AJPDIS
GLOBAL RESEARCH NETWORK

AMERICAN Journal of Public Diplomacy and International Studies
Volume 01, Issue 06, 2023 ISSN (E): 2993-2157

Methods of Ensuring Legal Consequences Arising From Non-Fulfillment of Contractual Terms in the Countries of the Romano-Germanic Legal Family

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Abstract: Article devoted to the comparative legal analysis of the legal consequences arising from non-compliance with the terms of the contract in the countries of the Romano-German and Anglo-Saxon legal system.

Keywords: Contract, essential terms, civil liability, legality, offer, acceptance.

The main role of the regulator of contractual relations in foreign countries of different legal families related to codified and non-codified private law (Romano-Germanic and Anglo-Saxon) belongs to official law, mainly contracts such as construction, supply of goods, service. represented by standard contracts developed by professional associations in the abovementioned fields.

Formal law, which is not recognized as a law, by its very meaning, is of particular importance in regulating contractual relations, mainly in relation to construction contracts, because it summarizes the most important contractual and judicial practices.

In many Romano-Germanic countries, customers and contractors are governed by civil law when concluding contractual agreements, fulfilling contractual terms, and canceling them. Civil Codes of France, Germany, Spain, Italy, the Netherlands, the Russian Federation, Georgia, the Republic of Belarus, etc. are examples of this.

The contract law of the Romano-Germanic countries differs from one another.

For example, Section 651a of the German Civil Code covers contracts for tourist services, and in such contracts, the service provider is usually obliged to fulfill the transport obligations under the contract. According to Article 779 of the Russian Civil Code, the contract regulating tourist services is not related to contractual-legal relations, but belongs to the category of civil-legal agreements on the provision of paid services. That is, the fulfillment of a number of obligations in tourist contractual relations is carried out through other contracts.

The Civil Code of Georgia also contains provisions regulating general provisions on contractual-legal relations, which do not provide for their classification into separate types [1].

[1]Civil Code of Georgia dated June 26, 1997. No. 786-IIs. [Electronic resource]. The mode is available at : www.jguard.ru/images/attaches/235/GK_Georgia.txt/ . - (date of application : 28.04.2021) .

The same position is noted by the legislation of many other countries, in particular, in Bulgaria, the Law "On Contracts and Obligations" adopted in 1950 can be cited as an example [2].

In the section of the Civil Code of the Czech Republic No. 89/2012 on general provisions on contractual legal relations, the methods of securing contracts and the consequences arising from their non-fulfillment are defined [3].

In the Austrian Civil Code, the provisions on contracts are regulated in the twenty-sixth section "On service contracts". In this section, general provisions on contracts are provided [4].

From a legal point of view, contracts in all countries belonging to the Romano-Germanic legal family are divided into consensual and synallagmatic contracts [5]. According to the legislation of the Republic of Uzbekistan, contracts are divided into one-sided and two-sided, paid and free, and real and consensual types [6].

A consensual contract is a contract in which the agreements of the parties are sufficient, and rights and obligations are formed after reaching an agreement on the entire conglomerate of conditions.

The terms "reciprocity" or "synallagmatic" are used in relation to the "unilateral" and "bilateral" constructions of the contract, emphasizing that contractual relations depend on the distribution of rights and obligations between the parties.

Analyzing the normative legal documents of the civil law of the continental law countries allows to note that in many countries belonging to this family there are specific forms of various contracts and its compensatory nature is generalized.

In the countries of the Romano-Germanic legal system, the legal consequences arising from the violation of the terms of the contract are not limited to measures of contractual liability. It is used in a broader sense, in addition to compensation and compensation for damages, including, in particular, suspension of the contract, non-performance by the creditor of the services specified in the contract, reduction or increase of prices by the creditor in connection with the non-performance of contractual obligations by the debtor, and annual interest is unique in that it provides rights to the creditor, such as free assignment of accounts.

Unlike the Romano-German legal system, in the Anglo-Saxon system, the issue of contractual liability is broader and is not limited to the compensation of damages caused by the contract or the application of a penalty, but also the violation of the contractual obligation and the use of legal remedies in this regard. it is emphasized that the possibility should also be taken into account.

