who made untimely payment of the monetary duty on creditor's claim is obliged to pay the amount of debt considering also the adopted inflation index for the whole time of the undue payment, and also annual three percent applied to the amount due if other percentage amount is not provided by the law or by the contract.

Legal practice lacks a sole interpretation of the abovementioned norm, which leads to different applications of the Civil Code of Ukraine Art. 625. In some cases courts refer to annual 3 % (Art. 625) as to the type of surcharge. In other cases it is referred to as an additional sanctions type applied to undue payments. Such sanction should be applied simultaneously, regardless of the debtor's liability and his/her surcharge payment for undue payment claims. Therefore the court practice lacks a unified interpretation of certain contract types, while the courts cannot determine which contract type this sanction type should be applied to, whether it be the contracts lacking percentage determination or to the contracts lacking determined surcharge norms, or to all contract types applicable to monetary duties without any exceptions.

The article determines the types of duties subject to Art. 625 of the Civil Code of Ukraine application. It sets the relation of annual 3 % with monetary costs usage payment, surcharge and the means of civil liability. It is determined that annual 3 % is a mean of civil liability applicable in case of monetary undue payment by the debtor.

Keywords: monetary obligation, penalty, responsibility, percent.

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SOCIO-LEGAL FUNCTIONS OF COMMERCIAL CONTRACTS

The paper contrasts socio-legal research of commercial contractual relationships to conventional legal analysis of contracts. It reviews the works of scholars in various disciplines including law, economics, and management, and suggests that the most fruitful way to understand the actual role of contracts in business is to analyze their socio-legal functions, such as trust-building, communication channelling or symbolic ritual, within a wider socio-political context of this society.

Keywords: commercial contracts, socio-legal research, law and society approach.

Classic contract law in the Romano-Germanic, common law, and post-socialist traditions alike has treated contracts permissively. In traditional common law textbooks, contract is defined as an exchange of promises for which, if breached, the law will provide a remedy [1, p. 1022–1033]. In Ukraine, in transition from a socialist to a post-socialist law tradition and in common with the Civil Law tradition, contract is defined as "an agreement of two or more parties aimed at establishment, change or termination of civil law rights and obligations" [2]. Although there is quite a difference between these definitions, they both are based on similar general assumptions that a transaction under a contract is discrete; the identities of the parties are irrelevant; agreements and performance are clear and complete; issues of opportunism and of trust do not arise; the personal involvement of the parties is minimized; no significant histories nor likely future relations exist; and that if any problems occur, they can be remedied by the application of the law [3; 4].

This traditional view of the contract dominated the legal world for centuries but has been recently subjected to challenge by socio-legal or "law and society" scholars. Goetz and Scott argue that "where the future contingencies are peculiarly intricate or uncertain, practical difficulties arise that impede the contracting parties' efforts to allocate optimally all risks at the time of contracting" [5, p. 1090]. Therefore, classic contract law was critiqued for an inability to reflect the modern conditions of a technologically developed market economy. As a consequence of the above critique, the socio-legal approach to contracts has, first, expanded the scope of the notion of contracts and, second, helped scholars develop a contextual analysis of contracts.

Socio-legal scholars came up with a view of contracting derived from empirical observations. This approach better reflected the messy realities and therefore did not fit conventional jurisprudential and legislative approaches to contracts. Within this approach, Macneil equated contracts to "relations among people who have exchanged, are exchanging, or expect to be exchanging in the future" [6, p. 274]. Consequently, contracting was viewed as a "process of managing and adjusting relationships within a framework set by formal agreements and other external regulatory influences" [7, p. 124].

According to this line of thought, formal contractual documents present a central focus of the relationship but do not equate the relationship. On one hand, social relations between contracting parties capture broader aspects than those fixed in the contracts. On the other hand, it often happens that contracts contain elements that go beyond the relationship of the parties or have no actual connection to this relationship. Therefore, the formal contractual document is a starting point in the socio-legal studies of contracting that enables the relationship itself to be identified.

When formal contracts are seen as an integral part of contractual relations, the attention of researchers moves beyond the substance of contractual clauses and the legal rules governing them. Other characteristics of contracts acquire greater importance for a prospective analysis of relations between the parties. Such characteristics of formal contracts include, among others, the form of the contracts, their completeness, and their duration.

The second aspect of the socio-legal approach to an analysis of contracts concerns the scope of the analysis. Socio-legal scholars advocated a highly contextual approach to understanding contractual relations [8, p. 881] and the importance of the wider economic, organizational, and institutional environment in which the contract and compliance with the contract are set [9]. Although such an approach presents serious challenges for the researcher, who must possess a solid understanding of and ideally a feeling for the local context and cultural predispositions of local business, it is worth undertaking.

