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DIGITAL CONTRACTS IN CIVIL LAW OF UKRAINE

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Abstract. Today, almost all global processes are undergoing digitalization, and jurisprudence is no exception. In this context, classical institutions of civil and contract law that use the digital space, namely contracts, are of great interest. Unfortunately, it is not very developed and not completely settled in Ukraine. At the same time, there is quite a lot of experience in regulatory control and legal regulation of these institutions in the world. The transition of law to the Internet is considered by civil scientists as the most important condition for the emergence of digital law, which in its turn is closely related to civil law. When parties enter into electronic contracts the whole contract can literally be concluded within seconds at the click of a button, so it's easier than enter into contracts with each other interacting face to face. The traditional paper based contract law has rules that apply to matters such as jurisdiction, validity, formation of contract, modifications to contracts. In the world of online trading these are all issues that arise in online contracts and is a challenge to the traditional concepts of contract law.

Keywords: *digital contract, civil law, electronic evidence, form, code.*

Digitization and digital flourishing are replacing the old means of electronic communication, such as the telephone, fax, telegraph, and are changing not only the methods of communication, but also its subject matter. The Internet has supplanted all other means of communication, leaving them far behind. Today, jurisprudence, trade, and business are moving online, which allows to increase the flow of customers, work regardless of the time of day and your location. Therefore, individuals and legal entities create their websites, online stores provide their customers with more comfortable conditions of access to goods and services. And just a few clicks add comfort to our everyday life and simplify business. At this stage, such a new link of contracts as electronic contracts emerges.

First of all, according to Clause 5 of Part 1 of Article 3 of the Law of Ukraine "On Electronic Commerce", an electronic contract is an agreement between two or more parties aimed at establishing, changing or terminating civil rights and obligations and executed in electronic form [1].

The electronic form of the contract as a way of expressing the will is endowed with a number of features that distinguish it from the "classical" written form and require detailed research. First of all, this type of difference should include the fact that the content of the contract is recorded not on paper, but in digital form in the computer memory. Some researchers believe that the specified methods of expression of will, which are the essence of simple written and electronic forms of the contract, are the same in their legal nature, which we cannot agree with. The fundamental difference between the indicated methods of expressing the will is that, unlike the usual written form, the electronic form is not directly accessible for human perception. In other words, if it is necessary to obtain information about the terms of the contract, it is necessary to transform the digital form into a visual form accessible to human perception [2, p. 90-91].

According to articles 205, 207, part 2 of paragraph 2 of article 639 of the Civil Code of Ukraine, a contract concluded with the help of information and communication systems with the consent of both parties is considered to be concluded in the written form. Thus, according to Part 1 of Article 638 of the Civil Code of Ukraine, a contract is considered concluded if the parties have reached agreement on all essential terms of the contract in the proper form [3].

If we take into account the provisions of part 1 of Article 181 of the Economic Code of Ukraine, it is obvious that the contract is concluded in the manner established by the Civil Code of Ukraine, taking into account the features provided for by the Economic Code of Ukraine [4].

The purpose of signing the contract is the need to identify the signer, confirm the signer's agreement with the terms of the contract, as well as confirm the integrity of the data in electronic form. This means that if we have an electronic form of the contract, it must be signed with an electronic signature.

According to the first part of Article 12 of the Law of Ukraine "On Electronic Commerce", the moment of signing an electronic contract is the use of:

- electronic signature or electronic digital signature in accordance with the Law of Ukraine "On Electronic Digital Signature", provided that all parties to an electronic transaction use the means of electronic digital signature;
- electronic signature with a one-time identifier defined by the Law;
- an analogue of a handwritten signature (facsimile reproduction of a signature using mechanical or other means of copying, another analogue of a handwritten signature) by written agreement of the parties, which must contain samples of relevant analogues of handwritten signatures [1].

To sign electronic documents, you can use the online service for signing documents with an electronic signature on the DIYA portal.

With regard to judicial practice, the Resolution of the Supreme Court dated January 19, 2022 in case No. 202/2965/21 (a printout of an electronic correspondence cannot be considered an electronic document (a copy of an electronic document) within the meaning of the provisions of part one of Article 5 of the Law of Ukraine "On Electronic Documents and Electronic document circulation" shows that this printout of electronic correspondence cannot be considered as evidence, because it does not contain an electronic signature, which is a mandatory requisite of an electronic document, since in this case it is impossible to identify the sender of the message and the content of such a document is not protected from corrections and distortions) [5].

Not every electronic legal agreement requires the creation of a separate electronic contract in the form of a separate electronic document. That is, this means that an electronic contract can be concluded in a simplified form, or in the form of a separate document, that is, classically.

The place of conclusion of an electronic contract is the location of a legal entity or the actual place of residence of an individual who is a seller (executor or supplier) of goods, works, and services.

The moment of fulfillment by the seller of the obligation to transfer the goods to the buyer is determined in accordance with the provisions of the Civil Code of Ukraine on sale and purchase, unless otherwise established by this Law. If the subject of an electronic contract is the providing of services in the field of electronic commerce, the supplier's obligation to the consumer is considered fulfilled at the moment when the service provided by the supplier meets the properties defined by the contract or legislation. If the subject of the electronic contract is the performance of work in the field of electronic commerce, the duty of the executor to the customer is considered fulfilled at the moment when the result of the performed work meets the requirements established by the contract or legislation.

The electronic contract may specify another moment of fulfillment of obligations between the parties. The buyer (customer, consumer) must receive confirmation of the execution of an electronic transaction in the form of an electronic document, receipt, merchandise or cashier's check, ticket, coupon or other document at the time of the transaction or at the time of the seller's fulfillment of the obligation to transfer the goods to the buyer [1].

