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CANCELLATION OF CONTRACT AND PRINCIPLE OF JUSTICE IN CIVIL LAW OF UKRAINE

The peculiarity of modern principles of civil law defines the current state of civil law in general.

Regardless of whether an entity is the subject of public law or private law, their participation in civil relations is regulated by civil legislation on the same principles, that define the practical requirements of the legal status of persons. These principles of law were mentioned in the Civil Code for the first time, governs all civil relations in Ukraine, are called the «general principles of civil law» and referred to in Art. 3. of Civil Code of Ukraine.

It is necessary to consider principles of law, because in modern legal science notion of principles are determined as being formally enshrined in legislation. Moreover, as seems, that here is narrowing the meaning of the principles in law enforcement and restriction of their activities. The leading ideas are considered as supporting in choosing standards of applying and not applying for direct regulation.

Principles of justice, honesty, reasonableness are the principles of natural law. From this stand point should be considered principles of law, their place in system of law and legislation.

Defining the principle of justice, first of all, should be considered its role in the system of principles.

The normative approaching of understanding regulatory role of law is preferable in any formal functioning society. Strengthening contrasting of different approaches to comprehension of law takes place in periods of serious changes in social relations. The responsibility for social problems lays on the normative approaching. The most competitive approaches in the comprehension of the problems are normatyvizm, natural law and sociological approaching. Society is gripped in obsolete rule of law, which act as a brake to further progressive development and changes of the system.

Regarding principles of legislation, they are deemed to have an derivative character according to the principles of law, because the legislation – is the outer form of law.

The legal principles have nature signs because they are reflected in legal norms, but not always and not all the principles are found in these clear-cut. Sometimes they seems as guidelines, which have more general character.

General legal principles form the legal basis for legislation. According to them makes assessment of the law, and legal relations. With the help of principles could be created a single harmonious legal and legislative system. The principles could be used for coordination of developing of appropriateness of social relations. Principles of law are fixed in the preamble to the main regulations and in law.

It is considered that the principle of justice is crucial for private law and determines the method of regulation.

Together with the method of legal regulation private law is formed and distinguished by the principles of law. That is why, determining the principle of justice in private law as leading principle in private law is conditioned by features of this branch of law and by its method.

The principle of justice has particular importance. It expresses in the greatest degree the general social nature of law, commitment to the compromise between members of the legal relationship, between the individual and society, the citizen and the state.

Justice demands responsibility between actions and their social consequences. Must be adequate work and it's payment, damage and its compensation, crime and punishment. Law reflects this adequacy, if they correspond to the principle of justice.

The principle of justice is closely connected with the principles of natural law and it is the link between law and morality.

Radically decides the question of correlation between law and justice V. S. Nersesyants. He refuses to understand justice as a moral or legal categories and argues that principle of justice has only legal meaning. Moreover, the only law is just, because justice embodies and expresses common correctness, and this ,in its streamlined form, means the total legitimacy and creates the essence and base of law ... If the legal nature of justice throws away , then as justice starts to claim any no legal principle (moral, religious, political, national), and this in turn leads to

subjectivity in understanding justice and pretention to give general role to private interests. In general, says V. S. Nersesyants, we can say that justice – a self-awareness, self-expression and self-esteem category and at the same time – it is legal evaluation of everything that is out of law. Thus, V. S. Nersesyants understands the category justice in out of law relations as a subjective category of legal understanding of relationship.

Quite the opposite position adheres S. S. Alexeev. He understands justice as a social and ethical phenomenon, which is set as the principle when it is embodied in the legal manner of regulation.

It seems that justice is adequacy and phenomenon that appears from the nature of law. And we can not agree with the first thought or another. Indeed, it is impossible to understand justice as a moral or political principle in legal sphere, and we should differentiate justice as a principle of law.

Justice as a legal category, as a principle gets realization when it is embodied in law. Comparing «justice» in the legal and philosophical meaning it is necessary to notice that the implementation of justice in the rule of norm of law means narrowing the circle of its application. If we consider the principle of justice as a principle of legislation, then it coincides with principle of legality.