Economic exchange would not be feasible without an explicit or at least an implicit contract – the "meeting of minds" or "agreement" of the parties. The role of contract in supporting economic exchange within the context of the North American and European business environment has become one of the most controversial issues in socio-legal literature. In general terms this debate was termed a "fundamental disagreement in the literature on the relationship between trust and control" [10, p. 25]. It was largely triggered by contradictory empirical evidence.

Earlier empirical research downplayed the role of contracts in business relationships. Macaulay found in 1963 that businesses in the United States often did not resort to formal contracts; nor had they planned their contractual relationship in full, or used legal sanctions to enforce contracts and settle disputes [11]. Beale and Dugdale confirmed Macaulay's findings in 1975 study of English engineering manufacturers [12]. Palay noted in 1985 that "parties who have, or anticipate, strong relational ties with their contracting opposites are not particularly worried about initial terms of agreement" [13, p. 562]. Formal contracts were seen as substitutes to trust in business relations by Lyons and Mehta [14]. Macaulay reiterated in 2003 that in many business relationships "careful contract negotiation signals distrust when the situation calls for a business marriage" [15, p. 46].

Another stream of empirical studies explored the role of contract in long-term relationships. Deakin and others contended that "a formal, detailed agreement may be a sign of a pre-existing cooperative relationship between the parties, which facilitates a process of advance planning" [9, p. 340]. Arrighetti and colleagues empirically studied contracting practices of British, German, and Italian firms in mining machinery and furniture manufacturing [16]; Hadfield and Bozovic researchers explored contractual relations of the United States firms in varied sectors [17]; Poppo and Zenger analyzed contracts for information services [18]; Woolthius and colleagues researched inter-firm relationships in technical innovation [19]. All these studies confirmed the importance of the formal written contract in business, together with its complementary role in respect to trust and informal institutions of contract enforcement.

Increasingly researchers recognized various circumstances under which contracts could be of less or more importance. For example, the findings of Woolthius and colleagues distinguished between two scenarios. Where trust is lacking, the legal sanctions of a formal contract are seen as a viable substitution, provided the court system functions properly to draw meaningful redress; then "contracts are more likely to be intended and interpreted as safeguards against opportunism". When trust between contracting parties is in place, the contract is not dismissed, but supports the relationship [19].

The existence of numerous empirical findings pointing in opposite directions implies that the very notion of contract is ambiguous. If the contract is treated as an exclusively legal instrument for the purpose of litigation, then its role in business becomes marginal. According to Campbell:

If the legal remedy is not pursued when it is available, then the contract itself is not of the first importance. One does not need a contract to exchange goods – one needs the contract to get a state-underwritten guarantee of a remedy in the event of a breach [20, p. 168].

This approach, which confines contracts to a "uni-dimensional legal safeguarding instrument", was demonstrated to be misleading at best [19]. Conversely, when other extra-legal functions of contracts are appreciated, the role of the contract in business relations becomes more meaningful. Therefore, apart from legal recourse, contracts have been shown by many socio-legal scholars to be necessary for a variety of purposes.

First, all contracts to varying degrees incorporate the parties' vision and planning of their commercial engagement. According to Vincent-Jones, the planning function of the contract refers to technical issues of "determining who is to do what, when, and for how much, how payment is to be adjusted in line with task changes, and how performance is to be measured, monitored and rewarded" [21, p. 325]. Macaulay in his 1963 essay, when describing the planning function of contract, meant "careful provision for as many future contingencies as can be foreseen" [11, p. 56]. Many researchers have empirically demonstrated that by spending more time on the negotiation of the technical details of their future deal, western business people think more of the coordination of their efforts in the case of unforeseen contingencies, such as technical or economic developments, a hostile takeover, or the bankruptcy of one of their trading partners, or accidents, rather than of possible opportunism and protective legal remedies [11, p. 157; 16, p. 185; 19, p. 835].

Second, where transactions are complex, formal contracts serve as a record of the deal and as a memory aid, akin to the minutes of a meeting. Even in simple transactions in a non-western context, such as between businesses in Ghana, firms keep records of transactions and use them to "minimise discussion on the reality of the debt rather than to ensure payment through legal recourse" [22, p. 441].

Third, contractual frameworks may be closely linked to the organizational routine of the companies concerned. In the context of a study of inter-firm alliances, Vlaar and others found that formalization may be "imposed on participants by the managers that are held responsible for the performance of the alliance" [23, p. 441]. According to King and Smith, contracts in many cases become formalized routine solutions to common problems of organizations which are established "without much thought to concerns about opportunism" [24, p. 31].

Fourth, in all types of contractual relations, contracts could perform a symbolic function to demonstrate a mutual belonging to the same community of people tied by common norms and a common cultural background [19, p. 835]. In this view, contracts represent "a symbolic gesture of legitimacy" and "a symbolic rite of passage into the modern world of corporate business" [24, p. 39].

