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STRENGTHENING TREATY STABILITY IN THE INTERNATIONAL LEGAL SPHERE

CZU: 341.6:347.75/.76 **DOI: https://doi.org/10.5281/zenodo.12755210**

Abstract

The presented article reveals the possibilities of strengthening contractual stability in the international legal sphere, in view of the fact that the main legal means by which the participants in the commercial turnover interact is a civil law contract. International commercial agreements mediate the international business activities of the parties and differ from similar internal transactions, as well as transactions that, although complicated by a foreign element, are concluded with the participation of the consumer.

Keywords: *strengthening of contractual stability, civil law contract, participants in commercial turnover, contractual freedom*

Introduction

The main legal means of interaction between participants in a commercial turnover is a civil contract. In the field of international commercial turnover, a civil law contract acquires the features of an international commercial contract. In the science of international law, there is no unified definition of the concept of "international commercial agreement". The historical development of the unification of the law of international commercial agreements, which began several centuries ago, encompasses the following stages. *The first stage* refers to the period of the emergence of medieval law as a law merchant, representing a set of international trade customs that regulated the political community of merchants who traveled from port to port and from fair to fair. *The second stage* was marked by the emergence of national legal systems under the influence of the understanding of law as a national phenomenon and the approval of the idea of national sovereignty. *The third stage*, the modern stage, was marked by a movement from national isolation to universal unification, which allowed, on the basis of multilateral negotiations, to develop and adopt uniform conflict of laws and substantive legal norms. It is to the third stage in the development of international legal unification of commercial law that the emergence of a uniform understanding of the category of international commercial agreements is assigned.

The following classification of international commercial agreements can be made.

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First, depending on the subject of the international contract:

- international contract for the sale of goods;
- international lease agreement;
- international financial leasing agreement;
- international factoring agreement;
- international contract, etc.

Secondly, we can distinguish simple international agreements (for example, an international sale and purchase agreement), as well as complex (mixed and unnamed). The latter are becoming more widespread in international trade. European countries carry out legal regulation of this kind of contracts both within the framework of civil law, trade law, tax law, as well as special legislation (Tatar, 2019: 152). So, among the most common in practice mixed (complex) foreign economic agreements are international leasing, franchising, distribution, factoring agreements, investment agreements, etc. When writing the article, the following methods were used: comparative legal, logical, imperial, historical.

S. V. Nikolyukin (Nikolyukin, 2010: 154) distinguishes the following types of contracts for foreign trade purchase and sale:

1. Depending on *the nature of the delivery* and *the specifics of the relationship between counterparties:*

- an international (cross-border) contract with a one-time delivery of goods, after the execution of which legal relations between the parties to the transaction terminate;
- an international (cross-border) contract with a periodic regular supply of goods from the seller to the buyer within a certain period.

These types of contracts can have both short and long term of execution, and their main difference lies in the specifics of the relationship between the participants;

1. Depending on *the form of payment*.

- an international (cross-border) contract with payment in cash, which provides for settlements in a certain currency agreed by the parties using the payment method and form of payment specified in the contract;
- an international (cross-border) contract with payment in commodity form, which provides for the sale of one or more goods with the simultaneous purchase of another goods from a counterparty. It is important to note that settlements in foreign currency are not performed. Such contracts include commodity exchange and compensation agreements;
- international (cross-border) contract with payment in mixed form. In such contracts, payment can occur partly in cash, partly in commodity form. For example, in such complex contracts as turnkey construction, where the supplier's obligations can combine a variety of supplies and services, and also include the fulfillment of obligations after the completion of the object,

such as personnel training, maintenance and supervision of the operation of the object;

2. Depending on *the nature of the delivery:*

- an international (cross-border) contract with a one-time supply, providing for the delivery by one party to the other of the amount of goods agreed between them by a certain date specified in the contract. Most often, after the parties have fulfilled their obligations, the legal relationship between them terminates;
- an international (cross-border) contract with periodic delivery, providing for the regular periodic delivery of the agreed quantity of goods within a specified period. This period can be short (usually one year) and long, averaging 10 years, and sometimes 20-30 years;

3. Depending on *regulation*:

- contracts of international sale and purchase, governed by the Vienna Convention 1980;
- contracts of international sale and purchase, to which it is not applicable. The latter include not only transactions between counterparties whose commercial enterprises are located in countries that have not joined the Vienna Convention of 1980, but also, for example, contracts for the sale and purchase of electricity, securities, ships and aircraft, which are quite common in foreign trade, etc.

