedures, and conditions of the parties' actions under the contract, as well as what obligations the parties will assume in the future and what rights they will have. Therefore, in the process of concluding a contract, no matter how much freedom and privileges are given to the parties, it is necessary to take a serious approach to its implementation and act in accordance with the rules established by law.

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