



Civil-law problems connected with obligatory drawn contracts

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Abstract

The problems of civil-law connected with obligatory drawn contracts were analyzed in the article as well as the suggestions about contracting and development of them was given.

Keywords: free contracting, contract, compulsory contract, drawing an agreement, the stages of drawing up agreements, consideration and signing the contracts, contract archiving

Introduction

The principle of freedom of contract is one of the most important rules of the civil legislation of the Republic of Uzbekistan, based on market relations. Freedom of contract as a basis of civil legal documents was reflected in article 1 of the current Civil Code of the Republic of Uzbekistan as well as the freedom of contracts is harmonious with the initiative of participants of market economic relations, with ample opportunities given to them and freedoms, with the rules of civil law ordering as non-interference in the part of the activities, such as the laws of market supply and demand, competition. At the same time, freedom of contract is particularly important in the development of entrepreneurship, providing opportunities to small businesses and legal safeguards.

Freedom in the preparation of contracts and in the choice of the form drawn up by the contracting parties of legal relations is enshrined in Article 8 of the Civil Code of the Republic of Uzbekistan. According to him, the civil rights and obligations arise from treaties and other agreements provided for by law, and treaties and agreements, not provided for by law, but not contrary to it. For this reason, the choice of types of contracts and, in general, with the expression of the desire to make the contract and enter into a contractual relationship, the parties entering into a legal relationship are free.

The content of the freedom of contract is reflected in article 354 of the Civil Code of the Republic of Uzbekistan, according to which citizens and legal entities in the preparation of contracts are free.

According to Professor I.B. Zokirov the principle of freedom of contract can be understood by highlighting three positions:

- 1) Freedom of choice of the subject of his counterpart, that is a partner in the contract;
- 2) The freedom to choose the subject of the contract, that is the state of adoption of the treaty;
- 3) Freedom of choice of the contract conditions.

The implementation of these three provisions in relation to the subject should not exert any improper influence ^[1].

A.N.Tanaga gives the following definition of the principle of freedom of contract: the freedom of contract - directly enshrined in law the primary basis for civil law, which

determines the freedom to create contracts, freedom of choice of species is freedom of contract and determining the terms and conditions for the subjects of relations contracts ^[2].

According H.R.Rahmonkulova freedom of contract leads to the existence of the true desires and will of the parties in entering into a relationship agreement. This will is manifested primarily in the actions on drawing up the contract, and secondly, in the act of determining the conditions of the contract, in the third, the actions to fulfill the contract obligations ^[3].

According to part 2 of article 354 of the Civil Code of the Republic of Uzbekistan is not allowed forced drafting of the contract. Cases duty of drawing up the agreement in the cases provided for in this Code and other laws or the commitments are the exception.

According H.R. Rahmonqulov, according to the legislative documents in force at the time of the socialist system, the composition of many contracts are required. State, cooperative, public organizations were required to make a corresponding agreement. This commitment, first of all, arose on the basis of planned targets. Existing civil legal documents also suggest drafting contracts compulsory. However, the legislation of the modern system is very different from the law of the former system. Drawing up of contracts compulsory by law only in specific cases established ^[4].

R.Knipper about drawing in the CIS agreement on a mandatory basis considers that the establishment of the Civil Code, along with the freedom of contracting is not without reason restricts these principles and the restriction in the first place, which is carried out in terms of social protection and consumer protection. At the moment, the legislation of some countries, such as the Civil Code of Georgia and Moldova, established the compulsory contracting for leading at the enterprise market, and other relevant circumstances, the civil laws of other CIS countries have established rules for drawing up the agreement on a mandatory basis in accordance with the Civil

2 Tanga A.N. The principle of freedom contract civil law of Russia.- St. Petersburg. Press Law Center. 2003. - P.39.

3 Rahmonqulov H. with descender. Liability law. Text book.- T.: TGYUL2005 - p.227.

4 Rahmonqulov H. with descender.Liability law. Text book.- T.: TGYUL2005 - p.253.

1 Zokirov IB Civil law. Textbook. -Tashkent. TSIL, 2009. Part 1. -384 With.

Code of the CIS model ^[5].

