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SOME ISSUES OF IMPROVING PENALTY LEGISLATION

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ABSTRACT

This article provides a scientific and theoretical analysis of the non-fulfillment or inadequate fulfillment of contractual obligations by business entities, as well as the improvement of the application of penalty to ensure the fulfillment of commercial obligations of civil law relations and makes relevant recommendations.

KEYWORDS: *Contract, Monetary Obligation, Commercial Obligation, Commercial Transaction, Alternative Penalty, Absolute Neustoyka, Creditor, Debtor, Compensation, Penalty Agreement, Unfulfilled Obligation, Breached Obligation, Loss, Indemnification, Fine, Astreine.*

INTRODUCTION

Strengthening contract discipline in the field of trade in goods (services, works) in the world, ensuring the rights of creditors and increasing the effectiveness of civil liability measures against the debtor who has not fulfilled or inadequately fulfilled the obligation. Indeed, in 2017-2018, world trade will increase by 10% to 25 trillion. According to preliminary estimates of the International Trade Organization, the volume of global trade will increase by 3.7% in 2019-2021, leaving behind the growth of global production by 0.7%[1]. Particular attention is paid to the introduction of a penalty, which is a means of ensuring the fulfillment of the obligation and a universal measure for non-performance of the obligation, the creation of effective legal mechanisms to encourage the debtor to perform the obligation properly.

It can be observed that the world-famous companies have been fined for non-fulfillment of their obligations and acting against the interests of consumers. In 2019, the European Commission fined Google 1.49 billion euros, the US Federal Trade Commission fined Facebook Inc $ 5 billion, and the US California court fined the German concern Bayer $ 2 billion[2].

It is obvious that at the same time in the world there are new approaches to improving the acceptable, effective, efficient and balanced methods and means of protection of creditors' rights, the use of penalties as a measure of responsibility. In particular, ensuring freedom of contract, not to impede the free movement of goods, services and capital around the world, improving the protection of the rights and legitimate interests of the parties, documents on international standards, including the principles of treaties, in particular UNIDROIT[3]Adaptation of national legislation to the principles of international trade agreements, finding scientific solutions to

problems related to legislation and law enforcement practice are becoming increasingly important.

In the process of building a new Uzbekistan, special attention is paid to the protection of the rights of business entities, which are the locomotive of the country's economy, improving the institution of civil liability, as well as ensuring a fair procedure for compensating entrepreneurs. Organizational and legal regulation of granting privileges and preferences to business entities[4], it is very important that entrepreneurs do not forget their obligations, their responsibilities before the law[5].In this regard, the existing theoretical framework for the application of penalties for non-compliance with the terms and conditions of the contract between business entities in the right of obligation is to develop effective civil law mechanisms to protect the rights and legitimate interests of entrepreneurs in the future scope and scope of civil law relations. it is important to study aspects such as its legal nature, its place and function in civil law, the degree of guilt of the defendant for non-performance of the obligation, the reduction of the penalty.

The question of the debtor's liability for non-performance or improper performance of an obligation, i.e. the application of a penalty, has been known for a long time in civilization.

Like other institutions of civilization, the history of the origin of penalty dates back to ancient Roman law, and neustoyka (stipulatio poenae) was a conditional agreement that provided for the obligation of the person who violated the contract to pay a fine in favor of the injured party.

D.D. Grimm stated that the purpose of this agreement was to put pressure on the debtor and thereby ensure the fulfillment of the principal obligation. The parties made an approximate assessment of the consequences of the violation of their rights and included in the contract a condition of imposition. Violation of the contract is expressed in money as a condition for activating the penalty and is a mechanism for enforcing the obligation[6].

In Europe, the norms on neustoyka were first consolidated in the sources of Roman private law, in which neustoyka was defined within the institution of "scholarship", ie verbal "commentary", as a conditional obligation that enters into force if one of the parties to the scholarship violates the main obligation. The statement (penalty) helped to strengthen civil law contracts and ensure their implementation.

