THE CONTENTS OF UNNAMED CONTRACTS

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Abstract: *Any construction, whether named or unnamed, is a new model, consisting of various kinds of conditions and features that reflect the interests of society and the state as a whole. The peculiarity of the new contractual structure in the form of an unnamed contract is the presence of a definition of the subject of the legal relationship, along with the object, the subject, the essential and distinctive conditions of this contract, the rights and obligations of the parties, the procedure for concluding, changing and terminating the contract, the responsibility of the parties under the contract. At the same time, the contract is considered concluded when the parties have agreed on all the terms of the contract, without going beyond the generally known legal procedure.*

Key words: *unnamed contract, specifics of the contract, subjects and objects of the contract, content of the contract, distinctive features of the contract*

Rezumat: *Orice construcţie, denumită sau nenumită, este un model nou, constând din diferite tipuri de condiţii şi trăsături care reflectă interesele societăţii şi ale statului în ansamblu. Particularitatea noii structuri contractuale sub forma unui contract nenumit este prezenta unei definitii a subiectului raportului juridic, alaturi de obiectul, subiectul, conditiile esentiale si distinctive ale acestui contract, drepturile si obligatiile părţile, procedura de încheiere, modificare şi încetare a contractului, responsabilitatea părţilor în temeiul contractului. Totodată, contractul se consideră încheiat atunci când părţile au convenit asupra tuturor termenilor contractului, fără a depăşi procedura legală general cunoscută.*

Cuvinte-cheie: *contract nenumit, specificul contractului, obiectele şi obiectele contractului, conţinutul contractului, caracteristicile distinctive ale contractului*

Introduction: In the event that a new civil contract does not fall under any of the named models, it can be attributed to the number of unnamed contracts, but at the same time it will be possible to identify and study which of the terms of this contract do not coincide with the generally accepted and well-known contractual terms of the named contracts.

Ozhegov’s Explanatory dictionary provides that "contract" means a written agreement of the parties on mutual obligations assumed” [14, p. 74]. According

to the Explanatory Dictionary of the Russian Language by T.F. Efremova “A contract is usually an agreement concluded in writing, where certain obligations are established between the parties to the agreement, on the basis of an agreement on their performance”[5, p. 312].

In the Explanatory Dictionary of the Russian Language, ed. S.I. Ozhegova and N.Yu. Shvedova, “A contract is an agreement concluded in writing on the fulfillment by the parties of their obligations to fulfill all the conditions agreed between the parties”[15, p. 296].

Let's try to interpret the meaning of the word "agreement", according to the Dictionary of the Russian language by A.P. Evgenieva “Agreement from the verb to agree, that is, recognition by one or the other party of something (positive, negative, false, true, erroneous and real)”[6, p. 114].

Further, “named in the law”, how to understand this phrase? In accordance with the Law of the Republic of Moldova No. 100 of December 22, 2017 "On Normative Acts" the Art. 8 establishes that “a law is a normative act adopted by the Parliament on the basis of constitutional norms in accordance with the procedure established by the Constitution of the Republic of Moldova and the Rules of Procedure of the Parliament approved by the Law No. 797/1996, as well as by the above mentioned Law”[12]. Evgenieva A.P. in the Dictionary of the Russian language characterizes “law” as a set of mandatory norms and rules governing public relations, that is, it can be argued that a law is a combination of established prescriptions, rules that are binding and play not an unimportant value in a person's life, and most importantly, they must be met.

Synonyms for the adjective "named" are specified, mentioned, implied, named in the law, specifically regulated by it, that is, a normative legal act adopted in relation to something, which is provided in order to regulate specific social relations, and the rest of the agreements will be unnamed , that is, not listed, not characterized, not named in the law.

