

Legal Regulation of Obligations on Service Delivery in the Context of the Development of Ukraine's Economy

Nataliia Fedorchenko • Ivan Kalaur

Abstract The article defines legislative approaches towards legal regulation of relations on service delivery, focuses on the existing collisions of legal regulation of studied relationships. The authors also noted that legislative approaches in the Civil and the Economic Codes of Ukraine contain a significant number of rules of clearly conflict character. Acts of subordinate legislation, adopted by the Cabinet of Ministers of Ukraine and other state authorities in cases and within the limits set by the Constitution of Ukraine, have important regulating significance in service delivery. Of great importance are the general provisions of the Civil Code of Ukraine regarding contracts for services, which can help solve a number of conflicting issues arising during service delivery. Even greater importance for this sector belongs to general provisions of the Civil Code of Ukraine on the procedure of concluding, amending and termination of contracts, laches, liability for breach of obligations and termination of obligations. Thus, analysis of these regulations suggests the lack of a systematic approach towards normative regulation of relations on service delivery.

Keywords Sources of legal regulation - legal instruments - service delivery sphere
obligations on service delivery - civil legislation - contract - the economy of Ukraine

JEL classification K 100 - K 120

Introduction

The signing of the Association Agreement between Ukraine and the European Union and, consequently, the change of vectors of economic development of our country put new questions regarding the main concepts of legal regulation of relations in service delivery.

According to the World Trade Organization (WTO), the share of services in world gross domestic product reaches over 60%. A similar trend is observed in the domestic market economy. The modern services market is characterized not only by a trend to growth but by a growing trend towards diversification of services. Activities in service delivery meet social, domestic, and spiritual needs of individuals, as well as the needs of legal entities and the needs of global macroeconomic scale, which are

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satisfied by the emergence of new services in the field of information technology and telecommunications. The changes of Ukraine's development vectors put on the agenda the need for a new concept of legal regulation of service delivery that would meet the economic and social realities of the day. That is why this article attempts to explore prospects of legal regulation of relations in service delivery. In particular, in contractual obligations on service delivery in addition to named types of contracts are widely used unnamed types, which without a proper theoretical understanding may lead to negative consequences. This explains the need for civil regulation of contractual obligations both on the theoretical and enforcement levels.

The integration processes in the legal regulation of the services' market stipulate bringing national legislation in line with EU standards and the need to harmonize national legislation with the provisions of the international private law of the EU (in particular, with the General Agreement on Trade in Services).

1. Analysis of the Recent Research and Publications

Analyzing the sources of legal regulation of services obligations, we should first of all note that sources of law are one of the main legal categories both in the praxeological and epistemological sense, so this category has a rich research history. However, as S. F. Kechekyan noted the issue of sources of law "is the one of the most obscure for the theory of law" (Kechekyan, 1946).

The term "source of law" was firstly used and acquired doctrinal comprehension through the works of Titus Livius, who called the Law of the Twelve Tables "fons omnis publici privatique juris" (the source of all public and private law). As A. F. Shebanov noted on that, the term "source" was used by Titus Livius within the meaning of the basic principles, a kind of historical roots, on which basis contemporary law had evolved (Shebanov, 1968).

Analysis of a situation around the current scientific study of sources of law allows us to fully agree with some domestic researchers about the lack of development of this issue in analytical jurisprudence as a whole (Patsurkivskyi, 1998). Definition and understanding of a "source of law" concept is the area, where underdeveloped theoretical and legal comprehension is particularly clearly manifested, because in most cases the fundamental assumption that forms the basis of such understanding of a source of law is the thesis about inseparable connection between forms of law and legislative activity of a state (Pervomaiskyi, 2001). However, such an approach of legal-positivistic understanding of sources (forms) of law for many contemporary researchers is rather a simplification of the real situation, caused by the applied need for clear definition of terms in legal practice and theory.

Without equating the terms "source" and "form" of law and considering their multi-valued nature, analyzing the sources of legal regulation of obligations on service delivery we use the category a "source (form) of law", which is the result of perennial searching for external expression of law as a social phenomenon and has the right to exist. So, currently a discussion about the correctness of terms "form of law" and "source of law" continues, but these terms are used in the same meaning. It should be borne in mind that a source of law is understood in the formal-legal sense (emergence, but not origin) of law, and its external expression is a form of law as a concept that reflects a set of ways to fix those rules that have already been made by a source of law.

2. Discussion

So, moving to the analysis of the main sources of legal regulation of obligations on service delivery, we will use for their classification such features as state- and power-related nature and a

particular type of social regulation, based on which all sources of legal regulation of obligations on service delivery can be divided into the following groups:

- 1) formal-legal (institutional) sources - have inherent legal level of social regulation as a result of legislative activity of state bodies (multileveled regulations in service delivery);
- 2) social (non-legal) sources - have inherent, or direct, or indirect recognition by the state as regulators of relations on service delivery (morality, customs, law of standard contracts);
- 3) judicial practice as a source of legal regulation - has the combination of formal-legal, non-legal sources and contractual self-regulation.