Finally, in long-term relations between regular trading partners, contracts could be treated as a sign of commitment to the relationship that signals loyalty and trust to the other party [19, p. 831]; as a communication tool to transmit information within and between firms [25, p. 267; 26, p. 39]; as a device to communicate legitimacy to a broader set of stakeholders, reinforce or establish organizational identity [24, p. 33]; as a basis for insurance coverage, a credit grant, the determination of a tax liability, or as legitimization of the actions of a company's management vis-à-vis its owners [26, p. 38].

To conclude, this brief overview of literature concerning socio-legal research in the field of contracts suggests that one productive way to look at formal contracts is to appreciate their qualitatively different functions which go far beyond legal defence in courts [27].

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Кисельова Т. С.

СОЦІОПРАВОВІ ФУНКЦІЇ ГОСПОДАРСЬКИХ ДОГОВОРІВ

У статті розглянуто соціоправовий підхід до досліджень правових відносин, пов'язаних з укладанням та виконанням господарських договорів. На основі аналізу наукових праць різних дисциплін, включаючи право, економіку та менеджмент, авторка обґрунтовує необхідність вивчення різноманітних функцій договорів, як-от побудова довіри, налагодження комунікації або втілення ритуалу. Розуміння таких «неюридичних» функцій договорів у широкому соціополітичному контексті конкретного суспільства надає повнішу картину їхньої ролі в бізнесі.

Проаналізовано функції господарського договору з точки зору соціоправового підходу до досліджень правових явищ. З огляду на те, що формальний письмовий договір відображає тільки невелику частину відносин між сторонами, яка, крім того, не завжди точно віддзеркалює реальні відносини, соціоправовий підхід до дослідження господарських договорів розширює поняття договору до поняття договірних відносин. Цей підхід розглядає письмовий договір і правовідносини, які він регулює, в сукупності. Крім того, договірні відносини аналізуються в широкому соціальному, політичному та організаційному контексті суспільства, що надає можливість знайти більш глибинні пояснення причин порушення договірних зобов'язань на системному рівні. Розширення фокусу від формального договору до реальних, подеколи неформальних, відносин між сторонами дає змогу зрозуміти різноманітні функції договорів. На підставі аналізу праць зарубіжних учених з права, економіки

та менеджменту, окрім традиційних функцій договору, авторка виділяє такі функції, як побудова довіри між контрагентами, встановлення каналу для комунікації, економічне планування, рутинні менеджерські практики, втілення символічного ритуалу тощо. Навіть якщо для досліджень договорів у такому розширеному розумінні потрібно набагато більше зусиль, ніж для традиційного правового аналізу, ці зусилля недаремні, оскільки вони сприяють кращому розумінню комплексної реальності.

Ключові слова: господарські договори, соціоправові дослідження, право і суспільство.

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РОЗКРИТТЯ СТРУКТУРИ ВЛАСНОСТІ ТЕЛЕРАДІООРГАНІЗАЦІЙ В УКРАЇНІ: ПРОБЛЕМИ ЗАКОНОТВОРЧОСТІ ТА ПРАВОЗАСТОСУВАННЯ

У статті розглянуто окремі проблеми застосування положень чинного законодавства України щодо прозорості структури власності телерадіоорганізацій: недосконалий термінологічний апарат Закону України «Про телебачення і радіомовлення», невідповідність передбачених ним механізмів меті нормативно-правового регулювання, недостатність ресурсів Національної ради України з питань телебачення і радіомовлення щодо перевірки достовірності інформації про структуру власності телерадіоорганізацій.

Ключові слова: кінцеві бенефіціарні власники, структура власності телерадіоорганізації, прозорість медіавласності.

25 листопада 2014 року набув чинності прийнятий 14 жовтня 2014 року Закон України «Про внесення змін до деяких законодавчих актів України щодо визначення кінцевих вигодоодержувачів юридичних осіб та публічних діячів» [1], завдяки якому законодавство України поповнилося широковідомим у більшості правових систем розвинутих країн поняттям «кінцеві вигодоодержувачі», яке пізніше законодавець трансформував у поняття «*кінцеві бенефіціарні власники*».

Основною метою Закону є зменшення рівня корупції в Україні, а також запобігання легалізації доходів, отриманих злочинним шляхом. Ця мета досягається шляхом покладення на орган управління юридичної особи обов'язку розкривати інформацію про реального (кінцевого) власника відповідного суб'єкта господарювання, тобто особу, яка фактично здійснює над ним контроль.

Цілком очевидно, що такий підхід у повному обсязі застосовується й до засобів масової інформації, прозорість структури власності яких має ще одну вкрай важливу мету, задекларовану, зокрема, в Рекомендаціях Комітету Міністрів державам-членам Ради Європи № R(94)13 про заходи забезпечення прозорості засобів масової