N. Yu. Erpyleva (Erpyleva, 2012: 342) identifies the types of international contracts, depending on the types of contracts provided for in INCOTERMS: ex-works, free carrier, free along the side of the ship, free on board, cost and freight, cost of insurance and freight and others.

Of particular interest is the allocation of international contracts in English law. For example, A.A. Dubinchin distinguishes the following types of contracts in English law:

- unilateral contracts;
- bilateral contracts;
- informal contracts;
- formal contracts.

The Essence and Content of the International Leasing Agreement

In modern conditions of the development of the world economy, financial leasing has become widespread, since it is associated with the attraction of economic entities from different countries of additional sources of financing in production and other areas.

The term "*leasing*" (orig. English *leasing*, derived from *lease*) means a long-term lease of machinery, equipment, vehicles and other production facilities. In the educational literature it was noted that in international contractual practice, financial

leasing has developed as a special type of the institution of lease. In the legislation of individual countries, it is also traditionally considered as a special type of lease, which is a commercial activity for the acquisition at its own expense (or at the expense of credit funds) of property by one person (lessor) in order to lease it to another person (lessee) and generate income from this activity in the form of receiving rent payments.

The peculiarity of the lease agreement is that the leasing provider (which is often played by commercial banks, investment funds, insurance companies, as well as specialized leasing companies) transfers the property specially acquired under a sale and purchase agreement for the use of the lessee without using it himself. This allows us to consider leasing not only as a type of lease, but also as a kind of long-term lending ("investment"), in which the lessee repays the "loan funds" (that is, the money spent on the purchase of equipment) by regular payments to the lessor in an agreed between them the amount of rent payments. The amount of these payments consists of the cost of the equipment (as a rule, corresponding to its full depreciation), the lessor's expenses related to the purchase of equipment (for example, in the case of using credit funds), as well as the amount that is directly the lessor's profit. Thus, in the event of the conclusion of a lease agreement, mutually interconnected tripartite relations arise.

The main act governing leasing relations in international trade practice is the UNIDROIT Convention on International Financial Leasing (UNIDROIT Convention, of May 28, 1998), which was signed in 1988 in Ottawa (therefore, in the literature it is often referred to as the Ottawa Convention). In addition to the draft of this UNIDROIT Convention, containing primarily unified norms, this international organization has also prepared a model leasing agreement. The parties to the convention are France, Italy, Spain, Hungary, Panama, Latvia, Russia (from January 1, 1999), Belarus (from March 1, 1999), Uzbekistan (from February 1, 2001) and other states.

The 1988 Ottawa Convention applies to leasing participants when the business of the lessor (lessor) and the lessee (lessee) are located in different states. The state of the commercial enterprise of the supplier of the equipment being leased must also be a party to the Convention. From the Ottawa Convention, it follows that financial leasing is a transaction executed in two types of contracts: a sale and purchase (supply) agreement between the lessor and a supplier of equipment selected according to the lessee's specification, and a lease agreement between the lessor and the lessee, on the basis of which the lessee uses the equipment in return for the payment of periodic payments.

Financial leasing is characterized as a type of activity, in the implementation of which:

a) the lessee himself determines the equipment and chooses a supplier, not relying on "the experience and judgment of the lessor";

b) the leased equipment is purchased by the lessor only in connection with the lease agreement, about which he must notify the seller;
c) periodic payments payable under a lease agreement are calculated taking into account the amortization of all or a significant part of the cost of the equipment.

The subject of financial leasing is, as a rule, movable property (equipment): production equipment, including component equipment and means of production. In addition, they can be vehicles of all kinds, as well as equipment closely related to real estate and belonging to the land plot or property attached to the land plot (for example, a drilling rig). During the term of the financial lease agreement, the owner of the leased property remains the lessor, whose rights are protected in the event of the lessee's bankruptcy. This property cannot be foreclosed on the claims of the lessee's creditors.

