

CONTRACT AS ECONOMICAL AND LEGAL DESIGN

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Abstract. In article on the basis of the analysis of works of the Russian and foreign scientists-lawyers, experts lawyers, and also economists the contract research as economical and legal design is conducted. The contract as an economical and legal design represents the special economical and legal mechanism regulator mediating economic activity, designed to provide legal satisfaction of economic interests, certain subjects, formed by the elements interconnected and coordinated among them.

It is revealed that such economical and legal design consists both from legal, and from economic elements. It is formed of the following obligatory and necessary elements: (1) legal procedure of coordination of terms of the contract, (2) form of the contract, (3) term, (4) subjective rights and legal obligations of the parties, (5) valid economic contents of the contract. The list of the designated elements of the contract is open and depends on complexity of the most economical and legal design and a type of the bilateral or multilateral civil transaction.

The nature of its legal communications exerts impact on an economical and legal orientation of a design of the contract. In turn features of contractual communications affect achievement of the legal purposes.

It is proved that the contract as an economical and legal design has to be always filled with economic sense. It is shown that lack of the valid economic sense of the contract is considered by law-enforcement practice therefore leads to adverse legal effects.

Keywords: contract, economical and legal design, legal design, economic relations, economic contents

1. INTRODUCTION

The contract as the tool organizing the economic relations arose still in ancient time. Despite so long period of the existence a contract role as means of commodity movement of material benefits does not cease to increase. With development of market economy and with expansion of a possibility of use of the dispositive beginnings of legal regulation in various areas of social life, the contract began to mediate the hugest layer of the public relations. New kinds of contracts do not cease to arise. So, in 2015 also other contracts were published in the Russian civil legislation frame, option, subscriber. The specified circumstances testify to that, as at the present stage the internal dialectics of development of the contract needs judgment through a prism of new methodological approaches and receptions.

Need and expediency of system and structural studying of the contract as economical and legal design is caused by flexibility of a contractual form, a possibility of the accounting of an economic situation, ability to a detailed specification of the rights and duties, self-regulation, creation of new standard of behavior, etc. The understanding of the contract as economical and legal design expands approach to its essence as economical and legal phenomenon. Therefore, the research of components of the contract and the analysis of structure of its legal communications are urgent, demanded and timely from a position of interaction of economy and law.

Purpose of the real work: to allocate contract elements as economical and legal design.

2. MATERIALS AND METHODS

The Russian civil legislation gives a legal definition of the contract and fixes its conditions, different types, ways and procedures of the conclusion, change and cancellation, without focusing attention on system and structural aspects. Only in science the contract can be considered as a design with allocation of the separate interconnected elements. Determination of essence of the contract as economical and legal design, the research of its structural parts was conducted on the basis of the analysis of works foreign (*J. Beatson, Ch. Closset, L. Silence, R.W. Hamilton, J.R. Macey*, etc.) and Russian (*E. S. Vybornova, Yu. A. Serkov, M. Yu. Chelyshev*, etc.) scientists-lawyers, experts lawyers, and also economists (*Abbas Mirakhora, Adam Nga, Ginanjar Dewandarua, Baharom Abdul Hamida*).

The methodological basis of a research was made by the dialectic method which allowed to learn in indissoluble unity and in the general coherence essence of the contract as an economical and legal design. Studying of structure of legal communications of the contract was promoted by logical receptions in the form of the analysis and synthesis, induction and deduction, comparison and generalization, analogy and typology. Legal reception allowed to understand an essence and the importance of the precepts of law governing the contractual relations. By means of the system and structural analysis within legal modeling internal integrity of the contract as economical and legal design, the harmonious interaction of its parts which is projected on questions of unity and differentiation of contractual regulation was shown.

3. RESULTS AND DISCUSSION

In a general-theoretical cut the design is the phenomenon of system character formed of the certain elements connected among them in a whole. In law it is accepted to understand the special system organization or group of the legal means developing in legal model with a certain legal algorithm (Luneva, 2015) as a legal (legal) design. Being necessary, logically expedient generation of positive law the legal design is artificial (Serkova, 2013, page 169), the efficiency of certain legal regulators developed for increase. Legal designs represent a concrete way of fixing in any legislation of legal tools which as components can include not only concrete legal means, but also their definitions, classifications, a structure, functioning mechanisms, legal procedures and even other legal designs, and ways of permission of possible conflict questions (Chelyshev, 2013, page 33, 35).

