CONSEQUENCES OF FAILURE TO COMPLY WITH CIVIL LEGAL OBLIGATIONS DURING THE WAR

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Abstract: The article highlights the features of the consequences of non-fulfillment of civil obligations during martial law, as well as the study of civil liability as one of the consequences of breach of obligation, structural elements of civil liability, its role in ensuring proper implementation of obligations and protection of civil rights and interests in the civil law of Ukraine in modern conditions. The legal consequences of non-performance and improper performance of obligations are considered. Civil liability, damages, the distinction between "insurmountable" and "extraordinary" in civil law are studied.

Keywords: Obligations, war, responsibility, transactions, contract, force majeure, legal consequences.

1 Introduction

The military aggression of the Russian Federation against Ukraine has affected almost all spheres of human life in Ukraine, including the possibility of fulfilling civil obligations. It is assumed that for these reasons, a large number of civil law agreements concluded in Ukraine will not be properly implemented. In this regard, there is a need to investigate the consequences of non-compliance with civil law obligations due to martial law in Ukraine. Civil law relations cover part of the legal relations that need to be regulated in accordance with the economic and political state of society. Civil legislation of Ukraine is devoted to the settlement of property and personal non-property relations among a significant number of participants in such legal relations, including individuals, legal entities, local communities, officials of local governments, the state and more. At the same time, today's civil law poses challenges that the country did not know before. The attack on the country of the terrorist state has caused significant changes in public life, which should be reflected in the current legislation.

The imposition of martial law means, first of all, the restriction of citizens' rights, which is a necessary necessity. It should be agreed that "the maintenance of martial law in a state and the declaration of a state of war are important military-political and legal acts of the top political leadership of a state against which there is an imminent threat or armed aggression, and are important for ensuring national security and defense and vital activity of the state". Kirichenko S. O., Lobko M. M., Semenenko V. M. (2019).

Almost every contract contains a section that defines the circumstances that are grounds for release from liability for failure to fulfill obligations under the contract. Due to the fact that obligations are a central category of civilization, scholars often turn to this group of legal relations, as they study both general theoretical approaches and specify their developments on certain types of obligations. This field of science is represented by the works of T. V. Bodnar, N. Yu. Golubeva, Zh. V. Zavalna, V. V. Lutsy, R. A. Maidanyk, D. I. Meyer, K. P. Pobedonostseva, O. P. Pecheny, I. Y. Puchkovska, S. V. Sarbasha, M. M. Sibilova, G. F. Shershenevich, E. O. Kharitonov, R. B. Cone and others.

2 The initial presuppositions

The civil legislation of Ukraine does not recognize the arbitrariness of the debtor in matters of execution or non-execution of the commitment. This is evidenced by a number of rules on the requirements for proper performance of obligations (Chapter 48 of the Civil Code of Ukraine), types of enforcement (Chapter 49 of the Civil Code of Ukraine), ways to protect civil rights and interests of the injured party and legal consequences of breach of obligation (Chapters 3 and 51 of the Civil Code of Ukraine).

The purpose of the article is to outline the general provisions on the consequences of non-fulfillment of obligations under the civil law of Ukraine during the war. Analyze the features of civil liability of the parties for failure to fulfill obligations.

3 Methods

The methodology of the chosen problem is a systematic approach, as well as dialectical, formal-logical and structuralfunctional methods and other general scientific research methods, as well as special legal methods: comparative law and formal law. The methodological basis of the study is theory cognition, its general method of materialist dialectics. The following were used as general scientific research methods: formal-logical and systematic methods.

4 Results and discussion

In accordance with the general provisions of the Civil Code of Ukraine, which determine the legal consequences of breach of obligation and liability for breach of obligation, breach of obligation is its non-performance or performance in violation of the content of the obligation (improper performance).

In accordance with the general rule on the legal consequences of non-performance or improper performance of obligations under the contract, the legislator established a general rule according to which in case of breach of obligations there are legal consequences established by contract or law, including:

1) termination of obligations waiver of the obligation, if it is established by the contract or the law, or termination of the contract;
2) change in the terms of the obligation;
3) payment of a penalty;
4) compensation for damages and moral damage.