This classification of sources of legal regulation of relations on service delivery, in our opinion, reflects the existence of two levels of regulation in the modern civil law: a) external (power-state) and b) individualized, carried out at the level of local acts (statutes, regulations) and agreements. Thus, let's start analyzing sources of legal regulation of obligations on service delivery with formal-legal (institutional) sources.

Based on a systematic interpretation of the Civil Code of Ukraine (hereinafter - CC) and the Economic Code of Ukraine (hereinafter - EC), the main source of contract law is enactment (formal legal source), which the highest level is the Constitution of Ukraine (Teslenko, 2005). Thus, according to the part 1, art.4 of the CC the Constitution of Ukraine is the basis of national civil legislation, which provides general principles of activity in the civil field by recognizing private property and freedom of entrepreneurship and fixes priority of the rule of law, according to which we'll consider the general theoretical positions taking into account features of relations on service delivery.

At the same time, the general constitutional prescriptions are the so-called "atypical" prescriptions because they do not form rules of behavior and serve as a legal basis for civil legislation and enforcement activity. However, the Constitution of Ukraine plays a special role in the legal regulation of studied relations. Thus, the highest legal force of the constitutional prescriptions creates preconditions for a unified legal order throughout the country. Constitutional norms, being mainly the rules of a general character, receive specification in corresponding legislation (Todyka, 2000).

International treaties and agreements ratified by the Verkhovna Rada of Ukraine are an integral part of the legislation governing contractual relationship on service delivery and have priority over domestic civil law. According to the art.9 of the Constitution of Ukraine, such international agreements are a part of the national legislation of Ukraine (Constitution of Ukraine, 1996). The same rule is enshrined in the first part of the art. 10 of the CC. Based on the content of the eponymous Law of Ukraine "On international agreements of Ukraine", international agreements are applied in the order provided by national legislation, unless the agreement itself does not require the adoption of a separate domestic act (the Law of Ukraine "On international agreements of Ukraine", 2004).

Thus, civil legal norms of international agreements, which implementation is possible only through interaction with domestic civil legislation of Ukraine, should be implemented in acts of civil law as its norms. Under the current legislation of Ukraine provisions of international agreements are mandatory for rules of civil law. However, if an international agreement does not comply with the Constitution of Ukraine in whole or in part and this contradiction was acknowledged by the Constitutional Court of Ukraine, such agreement or its part can not be applied in Ukraine (Opinion of the Constitutional Court of Ukraine in the constitutional proposal of the President of Ukraine for giving conclusion on the constitutionality of the Rome Statute of the International Criminal Court, 2001).

Thus concluded and duly ratified international agreements of Ukraine are an integral part of

the national legislation and are applied in the order established by the national legislation; if an international agreement, concluded in the form of a law, establish rules other than those provided for by the legislation of Ukraine, the rules of the international agreement have priority (Judicial practice in economic judicial proceedings, 2007).

Thus, the Constitution of Ukraine and the CC of Ukraine for the first time fixed at the legislative level interrelationship between international and domestic legal regulation of relations on service delivery and established the priority of the international agreement provisions over Ukrainian acts of civil legislation.

Analyzing modern approaches to the unification of the international private law of the EU in general, and in the field of contractual obligations in particular, A. S. Dovhert concludes that unification started not on the basis of international conventions, as before, but on the basis of regulations. That is, according to the scholar, there is a shift from the internationalization of private international law to its Europeanization (Dovhert, 2012).

Totally agreeing with the opinion of a recognized expert in the field of private international law, it is appropriate to note that in a formal-legal sense sources of contractual relations are, first of all, rules of the CC of Ukraine and the Law of Ukraine “On International Private Law”, rules of international conventions developed under the Hague Conference on private international law, 1980 Rome Convention on the law applicable to contractual obligations, Order of the European Parliament and the European Council № 593/2008 on the Law applicable to contractual obligations (Rome I Regulation), the Vienna Convention on Contracts for the International Sale of Goods 1980, etc. (Solomon, 2008).

The Law of Ukraine “On International Private Law” prescribes that the choice of law by the parties to a contract must be clearly expressed or directly follow from their actions, terms of a contract or circumstances of a case, considered in their entirety (art. 5, part 2) (The Law of Ukraine “On International Private Law”, 2005).

The international agreements with Ukraine, which are used to regulate relations on service delivery, are fully correspond to the generally accepted principles of international law, including those expressed in the norms of the Vienna Convention on the Law of Treaties of May 23, 1969 (ratified by Ukraine on June 13, 1986) (Vienna Convention on the Law of Treaties, 1969), the Vienna Convention on Succession of States in Respect of Treaties of August 23, 1978 (ratified by Ukraine on November 26, 1992) (the Vienna Convention on Succession of States in respect of Treaties, 1992), Principles of UNIDROIT, Principles of the European Contract Law (the so-called principle of Professor Ole Lando), Common European Sales Law (CESL), rules of substantive contract law (the so-called Common Frame of Reference), adopted by the legislature of the European community, standardized, conventional legal instruments, etc. (Venhryniuk, 2013). Thus, the Danish scholar Ole Lando managed to hold a fairly wide European codification of contract law rules, because, in addition to general provisions, the Principles of European Contract Law contain provisions on conclusion of a contract, authority of agents, validity, interpretation, content, implementation, and consequences of breach of contract, etc. (The Principles of European Contract Law, 2003).