The legislator in Part (2) of Art. 994 of the Civil Code of the Republic of Moldova provides that the following applies to unnamed contracts:

a) Agreement of the parties, that is, the parties agree, or have come to an agreement, have reached agreement on something;

b) The legal provisions applicable to contracts and contractual obligations in general, i.e. to which the provisions set out in Section II “On contracts in general” apply, where according to Art. 992 of CC of RM “A contract is an agreement of two or more persons on the establishment, change or termination of legal relations”. A contract is a kind of conversation, spoken words about something, where the spoken word corresponds to a counter word, but both of them are aimed at satisfying something. That is, those who wish to achieve a common goal, or the contract can be considered as a legal relationship, as a result of which obligations arise between the parties at the will of the subjects of the contract, and an obligation is a kind of necessity, an obligation to fulfill something, to return something or fulfill any -or actions from one side to the

other side. Most often, these or those obligations are associated with the repayment of debt, with the transfer of property, the return of funds, with the provision and performance of any work and services. And also in Section I “On obligations in general”, where, according to Part (1) of Art. 774 of the Civil Code of the Republic of Moldova provides that “By virtue of the obligation relationship, the creditor has the right to claim from the debtor the execution, and the debtor is obliged to make it”;

(c) Practice and custom between the parties in this area. The legislator by practice means any activity related to the publication and implementation of the statutory regulations in conjunction with the accumulated experience. The term “custom” is understood as a way of behavior that has already developed over a long period of time, which is carried out in society and is reproduced as usual and inherent in all members of society. Custom is a norm, the fulfillment of which is not even in doubt and is taken for granted and for granted. But a custom is not a tradition, since traditions are phenomena inherent in all spheres of life and culture, that is, they are interpreted more broadly than a custom. The term "custom" is equated with the term "rite", but the rite is only a variety, and the custom itself includes the rite, as well as its practical phenomenon. According to V. Propp: “Rite and custom are not the same”[16, p. 76], in our opinion, this judgment is correct.

d) The legal provisions applicable to similar named contracts, insofar as they are compatible with the nature and purpose of the contract not named in the law, that is, the general rules applicable to the named contracts insofar as they relate to the essence and achievement of a single purpose, that is, the desire of the subject to achieve the final result, which the process itself was initially aimed at - a conscious inclination to complete the fulfillment of certain tasks by one or another subject.

Taking into account the legally established and enshrined in the Civil Code of the Republic of Moldova, the essential conditions and features of the named contracts, let us build the following hierarchical pyramid of essential features of unnamed civil law contracts: the subject of the contract; object of the contract; subjective composition of the contract; its content; conclusion, amendment, termination of the contract, the responsibility of the parties under the contract.

The named agreements reflect the content of the many times emerging social relations, polished to the smallest detail, both by science and by the legislator. The possibility of concluding unnamed or mixed contracts, provided for by the Civil Code of the Republic of Moldova, is a progressive phenomenon and is aimed at regulating relations that were not known and did not exist at the time of the adoption of the Civil Code of the Republic of Moldova, and the possibility of their emergence, which became real after the adoption of the Civil Code of the Republic of Moldova, in connection with the emergence of new objects of civil legal relationship.

Taking into account the above, I still want to admit that the establishment and classification of one or another treaty among the named or unnamed treaties is a very complex and ambiguous process, in the knowledge of which one cannot do without a deep analysis and synthesis of all the signs and directions of the treaty from the point view of national and foreign law, as well as without studying the judicial practice of the Republic of Moldova, as well as the judicial practice of foreign countries, for example: the Russian Federation, the Republic of Belarus, the Republic of Uzbekistan, the Republic of Kazakhstan and the countries of the European Union.

Taking into account the above, we will try to analyze a classic example of an unnamed contract, without the terms of other contracts, such as an agreement for the use of a separate structural element (part) of an immovable thing (building) for the purpose of advertising. Assuming the proximity of such an agreement to a property lease agreement, we will reveal its distinctive features. Based on the content of Art. 1251 of the Civil Code of the Republic of Moldova, property lease is an agreement according to which: “one party (the lessor) undertakes to provide the other party (the lessee) with an individually defined thing for temporary use or for temporary use and possession, and the tenant undertakes to pay for that". To determine the type of agreement in the form of a property lease agreement, however, like a lease agreement, it is sufficient that the subject of this agreement is the transfer of an immovable or other property for use within a certain period and at a price set by the parties. The specificity of the legal regulation of a property lease agreement is due to the specifics of the subject of this agreement, the elements, depending on which the payment for the use of the thing is determined. According to Art. 1252 of the Civil Code of the Republic of Moldova, the contract for the lease of real estate is considered concluded in writing. In this situation, the subject of the contract is the roof or wall of the building where the advertisement will be placed, that is, such a subject of the contract, which is not directly provided for by the norms of the Civil Code governing relations under this contract.