In particular, in accordance with Art. 614 of the Civil Code of Ukraine, the person who violated the obligation is liable for his guilt (intent or negligence), unless otherwise provided by contract or law.

In particular, under civil liability is understood to be provided by law or contract and provided by force of state coercion obligation of the parties to civil relations to suffer deprivation of property to restore or compensate for the violated right of the victim, expressed in imposing additional obligations or deprivation effective rights. Roziznana I. V. (2014)

Most researchers point out that civil liability is a sanction for an offense. As V. D. Prymak rightly pointed out, even when the term "sanction" is not directly mentioned in the proposed definitions in the legal literature, the definitions of the definition of civil rights. Primak V. (2003).

Under civil liability, it is necessary to understand only those sanctions that are associated with additional burdens for the offender, that is, for the offender. At the same time, the additional encumbrance is always of a property nature, aimed at the property sphere of the offender. It is with such an additional

burden that civil liability as a sanction differs from other civil sanctions. In addition, such a property nature of civil liability measures is a specific feature of civil liability.

Examining the nature of civil liability, researchers note that the grounds for its application are the existence of rights and obligations, violation of which entails the application of appropriate sanctions, wrongdoing, the presence of damage caused by wrongful conduct, the causal link between wrongful conduct and consequences, as well as the presence of guilt of the offender. Kharitonova E. O., Kharitonova O. I., Golubeva N. Yu. (2007).

Therefore, the conditions of civil liability are the presence of:

1) illegal behavior of a person related to the violation of contractual obligations or the law in compliance with the terms of the contract;
2) the negative consequences of such behavior (damage), both tangible and intangible;
3) the causal link between wrongful conduct and harm;
4) the fault of the person who caused the damage.

It should be noted that wrongdoing, harm, causation are objective and belong to such an element of the offense as the objective party, and guilt – the subjective basis of civil liability and belongs to the subjective side of the offense.

According to Art. 526 of the Civil Code of Ukraine, the obligation must be performed properly in accordance with the terms of the contract and the requirements of the Civil Code of Ukraine, other acts of civil law, and in the absence of such requirements and conditions – in accordance with business practices or other requirements. According to Art. 193 of the Civil Code of Ukraine business entities and other participants in economic relations must perform economic obligations properly in accordance with the law, other legal acts, the contract, and in the absence of specific requirements for the fulfillment of obligations – in accordance with the requirements In case of impossibility to fulfill the obligation due to a circumstance for which neither party is responsible, the obligation is terminated (Article 607 of the Civil Code of Ukraine). The inability to perform an obligation can be defined as the subjective or objective inability of the debtor to perform certain actions that constitute the content of the obligation. Inability to perform characterizes situations in which the debtor's performance of his duties arising from a contract or law has become impossible due to various reasons. Impossibility is an event that occurs at the time of fulfillment of the obligation and is contrary to the principle of inadmissibility of unilateral waiver of the obligation. The notion of inability to perform is collective, as this inability is associated with various facts that interfere with the normal dynamics of the obligation. Khalabudenko O. A. (2014).

Legal consequences of breach of obligation

Forms of liability under civil law are set out in Art. 611 of the Civil Code, according to Part 1 of which in case of breach of obligation there are legal consequences established by contract or law, in particular:

1) termination of the obligation due to unilateral waiver of the obligation, if established by contract or law, or termination of the contract;
2) change in the terms of the obligation;
3) payment of a penalty;
4) compensation for damages and moral damage.

Also in accordance with Part 2 of Art. 611 CC in case of breach of a negative obligation by the debtor, the creditor, regardless of payment of damages and (or) compensation for damages and non-pecuniary damage has the right to demand termination of the action from which the debtor undertook to refrain, if it does not contradict the obligation. Such a claim may be made by the creditor in the event of a real threat of breach of such an obligation.