VI Sinaisky gives the following general picture of the legislation on neustoyka in force in the Russian Empire:

- Fines in Russian law, which have the nature of penalty, unless otherwise provided by law or contract;

- in practice the appraisal neustoyka is not recognized;

-there are legal and contractual penalties, which require the formalization of contractual penalties in writing;

- contractual penalties can be paid not only in cash, but also in other property;

- contractual penalties could not be applied to secure the obligations established by the payment of legal penalties[7].

Paragraphs 339-345 of the GFT are devoted to penalty, in which more emphasis is placed on contractual neustoyka. According to the GFT, "impunity allows the lender to protect itself from

adverse events that can not be expressed in numbers or are generally intangible in nature"[8]. According to paragraph 342 of the GFT, penalty can be expressed not only in the form of a sum of money, but also in the form of special property. The obligation to pay neustoyka is not by its nature an independent obligation.

In French civil law, penalty is characterized by its compensatory nature. For example, Article 1229 of the FFC states that a punitive explanation (imposition) is a means of compensating the creditor for damages incurred due to non-performance of the main obligation. Neustoyka appears as a general calculation of damages, emphasizing that its task is to prevent litigation.

Even if the court finds that the amount specified in the contract is insufficient or too high to cover the damage, the amount less or more cannot be imposed by the court (Article 1152 FFC). Law No. 75-597 of July 9, 1975 gives the court the right to increase or decrease the amount of the penalty in case of low or excessive amount[9]. This change is aimed at preventing the abuse of freedom granted to the parties in the settlement of the contractual penalty.

I. Novitsky and L. Lunts stated that "in case of non-performance and improper performance of the obligation, the various consequences of the penalty do not have to be linked, in both cases the creditor has the right to demand payment of the penalty and at the same time performance of the obligation"[10].

In relations between Soviet enterprises, a penalty is in some cases an unconditional condition of the contract, and a contract without a penalty is considered defective[11].

This led to the existence of a "mixed" penalty, in addition to the relative and penalty penalties, which required the payment of the amount of damages not covered by the amount of the penalty[12]. In contrast, K. Grave states that the type of relative neustoyka ("joint or total relative neustoyka") does not apply here, but a specific type of penalty[13]. Later, VK Reichher proposed the term "accountable penalty" to describe such a combination of neustoyka and damage[14].

The term has been supported by a number of researchers and later mastered at the current level of legal education[15].

The Penalty Institute is used in many developed countries of the world, for example, the Austrian Civil Code 1336, GFT 339-345, FFC 1229 and 1152, Luxembourg FC 1152 and 1226, Spain FC 1152, Greece FC 405, Italy FC 1382-1384, Netherlands 91: 91-6. : 94, Articles 810 of the FC of Portugal, 180 of the FC of Mongolia, 544-545 of the FC of the Czech Republic, 114 of the Law of the People's Republic of China on Contracts, 74 of the Law of India on Contracts, as well as the case law of common law countries (for example decision on the case of Dunlop Pneumatic Tire Co. Ltd. v. New Garage and Motor Co. Ltd., decision on the case of Clydebank Engineering & Shipbuilding Co. Ltd. v. Castaneda in Scotland in 1904, Banta v. Stamford Motor in the United States in 1914. Co. 89 Conn. Decision in the case) [16].

In English law, for example, the penalty approach was first formulated within the framework of the law of justice[17]. The question of whether it is permissible to impose a sanction in a contract for breach of an obligation will depend on how the relevant provision is qualified. If the condition is recognized as (penalty), ie the amount of money assigned in the contract for the purpose of intimidating the debtor (in terrorem) and forcing him to fulfill his obligations, the

court finds such a condition invalid. If the parties entered into this contract and tried to assess in advance the damage that the creditor may incur in the event of breach of contract (liquidated damages), this money will be recovered, regardless of the amount of damage proved in practice, even if no damage was caused[18].

