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Drivers of International Contract Law at the Stage of Digitalization of Economy

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ABSTRACT
In the period of digitalization of law, the criterion for distinguishing private relations is the interest underlying them: private, public or private-public. In the world of modern and digital law, which is marked by a significant level of legal unification, in particular in the framework of the institutions of a united Europe, the urgent problem is the fragmentation of law as a decentralized factor. The purpose of the article is to establish the presence and outline the boundaries of such a specific entity as international contract law on the basis of a study of the main options for regulating contractual relations of a private nature. The author believes that questions of the legal nature of commercial law are controversial. Some scholars are of the opinion that the inclusion of a public element in this regulatory system is just an attempt to artificially separate commercial law into an independent branch of law by grouping the norms of civil and administrative tribunal. The scientific literature is analyzed in the context of the existence of competence to establish peremptory norms for the Member States by the institutions of the European Union. The author concludes that international contract law is not a fiction but a real regulatory system, the object of legal regulation of which are cross-border contractual relations.
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1. INTRODUCTION

Currently, private relations are those that are around the interests of individuals. The purpose of private law is to protect and safeguard them. However, there is a need to outline the boundaries of such a specific sector of private law relations among their diversity, which is discussed in this paper. Relations that, at the discretion of the parties or as directed by law, require contractual execution, constitute a separate sphere of legal relations. This is a private contractual relationship.

The objective historical process has contributed to the fact that contractual relations take shape in many areas of public life - from the domestic sphere to the sphere of economic turnover. That is why private relations are the subject of regulation of many branches of law and the contract is a cross-cutting institution of all private law branches of law.

We believe that it is advisable to consider English terminology a priority for finding possible unified approaches to determining the nature of contractual relations. English is not only the language of international business but also the language of international law (both public and private). It is advisable to talk about "contract law" to show the content of the contractual relationship. Legal systems of the countries of Eastern Europe operate with the concept of “contract”, “contract law”, which cannot be fully identified with the “contract”. Domestic legislation, in particular, distinguishes between “contracts” and “business contracts”. The latter is closest to “contracts” in their Western sense. However, given the differences in economic relations between commercial and non-commercial, there are inconsistencies. Although today in post-Soviet jurisprudence the “contract” is gradually being included in the applications, it is still more readily happening in business than in academic circles.

Perhaps some will ask whether parallels between Western contract law and Eastern contract law are required. In an era when private relations are experiencing a cross-border scope and their participants have more opportunities to realize their autonomous will, there is a need not only to predict the behavior of a foreign counterparty in a particular situation but to find optimal ways to build a relationship with him to a common denominator. The specified function is performed today by cross-border trade law - lex mercatoria.

2. MATERIAL AND METHODS

Contract law is allocated at the level of national legal systems. The object of this law is contractual relations of a private nature, and the sources of compliance are national legislation. In continental law countries, contract law is often seen as an institution of the law of obligations, or as a sub-branch of civil law, along with family, inheritance, property law. Common law countries imitate the centuries-old tradition of separating contract law into a separate institution.

In a slightly wider variation, it is customary to talk about commercial law, business law, trade law, where the object

of regulation is the relationship of exchange, commerce along contractual relations. If this regulatory system covers relations with a foreign element, we are talking about international business law.

In Western Europe, where there is dualism of private law, and in the USA, where commercial law, as an industry, is based on separate codified acts, the scope of regulation of which is the above relations. The dualism of private law is present in Russia and commercial relations are regulated by economic law. Russian commercial law does not regulate exclusively private relations. Relations of the state order, privatization relations, regulation of activities in free economic zones cannot be regulated by private law means.

The legal nature of the economic law of Russia is debatable. Some scholars are of the opinion that the inclusion of a public element in this regulatory system is an attempt to artificially isolate economic law into an independent branch of law by grouping the norms of civil and administrative legislation. This issue has reason to become an object of independent research.

The term "communitarian law" also occurs in the framework of regional unification when they speak of European contract law [5]. This broad concept covers, along with contractual, other branches of EU law. As leading scholars of the EU member states note, EU membership has not significantly affected national contract law for common law countries today. It is assumed that this state of affairs will not last long [6].

An example of an invasion of EU institutions in the regulation of member states' national contractual relations is The Unfair Contract Terms Directive (93/13 / EEC), which provides national courts with ample opportunity to establish the invalidity of contracts (or their individual conditions) in case of non-compliance.

3. RESULTS AND DISCUSSION

In particular, a contract condition that has not been separately agreed upon and creates a significant imbalance in the rights and interests of the parties to the contract putting the client at a disadvantage (Article 3) is considered invalid. If the contract condition is invalidated, it does not create rights and obligations for the consumer, and the contract is valid without taking into account such a condition (Article 6). Directives are implemented in the legislation of member countries by special acts. Therefore, the norms established by it become mandatory for application in 27 states of the Union.

The document that plays a key role on the path to common European contract law is the Principles of European Contract Law (PECL) developed by a group of independent experts from 1982 to 1994 when a consolidated version of all three parts was published. From the beginning of work on the PECL, it was assumed that they will become the forerunners of the future European Civil Code (according to some sources - the European Code of Obligations), the norms of which will become mandatory for application throughout the EU. In 1994, the European Parliament [9] identified as a priority in the regulation: the development of communal legislation the development and adoption of the European Code of Private Law. It was noted that unification in its preamble should be carried out in the field of private law, the most important for the development of a single market, such as contract law.