We will consider in more detail some of these legal consequences of breach of obligation, as well as other legal consequences of breach of obligation, which are set out in the CC, in particular:

1) the emergence of the right to unilateral waiver of obligations of the injured party. Thus, in case of breach of the obligation by one party, the other party has the right to partially or completely waive the obligation, if required by contract or law. Unilateral waiver of the obligation does not release the guilty party from liability for breach of the obligation. As a result of unilateral waiver of the obligation, the terms of the obligation are partially or completely changed or terminated accordingly;
2) the debtor's liability for the actions of others. The debtor is liable for breach of obligation to other persons who were entrusted with its performance (Article 528 of the Civil Code), if the contract or law does not establish the responsibility of the direct executor;
3) the right to demand a thing determined by individual characteristics from the debtor. If the debtor fails to transfer to the creditor the ownership or use of the thing determined by individual characteristics, the creditor has the right to claim the thing from the debtor and demand its transfer in accordance with the terms of the obligation. The creditor loses the right to claim from the debtor the thing determined by individual characteristics, if this thing has already been transferred to a third party in the ownership or use. If the item determined by individual characteristics has not yet been transferred, the priority right to receive it has the creditor whose obligation arose in favor of, and when it is impossible to determine – the creditor who first filed a lawsuit;
4) execution at the expense of the debtor. In case the debtor fails to perform certain work for the creditor or fails to provide him with services, the creditor has the right to perform this work on his own or entrust its performance or service to a third party and demand damages from the debtor, unless otherwise provided by contract, civil law or obligation.
5) change in the terms of the obligation. Changing the terms of the obligation occurs, in particular, when terminating the obligation by transferring the assignment (Article 600 CC), when changing the subject of the obligation, ie instead of the specified in the obligation object (thing, service, work, etc.) to the creditor money, other property, etc. are transferred. Thus, there is improper performance of the obligation in violation of the terms of the subject of its performance, but with the consent of the parties the legal consequence of such violation is not liability, but change the terms of the obligation and its termination. which occur as a result of breach of obligation.

A distinction should be made between the impossibility of performance as a ground for termination of the obligation and force majeure as the basis for release from liability for non-performance of the contractual obligation. Force majeure is only a form of impossibility of performance of the contract and may in some cases entail termination of the contract by its termination. Therefore, it should be noted that the occurrence of force majeure does not always terminate the obligation, but only releases from liability for non-performance. Exemption of the debtor from liability in case of inability to perform is possible in the following cases: the circumstance is force majeure; there is no causal link between the debtor's actions and the circumstances; the circumstance that caused the impossibility of execution was beyond the control of the debtor.

According to Art. 1 of the Law of Ukraine of 12.05.2015 № 389-VIII "On the legal regime of martial law" martial law is a special legal regime imposed in Ukraine or in certain localities in case of armed aggression or threat of attack, threat to state independence of Ukraine, its territorial integrity and provides for granting the relevant state authorities, military command, military administrations and local self-government powers necessary to deter the threat, repel armed aggression and ensure national

security, eliminate the threat to Ukraine's independence, territorial integrity, and temporary, limited threat constitutional rights and freedoms of man and citizen and the rights and legitimate interests of legal entities, indicating the term of these restrictions.

The legal basis for the imposition of martial law is the Constitution of Ukraine, Law 389 and the Decree of the President of Ukraine on the imposition of martial law in Ukraine or in certain localities, approved by the Verkhovna Rada of Ukraine.

Thus, the Law of Ukraine of March 15, 2022 № 2120-IX "On Amendments to the Tax Code of Ukraine and other legislative acts of Ukraine on the application of norms for the period of martial law" (hereinafter – Law № 2120-IX) supplemented, inter alia, section "Final and Transitional Provisions" of the Civil Code of Ukraine, paragraph 18.

Signs of force majeure (force majeure), in addition to the extraordinary circumstances, as well as the inevitability of the consequences, should also include the external nature of the activities of the obligor. Significant features, in turn, are characterized by additional criteria, which can be both mandatory (necessary) and optional (optional). So, let's look at the signs of force majeure (force majeure) in more detail. The generic feature that characterizes any circumstance of force majeure is the feature of its being "out of the control of the party". Kharitonova, noting that "the inability to control the situation, to influence it" is one of the factors for recognizing the circumstance as force majeure.