Indeed, the introduction of compulsory drafting in the exceptional freedom of drawing up the order contract determines the mandatory preparation of contract with respect to one side or two sides. Mandatory drawing up of the contract gives rise to organizational and legal relations and the emergence of such a relationship, their content and the conditions for their implementation are reflected in the Civil Code.

According to N.D. Egorova, a procedure for drawing up the contract according to the law is used when drawing up a contract for one of the parties be sure, that is when you should make a binding contract ^[6].

Organizational and legal relationship with the compilation of the contract is mandatory, the draft treaty origin, its adoption and the administration of response, changes in the conditions provided for in the draft treaty or organizational processes associated with the rejection of the formation of the contract are reflected in article 377 of the Civil Code of the Republic of Uzbekistan. According to part 1 of this article, according to this Code or other laws, in cases where a party has sent an offer (the draft agreement) is required to draw up a contract, the other party within 30 days should be direct awareness (disagreements protocol with the draft treaty) on the acceptance or rejection of the acceptance of the offer or the acceptance of other conditions.

According to E.S. Kanyazov, when drawing up a contract for a party that has sent the offer (the draft contract), is mandatory, the other party within 30 days is required to send the notice. This is performed in the following forms:

- Notice of acceptance;
- Notification of non-acceptance;
- Extension of the requirements of the treaty-based requirements, which differ from the requirements proposed by the acceptance of the offer. However, this notice, in contrast to Article 375 of the Civil Code says abuse of acceptance. In this case, together with the draft sent to the seller signed the protocol disagreements ^[7].

In this sense, joining E.S.Kanyazov opinion it should be noted the absence of a logical connection between the rules of Article 375 of the Civil Code of the Republic of Uzbekistan and the Article 377. The reason is that in Article 375 of the Civil Code stated the rule that "the answer of the agreement on the basis of drawing up the contract conditions that differ from those offered in the offer are not considered to be an acceptance. Such a response is a refusal to accept at the same time a new offer. "In the same article 375 of the Civil Code of the Republic of Uzbekistan provides for the administration of disagreement with the protocol agreement signed by the project in accordance with Part 2 of Article 460, determined by the rules of the stages of drawing up a binding contract and, in this case, the parties decide on organizational matters relating to possible changes in the relevant project. In addition, Article 375 of the Civil Code requires rules on the stages of drawing up the contract, as Article 377 of the Civil

Code sets the rules "drawing up of the contract is mandatory", is an exception from the normal procedure for drawing up the contract. Therefore, in order to ensure mutual consistency and eliminate contradictions between them should introduce a rule "are the exception rule of Article 377 of the Code." This will serve as the correct use of the rules of the Civil Code and prevent groundless conflicts between the parties.

It should be noted, preparation of contracts is a mandatory organizational and legal relations and to acquire property hue. The aim of such relations is to generate in the future contractual relationship with the property shade and execute the contract. Typically, such a procedure for drawing up a binding contract does not apply to all types of binding contracts and binding agreements that do not use this procedure, organizational relationships do not occur. For example, when drawing up the contract of retail dealer, has a massive contract and engaged in ongoing business and customer need for such a procedure is not felt. The reason is that the implementation of the retail sale contract, despite the fact that it is necessary for the seller, in many cases, carried out immediately after the preparation and, at the same time the administration of the offer waiting in within 30 days of acceptance, and other organizational issues are not observed. Therefore, to talk about the preparation of all types of "compulsory agreements" mandatory and include them in the number of contracts drawn up by a mandatory, it would be wrong. As the "preparation of the contract is mandatory" and "binding contract" - differing legal reality and they should be analyzed separately.

In this sense, the inclusion of some of the authors of the mass of agreements aimed at protecting consumers' interests in a group of contracts, drawn up by a mandatory ^[8] From the point of view of logic, not advisable. This agreement (the massive contract), despite the fact that it is considered essential for one of the parties is required, the procedure for its preparation was not based on Article 377 of the Civil Code rules. Contracts of this type (bulk agreements) prohibited by law at first to accept the conditions of party providing the goods, works and services, and then refuse to side in drawing up the contract. And drafting of the contract, usually carried out on the basis of the rules laid down in the preparation of contracts. In drawing up the agreement on a mandatory basis, the contracting parties shall be established in advance, and based on this, one side or two sides of the contract are forced to draw up a contract. For this reason, they should discuss the organizational and legal issues related to future legal relations, the responsibilities entrusted to them, and rights. This gives rise to organizational and legal relations and property relations agreement between them and the content of the contract and questions on registration.

