IMPROVEMENT OF THE BASICS AND PROCEDURE FOR APPLYING LIQUIDATED DAMAGES IN THE RIGHT OF OBLIGATION

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ABSTRACT: This article provides a scientific and theoretical analysis of the non-fulfillment or inadequate fulfillment of contractual obligations by business entities, as well as the improvement of the application of penalty to ensure the fulfillment of commercial obligations of civil law relations and makes relevant recommendations.

Keywords: contract, monetary obligation, commercial obligation, commercial transaction, alternative penalty, absolute liquidated damages, creditor, debtor, compensation, penalty agreement, unfulfilled obligation, breached obligation, loss, indemnification, fine, astreine.

An urgent issue is the strengthening of contractual discipline in liability-legal relations, ensuring the rights of creditors and increasing the effectiveness of civil legal liability measures applied to a debtor who has not fulfilled or has not fulfilled the obligation.

Particular attention is paid to the implementation of liquidated damages, a means of ensuring the fulfillment of the obligation and a universal measure applied to non-fulfillment of the obligation, the creation of effective legal mechanisms to motivate the debtor to fulfill the obligation at the proper level.

It can be observed that large companies in the world are subject to large fines for not fulfilling their obligations, operating contrary to the interests of the consumer. In particular, in 2019, the Eurocomission imposed a fine of 1.49 billion euros on Google, the US federal Commission for trade on Facebook Inc. for us $ 5 billion, and the US California court imposed a fine of 2 billion US dollars on the German Bayer concern[1].

Currently, in the countries of the world there are new approaches to ensuring the fulfillment of obligations and the use of liquidated damagesa as a measure of responsibility, improving optimal, effective, effective and proportional methods and means of protecting

[1] https://ria.ru/20190724/1556844594.html

creditor rights. In particular, it is urgent to ensure the freedom of contracting, not to hinder the free movement of goods, services and capital around the world, to improve the protection of the rights and legitimate interests of the parties, to international standards, including documents on the principles of contracts, in particular, to adapt national legislation to the principles of UNIDRUA international commercial agreements.

Special importance is attached to protecting the rights of business entities, which are the engine of the country's economy, improving the institution of civil legal responsibility, and at the same time ensuring a fair procedure for compensation of damages caused to entrepreneurs. Organizational and legal regulation of giving privileges and preferences to business entities, it is extremely important that entrepreneurs do not forget their obligations and responsibilities before the law.[2].

In this regard, in the law of obligations, it is important to research aspects such as the application of neustopika for non-compliance with contractual requirements and discipline, the legal nature of neustopika, its place and function in civil legislation, the degree of guilt of the person responsible for the non-fulfillment of the obligation, and the reduction of neustopika.

It is known from ancient Roman law that the obligation of the person who broke the contract to pay a fine in favor of the injured party was called liquidated damages (stipulatio poenae).

The purpose of this agreement was to put pressure on the debtor and thereby ensure the fulfillment of the main obligation. Breach of contract was expressed in money as a trigger condition and was considered as a mechanism to force the obligation to be fulfilled. The parties made an approximate assessment of the consequences of violation of their rights and included a non-stop clause in the contract.

In Europe, the norms of liquidated damages were first established in the sources of Roman private law. It is described as a conditional obligation, which comes into force in case of breach of the main obligation by one of the parties to the obligation. Liquidated damages strengthened contracts that were not protected by civil law and ensured their execution.

[2] Mirziyoev Sh.M. We will build our great future together with our brave and noble people. -Tashkent: "Uzbekistan" NMIU, 2017. -P. 357.

The following general picture of the legislation on liquidated damages in the Russian Empire can be seen:

- liquidated damagess have the nature of a fine, unless otherwise provided by law or contract;

- in practice, the evaluative neustopika is not recognized;

- contractual agreements must be formalized in writing;

- liquidated damagess can be paid not only with money, but also with other property;

- it is not possible to apply contractual remedies to ensure obligations established by legal remedies[3].