The sign of extraordinary is characterized by the presence of a mandatory criterion – objectivity, ie an atypical circumstance, unusual not because it is considered by the subject, but because of the objective understanding of the extraordinary in general, regardless of subjective attitude to this circumstance. So, force majeure is always objectively extraordinary. At the same time, the sign of emergency is characterized by the presence of an optional criterion – unpredictability. However, the optionality of this criterion means that it is not in all cases a necessary characteristic of the extreme circumstances of force majeure.

In particular, this clause currently stipulates that during the period of martial law, state of emergency in Ukraine and within thirty days after its termination or cancellation in case of default by the borrower of the monetary obligation under the agreement under which the borrower was granted a loan by the bank or another lender (lender), the borrower is released from liability under Article 625 of this Code, as well as from the obligation to pay in favor of the lender (lender) a penalty (fine, penalty) for such delay. Also, this paragraph establishes that the penalty (fine, penalty) and other payments, the payment of which is provided by the relevant agreements, accrued inclusive from February 24, 2022 for late performance (non-performance, partial performance) under such agreements, are subject to write-off by the lender (lender).

According to Article 617 of the Civil Code of Ukraine, a person who has violated an obligation shall be released from liability for breach of obligation if he proves that the breach occurred as a result of accident or force majeure.

In turn, according to Part 2 of Article 141 of the Law of Ukraine "On Chambers of Commerce and Industry of Ukraine" military action is considered force majeure, which objectively makes it impossible to fulfill obligations under the terms of the agreement.

Signs of force majeure are extraordinary and inevitability (Article 14-1 of the Law "On Chambers of Commerce and Industry in Ukraine"), as well as an objective causal link with the consequence in the form of default. For contractual obligations, force majeure is a precondition for release from liability for improper performance or breach of obligation, but does not in fact cancel the obligation. That is, force majeure is not a universal debt forgiveness. Contractual obligations are not deleted, so the main obligation must be properly performed as soon as possible, if such performance is appropriate for the parties at the end of the force majeure.

The "insurmountable" and the "extraordinary" in civil law are not identical and have different consequences. In particular, force majeure is possible but not mandatory for declaring a state of emergency (this regime was in force in Ukraine during February 24, 2022). The direct military aggression of Russia and Belarus against Ukraine has not happened on such a scale before. But after the return of independence, we can talk about a similar situation in 2003 (the conflict in Tuzla). At least since the end of February 2014, the circumstances of aggression and occupation in Sevastopol, Crimea and ORDLO are very identical. Therefore, the events of the end of February 2022 in 9 oblasts and Kyiv can be considered expected. After all, no matter how rare it may seem to be war, threat of force by the state, sabotage or other use of weapons against the territory where the party to the treaty is located, many circumstances of such an event can be prepared and adapted.

An extraordinary but disgusting event is not force majeure. For example, 150 years ago it was difficult to imagine the real impact of man-made activities on natural phenomena, but in the early twentieth century it became known about weapons of mass destruction, and therefore, artificial mass poisoning and epidemics became possible. Since the middle of the last century, when nuclear weapons were invented, it has become possible to create artificial storms, earthquakes, cyclones, floods, which were previously considered natural disasters. Of course, with regard to less destructive social phenomena, which the law recognizes as force majeure circumstances (war by conventional methods, crimes against humanity, war crimes, threat of force, fire, etc.), it is quite objective to identify subjects of civil law who they cause and contribute to their occurrence.

The Supreme Court in Case 10910/9258/20 emphasizes: "Force majeure circumstances are not of a preliminary nature, and if they arise, the party must prove that these circumstances were force majeure in this particular case of performance".

