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УДК 347.73

Use of "civil law contract" concept in financial law as an example of pragmatic influence on legal terminology

Being under the influence of regulatory prescription and implementing it in practice in specific legal relationships, a participant of social relationships and law enforcement authority in many cases have to carry out interpretation of the legal norm. They carry it out through various methods taking into account a significant number of factors. One way for law interpretation is a lexical technique, which involves establishing lexical meaning of the terms and terminological systems contained in their relationship in legal norm expressed through words. The explication of their inner form determines mandatory consideration of pragmatic aspect of lexical meaning development logic, which involves the most exhaustive clarification of practical purpose pursued by the lawmaking authority while drafting a respective legal norm.

Application of the relevant legal terms by a lawmaker is influenced by a certain objective; consequently functioning of the terms in a particular legal sphere can lead to mixed results in the interpretation of various legal norms. Therefore, the interpretation of the norms and their application in the texts of legal acts are affected by such factors as sphere of application, objective of the term application, and wide range of linguistic and pragmatic factors.

Trying in due time to broaden the basis for pension contributions (fees), the lawmaker provided their charging from payments to individuals under civil law contracts (civil contracts). The lawmaker has determined to set payments under contractor or service contracts equal to the salary. However, application of this concept in legislation resulted in affecting the material nature of mutual relations between companies and entrepreneurs, on the one hand, and their employees, on the other hand. Moreover, in the following years this concept took roots so deeply in practice of business entities that obtained a completely

different meaning than its literal interpretation allows. Over the years there are many clarifications of regulatory authorities, tax service consultations and judicial practice. As responsibility for violation of labour law had increased, almost every company or entrepreneur raised the question whether this or that individual providing services or performing works under "civil law contracts" is actually a counterparty to the contract. Or he/she is an employee and application of a civil law contract is unlawful in relations with him/her?

In other words, application of an artificial term in the field of taxation (pension contributions, later – unified social fee) by a lawmaker significantly affected the application of legal terminology in the course of settlement of material civil law and labour relationships, actually determining the mechanisms for these concepts application and relevant practices.

The pragmatic aspect of legal language was considered by such scientists as, among others, M. Andruszkiewicz, P. S. Angermeyer, A. J. Hartig, N. Ye. Koval, V. H. Kulykova, O. A. Novytska, O. I. Novostavska and H. van Schooten.

However, the pragmatic aspect of modern legal language development by the example of impact of application of the term "civil law contract" (civil contract) in financial law on its application in civil law and in practice is considered for the first time.

A. J. Hartig points that it is recognized that law and language are deeply connected. Although the author cites White (1979) who demonstrated the dangers of focusing on the linguistic comprehension of the text without taking into account the assumptions that expert legal practitioners bring to it [1].

Significant role in the study of the language of law can be played by pragmatist interpretationism which rejects formal methods of research [2]. The most relevant for pragmatics, according to L. V. Horishna, is the purpose of a text, while author's selected content and linguistic expression manner, including language units with necessary values, affect the relation of a recipient to the text [3].

Pragmatic features affect the layout of professional language texts and determination of pragmatic relations of the text [4]. Participants in legal discourse are, on the one hand, an author (professional lawyers), and on the other – a recipient [5]. The feature of subjective membership of legislative communication is that it includes not only professional lawyers, but also other persons who do not always possess the necessary degree of legal terminology, that is why legislation texts should be clear, semantically transparent, expressive and easy to understand [6].

Many institutions have official languages what are used by agents working in them. However many people who interact with them speak other languages and have limited or no proficiency in the official language [7].

According to Li KX (Li Kexing) perusing the text to decode the writer's intent is one of five basic legal translator steps in his translation strategy [8]. Speaking about legal translation M.Chroma points that it is a process of transmission of source law and language (semiotic system) to target law and language (semiotic system). This process is complex: interpretation by a translator of the source text within the source legal system forms its crucial stage as the translator is able to convey to another language only such information that he or she finds in the source legal text [9].

The purpose of this article is to analyse the impact of application of the term "civil law contract' ("civil contract") in the financial law on its application in civil law and in practice from the perspective of pragmatics of contemporary legal language, and to develop conclusions about influence patterns of changes in application of the terms in the legislation on their application in the texts of legal acts and in practice.

Achieving this goal contributes to the development of topical general scientific issues for the analysis of the trends of modern legal system development with regard to interrelations between financial, civil (contractual) and labour law, and development of linguistic and philosophical approaches to consideration of concepts of contemporary legal language.