French civil law is characterized by a neustoic compensatory nature. For example, in Article 1229 of the Civil Code, it is noted that a punitive notice (liquidated damages) is considered as a means of compensation for the losses suffered by the creditor due to the non-fulfillment of the main obligation. Liquidated damages appears as a general calculation of damages, and it is emphasized that its function is to prevent legal proceedings.

Even if the court considers the sum indicated in the contract to be insufficient or too high to compensate for the damage, a lower or higher sum may not be assigned by the court (Article 1152 of the Civil Code). Law No. 75-597 of July 9, 1975 gives the court the right to increase or decrease the amount of neustopika if it is too low or too high.[4]This amendment aims to prevent the abuse of the freedom granted to the parties in negotiating a contractual settlement.

The Liquidated damages Institute of many developed countries of the world, for example, Austrian Civil Code 1336, GFT 339-345, FFK 1229 and 1152, Luxembourg FC 1152 and 1226, Spain FC 1152, Greece FC 405, Italy FC 1382-1384, Netherlands FC 6:91-6 :94, Articles 810 of the Portuguese FC, 180 of the Mongolian FC, 544-545 of the Czech FC, 114 of the PRC Law on Contracts, Article 74 of the Indian Contract Law, as well as the case law of common law countries (for example, in England 1915 Dunlop Pneumatic Tire Co. Ltd. v. New

[3]Sinaisky V.I. Russian civil law. -M., 2002. - P. 324-326.
[4]Komarov A.S. Responsibility in business. -M., 1991. - P. 147.

Garage and Motor Co. Ltd., Scotland 1904 Clydebank Engineering & Shipbuilding Co. Ltd. v. Castaneda, USA 1914 Banta v. Stamford Motor Co. 89 Conn.) may be noted[5].

For example, in English law, the approach to liquidated damages was formed for the first time in the framework of the law of justice[6]. The question of whether it is permissible to stipulate a sanction for breach of obligation in the contract will depend on how the relevant provision is qualified. If the condition is recognized as a penalty, i.e. a sum of money assigned in the contract in order to intimidate the debtor (in terrorem) and force him to fulfill his obligations, the court finds such a condition invalid. If the parties, while entering this condition into the contract, tried to estimate in advance the damage that the creditor may suffer in case of breach of the contract (liquidated damages), this money will be collected regardless of the amount of damage proven in practice, even if no damage has been done[7].

In England, an action for damages is considered a general and universal remedy, while enforcement is considered an inadmissible remedyhere[8]. English law, which frowns upon enforcement, also condemns indirect enforcement by calculating default[9].

Thus, in the history of the development of civil law, liquidated damages occupies a special place as a method of securing obligations and as a measure of responsibility. In history, there have been two different approaches to the regulation of liquidated damages: *the first* - punitive (penal) liquidated damages; *the second* is an estimated neustopika (pre-estimated damage).

The following scientific-theoretical conclusions and proposals can be made for improving the principles and procedure of using neustopika in the law of obligation:

1. Neustoyka, on the one hand, is a method of ensuring the fulfillment of obligations, and on the other hand, it acts as a form of civil-legal responsibility. At the stage of conclusion and performance of the contract, Liquidated damages performs the functions

[5]Karapetov A.G. Forfeit as a means of protecting the creditor's rights in Russian and foreign law. -M., Statute, 2005. - P. 8.
[6] Samuel G. Law of Obligations & Legal Remedies. L., 2001. P. 361.
[7] Clydebank Engineering & Shipbuilding Co v. Castenada иши (1905 йил).
[8]Karapetov A.G. The claim for the award to the performance of an obligation in kind. -M., 2003. -S. 45; Pavlov A.A. Awarding to the performance of duty as a way to protect civil rights. -SPb., 2001. - P. 57.
[9]Report of the Secretary-General “Liquidated Damages and Penalty Clauses” (A/CN. 9/161) // Yearbook of the United Nations Commission on International Trade Law. 1979. T.X. – P. 55.

of incentive, signaling and restoration of property rights of the creditor, which may be violated, and ensures the proper execution of the contract, and at the stage of violation of the obligation, it becomes a specific form of responsibility and exhibits compensatory, punitive, educational functions.