It is reflected in the United Nations Vienna Convention on the International Sale of Goods [7], the UNIDRUA principles of international commercial contracts [8], as well as the European contract law principles .[9]

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[2]Law of Bulgaria "Ob obyazatelstvax i dogovorax v Bulgaria" ot 1950 g. II [Electronic resource]. The regime is available at : www.gsi.bg/print/print_st/1535/ (date of application : 28.04.2021).

[3] Zakharkiv O.V. Dogovor podryada v zarubejnyx stranax // Otechestvennaya jurisprudence. – 2017. - No. 7. – P.24-27.

[4]General Civil Code Austria 1811 Allgemeines Burgleches Gesetzbuch / per. s wet. Maslov S. S. - M.: Infotropic Media, 2011. – P.37.

[5]Braginsky M.I., Vitryansky V.V. Dogovornoe pravo: Obshchie pologeniya (po izd. 1997 g.). - M., 2017. – 847 p.

[6]https://sinref.ru/000_uchebniki/04000pravo_uzbekistan/009_asbuka_fermera_zakon_o_selskom_hozaistve_2011/012.htm

[7]https://lex.uz/docs/2634626

[8]https://nrm.uz/contentf?doc=50687_principy_mejdunarodnyh_kommercheskih_dogovorov_(principy_unidrua)_(1994_g_)&products=1_vse_zakonodatelstvo_uzbekistana

According to German law, the scope of application of the provisions of legal consequences arising from non-performance of the contract is not limited to the relations regulated by the German Civil Code. They differ in that they are regulated in the German Commercial Code as well as in special laws. In addition, these rules apply not only in the field of the law of obligations, but also in the field of corporate law [10].

In this regard, D. Medicus came to the conclusion that the provisions on the compensation of damages under the contract, in fact, should not be regulated in the general part of the laws on obligations, but in the general provisions of the German Civil Code or even by a separate general law.

Similar rules exist in the Anglo-Saxon legal system, which distinguishes between the concepts of liability under the contract and damages under the contract. According to A. Komarov, "if in the first case the offense was committed (in the form of a contract or offense (delict)) and the type of damage (physical, material, moral) is determined, in the second case the amount of the damage, the legal possibility of its compensation, as well as this the amount of monetary compensation for damage will be determined" puts forward the opinion [11].

In relation to the opinion of A. Komarov mentioned above, it can be said that in the countries of the Anglo-Saxon legal system, the legal consequences arising from the work not performed under the contract do not cause direct liability, first of all, the concepts of liability and damage under the contract are clarified.

It is permissible to dwell on the legal consequences of the Republic of Uzbekistan, which is a part of the Romano-German legal family, arising from non-fulfillment of the terms of the contract.

As legal consequences of non-fulfillment of the terms of the contract in Uzbekistan, civil-legal liability (compensation of damages, bailment, retention, surety, guarantee, zakalat), administrative liability of officials (Code of administrative offences of the Republic of Uzbekistan 175, 176 1 ' 176 [2] , Articles 212 and 214) and criminal liability (Articles 175, 181, 186 of the Criminal Code of the Republic of Uzbekistan).

In the contractual practice of legal entities, there are situations in which the buyer does not make timely or complete payment to the seller for the goods delivered under the sales contract, the product supplier does not deliver the product within the terms specified in the contract, the contractor does not perform the construction works under the contract does not perform on time, the customer is late in handing over advertising materials to the executor, the service provider does not provide full service according to the contract, etc.

The Civil Code of the Republic of Uzbekistan (Uzb. Res. FK) serves as a basis for determining that one of the parties did not fulfill their obligations or did not fulfill them properly.

Liability for non-performance or improper performance of obligations under the contract concluded between the parties has two forms. That is, ***firstly,*** contractually and ***secondly,*** in the form of breach of non-contractual obligations.

The concepts of non-fulfilment or inadequate fulfillment of obligations are different from each other.

Non-performance is defined as non-fulfillment of the terms of the contract (for example, non-payment of the full contract fee or refusal to pay for the delivered goods or refusal to provide services, work, etc.).

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[9]https://online.zakon.kz/Document/?doc_id=30514349

[10]Belov V.A. Civil law. Obshchaya i osobennaya chasti. Textbook. M.: "Center YurInfoR ". 2003. p. 2402. C. _ 875.

[11]Komarov A.S. Otvetstvennost v kommercheskom oborote. M.: Law . lit. 1991. S. 38.