The correct interpretation of this agreement as an unnamed one has a connection with the fact whether the structural element goes into use separately from the specified building or together with it, in fact, considering it a separate object of immovable property. The significance of this interpretation of the contract is whether the component part of the building (that is, the roof of the building, the wall) is an independent thing in this situation. Taking into account the confusion of this interpretation, one can objectively interpret the definition of a “building”, implying a room as an integral part of a building. We are talking about the hiring of the entire building or the structures that make up this building. The contradiction of this agreement is to prove that its subject is to offer a person the opportunity to freely place advertising on the roof, wall of the specified building, and in this case the agreement will be considered unnamed. Since the transfer of a thing to rent leads to a short-term transfer by the owner of

the rights to handle this thing, and in our case, the roof of the building or the wall acts as an integral element of the building and at the same time does not act as an independent object provided separately from the building and this agreement will not be considered as an agreement property lease, but will be recognized as an unnamed contractual structure.

In our opinion, on the one hand, an agreement that is concluded between the owner of the building and the person who wants to dispose of a separate component of the building for the purpose of advertising, while not representing a typical lease agreement, but an unnamed contractual structure. Taking into account all the provisions of the legislation of the Republic of Moldova concerning the lease agreement, the building as a whole is subject to encumbrance, although this is not provided for in the analyzed agreement. So, we can safely say that this transformation of a property lease agreement with a pronounced specificity, composition, purpose and there is reason to believe that this is an unnamed agreement. The difference between the new contractual structure as an unnamed contract consists in the presence of a definition of the subject of the legal relationship, object, subject, essential and distinctive conditions of this contract, the rights and obligations of the parties, the procedure for concluding, changing, terminating the contract, the responsibility of the parties under the contract.

An unnamed contract is an unnamed contract in the system of civil law contracts, but neither its purpose (*cauza*) nor its content contradicts either public order or the good morals of society [22, p. 251-259].

The development and transformation of economic relations in the Republic of Moldova led to the complication of contractual structures, as well as to the emergence of new ones, previously unknown to the national legislation. It is no longer uncommon for a concluded agreement to contain signs of contracts, both enshrined and not enshrined in the legislation of the Republic of Moldova, and this creates certain inconveniences when concluding agreements of this kind, and even more inconveniences are created when resolving disputes arising from them between parties to such agreements.

Civil law does not provide for an exhaustive, closed list of contracts and does not oblige the parties to “adjust” their contractual ties to a known contractual type. For objective reasons, it is impossible to envisage all options for contractual relations, since the set of named contracts always lags behind the needs of economic turnover [1, p. 404]. That is why, in most cases, it is impossible to conduct effective business with the help of legally defined models of contracts [21, p. 18]. Participants in civil turnover need contracts "transformers", which are repeatedly transformed, that is, maximally ensure the achievement of the desired results cheaper and more efficiently and in the interests of participants in civil turnover.

The legislation of the Republic of Moldova to some extent contributes to the development of “transformers” documents of title, namely, referring to part (2) of Art. 993 of the Civil Code of the Republic of Moldova, the contracting parties

are free to conclude contracts within the mandatory legal provisions and to determine their content. An agreement is a legal document that is based on the consent and confidence of the parties, concluded in accordance with the requirements of the law, does not contradict the general principles of civil law, law and order and public mores, securing the will and desire of the parties, and also containing obligations that provide for the voluntary mutual consent of the parties to in relation to the rights and obligations of the parties under the contract.

