LEGAL COMMUNICATION OF THE PARTIES AND A PROLONGED CONTRACT: AN ANALYSIS ON THE QUALIFICATION PROBLEMS OF SUBJECTIVE TRANSACTION ELEMENTS

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ABSTRACT

The article deals with the issues of constituent parts of legal relationship, as well as the concept of legal relationship as the basis of civil liability. The doctrine of counter execution, existing in English law - as the main evidence of the conclusion of the contract, the peculiarities of determining the moment of entry into force of the contract in the civil law of the Russian Federation, as well as the emergence of a legal phenomenon in the form of an unconcluded contract.

Keywords*:* Legal Relationship, Counter Execution, Sufficiency and Adequacy of Counter Execution, Legal Loyalty, Concept and Composition of the Contract, Unconcluded Contract.

INTRODUCTION

The concept of a contract is the main category of law of obligation, regulation of which is among the priorities of civil law. Legal systems may define a bilateral transaction differently, but the key idea is that it is an agreement between the parties aimed at establishing, modifying and terminating private law rights and obligations. An agreement represents a reconciliation of the will and intentions of the parties, it is a subjective goal that has found external expression. The questions solved by the basic provisions of contract law, are directed on definition of intention of the parties (valid and supposed), presence of the coordinated will and conformity of intention and will expression. Assessment of will and its expression is essentially a perception of the legal system of the subjective element of legal relations (Arvind, 2019).

English law has developed a set of techniques to analyze the parties' attitude to the transaction and their internal goals. The foundation of this system is the notion of a legal relationship, since the first thing to be assessed is the subjects' intention to create a legal relationship, which includes the conditions for the emergence of a legal obligation, a reasonable expectation of the parties regarding the actions of the counterparty and the understanding that failure to comply with the agreed conditions may be appealed in court and the contract will be enforced. The necessity of the primary analysis is based on the principle of contract freedom existing in English law, when the category and type of legal relations become secondary to the very fact of existence of the parties' readiness to bind them to legally binding relations.

The question that arises before judicial bodies in the analysis of the intention to create a legal relationship is caused by the fact that the subjective component, as opposed to the will

expressed in a certain external form, is not subject to unambiguous interpretation. The situation is complicated when one of the parties denies the existence of the purpose to enter into legal relationship. The absence of a mandatory written form for most contractual models has led to the formation of a set of techniques and methods of qualification of the behavior of subjects, reflected in the doctrine of counter execution. The fact of committing acts aimed at the performance of the obligation confirms, at least, the existence of the intention to create a legal relationship with the other party. The doctrine of counter satisfaction proceeds from the assessment of sufficiency of what is provided in return. A significant role here is played by the subjective assessment of sufficiency-whether the fulfillment was of a specific material value for the participant of legal relations. The priority of subjective perception of sufficiency is based on the fact that satisfaction must not be adequate, i.e., the court must establish that the counter satisfaction had a material value, but does not determine whether it is equivalent in monetary terms to what is presented as counter satisfaction. The method of benefit or harm is used to assess this criterion when actions taken as a counterclaim bring direct or indirect benefit or help to avoid the occurrence of loss or harm. This approach is closely linked to the impossibility of determining accurately the actual value of the counter performance, especially when what is provided by the other party has a material value only for the party to the contract. For example, the very fact of the minimum tangible value can be considered by the court as sufficient. This dispute arose in connection with a special offer from Nestle, in which the company promised anyone who brought three wrappers of their chocolate the opportunity to buy a Rockin'Shoes record at a special price. Despite the low material value of the chocolate wrappers, the courts concluded that there was a counter execution and therefore a legally binding relationship between the parties (Aliyevna, 2016).

Opponents of a subjective approach to assessment of counter satisfaction suggest that fair qualification of contractual relations is impossible without determination of some economic assessment or value, even if the execution price cannot be quantified accurately. The lack of such an assessment, according to Professor Treitel, leads to contradictory court decisions: in Cook v Wright, the courts found counter-execution despite the absence of any benefit for the person receiving the promise, in another Foakes v Beer case the court ignored the actual benefit received by the debtor and concluded that there was no counter-execution. The appellate court's decision in the Williams v Roffey Bros & Nicholls case emphasized the need to determine the debtor's "real benefit" rather than the legal benefit. Despite the importance of this decision, it did not affect the doctrine of counter execution and the basic approach remains a subjective interpretation of the benefit (Andrews, 2015).