Inadequate fulfillment means non-compliance with contractual terms and legal requirements, and in the absence of such terms and requirements, business practices or other requirements that are usually imposed. Examples of this include non-payment in full, delivery of goods of poor quality and inconsistent assortment, performance of work and provision of services in a smaller volume than stipulated in the contract.

Distinguishing the mentioned differences is important for determining the essence of applying the institution of penalty as a measure of property liability provided for in civil law, which is one of the methods of ensuring legal consequences arising from non-fulfillment of the terms of the contract.

According to part 1 of Article 260 of the Civil Code of the Republic of Uzbekistan, the amount of money that the debtor must pay to the creditor in case of non-fulfillment or improper fulfillment of the obligation established by law or contract is considered non-payment.

The following basic requirements are imposed on Penalty:

- the creditor shall not be obliged to prove the damage caused to him, the amount of the damage and the amount of unearned income.

In contrast, under the Anglo-Saxon legal system, the creditor has to prove the amount of contractual damages and lost profits. This is one of the differences between the legal consequences of non-fulfillment of the terms of the contract in the two legal systems.

- Uzb. Res. According to Article 262 of the FC, the agreement on penalty must be made in writing. Only in such a case the injured party (creditor) has the right to demand payment of the default. The reason is Uzb. Res. It follows from the requirement of the provision in Article 115 of the FC "Failure to comply with the written form of the agreement is the reason for its invalidity";
- with penalty, only real demand is provided. In other words, if Uzb. Res. If there is no reason for the occurrence of the default provided for in Article 260 of the CC, it is not possible to demand its payment by the creditor. Therefore, in order to apply penalty, there must be a fact of non-fulfillment or improper fulfillment of obligations by the debtor;

It follows from the requirements of Articles 260 and 263 of the Civil Code of the Republic of Uzbekistan that penalty can be provided for in the agreement of the parties, that is, contractual penalty or the law (legal penalty).

Uzb. Res. According to the first part of Article 261 of the FC, the penalty is in the form of a fine or surcharge.

There are several differences between a fine and a penalty, which are considered forms of surcharge, and these differences are as follows:

Firstly, according to the basis of application: a fine is paid in cases of non-fulfillment or improper fulfillment of obligations, and a surcharge is paid in cases of non-fulfillment (missing the deadlines for fulfilling obligations);

secondly, according to the method of calculation: the fine, as a rule, is in a fixed amount of money, and the surcharge is calculated as a percentage of the unfulfilled part of the obligation for each day of the missed period.

It is also worth noting that according to Article 326 of the FC of the Republic of Uzbekistan, the court can reduce the amount of penalty in the following cases:

- if the penalty to be paid is disproportionate to the consequences of breaching the creditor's obligation.

The extent to which the debtor fulfilled the obligation, the property status of the parties participating in the obligation, as well as the interests of the creditor should be taken into account.

As mentioned above, in addition to the measure (method) of securing obligations, penalty is also a measure of material liability.

Uzb. Res. Part 1 of Article 324 of the Civil Code states that "the debtor must pay the damage caused to the creditor due to non-performance or improper performance of the obligation." In accordance with part 2 of Article 14 of the FC, damage means expenses incurred or to be incurred by a person whose rights have been violated to restore the violated right, loss or damage to his property (actual damage), as well as if this person has not violated his rights. Incomes that could have been received in the normal course of civil affairs, but could not be received (lost profits) are considered.

Based on this norm, it can be noted that recovery of damages is a general form of responsibility for contractual obligations and a universal method of protecting citizens' rights.

Therefore, the need to determine the difference between penalty and damages as a legal consequence arising from non-fulfillment of the terms of the contract, as a measure of material liability, as well as to protect the rights of citizens, requires the need to determine the mutual ratio of penalty and damages.

The mutual ratio of penalty and damage is defined in Article 325 of the Civil Code, according to which "if penalty is established for non-fulfilment or improper performance of an obligation, the part of the damage not covered by penalty shall be paid.

From the above, it can be concluded that the Civil Code of the Republic of Uzbekistan and the current practice of determining contractual penalties do not prohibit the parties to the contract from dispositive, that is, the method of regulating the order and amounts of fines and surcharge according to their wishes. In such cases, the party whose right has been violated has the right to independently make a decision on the recovery of penalty.

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