Under *a financial lease agreement,* the lessor is obliged to acquire ownership of the property for leasing, as well as to ensure its transfer to the lessee in a condition that complies with the terms of the agreement and the purpose of the property. Since the choice of the supplier and equipment under this agreement lies with the user of the equipment (lessee), and not with the purchaser (lessor), the Convention, as a general rule, provides for the exemption of the lessor from liability to the lessee with respect to the equipment sold. In this case, the lessee has the right to address claims related to the main characteristics of the equipment (quality, equipment completeness, etc.), which he himself chose, not to the lessor, but directly to the equipment supplier. This, however, does not relieve the lessor of the obligation to ensure that the equipment is transferred to the lessee.

If the equipment is not delivered or delivered late, or does not comply with the terms of the supply agreement, the lessee is entitled to:

a) refuse from the leased equipment or terminate the lease agreement;
b) suspend periodic payments due under the lease agreement until the lessor ensures proper performance by offering the lessee the appropriate equipment.

The obligations of the lessee to the lessor under a finance lease are the same as the ordinary obligations of a lessee under a lease. He is obliged to make the agreed periodic payments (lease payments), take proper care of the equipment, use it in a reasonable way and maintain it in the condition in which it received, taking into account normal wear and tear and those changes that are agreed by the parties, in accordance with paragraph (1) and h. (2) Art. 1314 of the Civil Code of the Republic of Moldova. Upon the expiration of the lease agreement, the lessee is obliged to return the property in the specified state, unless he has exercised the right to purchase or continue its lease for a subsequent period.

Matters that are not directly regulated by the Ottawa Convention shall be resolved in accordance with the general principles on which it is based, and in the absence of such, in accordance with the law applicable by virtue of the rules of private international law. The Convention itself provides for separate conflict of laws rules, with the help of which the applicable legal rules governing property rights to various types of property are determined. In particular, in cases where the subject of leasing is equipment attached to a land plot or becoming a property of a land plot, the question of whether or not the specified equipment has become such an accessory (or was attached to a land plot), and the resulting legal consequences for the lessor and the owner of property rights to this land plot are determined by the law of the state of location of this land plot (Gazman, 2003: 114).

Depending on the type of equipment that is the subject of leasing, the issue of the choice of legal norms for the recognition of real rights for the lessor, the bankruptcy administrator ("trustee") or creditors in the event of the lessee's bankruptcy is being decided. So, in relation to a registered sea or aircraft in this case, the law of the state of their registration shall apply; in relation to equipment that is usually moved from one country to another, including aircraft engines, - the law of the state in which the main business of the lessee is located; with respect to other equipment, the law of the state of the location of that equipment.

The Essence and Content of the International Refit Contract

Contracts for the performance of construction work by foreign contractors, mainly for the construction of large industrial and domestic facilities or for their overhaul, are now widespread. Based on the provisions of the civil legislation of the Republic of Moldova, but directly from Art. 1352 of the Civil Code of the Republic of Moldova: "Under the work contract, one party (the contractor) undertakes at its own risk to perform certain work for the other party (the customer), and the customer undertakes to accept the work and pay the agreed price".

The conclusion of large contracting agreements may be preceded by tenders to determine the most reliable contractor and the most favorable conditions for the future contract by the customer on a competitive basis. The bidding procedure is determined by the conditions that are developed in advance by their organizers, taking into account the norms of national law and the specifics of the planned construction and other works.

When providing technical assistance in the construction of enterprises and other facilities abroad, in the performance of exploration, geological exploration and other works, a civil contract (agreement) is concluded. In our training manual, it was noted that a contract for the provision of technical assistance in its content is a complex type of contract, including the purchase and sale of goods (foreign trade supply of machines, materials, mechanisms and equipment), contracts of assignment

(agency), order, performance of work, provision of services and contract. However, in practice, the parties in such complex contracts continue to be referred to as contractors (suppliers) and customers.