The opportunity set out above in the Civil Code of the Republic of Moldova allows participants in civil transactions to independently form a certain model of a “transformer” agreement, which is not provided for by law, but most effectively regulates the relations that have arisen between them. To establish the type of contract as unnamed, it is sufficient to establish that it is not regulated by law and other legal acts. An unnamed contract is characterized by the novelty of the contract, determined by the specifics of the contract, the special structure of the rights and obligations of the parties, and the specifics of the fulfillment of obligations. Figuratively speaking, an unnamed contract is an empty legal framework initially located in a kind of legal vacuum and filled at the will of the participants in the civil turnover with a certain content [4, p. 34-43].

Often, the courts are faced with difficulties in resolving disputes arising from unnamed contracts, since there are no clear guidelines on the limits of the contractual situation between the parties, which often leads to exceeding the limits of freedom of contract. To some extent, the parties, using an unnamed contract, want to mislead the courts, referring to the so-called and established "business habits (customs)", then to some other circumstances, squeezing an unnamed contract into a structure close to the named one, just to achieve the desired result. In such a situation, law enforcement agencies must first assess agreements unknown to the current legislation, from the point of view of their non-contradiction with the law, in accordance with Part (2) of Art. 4 of the Civil Code of the Republic of Moldova, which reads: “By-laws are applied to regulate civil legal relations only if they are issued on the basis of the law and do not contradict it”. Having found in the content of unnamed constructions a contradiction to these concepts, law enforcement authorities must recognize them as invalid with all the legal consequences provided for by the current legislation.

Next, let's touch on the legal aspects regarding the content of the contract. As you know, the content of the contract is formed by: the rights of the subjects and their obligations under the contract. In the usual contractual structure, the synallagmatic obligations of one party correspond to the rights of the counterparty and vice versa [10, p. 345].

Legal relationship is a kind of legal guidance of the subject in relation to property. In the case when the thing (object) itself does not differ from others in any individualizing characteristics, then its nature can be resolved within the

framework of the law of obligations. Even in Roman law, legal obligations were built on promises through the pronunciation of words (*verbis*), and then reflected in the letter (*litteris*), subsequently with the transfer of the thing (*res*), the achievement of a mutual agreement on all essential terms of the contract (*consensus*). The significance and usefulness of legal obligations is reflected in a single merger of the principle of free will with the principle of typification. The freedom that is realized within the bounds of legal obligations allows you to apply and use the necessary legal structure, which opens up the possibility of a quick response to the emerging new desires of the whole society. Indeed, in fact, an obligation is a legal relationship approved within the framework of one specific legal contract, presented in the form of a connection between the parties (the creditor's ability to demand from the debtor to do something), because it is through obligations that there is a real opportunity to force the debtor to fulfill this obligation, based on the rules of law and order and morality [18, p. 48-64]. The very definition of "obligation" is enshrined in part (1) of Art. 774 of the Civil Code of the Republic of Moldova, according to which: “By virtue of the obligation relationship, the creditor has the right to demand the execution of the performance from the debtor, and the debtor is obliged to perform it. Execution may consist of giving something, doing a certain thing, or refraining from doing a certain thing".

Liabilities have both a passive and an active side. Let us take the liberty to trace this picture using the example of the civil legislation of such countries as Romania, Ukraine.

According to Art. 164 of the Civil Code of Romania, an obligation is a legal connection, by virtue of which the debtor assumes the obligation to perform performance to the creditor who has the right to receive due provision [2]. And in part (1) of Art. 509 of the Civil Code of Ukraine, the obligation of the debtor is to commit a certain action in favor of the other party (the creditor) (transfer property, perform work, provide a service, pay money, etc.) or refrain from a certain action [3].

In reality, the obligation is embodied in a legal relationship, where the content is presented in the form of subjective rights and legal obligations. The implementation of the law of obligations is feasible through such principles of civil law as good faith and diligence. Namely, part (1) of Art. 775 of the Civil Code of the Republic of Moldova establishes that: “The debtor and the creditor must show good faith upon the occurrence, in the period of its existence and at the time of performance and termination of the obligation." In addition, the implementation of the law of obligations requires compliance with the general principle laid down in part (1) of Art. 10 of the Civil Code of the Republic of Moldova, according to which: “Individuals and legal entities participating in civil legal relations are obliged to exercise their rights and fulfill their duties in good faith, in accordance with the law, agreement, principles of law and order and morality. Good faith is assumed until proven otherwise”.