2. It is necessary to distinguish between the cases of non-fulfillment of the contract and non-fulfilment of the contract in the regulation of the payment of neustopika. For example: a) if the debtor is obliged to pay a penalty in case of non-fulfillment of the contract, the creditor may demand payment of a penalty instead of fulfilling the contract. If the creditor has required the debtor to pay the default, it is not possible to impose a requirement to fulfill the obligation; b) if the default obligation is not fulfilled properly, the deadline for fulfillment is delayed, payment is provided without fulfilling the specified requirements, the creditor has the right to demand compensation for damages and payment of default in addition to the fulfillment of the obligation.

3. Due to the fact that Liquidated damages has aspects specific to the educational function of legal responsibility, in its essence there are aspects specific to ensuring the fulfillment of obligations. Therefore, the logic of including the liquidated damages in the structure of these two legal institutions is also related to this factor, and in such duality, the priority is given to the phase of collection of the liquidated damages. This stage arises when civil-legal liability is applied, and turns the breach, which was initially defined as a method of ensuring the fulfillment of the obligation, into a liability measure that is levied in case of breach of contract.

4. It is necessary to introduce the institution of ***astrent (judicial liquidated damages)***, which is a unique form of liquidated damages, into the civil law and introduce the mechanism of distribution of the liquidated damages collected by the debtor in case of non-execution of court decisions in favor of the creditor and the state budget. In addition to being a measure of material and legal influence, the asrent is also considered as a means of encouraging the debtor to fulfill the obligation established by the court decision.

Unlike the administrative fine charged for non-execution of court documents and documents of other bodies, the asrent serves the interests of the creditor and at the same time has an effective effect on speeding up the execution process due to the fact that it

exposes the debtor to additional property losses based on the amount of the debt. It is obvious that the administrative fine for non-execution of court decisions, which is currently in use, is extremely ineffective. For this reason, it is appropriate to include norms on asrent in the Civil Code, Civil Procedure Code and Economic Procedure Code.

5. It is necessary to introduce provisions on ***"Supplier payment"*** into the civil legislation as a new way of fulfilling obligations. Through this method, the fulfillment of the obligation is fully ensured by means of payment entered in favor of each other during the conclusion of the contract by the parties to the obligation. Although this method has functions and aspects similar to *"pledge"* or *"guarantee*", due to its use in the form of *"money payment*", it is considered closer to the actual subject of liquidated damages.

6. It can be seen that the provisions regarding the determination, calculation and application of civil-legal fines are "scattered" in various legal documents. In many departmental documents, there are cases where variations in the system of sanctions established by monopolies, especially in the provision of services to consumers, are defined and implemented contrary to the rights and legal interests of citizens in many cases. In order to eliminate these situations, it is necessary to introduce a new article called ***"Measures of civil legal responsibility"*** into the Civil Code, and to specify exactly what measures of penal nature are considered measures of civil legal responsibility and their types.

7. The use of fine liquidated damages as a measure of liability along with compensation of damages causes the problem of the ratio of payment of liquidated damages and compensation of damages, and *their separate application (alternative liquidated damages)* leads to violation of the principle of compensatory civil legal liability. Accordingly, it is necessary to widely introduce the type of liquidated damages, which is taken into account in the practice of law enforcement.

8. The norm of liability for non-fulfillment of monetary obligations is a legal deterrent applicable to monetary obligations. The norm of the Civil Code on liability for non-fulfillment of a monetary obligation should be considered as a norm on *legal default*, and the interest provided for non-fulfillment of a monetary obligation is a type of default.

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