Contract as legal design. In civil law the legal design of the civil contract is understood "as the special legal mechanism regulator which appeared as a result of legal activity designed to provide legally satisfaction of interests of certain subjects of civil law formed by the interacting coordinated elements" (Serkova, 2013, page 172). At the same time necessary elements of the considered design are (1) legal fact, (2) legal procedure and (3) legal relationship (Serkova, 2013, page 172).

In development of the designated approach to a contract structure, we believe that the last as the legal design can also consist of the following interconnected structural elements: (1) legal procedure of coordination of terms of the contract, (2) form of the contract, (3) term, (4) subjective

rights and legal obligations of the parties of the contract. Let's pay attention that to the legal fact there corresponds contract term, to the legal procedure - the sequence of actions for coordination of terms of the contract, and also a contract form, and to legal relationship - the subjective rights and legal obligations of the parties of the contract. Means, the approach to system structurally structure of the contract offered by us not only corresponds to earlier stated scientific positions, but also concretizes them.

The list of the designated elements of the contract is open and depends on complexity of its most legal design and a type of the bilateral or multilateral transaction. For example, the state registration of the contract forms an independent obligatory element of a legal design of the lease contract in the cases provided by the law. The same should be told about such independent element of a legal design of the real contract as commission of additional actions in the form of transfer acceptance of property. In a design of the consensual contract transfer of property does not form an independent element as joins in legal relationship, making its contents (Serkova, 2013, page 182). In some cases the special procedure of the choice of the contractor in the form of tendering, including their electronic form, will form the integral structural part of the corresponding contractual design. At the same time the simplest legal design of the contract consists of the minimum set of obligatory elements. Let's consider them separately.

1. The legal procedure of coordination of terms of the contract acts as independent structural division of the considered legal design. Here the sub-elements of the analyzed element of a legal design of the contract are allocated: the offer (and also the counter offer) and the acceptance (in some cases expressed by conclusive actions). As obligatory stages of the conclusion of the contract the offer (the offer to sign the contract) and the acceptance (adoption of the offer) exist always. For the conclusion of the transaction the offer surely has to contain essential terms of the contract, and the acceptance - to be full and unconditional. The acceptance conclusive actions - commission of actions for implementation of the terms of the contract specified in the offer also admit.

2. A form of the contract it is expedient to recognize it as a separate element as only on condition of observance of the required form there will be rights and duties. Contracts are made orally or in writing (simple or notarial). In case to the contract it is not given necessary from the point of

view of the law or the agreement between contractors the form giving the chance of the correct perception of will of subjects it is qualified as invalid.

3. Term is also an obligatory element of a legal design of any contract. Certainly, there are different types of terms (a closing date of the contract, its action, execution, warranty periods, etc.), however this or that term with need will always take place in the contract. Term in the form of the moment of the conclusion of the contract is characteristic absolutely of all and bilateral, and multilateral transactions (Serkova, 2013). Moreover, even uncertain period of validity of the contract appears in the form of the certain "period of time" too.

4. The subjective rights and legal obligations of the parties as a structural part of the contract form actually contractual legal relationship. Without them emergence of the contract as the subjective rights and legal obligations of the parties determine its main legal content and legal orientation is impossible. At the same time the contract is not limited only to the rights and duties, necessary owing to the essence of the corresponding contractual relation, it can become complicated the additional rights and duties of contractors.

In literature by the contract right importance of respect with the parties of contractual conditions, respect for the subjective rights and fulfillment of duties which forms the principle of sanctity, inviolability, un-breakability of the contract (Beatson, 1998) is highlighted. Due performance of the contract assumes appropriate performance of legal obligations of the parties in time. Moreover, in general denial of the subjective rights and legal duties of contractors as the facts recorded in the contract (Hamilton & Macey, 2005) is inadmissible. However under the changed economic circumstances performance of the contract can lead to big losses, than its non-execution, then the contractor has an incentive of conscious violation of the subjective rights of other party (Mirakhora, Nga, Dewandarua & Hamida, 2017). In that case intended breaches of contract are more effective, than its execution (Posner, 2009) , (Shavell, 2009).

Special attention should be paid not only to components of a design of the contract, but also the nature of its legal communications. The matter is that the legal regime and obligations following from the agreement for each its party are predetermined by various nature of legal communications of the contract (Closset & Silence, 1967). At the same time features of contractual

communications affect achievement of the legal purposes. So, in jurisprudence it is proved that, for example, the unequal structure of legal communications of the agency contract of *sponsor look* and the agency contract of *a commission look* influences legal qualification of legality of the procedure of holding the electronic auction on bankruptcy when participation in it is carried out through the professional intermediary (Lunyeva, Zavdat, 2015).