Based on the provisions of Part (3) of Art. 509 of the Civil Code of Ukraine, the obligation must be based on the principles of good faith, rationality and justice.

Romanian civil law establishes the obligation of every person to exercise rights and perform duties voluntarily, in accordance with public order and good manners, and does not allow the exercise of the right with the aim of causing harm or damage to another person or in any other excessive and unreasonable way, contrary to the principle of good faith (p. (1) Art. 14 and Art. 15 of the Civil Code of Romania).

A *bona fide* actor is a person whose behavior does not violate the law, the contract itself, the foundations of law and order and morality. The principle of good faith should apply equally to both the debtor and the creditor.

The Moldovan legislator provided for and consolidated the norms on contracts in the Book of the Third Civil Code, in Section II "On contracts in general" and the norms on obligations in Section I "On obligations in general", which testifies to the connection of contracts with the law of obligations.

After all, as you know, subjective rights and legal obligations operate within the framework of a given legal structure and express the will of the parties pursuing a common goal, to voluntarily accept, fulfill, perform certain obligations under the contract. If agreements do not have a single purpose, or if the purpose is contrary to public order and good manners, they will be invalid. In the countries of continental Europe, the main thing is the idea of an agreement as an agreement of two or more persons on the establishment or change or termination of subjective rights and legal obligations [7, p. 106].

Consequently, the nature of the unnamed contractual structure reflects the special independence and individuality of the object, focus, essential conditions and the absence of civil law regulation. This agreement does not fit into the boundaries of a specific type, type of agreement, where the parties themselves decide what the contractual model should be, but without going beyond the fundamental principles of the law of obligations and contractual law, within the framework of not contradicting their current legislation.

Important signs of an unnamed contract are: uncertainty, uncertainty in civil law, its subject matter, object, essential conditions, the rights and obligations of the parties contained in the contract, the relationship between the parties to the contract in the process of fulfilling the essential obligations assumed.

Moldovan and foreign civil legislation does not contain a closed, special list of contractual structures. In other words, the situation is not excluded when it may become necessary to create a kind of individual agreement special for a specific type (for example, a sponsorship agreement, an athlete transfer agreement, and others), which are not clearly named in the law and can be referred to as unnamed agreements.

Consider the so-called athlete transfer contract as an example of an unnamed contract. This type of contract is not enshrined in civil law, is poorly studied, but arouses both practical and scientific interest.

The definition of transfer is translated from English. to transfer - means to transfer or move (something, someone). This concept is applied in various fields: banking, economic, sports, tourism, etc. Let's try to figure out what this kind of transfer of athletes from one club to another is. The Athlete Transfer Agreement is devoid of legal regulation and represents a serious problem for all sports, both nationally and internationally. We will try to establish the legal boundaries within which this kind of relationship is regulated and what is the likelihood of their improvement [19, p. 45-61].

According to part (2) of Art. 1 of the Law of the Republic of Moldova "On Physical Culture and Sports" it is determined that: "Sport is a part of physical culture, a specific field of activity, the purpose of which is to maximize the development of a person's capabilities in competitive conditions, in the conditions of a sports-pedagogical process"[11].

Today, a professional sport is a guaranteed opportunity to generate large income, therefore, the relationship that has arisen between an athlete and a sports organization is very complex and sometimes contradictory.

The provisions of Part (2) of Art. 17 of the Law of the Republic of Moldova “On Physical Culture and Sports” prescribe that: “Sportsmen - professionals are persons who practice sports as a profession and receive income in accordance with an employment contract signed by them with a sports association or club of which they are members”. In the event that, during the term of the employment contract, an athlete, for some reason, said goodbye to his club, then either transfer (transitional payments, reimbursement of expenses, for the training of an athlete, etc.) is always at stake.