The law provides that termination of contract does not cause any, but proper it's execution. Improper performance does not terminate the obligation. The law established a comprehensive list of ways in which, besides the proper performance of the obligation, it could be considered as fulfilled. In all other cases, the obligation is complemented by the obligation to pay the fine or pay damages, or supplemented by another obligation that arises from the breach of obligation. Thus, special importance get the general principles of performance of obligations that take the form of their principles [1].

In case of non execution or performance of the obligation with violation of the conditions specified in the content of the obligations, the rules of chapter 51 of the Civil Code of Ukraine on liability for breach of obligations will be applied.

The boundary of the free determination of conditions of contract is the requirement for mandatory compliance provisions of law and the prohibition of its violation [2].

In accordance with Article 215 of the Civil Code of Ukraine is considered invalid the agreement, which does not comply with the conditions of the law.

The court at the request of either party could cancel the contract. Herewith the cancellation is seen as the early termination of contractual obligations. As a unilateral refusal of performance of obligations is not allowed, the cancellation could be exercised only on the grounds stipulated by the contract or by law [3].

Refusal of the contract in accordance with Part 2 of Art. 214 of Civil Code of Ukraine is allowed by the mutual consent and in cases envisaged by the law, and in accordance with Art. 651of Civil Code of Ukraine refusal is possible of other cases. Specifically, the agreement could provide the reasons under which the contract could be canceled unilaterally, at the initiative of one party.

The law provides the possibility of cancellation by one party. According to Art. 651 of Civil Code of Ukraine the main method of the cancellation (change) of the agreement is its cancellation or change with the consent of the parties. Civil Code of Ukraine provides specific ways in which the parties, by agreement between themselves, may change or cancel the contract. For example, through the innovation (Art. 604 Civil Code of Ukraine), giving compensation instead of performance (Art. 600 Civil Code of Ukraine).

The change or the cancellation of contract, if the parties consent about this has not been achieved, could be provided only through the court order and only on the certain grounds. These reasons are the fundamental breach of the contract by the other party and in other cases established by the contract or by the law.

As a general rule, established by Art. 653 Civil Code of Ukraine in case of change (cancellation) of the agreement, the parties have no rights to require the return of what has been performed by them on the obligation on the moment of change or cancellation of the contract, unless otherwise is established by the contract or by the law. P. 5 of this article points – if the contract is changed or canceled in connection with a significant breach of the contract of one party, the other party may demand compensation for losses caused by the change or cancellation.

The institute of refuse of the contract has long been known in civil science and was actively used in practice, however, the essence of it was not clearly defined and it is still stay as somewhat uncertain.

The most common variant of this institute is a unilateral refusal from obligation. The principles of such refusal stipulated in Articles 525 and 615 CC of Ukraine. It is anticipated in Civil legislation refusing the obligation. The law, for example, Art. 739 Civil Code of Ukraine states that the taxpayer by perpetual rent can, refuse from the contract rent. Sometimes the law stipulates the circumstances in which the parties become possible to refuse the obligation. For example, under Art. 1056 of Civil Code of Ukraine

the lender has the right to refuse giving the borrower the loan, provided by agreement, in part or in full in case of violation of the procedure of recognition of borrower bankruptcy or other circumstances which clearly indicate that the loan, that was given the borrower, will not be returned on time.

Having analyzed the provisions of the institute termination and unilateral refusal of the contract with the Institute of the improper performance of the obligation are noticed following contradictions:

According to Art. 611 in case of violation of obligations following possible consequences are: 1) the discharge as a result of unilateral refusal of the obligation, unless it is established by the contract or by the law, or breach of the contract, 2) change in conditions obligations, 3) payment of penalties, and 4) compensation for losses and moral damages.