One more peculiarity of the assessment of sufficiency of counter satisfaction is connected with the subjective composition of the legal relationship. How to determine the material value of a promise, where there is a natural affection due to the existence of kinship relations. So back in 1853 a decision was made, where the father lent his son a certain amount of money. After his father's death, Mr. White, the executor of the will, went to court to collect the debt. The son refused to repay the debt on the grounds that the father had allowed his son not to repay the money unless he appealed against the will. As a result, the court did not qualify the promise as a counter-implementation and considered that the father had not undertaken any obligation not to try to repay his son's debt, as not to challenge the father's right to dispose of his property is a normal behavior of the son by virtue of the existing kinship relationships and has no material value to the parents. A similar issue in the establishment of counter execution in the relationship

between relatives, where the uncle promised to pay his nephew $5,000 if he quit drinking liquor, smoking tobacco, playing cards or billiards for money until his nephew turns 21. However, in this case, the renunciation of these activities was seen as a counter execution because the nephew had the right to do so, so he accepted the terms of the Uncle's promise and took action to fulfill it, thus creating a legally binding legal bond. Here it is also impossible to reveal the material benefit for the uncle, except for some material satisfaction, that the nephew leads a right way of life (Cornish et al., 2019).

An analysis of the various decisions of the English courts makes it possible to determine which actions of the parties can be considered as a proper counter execution. A separate category is the promise not to file a claim to enforce a valid claim. The courts appreciate this "legal loyalty", but the question that inevitably comes up when deciding is whether the claim itself is valid and enforceable. For example, the complainants considered that the defendant was subject to the requirement of a regulation under which he was obliged to reimburse the costs of their work on the street adjacent to the house in which the defendant lived. After the plaintiffs had promised to sue him, the defendant agreed to pay a lower amount, which was approved by the plaintiffs. When the defendant found that it was not covered by the law, it refused to make the payment on the grounds that its promise had no counter execution because the plaintiff could not offer anything in return. However, the Court considered that, despite the absence of a legal obligation in principle, the defendant believed in its existence and understood the negative consequences in the event of its enforcement, so that what the plaintiffs had offered him in return at the time the legal relationship arose was of clear value to him (Chen, 2018).

The opposing decision was taken in a case, where the party was aware in advance that the requirement whose waiver was proposed by the party as a counter obligation was invalid. The general approach taken with regard to the qualification of claims, in that a claim, whose invalidity is known at the time the alleged legal relationship arises, cannot be considered a proper counter satisfaction (Novitsky, 1954).

The criteria of counter satisfaction are also a time limit: execution must be granted at the same time as the contract is concluded, what is given before the contract or a promise of execution that may not be considered counter execution in the future. This approach is based on several court decisions. For example, in one case, the plaintiff bought a horse from the defendant, after which the defendant reported that the horse was healthy and calm, which was not true. However, the defendant was not required to respond to its promise because it had been made after the sale and its qualification as separate from the contract showed that it was not counter satisfactory (Orlova, 2018).

The said judgments formed the general principles of the counter-execution doctrine, exceptions to which were possible due to peremptory legal requirements and in clear contradiction to the right to justice.

So, the principle of freedom of contract in English law implies first of all the establishment of the fact of legal relationship, which is impossible without evaluation of the intention to enter into legal relationship on the one hand and on the other hand to grant counter execution. Since English law has clear rules for assessing the subjective component, based, among other things, on the qualification of the parties' conduct, the problem of attributing the contract to a certain model is relegated to the background for the judicial system. If the conduct of the parties indicates the conclusion of a contract unknown to the legal system, the courts will make a decision based on the intentions of the parties and any proven circumstances of the case.

The continental system of law is built on other principles of contract law. The legal regulation of civil turnover creates an extensive structure of contractual models with which commercial activity is carried out. The freedom of contract is declared, but it will always be subject to mandatory legal requirements. So legal systems that prefer to formalize the intentions of the parties proceed from the need to define the type, condition and content of each contract model, which is the main purpose of regulation. Non-compliance of a transaction with a contract as defined in the law may lead to various negative consequences, including recognition of the contract as null and void. This approach greatly simplifies the work of the judiciary, as it qualifies actions within a certain regulatory framework, but does not allow for the actual intention of the parties to be taken into account (Rabinovich, 1960).

The procedure for concluding a contract has become important for understanding the legal relationship in the countries of the continental legal system, since it is from this point onwards that the relationship between the parties moves into the legal plane. The Civil Code of the Russian Federation contains a controversial approach to the procedure of concluding a contract. On the one hand, to conclude a contract requires the expressed will of two or more parties. In this case, the will of the parties becomes the key criterion for assessing the fact of legal relationship. The will is a subjective factor, which is most similar to understanding the intentions of the parties in English law. However, while the arsenal of the common law jurisdictions has a well-established mechanism for evaluating the subjective element, in Russia the definition of the parties' will is the object of doctrinal research, which has not received much practical application. On the other hand, in accordance with Art 432 of the Civil Code of the Russian Federation, a contract is considered to be concluded if the parties have reached an agreement on all essential terms of the contract, which are named in the legal acts as essential or necessary for the contract of this type. Here the code deviates from clarification of will of the parties and inclines to establishment of conformity of parameters of the transaction to the conditions defined in the law (Piter, 2001).