Due to the fact that neither the Civil Code of the Republic of Moldova, nor the Labor Code of the Republic of Moldova, nor other legislative acts regulate this type of contract, sports clubs, organizations, federations, using the principle of freedom of contract, regulate this kind of relations on the basis of the norms of the existing bylaw Regulation of the transition of young footballers to the territory Of the Republic of Moldova, approved by the Decision of the FFM Executive Committee No. 39 dated July 25, 2003 (hereinafter - the FFM Regulations) [17].

So, the norms of Art. 20 - 22 of the Regulations stipulate that: “If the transfer of a young player from one Training Center to another Center or divisional club is initiated in conditions where the duration of the contract or contractual relationship (Art. 8 of the Regulations) between the young player and the Training Center in which he is registered, has not expired, the corresponding transition will be carried out in the event that a mutual agreement is reached between the parties concerned, as a result of which an official agreement on the transfer of athletes will be signed, and only subject to the fulfillment of all obligations included in this contract. A young player who, upon reaching the age

of 19, has completed a football training cycle at the relevant Training Center and, on his own initiative, has not concluded or renewed a previously concluded contract with him, may transfer to any divisional club only with the condition that the host party pays compensation to the relevant Training Center for preparation of the player, according to Art. 17 and 19 of this Regulation. The transfer of a young player can be carried out between all Training Centers registered in the prescribed manner".

It can be seen from the above that such contracts include two conditions, namely: the period of the transfer of the athlete, the payment of monetary remuneration for the training of the athlete. It is not a secret for anyone that this contract is of a compensatory nature and this is one of its distinctive features [20, p. 122-134]. A.A. Nikolaev states: "Under a transfer agreement, in which one entity - the owner of the transfer, transfers transfer rights to another entity that is the acquirer of the transfer (transfer). In turn, another entity - the acquirer of the transfer pays the owner of the transfer compensation for the training of a professional athlete, in accordance with the established rules"[13, p. 153-157]. Let us agree with the opinion of A.A. Nikolaeva where "squeezing" transfer payments into the area of civil regulation is that a contract is concluded between the parties, namely between the registering organization and the club. The registering organization with which the player is registered has the right to admit the player to the competition. The club undertakes to pay fees for each athlete, and the organization will allow the player to participate in the competition all season (a kind of counter service), that is, there is a paid civil document. The subject of this contractual structure is on what conditions the player's transfer is made, for example, the obligation of the club to pay compensation for the competing participation of an athlete to play with the athletes of another club.

Taking into account the above material, it is possible to identify *the qualifying signs of unnamed contracts,* which make it possible to distinguish them from other types of contracts:

1. object;
2. novelty;
3. individual focus;
4. uniqueness;
5. independence;
6. independence.

1. Unnamed contractual structures are concluded following the general principles of civil law: the principle of freedom of contract, the principle of good faith, the foundations of law and order and morality.

2. An unnamed contractual structure appears in the form of an "unprocessed", "unrecognized" structure, which is at an intermediate stage of emergence and is subsequently already recognized and regulated by the named structure.

3. Inconsistency of the subject, object, focus, individuality of the contract with the qualifying and basic features of the named contractual structure contributes to the establishment and fixation of it as an unnamed contract. Some types of unnamed contracts are concluded only by special (special) entities established by law. For reliability and credibility, we will give some examples of unnamed contracts, for example, contracts in the field of consulting services [8, p. 38]. The high rate of development of consulting services is proof that these services are an innovative sector of the entire economic life [9, p. 69-71]. As another example, consider agreements, according to which a hotel, a hotel negotiates conditions with one or another entrepreneur in relation to what he can do within the territory of a given hotel or hotel with its temporary guests, various kinds of services, as well as sell various kinds goods (souvenirs). Another type of unnamed agreement is an agreement between the airport and the bank, according to which, for a set fee, bank employees are entitled to stay within the airport, move through it and at the same time offer various types of banking services to passengers of this airport.

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