An integral feature of the provision of technical assistance, which determines its specificity, is the secondment of specialists and training of the customer's personnel, both at the site of the object and in the partner's country. The secondment and training of specialists may be part of the contract as part of the obligations. In many other cases, it is the subject of a separate contract. Technology transfer clauses can be an essential element of a technical assistance contract. Contract agreements concluded by foreign trade organizations with foreign counterparties provide for the production of either certain types or a whole range of works, for example, related to the construction of industrial objects abroad (Dmitrieva, 2018: 543).

An idea of the complexity of contracts concluded in practice gives the following list: for example, the obligations of the contractor (supplier) include:

- preparation of a detailed work schedule for the implementation of the project;
- performance of geological surveys for raw materials by our own specialists;
- development and preparation of all technical documentation for the project and its implementation, including schedules, drawings, specifications, etc.;
- submission for approval to the customer and / or his experts, prior to the start of production of materials and equipment, all the necessary documentation on which they will be produced;
- supply of machine materials, equipment and technical documentation in accordance with the schedules approved by the partners;
- provision of secondment of technical personnel to carry out field supervision over the construction, installation and equipment of the facility;
- training of the customer's specialists so that the personnel are able to independently operate the facility.

In turn, the customer's obligations include:

- making payments in accordance with the prices and payment terms stipulated in the contract;
- provision of infrastructure at its own expense (roads, bridges, temporary buildings and structures, housing for specialists, energy supply, water supply, construction sites, etc.);
- implementation of general construction and installation works under the supervision of the supplier; provision of the necessary personnel for training both on-site and for training abroad in the supplier's country;
- provision of living conditions for the supplier's personnel;
- supply of raw materials and other materials of the local market, necessary for the implementation of the project (Kanashevsky, 2016: 342).

Contracts concluded by foreign trade organizations with organizations and firms of other countries, depending on the nature of the work, can be of various types:

- contracts for the conduct of exploration and exploration works;
- contracts for design work;
- contracts for the performance of installation work;
- contracts for construction works;
- contracts for the maintenance of machinery and equipment, etc.

When performing construction work with the participation of Russian organizations, legal relations of two kinds may arise. With one type of legal relationship, construction work is carried out by organizations and firms of the country to which technical assistance is provided. The association (as a contractor) performs certain types of construction work under a contract with foreign firms and organizations (the customer).

In another type of legal relationship, the association assumes the construction of an enterprise or the construction of an object as a whole, up to its commissioning. This work is called turnkey construction. The association can carry out these works on its own behalf, attracting Russian construction organizations for this. As subcontractors, it has the right to involve local organizations, as well as in compliance with the legislation of the customer country, counterparties from third countries.

The turnkey construction practice is widespread.

International practice also applies the Model Terms of the Construction Contract, which were developed by the International Federation of Design Engineers (as revised in 1987), as well as the Legal Guidelines for the Drafting of International Contracts for the Construction of Industrial Facilities, prepared by the UNCITRAL working group. Both of these documents, which are of a recommendatory nature, are designed for use in construction with foreign participation.

Conclusions

- An international commercial agreement can be concluded by drawing up one document signed by the parties. It can also be concluded by the exchange of letters, telegrams, telephone messages, telefaxes, etc., signed by the party that sends them. In this case, the process of concluding a contract begins with an offer to enter into a contractual relationship, called an *offer*. The person who sends the offer is called the *offeror*. Consent with the proposal to conclude a contract (acceptance of the proposal) is called *acceptance*, and the person from whom the acceptance proceeds is called the *acceptor*. Not every offer related to the conclusion of a contract is considered an offer. Various price lists, brochures, tariffs, advertisements are not recognized as an offer.

- 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, not contradicting the principles of civil law.

- The law connects with the acceptance of the offer by the person to whom it is addressed, a completely definite legal consequence, namely the recognition of the contract as concluded. This legal consequence can only be achieved if the accepted offer already contains those minimum conditions that are recognized as essential by law or are necessary for contracts of this type. However, the law of different states unequally determines the conditions that are essential for a particular type of agreement, including for international commercial agreements.

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