Concept's of "Civil law contract" use. Literal lexical interpretation of "civil law contract" concept (and synonymic to it "civil contract" concept) is that this is about any contract that may be entered into by any members of civil relationships – both those from a number of contracts stipulated by the Civil Code of Ukraine and those not provided for by the Code, but such that do not contradict it. That is, in fact, the concept of civil law contract (and synonymic to it civil contract concept) is the most broad concept covering any agreement on property or property-related relationships, not contradicting the regulations of the civil law.

However, prolonged application of the above concept in financial law to refer to a narrower range of contracts resulted in the changes in its lexical meaning, and today both in everyday practice and in legal practice the concept used in the other semantic context, acquiring new connotations.

Regulations of financial legislation adopted starting from the first years of independence contributed most to the transformation of "civil law contract" concept meaning. In Ukrainian legislation application of the "civil law contracts" concept to regulate relationships concerning contributions to the state social insurance first appeared in the Resolution of the Verkhovna Rada of Ukraine No. 3290-XII "On Procedure for Enforcing the Law of Ukraine "On Amendments to the Law of Ukraine "On Pension Provision" as of June 17, 1993. Subparagraph "b" of paragraph 2 of the Resolution stipulated the contribution rate for enterprises, institutions, organizations and individual-entrepreneurs "who use hired labour", as the percentage of "the amount of remuneration paid to the citizens under civil law contracts".

Therefore, lawmakers then used the "civil contracts" concept, while meaning the kind of hired labour use.

The Instructions on the procedure for calculation and payment of insurance contributions to the Pension Fund of Ukraine by companies, institutions, organizations and citizens, as well as keeping the income and expenditure of its funds, approved by the Regulation of the Pension Fund of Ukraine No. 11-1 as of September 6, 1996, stipulated in p. 2, that, particularly, "all working citizens, including those working under the civil law contracts" shall be the payers of mandatory contributions for the state social insurance.

Subsequently, the Law of Ukraine No. 400/97-BP "On fee for mandatory state pension insurance" as of June 26, 1997 envisaged that such fee payer, except for the individuals working under an employment agreement (contract) shall also be deemed the individuals who perform work (services) under civil contracts. In addition, separate fee rate was provided for those individuals who pay certain remuneration to the individuals under civil law contracts.

The Law of Ukraine No. 1058-IV "On Mandatory State Pension Insurance" as of July 9, 2003, article 14, assumed that fee payers shall be particularly legal entities and individuals "who employ individuals under an employment agreement (contract) or otherwise provided by the law or under civil law contracts".

Finally, the Law of Ukraine No. 2464-VI "On Collection and Accounting of Unified Social Fee" as of July 8, 2010 also, in particular, enlisted legal entities and individuals "who employ individuals under an employment agreement (contract) or otherwise provided by the law or under

civil law contracts (other than civil contract entered into with an individual entrepreneur, if performed work (services provided) correspond to the activities according to the data from the Uniform State Register of Legal Entities and Individual Entrepreneurs" to the Fee payers.

As seen from the above, the use of the term "civil law contract" ("civil contract") in legislation regulating the collection of contributions for pension and other social insurance consistently assumes that such a contract is one of the means of application of hired labour provided for by the legislation.

However, if we analyse the approaches to application of appropriate terms in the texts of the mentioned legal instruments, the following feature may draw attention. The Resolution of the Verkhovna Rada of Ukraine as of 1993 uses the term "payments to the citizens under the civil law contracts", thus, formally they are any civil contracts (even, for example, sale and purchase, loan). However, Instruction No. 11-1 refers to "the citizens working under the civil law contracts".

In spite of numerous changes in legislation, the "civil law contract" concept is used in everyday legal practice today somewhere around in that sense.

Lawmaker's purpose. Why could not the lawmaker use more discrete, specified terms? Why not to provide, for example, imposition payments on unified social fee under specific types of contracts, under contractor or service contracts? The fact is that payments under contracts to individuals may be provided under a large number of the contracts – say, a contract of agency, transportation, commission. Does it, in the end, all comes down to whether work is performed or service is provided under the relevant contract?

Lawmaker's task was to cover all possible types of contracts under which an individual is paid for certain work performed or services provided in one concept.