Contract as economical and legal design. In literature it is emphasized that the economic beginnings of the contract began to get into judicial and legislative practice (Vybornova, 2012) more and stronger. And it is not casual as the economic essence of the agreement as the characteristic of primary public relation has close connection with contractual legal relationship.

The central category is "the economic contents of the contract" here. It serves as confirmation that the contract represents not just legal, namely economical and legal design.

The economic contents of the contract are an independent element of the corresponding economical and legal design. In the considered foreshortening the contract always has to be filled with economic sense. In the Resolution of Presidium of the Supreme Arbitration Court of the Russian Federation of 12.07.2011 No. 17389/10 in the matter of No. A28-732/2010-31/18 the legal position according to which the principle of freedom of the contract (Art. 421 of the Civil Code of the Russian Federation) assumes conscientiousness of actions of the parties, rationality and justice of its conditions, in particular ***their compliance to the valid economic sense of the concluded agreement*** is developed. In other words, terms of the contract have to be formulated so that the valid economic sense of the civil transaction followed from them, but offenses and abuses of the right were not covered.

Lack of the valid economic sense of the contract, certainly, is considered by law-enforcement practice therefore leads to adverse legal effects. In Definition of the Supreme Court of the Russian Federation of 25.04.2017 No. 304-KG17-3755 in the matter of No. A45-25360/2015 is established that the conclusion of turnkey contracts was not allocated with the valid economic sense and is not caused by reasonable economic or other reasons (the purposes of business character), was directed to formation of fictitious document flow for the purpose of creation of formal conditions for receiving a tax deduction at calculation of a value

added tax, and also cashing in of money. As a result were collected by tax authority from the unfair taxpayer unreasonably received tax deduction. Similarly, in the Resolution of Arbitration court of the Far Eastern Federal District of 25.01.2017 No. F03-6267/2016 in the matter of No. A51-2166/2016 is specified that the taxpayer considered operations on performance of contracts not according to their valid economic sense that formed the basis of the unfair accounting of a part of the expenses reducing taxable base on income tax, statements of tax deductions on a value added tax.

Economic contents as a part of design of the contract influences a possibility of its conclusion. There are situations of signing and legal execution of contracts at their economic inexpediency the conclusions which are used for abuse of the right. Therefore in jurisprudence the ban on compulsion to the conclusion of the contract which is not making economic sense was formulated. So, in the Resolution of Presidium of the Supreme Arbitration Court of the Russian Federation of 22.11.2011 No. 9113/11 in the matter of No. A55-10425/2010 the conclusion is drawn that because of lack of mutual obligations of the adjacent network organizations, judicial compulsion to the conclusion of the contract would mean compulsion of the defendant to use the services of the claimant which do not have economic contents.

Follows from the given examples of jurisprudence is that the economic contents of the contract are accompanied by respect for the principle of conscientiousness. The coverage of the specified principle in different legal systems is not identical: in France it treats, first of all, contractual obligations, and here in Germany it is considered fundamental both for all private law, and for separate institutes of public law (Zimmermann & Whittaker, 2008). We consider expedient lawful "expansion" of action of the principle of conscientiousness in private-law and at public institutes of Russian law.

The valid economic contents of the contract are in mutual coordination with other its structural divisions. System of the contract as economical and legal design is shown in interaction of its elements and in special structure of contractual communications.

4. SUMMARY

As a result of the conducted research it is necessary to summarize that the contract as an economical and legal design represents the special economical

and legal mechanism regulator mediating economic activity, designed to provide legally satisfaction of economic interests of certain subjects, formed by the elements interconnected and coordinated among them. Such economical and legal design consists of the following obligatory and necessary elements: (1) legal procedure of coordination of terms of the contract, (2) form of the contract, (3) term, (4) subjective rights and legal obligations of the parties, (5) valid economic contents of the contract. The list of the designated elements of the contract is open and depends on complexity of the most legal design and a type of the bilateral or multilateral civil transaction. The nature of its legal communications exerts impact on an economical and legal orientation of a design of the contract. In turn features of contractual communications affect achievement of the legal purposes.

5. CONCLUSION

Thus, the contract as an economical and legal design consists as it is pure from legal, and from economic elements. At the same time the economic element in the form of the valid economic contents of the contract has legal value as its existence or absence leads to various legal consequences. In turn legal elements of the contract are defined by specifics of the most economic relation.

CONFLICT OF INTERESTS

The author confirms that the submitted data do not contain the conflict of interests.

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