Electronic documents (messages) related to an electronic transaction may be submitted as evidence by the parties and other persons participating in the judicial proceedings. According to Article 64 of the Civil Procedure Code of Ukraine, Article 36 of the Economic Procedure Code of Ukraine and Article 79 of the Code of Administrative Procedure of Ukraine, evidence submitted in electronic form

and/or in the form of paper copies of electronic messages are considered written evidence [6; 7; 8].

Therefore, e-contracts are written evidence in the sense of the current legislation of Ukraine. At the same time, such contracts must meet all the requirements established for electronic documents, namely: the information in such a document must be recorded in the form of electronic data, including the mandatory details of the document, and it must also be signed with an electronic signature.

Article 100 of the Civil Procedure Code of Ukraine defines electronic evidence as information in electronic (digital) form containing data on circumstances relevant to the case, in particular, electronic documents (including text documents, graphic images, plans, photographs, videos - and sound recordings, etc.), websites (pages), text, multimedia and voice messages, metadata, databases and other data in electronic form. Such data can be stored, in particular, on portable devices (memory cards, mobile phones, etc.), servers, backup systems, other places of data storage in electronic form (including the Internet) [6].

Electronic evidence is submitted in the original or in an electronic copy certified by an electronic signature equivalent to a handwritten signature in accordance with the Law of Ukraine "On Electronic Trust Services" [9].

The participants in the case have the right to submit electronic evidence in paper copies, certified in the manner prescribed by law. A paper copy of electronic evidence is not considered written evidence. A party to the case who submits a copy of the electronic evidence must state that he or another person has the original electronic evidence. If a copy (paper copy) of the electronic evidence is submitted, the court may demand the original of the electronic evidence from the relevant person at the request of a party to the case or on its own initiative. If the original of the electronic evidence is not submitted, and the party to the case or the court questions the conformity of the submitted copy (paper copy) of the original, such evidence is not taken into account by the court [7].

The legal status of an electronic document and its copy is determined by Article 8 of the Law of Ukraine "On Electronic Documents and Electronic Document Management": the legal force of an electronic document cannot be denied solely because it is in electronic form; the admissibility of an electronic document as evidence cannot be denied solely on the basis that it is in electronic form [10].

The law establishes restrictions on contracts concluded in electronic form. Yes, contracts that require notarization or state registration cannot be concluded in electronic form [1]. For example, contracts for the purchase and sale of real estate, mines, donations, leases of buildings or other capital structures, etc. So, the law is about electronic trade, namely about goods, works and services that are

provided on the basis of Internet stores using information and telecommunication systems. An electronic document cannot be used as an original:

- certificates of the right to inheritance;
- a document that, in accordance with the law, can be created in only one original copy, except in the case of the existence of a centralized repository of original electronic documents; and in other cases provided by law.

Electronic evidence can be:

– correspondence between two people;
– information from the website;
– e-mail from the postal service;
– a post on a social network;
– other.

The method of recording electronic evidence will be the creation of its electronic copy, most often this happens in the form of a so-called " screenshot ". From this it can be concluded that the screenshot itself is not electronic evidence, it is only a source of information that will have evidentiary value in the case in the future, that is, it is an electronic copy of one or another electronic evidence. At the same time, it is important to consider that the court can check a copy of an electronic document by requesting its original and conduct a review and research of the website, correspondence in the court premises from the appropriate device (laptop, tablet, phone, etc.). That is, a printout from the site can be taken into account by the court as evidence in court, but the applicant of such evidence must be ready to demonstrate such a site and the information provided in the printout on the appropriate device.

At the expense of screenshots as evidence, even a certain court practice has already been created. For example, the Ruling of the Supreme Court dated July 13, 2020 in case No. 753/10840/19 (printouts of screenshots of correspondence in Viber are appropriate evidence; issuance of a restraining order is mandatory in case of evidence-based continuous use in direct communication or correspondence with the former husband/wife and children threats, including physical violence, use of profanity, insults and humiliation against them, which qualify as domestic violence in the form of psychological violence) [11], Resolution of the Supreme Court of December 26, 2018 in case No. 761 /13156/16 (screenshots must be examined by an expert) [12], Resolution of the Supreme Court dated March 17, 2020 in case No. 923/566/19 (commercial courts accepted screenshots of e-mail correspondence as proper and admissible evidence) [13]. So, we can conclude that the faster technologies develop, the more the legal and judicial system is digitized and modernized.

Parties to the e-contract can be e-commerce entities:

- a business entity of any organizational and legal form that sells goods, performs work, provides services using information and telecommunication systems;
- a person who purchases, orders, uses the specified goods, works, services by making an electronic transaction.

E-deeds and e-contracts have widely entered the national legal field thanks to the Law of Ukraine "On Electronic Commerce", which introduced a number of amendments to the Civil Code of Ukraine in order to provide legal certainty to transactions made with the help of information and telecommunication systems and contracts concluded in in electronic form [1; 3].

The level of security of Ukraine's information space is a serious problem. In the era of cybercrime, personal information and information security of individuals is at risk. Therefore, it is necessary to improve the standards of protection of digital information.

Thus, the era of digitalization and digital development cannot leave Ukraine aside, which is a natural result of the flourishing of the information society. An important element of this process is the state regulation of electronic commerce, in particular, the electronic contracting. Such agreements make people's lives much easier, which proves their value and practicality. So, drawing conclusions, we can say that we need to research, study, develop, improve and implement electronic deeds and electronic contracts more.

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