It is important to note that a lawmaker uses the concept of service formulating essential terms and conditions of the contract in many types of contracts in the Civil Code. For example, characterising storage contract, in particular, its variant – warehouse storage, article 956 of the Civil Code envisages that warehouse is an organization that keeps goods and provides services relating to storage, subject to entrepreneurial activity. According to Articles 558, 567 of the Civil Code, a pledger, a guarantor shall be entitled to payment for the services rendered to a debtor. The Law of Ukraine "On Transport" considers the transportation of passengers, cargo, baggage and mail as types of transport services. In most cases such contracts may be attributed to the contracts related to the contractor contract.

So, every time a radical change in legislation occurs, a considerable number of issues relating to the taxation of payments for one or another contract by unified social tax appear in practice. For example, question whether payments under rent contract, licence agreement or author's contract are subject to contribution charging?

These circumstances led to emergence of a significant number of publications in practical journals relating to the difference between the civil law contract and employment agreement. Today the concept of work under the civil law contract is often used in practice. The considered feature of such work is the fact that none of labour law institutions works here – access to work, working time, rest periods, holidays, etc. In fact, the only comprehensive legal area that allows combining such work with labour law is state social insurance, but actually only in part of unified social fee payment, which is not governed by the labour law rules but ruled by financial law.

Relevant pragmatic context. Therefore, while using the "civil law contract" concept in practice, we have to always realise relevant pragmatic

context: whether any civil contract, provided for by the Civil Code of Ukraine is meant, or whether it is said about the financial field (in terms of payment of unified social fee) and therefore, in essence, simply contractor or service contract is meant (or other types of contracts stipulating the services provision). Therefore, it is necessary to clarify both lexical competence of communication participants and means of mutual objectification.

Entering into contracts with individuals, some businesses and entrepreneurs assume serious mistakes. For example, some people believe that they should enter into a contract entitled: "civil law contract" or "civil contract". However, it certainly shouldn't be done. It may result in a potential threat of relevant contracts recognition as imaginary and relations under them – as labour relations and application of significant sanctions provided for today by Article 265 of the Labour Code of Ukraine, the Code of Ukraine on Administrative Offences, or even criminal liability for serious violations of labour legislation. When entering a civil law contract, which provides the remuneration to an individual not registered as an entrepreneur, everyone should keep in mind that it usually is to be a specific agreement provided by an act of the civil law (such as a contractor contract, or service contract), and parties should agree on all essential terms of a contract provided by the law. In addition, legal practice has developed a series of rules that allow you to clearly distinguish such a contract from employment agreement. The main one is that a contract may not provide for distribution of any of labour law institutions (working time, rest periods, holidays, etc.) to an individual (performer or contractor). And of course, it should be understood that the use of such contracts may not be a complete replacement for the employment agreement, which is virtually the only way of the use of hired labour in many fields (e.g. in the field involving liability, for licensed activities, while working in the conditions of aggravated risk).

Derivative term "employee under a civil law contract". An important consequence of application of the "civil law contract" ("civil contract") term in the considered context is the emergence of derivative term "employee under a civil law contract" in practice. This term is legally inaccurate, as in the civil law other specific terms – contractor (for contractor contract) and performer (for service contract) are applied in the contractor contracts and service contracts. However, in this case the use of the term "employee under a civil law contract" is contributed by the current legislation. Thus, paragraph 8 of Section IV of the Procedure for preparation and submission of the report on the accrued unified social fee amounts by insurants, approved by the Ministry of Finance as of 14.04.2015 under No. 435 provides for the same method for submission the information both on the execution and termination of contracts with the insured person in a report – both for an employee and for a person who performs work or provides services under the civil law contract.

However, the use of the term "employee" in a legal construction essentially eliminates the possibility of using the term "civil law contract" ("civil contract") in the same phrase next to it. For an employee is a party of exclusively to the employment agreement. In civil relations it is legitimate to use other terms – contractor, performer, and partner.

Conclusions.

1. The development of present-day legal language is greatly influenced by the factors determined by the application of certain terms or terminological systems in legislation with different functional semantic background. The transformation of their lexical meaning in legislation determines the change of the

mechanism of their application in the texts of regulations and practice, as well as in wide macro-speech acts. It necessitates consideration of language-pragmatic context while providing lexical interpretation of law rules.

