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JURIDICAL CONSEQUENCES OF REFUSAL TO PERFORM A PUBLIC TREATY

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The author proves the necessity of legal regulation of the failure of a party to execute the transaction on a public treaty. Here are considered the issues of the societal value of particular types of public treaties and inadmissibility of their non-fulfillment by an obligated party.

Keywords: public treaty, fulfillment of a public treaty, unilateral refusal to perform a public contract

The legal regime fulfillment of a treaty is a matter of debate for a theory of civil law. The essence of the discussion is that the fulfillment of a contract can be considered as oppositely directed unilateral deal, or under it should be understood legal action by parties of the contract

In the domestic civil literature the problem of the legal nature of contract fulfillment is studied in three main directions. First, the fulfillment is understood as a legal action [4, 177]. It is opposed by the view that considers fulfillment as several mutually directed transactions [7, 23-24]. Representatives of the third, the most fundamental direction, criticize the very subject of discussion, and refer it to pseudo-problems [5, 97-106].

The question of determining the legal nature of the fulfillment a civil-law treaty, in our opinion, is not idle for civil science. We believe that the fulfillment of a contract consists of mutually directed unilateral deals. Therefore, a proper understanding of this fact helps to determine the moment of fulfillment of a contract, acceptance of performed one and laying claims about the nature of performance. Below we illustrate the conclusion that the performance of a contract is a subject to the rules on transactions, and we point out the importance of such a qualification of obligation fulfillment.

Absence in the Civil Code of the RF of provisions on which of the parties first fulfills its obligation, and their non-mandatory regulation generates a lot of disputes considered by court instances. Legislative recognition of division transactions to real and consensual ones would help to resolve the situation. However, this classification is only implied but formally not enshrined in the Civil Code of the RF. Therefore, the party, which has implemented the actions provided for by the text or essence of a treaty, generates, thus, the obligation to perform counter-actions by the counterparty.

Consequently, the counterparty that has fulfilled its part of a contract, thus, implements a unilateral deal. Other counterparty, having applied to unilateral action on execution of the contract the evaluation category of "proper", takes executed and, in its turn, carries out an inherent unilateral deal, by passing consideration to the counterparty.

The study of procedure for fulfillment of a public treaty, we plan to implement in the context of transactional nature of fulfillment. The main property of this fulfillment we, after V. K. Tolstoy, see in free expression of will to carry out the actions, which provided for by the subject matter of a contract.

In a public treaty under fulfillment is understood the sale of goods, performance of works or rendering services that are required to be implemented by a commercial organization with respect to each person who applies to it. Consequently, as has been noted above, the fulfillment of a public treaty is not based on free will, but on the duties prescribed by law. Thus, in our view, the main problem encountered in the study of the features of fulfillment of public treaties as organizationally-prerequisite agreements, but not as properties of business contracts for sale of goods, performing works or rendering services, is a problem of rejection to perform and the possibility of forcing for fulfillment provided to the creditor by law.

As fairly remarks S. V. Sarbash, legal nature of failure to perform an obligation is not enough investigated in the Russian science of civil law [6, 37]. Juridical properties of refusal to perform a public treaty are not an exception.

Refusal to fulfill at its core is also a transaction, as it appears in the form of expression of will of an appropriate person, in this case the commercial organization that has announced an offer of a public treaty. Refusal is based on the will of a person seeking to achieve through such rejection certain goals. Consequently, as notices S. V. Sarbash, person's actions of refusal to fulfill obligations outwardly manifest in a certain expression of will, which may take a negative or positive form, depending on the nature of an obligation [6, 38].

Refusal to fulfill a contract can be considered as a measure of operational impact. So, the developer of the theory of operational impact measures, V. P. Gribanov believed, that "rejection of a treaty is an operational measure of generality aimed at the full cessation of relations of an authorized person with a defaulting counterparty" [2, 152-153].

However, the scientist specified that statutory cases of unilateral rejection of a treaty are not necessarily measures of operational impact. Rejection of a treaty may be referred to operational impact measures only in cases where it is applied by an authorized person in response to a breach of an obligation by the other party.

In those cases where the law allows the rejection of contract "at any time", that is independent of a breach of a contract by the other party, as well as in other cases not related to the breach of an obligation by the debtor, for example due to impossibility of performance, repudiation of contract should be considered only as a way of unilateral termination of an obligation, but not as a measure of operational impact [2, 152-153].

Differentiation of the cases of repudiation of contract from a practical point of view is important, because if the rejection is in the form of operational impact measure, then the person, to whom it was applied, is obliged to compensate the damage caused by its fault. Unilateral refusal of contract, in the absence of a violation, may be the basis for exaction of damages from the creditor, who rejected the contract.

In accordance with the above criteria, the failure to perform a public treaty should be seen exactly as a unilateral refusal, but not as a measure of operational impact. This is directly related to the public nature of a treaty. Publicity of a contract means not only openness, general availabifity, but also social demand and importance of the traded goods, performed works, services provided [3, 132-133].

In this regard, the failure to fulfill a public treaty, in those treaties, the subject of which are goods, works or services of high social value, is not permitted and shall result in responsibility, if there are no proven grounds for exempting from it. For example, in case of rendering services of medical nature for categories of people who have privileges in this service sector, the rejection of a contract should be recognized inadmissible.

In our view, we should adjust paragraph 2 of article 782 of the Civil Code of the RF and limit the right of refusal from the fulfillment of services. The grounds for refusal to comply with a contract, in our opinion, can only be a force majeure, the presence of which is must be proven by the performer. And the court must bear

responsibility to evaluate the nature of force majeure and the reality of impossibility to fulfill obligations [1].

Other circumstances that prevent fulfillment of a treaty on provision of services for a fee may not be considered as grounds for refusal to comply with the contract; in the case when a performer refers to them he should be denied the right to engage in this kind of activity for a period determined by the court.

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