For example, in the Charter, approved by Decision № 383 of the Cabinet of Ministers dated September 4, 2003 "On the procedure of drawing up contracts between the producers of agricultural products and billet, service organizations, their registration, execution, and monitoring of their implementation" set the direct order of drawing up contracts in preparation, processing and purchasing of agricultural

5 Knieper R. Development of civil codes in the CIS. / 10 years of the Civil Code of Uzbekistan's experience and perspectives development.-T. KONSAUDITINFORM-NASHR, 2008. - P.28.

6 Civil law. V.1. // Pod.red.A.P.Sergeeva, Yu.K.Tolstogo.-M. Prospect, 2003. - P. 607.

7 Comments of the Civil Code of the Republic of Uzbekistan. Tom-I-T. Vektor-Press, 2010. - 782 pp.

8 Rahmonqulov H. with descender.Liability law. Textbook. T. TGYUI.2005. - S.255-257.; Knieper R. Development of civil codes in the CIS. // 10 years of the Civil Code of Uzbekistan's experience and perspectives razvitiya.-T: KONSAUDITINFORM-NASHR, 2008. - P.28.

products. According to the Charter, the drafting of contracts of contraction carried out directly in the farms. Contraction contract, as the contract on the delivery of material and technical resources and the provision of services (works) based on the volumes set out in the business plans of farms, should be made one month before the beginning of agricultural activities, but no later than the beginning of the calendar year.

When drawing up the contract originator sends his responsible representative in the economy. The compiler has the right to send through the mail in the economy of contraction draft contract, if the parties are in different fields and agree to draw up a contract.

Since the compiler representative visit the farm or from the receipt of the draft treaty by mail within 7 days of the contract must be signed and returned to the originator. In the case of objection to the occurrences of farms over the requirements of the contract, the economy in the same period of disagreements and sends the originator signed contract in duplicate.

After the compiler will receive disagreements, within five days, he is obliged to make proposals received for consideration, in the same time frame for consideration of conflict situations is obliged to submit to the appropriate

economic court. The contract is prepared and signed in triplicate. Wood and service organizations provide to the District Department of Agriculture and Water written contract for registration within three days after the drawing. When you register you can not request additional documents or pay.

If the agreement meets the requirements of the district department of agriculture and water management registers it in the prescribed manner. In the case of non-compliance with the established requirements of the contract, the decision to refuse registration. In case of cancellation of registration of the contract, billet and service organizations, eliminating defects, shall, within three days to provide it again.

It can be seen that the preparation of the contract kontraktatsionnogo carried out according to the rules for a mandatory contract, laid down in Article 377 of the Civil Code, the special rules of the Constitution and raises a number of organizational and legal relations. Organizational work to be implemented by the Parties in the preparation of kontraktatsionnogo contract and the timing of their implementation are set out in Annex 1 to the Constitution and the application is called the "phase of the contracts between the producers of agricultural products, billet, service organizations, their registration." These steps are in the form of the following table:

Stages of preparation of contracts between producers of agricultural products, billet, service organizations, their registration

Steps	Events	Deadlines	Responsible persons
Stage 1	Preparations for drawing up contracts	One month before the start of farming activities	Wood, servicing and other organizations
2-stage	Review and signing of contracts	Within 7 days	Agricultural enterprises
3rd step	Delivery contracts for registration	Within 3 days	Wood, servicing and other organizations
4-Stage	Registration of contracts	Within 3 working days	Departments of Agriculture and Water Resources
5th step	Issuance billet contracts, servicing and other organizations after registration	After registration in 1 day	Departments of Agriculture and Water Resources
6th step	Issuance of farms registered contracts	After registering for 2 days	Wood, servicing and other organizations
Stage 7	Storage contracts	After all the requirements of the contract for 3 years	Wood, servicing and other organizations, departments of Agriculture and Water Resources of Agriculture enterprise

From these steps it is clear that the drawing up of contracts necessarily carried out only in the form of organizational and legal relations and their aim is not the formation of a specific value or a product of the amount of material, and the execution of the intangible nature of the actions.

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