In the United Kingdom, a claim for damages is a general and universal method of protection, and coercion to perform an obligation is considered here as an unacceptable method of protection[20]. British law, which has a negative view of coercion, also condemns indirect coercion by calculating the penalty[19].

Thus, in the history of the development of civil law, penalty has a special place as a method of securing obligations and a measure of responsibility. Historically, there have been two different approaches to the regulation of penalty: the first - punitive (fine) neustoyka; the second is the appraisal penalty (pre-estimated damage).

The following scientific and theoretical conclusions and recommendations can be made on the application of penalty in the law of obligations:

1. Penalty, on the one hand, acts as a method of ensuring the fulfillment of obligations, on the other hand, as a form of civil liability. Penalty acts as an incentive, signaling and restoration of the creditor's infringed property rights at the stage of conclusion and execution of the contract and ensures the proper performance of the contract, and at the stage of breach of obligation becomes a form of liability, compensatory, punitive, educational functions.

2. Since Penalty has specific aspects of the educational function of legal responsibility, there are also aspects inherent in ensuring the fulfillment of obligations in its essence. Therefore, the logic of including neustoyka in these two legal institutions is also related to this factor, and in such a duality, priority is given to the stage of recovery of penalty. This stage, which arises in the application of civil liability, turns the penalty, which was originally defined as a method of ensuring the fulfillment of the obligation, into a measure of liability in case of breach of contract.

3. In regulating the payment of penalty, it is necessary to distinguish between non-performance and improper performance of the contract. For example: a) if the debtor is obliged to pay a penalty in case of non-performance of the contract, the creditor may demand payment of a penalty instead of performance of the contract. If the creditor has demanded payment of the penalty from the debtor, the claim for performance of the obligation may not be made; b) if the penalty is provided for improper performance, late performance, non-performance in accordance with the established requirements, the creditor has the right to demand compensation for damages and penalty in addition to the performance of the obligation.

4. It can be seen that the rules for the establishment, calculation and application of fines of a civil nature are "scattered" in various normative legal acts. In many administrative documents, especially in the system of sanctions imposed by monopolies on consumer services, there are cases when they are often defined and applied contrary to the rights and legitimate interests of citizens. In order to eliminate these cases, it is necessary to introduce a new article in the Civil Code "Measures of civil liability" and clearly define exactly what impact measures that have a penal nature are measures of civil liability and their types.

5. It is necessary to introduce in the civil law the institution of a specific type of penalty (court penalty) and to introduce a mechanism for the distribution of the penalty in favor of the creditor and the state budget in case of non-execution of court decisions by the debtor. In addition to being a measure of substantive effect, the astrent is also a means of encouraging the debtor to fulfill the obligation established by a court decision as a penalty.

Unlike administrative penalties for non-enforcement of court and other documents, the astrenter serves the interests of the creditor and at the same time effectively accelerates the enforcement process as the debtor incurs additional property losses due to the amount owed. The administrative fines for non-compliance with current court decisions are clearly ineffective. Therefore, it is advisable to include astrentan norms in the Civil Code, the Code of Civil Procedure and the Code of Economic Procedure.

6. It is necessary to include in the civil legislation the provisions on "Supplier payment" as a new way of fulfilling obligations. This method fully ensures the fulfillment of the obligation by the parties to the obligation in advance by means of payment made in favor of each other at the time of concluding the contract. Although this method currently has the same functions and features as "hostage" or "guarantee", it is considered closer to the subject of the current neustoyka due to its use in the form of "payment".

7. The norm of liability for non-performance of a monetary obligation is a legal penalty applicable to monetary obligations. The norm of the Civil Code on liability for non-performance of a monetary obligation, the norm on legal penalty and the interest provided for non-performance of a monetary obligation should be considered as a type of penalty.

8. The use of fines as a measure of liability in conjunction with damages raises the problem of the relationship between the payment of fines and damages, and their separate application (alternative penalty) leads to a violation of the principle of compensatory civil liability. Accordingly, it is necessary to widely introduce the type of neustoyka that is taken into account in law enforcement practice.

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