So, the parties are free only to choose a certain type of contract, and violation of the legal requirements in terms of the agreed terms may lead to the denial of the very fact of the legal relationship. This has laid the foundation for such legal phenomenon as recognition of the contract as not concluded-despite the fact that the existence of the contract concluded in written form presupposes the existence of a legal relationship and does not require additional proof, such a contract may be recognized by the court as not concluded and, consequently, as not existing from the legal point of view. So, the information letter of the Presidium of the Supreme Arbitration Court of the Russian Federation No. 165 dated February 25, 2014, provides for the possibility of declaring a contract as a non-concluded one if the parties have not reached an agreement on all essential terms of the contract. As a result, an unsettled contract may not be recognized as null and void because it not only does not produce the consequences to which it is directed, but is absent actually and does not create any consequences, both in the present and in the future. At the same time, the limitation period, as specified in Clause 5 of the Information Letter, begins from the moment when the Party learns that its right has been violated. This means that after the conclusion of the contract, the Parties have started to execute the contract when, as a result, the contract was recognized as not concluded, the obligations have already been executed or, were in the process of execution. A situation arises when certain legal consequences of an unconcluded contract exist due to one of the parties' ignorance of the absence of a contractual relationship. These issues have appeared in the presence of a signed contract between

the parties in writing, i.e. the court proceeds from the priority of determining the type of contract over the very fact of the existence of legal relationship: if the conditions of the contract do not coincide with the conditions established by the Civil Code, it is easier for the court to recognize that the contract does not exist in principle than to try to resolve the dispute on the basis of the substance of the legal relationship (Piter, 2001).

Since this approach minimizes both the freedom of the contract and the evaluation of the parties' intentions, giving the work of the court an exclusively comparative character, the Supreme Arbitration Court of the Russian Federation is trying to make reservations in the above information letter. In the first case we are talking about the terms of services, so in accordance with Art. 708 of the Civil Code essential condition for the performance of the contract are terms, but being essential, they are not irreplaceable-here the court proceeds from the possibility of applying the general provisions of contracts. The following reservation applies to a contract not concluded in writing, but performed by the two parties through the implementation of actual actions. The court thus concludes that if the works have been performed before all the essential terms and conditions of the contract have been agreed upon, but have been handed over by the contractor and accepted by the customer, the contract provision applies to the relations between the parties (clause 7 of the Letter of Information) (Piter, 2001).

The main conclusion, which logically follows from the information letter, is connected with the fact that creating a new legal phenomenon in the form of an unconcluded contract, not having a normative fixation, the judicial bodies could not decide on the way they would go - to assess the real intention of the parties and be guided by it or to approach the question formally - to assess the compliance of the contractual model with the provisions of the law and not to go deep into the study of other circumstances.

In 2015, Article 432 of the Civil Code of the Russian Federation is amended to reflect the fact that one of the objectives of changing this article was the fixation of an unconcluded contract as a legal category, the legislator did not give him a definition, but pointed to cases where the recognition of the contract as an uninhabited person is impossible and, more importantly, the wording of the exception - such a reason for refusal to recognize the contract as an unconcluded, person was a violation of the principle of good faith. In the same year, when Article 432 of the Civil Code of the Russian Federation was amended, the Plenum of the Supreme Court of the Russian Federation adopted Resolution No. 25 *"On Application by the Courts of Certain Provisions of Section 1 of Part One of the Civil Code of the Russian Federation"* , which states that when assessing the actions of the parties as bona fide or dishonest, one should proceed from the conduct of the parties, which should take into account the rights and interests of the other party and assist it. Returning to an unconcluded contract, application of the principle of good faith indicates the priority of evaluation of the subjective factor over the formal approach, because despite the existence of uncoordinated conditions that make the contract unconcluded, the conduct of the parties may indicate the opposite, and in this situation the court proceeds from the actual intention of the parties (Piter, 2001).

Summing up, it should be noted that the refusal of the analysis of the subjective component of the legal relationship does not allow establishing a real goal and achieving the desired result by the participants of business activities. Nevertheless, if the questions of assessment of will and expression of will remain only in the plane of judicial discretion, it also will not contribute to the creation of stable rules of economic activity. In order for the legal regulation to carry out its direct function, it is necessary to form and consolidate understandable

mechanisms of qualification of the parties' behavior, not only the text of the contract, fixed on paper.

RESEARCH METHODOLOGY

To define the concept of legal relationship as a mandatory condition for the entry into force of the contract, and the intersection of this concept with the concept of the contract to assess the possibility, if there is a legal relationship between the parties to the civil law relations of the contract by an unconcluded. General scientific methods: Interpretations, descriptions and comparisons, and privately applied scientific methods: Comparative legal, analytical and system analysis methods.The conducted research showed that the renunciation of the subjective component of the legal relationship and the absence of mechanisms to correctly qualify the legal relationship of the parties led to the creation of such legal phenomena as an unconcluded contract, in the presence of an explicit expression of will of the parties to conclude it.

CONCLUSION

If the legal system leaves the issues of evaluation of will and expression of will only in the plane of judicial discretion, this in most cases will not contribute to the effective legal regulation and creation of sustainable business rules. The exercise by the law of its functions is possible only through the establishment of clear mechanisms to qualify the conduct of the parties, and not only through a literal interpretation of the text of the contract, recorded on paper (Shakhmatov, 1966).

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