Thus, in the case of unilateral refusal to obligation or termination the obligation the consequences occur under Article 653 of the Civil Code of Ukraine. These consequences will be compensation of damage only if there was a significant breach of contract by one party, when one party was largely deprived of what it had hoped to when was signing a contract. This situation can be understood so that in case of refusal or unilateral cancellation of the contract party can rely only on compensation of losses, whereby, only if losses were significant. If the losses were not significant parties are not entitled to recover what has been done by them for obligation until the modification or termination of the obligation will be, unless otherwise will be stipulated by the contract or by the law (p. 4. art. 653 of Civil Code of Ukraine).

Accordingly, one may conclude that in case of breach of the conditions of the contract that the court does not recognize as the essential, the injured party loses the protection of their rights.

According to the demands of justice, to prevent the negative consequences that may occur because of non-performance of the contract, it must be performed properly, by one of the means specified in Chapter 48 of Civil Code of Ukraine.

Failure to follow the principle of justice could result in negative consequences in case of violation of these requirements in the form of legal liability. For the proper functioning of civil turnover performance the principle of justice is ensured by appropriate means. The greatest relevance the principle of justice becomes in a relationship in which the parties themselves determine the rules of behavior. Therefore, the principle of justice was also enshrined in Art. 509 CC of Ukraine paragraph 3. According to the principles of honesty, reasonableness and justice parties may stipulate Endless list of fulfillment of mutual obligations.

Thus, the principle of justice is general principle for the proper performance of obligations and exercise of subjective rights.

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SUMMARY

Babich I. **Cancellation of contract and principle of justice in civil law of Ukraine.** – Article.

The article is devoted to the principle of justice in modern civil law of Ukraine and its role in the relationship of cancellation of the contract and unilateral refusal from the contract. Besides to the unilateral refusal of the contract, the Civil Code provides refusal of the contract by mutual agreement of the parties, so it is necessary to determine the interrelation of the Institute of the cancellation of the contract by agreement and refusal from the contract by agreement. The consequences of such termination are different. It is specified that, according to the demands of justice, to prevent the negative consequences that may occur because of non-performance of the contract, it must be performed properly, by one of the means specified in Chapter 48 of Civil Code of Ukraine.

Keywords: principle of justice, cancellation of the contract, refusal of the contract.

АННОТАЦИЯ

Бабич И.Г. **Расторжение договора и принцип справедливости в гражданском праве Украины.** – Статья.

Статья посвящена рассмотрению принципа справедливости в современном гражданском праве Украины и его роли в отношениях расторжения договора, одностороннем отказе от договора. Кроме одностороннего расторжения договора, Гражданским кодексом предусмотрено отказ от договора по взаимному согласию сторон, вследствие чего возникает необходимость определить соотношения этого института с расторжением договора по согласию сторон, также различаются последствия такого расторжения. Указывается, что в соответствии с принципом справедливости, с целью предотвращения негативных последствий, которые могут возникнуть в связи с

неисполнением договора должником, оно должно быть выполнено надлежащим образом, в соответствии с правилами главы 46 Гражданского кодекса.

Ключевые слова: принцип справедливости, расторжение договора, односторонний отказ от сделки.

АНОТАЦІЯ

Бабич І.Г. **Розірвання договору та принцип справедливості у цивільному праві України**. – Стаття.

Стаття присвячена розгляду принципу справедливості в сучасному цивільному праві України та його ролі у відносинах розірвання договору, односторонній відмові від договору. Крім односторонньої вімови від договору, Цивільним кодексом передбачено відмову від договору за взаємною згодою сторін, внаслідок чого виникає необхідність визначити співвідношення цього інституту з розірванням договору за згодою сторін, також розрізняються наслідки такого розірвання. Вказується, що у відповідності з принципом справедливості, з метою запобігання негативним наслідкам, які можуть виникнути у зв'язку з невиконанням договору боржником, воно повинно бути виконано належним чином, відповідно до правил глави 46 Цивільного кодексу.

***Ключові слова*:** принцип справедливості, розірвання договору, відмова від правочину.