2. One example of the impact of the term application in legislation in a certain pragmatic context is the consistent application of the term "civil law contract" (and its synonymic term "civil contract") to refer to a narrower range of contracts. Change of application context led to change in lexical meaning of the term, and today, both in everyday practice and in legal practice, this term is used in a different context than it is allowed by its literal lexical interpretation.

Civil law contract (if the term is used without special additional explanation) is currently understood as a contractor or service contract entered into with an individual who is not registered as an entrepreneur, who is a contractor or performer under such contract. Such contract is to provide the remuneration to an individual for performing work (providing services). The application of such term highlights the antonymousness (contradistinction) of this concept to the concept of "employment agreement". The civil law contract shall be concluded in accordance with the terms of the Civil Code of Ukraine, while the employment agreement shall be concluded in accordance with the Labour Code of Ukraine.

3. As a result of derivative word formation sustained by legal practice the application of the concept of "employee under a civil law contract" extends. However, the application of such a concept is unfounded, as the term "employee" points out to the presence of an employment agreement; the concept of a civil law contract shall be used with the concept of performer (for service contract) or contractor (for contractor contract).

Given the outdated nature of domestic legislation governing the use of hired labour, and given an active development of legal terminology relating to permanent financial legislation reformation, long-term development of a new draft Labour Code, further comprehensive transdisciplinary research of legal terminology in the suggested field is relevant and promising. However, considering the importance of the issue raised for legal theory science and economic activity of the most enterprises and entrepreneurs, scientific and practical studies of the matter under consideration shall also be relevant.

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Кравчук О. О. Використання поняття «цивільно-правовий договір» у фінансовому праві як приклад прагматичного впливу на юридичну термінологію

На розвиток сучасної юридичної мови в значній мірі впливають фактори, обумовлені застосуванням певних термінів або термінологічних систем в законодавстві з різним функціональним смисловим тлом. Трансформація їх лексичного значення в законодавстві визначає зміну механізму їх застосування у текстах правових норм і на практиці, а також в широких макромовленнєвих актах. Це вимагає врахування лінгво-прагматичного контексту при здійсненні лексичного тлумачення правових норм. У статті розглядається питання про вплив застосування терміна «цивільно-правовий договір» («договір цивільно-правового характеру») у фінансовому праві на його застосування в цивільному праві і на практиці з прагматичної точки зору. Зроблено висновки про вплив змін у підходах при застосуванні термінів у законодавстві на їх застосування в текстах правових актів і на практиці. Одним із прикладів впливу застосування терміну в законодавстві в певному прагматичному контексті є послідовне застосування терміну «цивільно-правовий договір» (і його синонімічного терміну «договір цивільно-правового характеру») для позначення значно вужчого кола контрактів. Зміна контексту застосування призвело до зміни лексичного значення терміну. Цивільно-правовий договір (якщо цей термін використовується без спеціального додаткового пояснення) в даний час розуміється як договір підряду або договір надання послуг, укладений з фізичною особою, яка не зареєстрована як підприємець, що є підрядником або виконавцем за таким контрактом. Застосування такого терміну підкреслює протилежність (відмінність) цього поняття поняттю «трудового договору».

Ключові слова: юридична термінологія, мовна прагматика, застосування юридичних термінів, єдиний соціальний внесок, цивільно-правовий договір, договір цивільно-правового характеру, трудовий договір.

Кравчук А. О. Использование понятия «гражданско-правовой договор» в финансовом праве как пример прагматического воздействия на юридическую терминологию

В статье рассматривается вопрос о влиянии применения термина «гражданско-правовой договор» («договор гражданско-правового характера») в финансовом праве на его применение в гражданском праве и на практике с прагматической точки зрения. Сделаны выводы о влиянии изменений в подходах при применении терминов в законодательстве на их применение в текстах правовых актов и на практике.

Ключевые слова: юридическая терминология, языковая прагматика, применение юридических терминов, единый социальный взнос, гражданско-правовой договор, договор гражданско-правового характера, трудовой договор.

Kravchuk O. Using of "Civil law contract" concept in Financial Law as example of pragmatic influence on legal terminology

Conclusions about influence patterns of changes in application of the terms in the legislation on their application in the texts of legal acts and in practice are made. One example of the impact of the term application in legislation in a certain pragmatic context is the consistent application of the term "civil law contract" (and its synonymic term "civil contract") to refer to a narrower range of contracts.

Key words: legal terminology, language pragmatics, application of legal terms, unified social fee, civil contract, civil law contract, employment agreement.