As a general rule of peace, the Chamber of Commerce and Industry of Ukraine and its authorized regional chambers of commerce certify force majeure and issue certificates of such circumstances at the request of business entities individually. Now the CCI has issued a universal force majeure certificate, which applies to the entire territory of martial law (as of April 21, 2022, this is the entire territory of Ukraine). But is this a direct cause of non-compliance? This issue is subject to analysis in the context of the type of contract, as we can see in addition to the risks provided by law, the provisions of each contract and the circumstances of specific parties may differ. We assume that in relatively quiet areas the universal certificate of the CCI of Ukraine may be perceived by the injured party as a "life hack to avoid liability", so since the CCI certificate is not the only possible evidence for the parties, the case law will later clarify whether universality the CCI certificate is only de jure or de facto.

Let's look at some types of commitments.

For example, a contract of sale, the creditor is not liable for defects in the goods, if he provided guarantees for its quality and prove that such defects arose as a result of force majeure after the transfer of goods to the buyer. The current UN Convention on Contracts for the International Sale of Goods obliges a party that fails to fulfill its obligations to notify the other party of the obstacle and its impact within a reasonable time. If there is no notification and the pending party did not know and could not have known about such an obstacle, the executing party shall be liable for damages caused by failure to notify such force majeure.

The contract of rent, lease, force majeure does not avoid the fulfillment of obligations, including financial (for example, lease

payments), but allows you to defer obligations or release from liability of the entity for non-compliance during the existence of such circumstances (penalties, damages). If the property is damaged before the transfer to the lessee (rent payer), force majeure can be used only if the property can be replaced. In case of uniqueness of the subject of rent (lease) the contract is subject to change or termination due to impossibility of performance. If property destroyed or damaged as a result of hostilities after transfer is transferred for rent for a certain period, the rent payer is not released from the obligation to pay it before the end of this period under the terms of the contract. If such property is transferred for the payment of an annuity, the payer may demand the termination of the obligation to pay the annuity or change the terms of its payment.

Under the lease agreement, the lessee is exempt from payment for the entire period during which the property could not be used by him due to circumstances for which he is not responsible. However, there are other options: (suspend) the contract in accordance with the principle of freedom of contract, change the form, frequency of rent, reduce rent to justify a significant reduction in the use of property, terminate the contract by referring to force majeure in the contract or warning counterparty for 1 or 3 months for the lease of movable and immovable property, respectively.

In accordance with paragraph 6.2 of the Regulations of certification by the Chamber of Commerce and Industry of Ukraine and regional chambers of commerce and industry of force majeure (force majeure) force majeure (force majeure) are certified at the request of the person concerned under each contract.

Force majeure only exempts from liability for breach of obligations (ie from the imposition of fines / penalties), but does not exempt from the need to fulfill the relevant contractual obligations. Thus, in connection with the recognition by the Chamber of Commerce and Industry of Ukraine of the military aggression of the Russian Federation against Ukraine by force majeure (force majeure), the parties may terminate the obligations due to their inability to fulfill them without liability contractual obligations.

5 Conclusion

In view of the above, it should be understood that during the martial law the consequences of non-fulfillment of civil law obligations have changed significantly only under loan agreements. In particular, debtors under such agreements are exempt from paying fines, penalties, three percent per annum, inflation losses and other liability.

As for other civil law agreements, the consequences of non-fulfillment of obligations are in fact the same as they were before the imposition of martial law. That is, if a party proves that it has breached its obligations due to insurmountable circumstances (for example, due to destruction of premises, inability to deliver goods to a certain territory, destruction of property, etc.), it will be released from liability. If the party is unable to prove such circumstances, it will be liable on a general basis.

In this regard, the parties to the agreement, who violated the civil law obligation and continue to plan to refer to the circumstances of force majeure, which arose in connection with military aggression, are advised to contact the Chamber of Commerce and Industry of Ukraine (regional chamber of commerce) and try to certify such circumstances under a specific agreement.

It is clear that the Civil Code of Ukraine in today's conditions requires not only theoretical understanding, but also generalization of existing practice of application of relevant provisions of the Civil Code of Ukraine and other acts of civil law, in order to determine the effectiveness of their legal regulation.

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