There is still a debatable issue in the literature about whether EU institutions are competent to establish peremptory norms for member states. Sirotkina O.V. notes that the PECL did not receive the force of a peremptory act because the relevant EU institutions did not authorize universal application due to lack of competence [5]. However, the direct possibilities of such competence are laid down in the primary legislation of the EU - the Treaty of Rome. Article 951 states that the Council of the EU, after consultation with parliament, takes measures aimed at establishing and functioning of the Single Market, including measures to bring the laws of the member states closer together.

The reason for the "dispositive" of the PECL is not the lack of proper competence in the Community, but the nature of the PECL, in particular their incompleteness. The principles govern only general issues of the conclusion and validity of contracts. Despite this, it is widely used by commercial participants as lex contractus.

Evidence of the adequacy of the competence of the European Communities to comprehensively regulate private relations in member countries is the Rome I Regulation, which replaced the Rome Convention on the Law Applicable to Contractual Obligations (1980). The scope of the Regulation is a conflict of laws in contractual obligations - in cases where the parties have not made the choice of law, as well as in relation to certain types of contracts (consumer, insurance, leases, individual labor, transportation).

The Regulation provides for the possibility of applying the law of non-EU countries in cases where there are grounds for this (in particular, the closest connection of the elements of the contract with the law of that state), and direct powers are given to national courts to apply peremptory norms of the law of third countries (including non-members EU), in all cases where a violation or neglect of such norms would pose a threat to the national public order (Art. 2, paras. 1-3, Art. 9). The provision on the compulsory observance of the public order of the country of the court (art. 21) is separately specified - this is the only case when the court can refuse to apply the law chosen in accordance with the Rules of Procedure. In general, the provisions of the Rules proceed from the principle of the free will of the parties to the contract to choose the applicable law. Restrictions on free will contained in the national legislation of member countries remain in force.

The main goal of the Regulation is to create a uniform conflict of laws regulation of contractual obligations, to exclude the possibility of return sending, to simplify and improve the procedure for unified conflict of laws rules in member states (the Rome Convention was not valid throughout the EU as it was not ratified by all). Also, the rules of the Regulation becoming universal in the EU can

be interpreted by the Court of the European Communities (as opposed to the Rome Convention) and applied by it when considering complaints submitted, therefore these rules form the basis for the formation of a uniform judicial practice in this area.

From a broader perspective, unlike regional regulatory systems, the phenomenon of the internationalization of contract law should be noted. In this connection, there are two possible trends in the global development of the latter. The first is associated with the development and application of global principles of a dispositive nature and model contracts; the second - with an attempt to create and implement peremptory standardized standards of contract law at the national level.

The principles of international commercial contracts developed and published by the International Institute for the Unification of Private Law (UNIDROIT). The UNIDROIT principles are a set of rules of international law that become applicable to a particular situation if they are directly elected by the parties as a lex contractus, or if the parties have determined that their relations are governed by general principles of law, lex mercatoria or similar provisions (preamble). The principles of UNIDROIT should be considered along with such international codifications of customs and rules as Incoterms and the FIDIC Model Terms for Construction Contracts.

Starting from its foundation in 1913, FIDIC has been actively working on the development of standardized contracts in the investment and construction industry. They issued several types of FIDIC contracts (books) that received a certain color designation for ease of use (Red Book - Terms of a contract for the construction of civil engineering projects, Yellow Book - Terms of a contract for electrical work, Orange Book - Conditions for design, construction, delivery objects, the White Book - a standard contract between the customer and the consultant for the provision of services).

FIDIC model contracts were recommended by the Federation for general use and are used in the construction of facilities, which are awarded in a row on the basis of international competitions. The advantages of these types of standardized contracts are their versatility and perfection. However, their use is not popular enough in Ukraine, most likely due to the lack of a normative act that would prescribe mandatory use.

crucial for the selection (possible or necessary) of the relevant regulatory complex.

4. CONCLUSION

The advisory nature of such acts as FIDIC contracts and the UNIDROIT Principles is an obstacle to the development of applicable, unified regulation of contractual relations. An attempt to create codes of practice, which should be imperative, resulted in the adoption of the Vienna Convention on Contracts for the International Sale of Goods of 1980 (CISG). So, being kind of dispositive in terms of choosing it as the applicable law, the CISG becomes mandatory automatically if it is ratified by the state party. If the parties to the international sale contract (provided that it falls within the scope of the Convention) have discussed the non-application of CISG, then it does not apply. Also, articles 12 and 96 of the CISG are absolutely imperative.

Proponents of standardized rules of a peremptory nature in international trade argue that conventions of this kind lay the foundations of unified international trade law and order, therefore more effectively eliminating barriers to international trade than do the dispositive principles. The application of the rules provided for by international agreements in force creates confidence among participants in cross-border contractual relations in the behavior of counterparties and legal remedies if such behavior is inappropriate (compared to the situation when the national law of a certain state applies).

International contract law is not a fiction, but a real regulatory system, the object of legal regulation of which are cross-border contractual relations in all their diversity. Despite the fact that the assignment of international contract law to a particular branch of law does not affect its existence, the correct definition of the subject and understanding of the essence of regulated relations is

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