No less interesting and important in its impact on the regulation of relations on service delivery are the rules of substantive contract law or the so-called Common Frame of Reference, which contains the largest number of unified rules of contract law. This legal instrument is considered as the realization of the official policy of the EU, which states that goals and objectives facing the European nations in the third millennium can be better achieved by means of substantive, rather than collision unification (Rudenko, 2006).

However, it is useful to note that the Rome I Regulation does not provide parties to a contract

with opportunities to select supranational law (*lex mercatoria*) instead of the law of any country. Therefore, this position is rightly criticized in the legal literature (Lando, 2008; Dovhert, 2012). Simultaneously, we may look with favor on the approach of the para.13 of the Rome I Regulation Preamble, under which parties are not prohibited to include references to non-state law or international agreement into their contract. However, the non-state law is considered, in particular, as acts of international intergovernmental and non-governmental organizations, including acts which are not binding for states and individuals (for example, rules of interpretation of International Commercial Terms - Incoterms).

So, apparently, in the modern Ukrainian civil legislation (art. 10 of the CC) the issue of the interrelationship between international and domestic legal regulation of service delivery was firstly resolved at the legislative level by establishing the superiority of Ukraine's international agreements over acts of Ukrainian civil legislation. In view of the above, we conclude that there is a priority of an international agreement over the rules of Chapter 63 of the Civil Code of Ukraine and special laws which regulate relations on service delivery.

The main act regulating relations in the field of service delivery is the Civil Code of Ukraine. N. S. Kuznietsova - one of the members of the working group on development of the Civil Code, notes that it should be seen as a social contract for members of Ukrainian society which accompanies their private life and regulates all spheres of activity. The Civil Code is not only an act of civil legislation but also the foundation stone for the whole system of private law, code of life for civil society (Kuznietsova, 2013).

At the same time, the studied relations are simultaneously regulated by the Economic Code of Ukraine, which in most cases duplicates approaches embodied in the CC, and brings in a significant discord and disagreement to the legal system in general. Therefore, we would like to express the hope that the Civil Code of Ukraine in the second decade of its existence will accomplish the mission embedded by its developers - acquire the features of the backbone legal act, grouping all economic laws around itself, in other words, become the core of the legal and economic reforms in Ukraine.

It's generally known that today legislative approaches reflected in the CC and EC of Ukraine contain a significant number of clearly conflicting rules. This was repeatedly stressed and emphasized in legal literature (Maidanyk, 2012). For example, the following rules: a) possibility to pay for contracts on service delivery in foreign currency is envisaged by the Civil Code of Ukraine and prohibited by the Economic Code of Ukraine (except of special permits for payments in foreign currency); b) fixing of different statutes of limitations for specific contracts and so on.

The significant role in the CC of Ukraine belongs to the regulation of relations on service delivery. Thus, a matter of fundamental importance is recognition of a service as an independent object of civil rights (art.177 CC). The Chapter 63 of the CC of Ukraine for the first time legislatively fixed a system of contracts on service delivery, what became the impetus to address theoretical and legal problems for determining a range of services, which are a subject of investigated contracts. The solution to this problem is possible by two methods fixed in the art.901 of the CC:

- 1) the concept of "service delivery" is disclosed by a legislator in part 1, art.901 of the CC as performing a certain action or certain activities;
- 2) the effect of Chapter 63 of the CC is applied to all (named and unnamed) relationships on service delivery, which with certainty include communication, medical, veterinary, auditing, consulting, information services, training services, tourism services, etc.

So, as it follows from the part 2, art. 901 of the CC of Ukraine, gaps in the 63 chapter of the CC are filled in with rules and other legislative regulations dedicated to certain types of activities

on service delivery. The latter, in particular, are Fundamentals of Ukrainian legislation on health protection, the Laws of Ukraine “On veterinary medicine”, “On transport”, “On communication”, “On tourism”, “On railway transport”, “On financial services and state regulation of financial services”, and so on. Important regulating significance in the field of service delivery belongs to subordinate regulations adopted by the Cabinet of Ministers of Ukraine, other state authorities, and authorities of ARC in cases and within the limits set by the Constitution of Ukraine. Thus, according to the art.117 of the Constitution of Ukraine the Cabinet within its competence issues mandatory resolutions and orders. Examples of such regulations are the Rules of consumer services, the Rules on the delivery of passenger transportation services, the Rules of the railway transportation services, the Rules on the provision of gas supply, the Rules of public services on water supply and sanitation, the Rules for providing public services in urban electric transport. The aforementioned subordinate regulations issued by different agencies within their jurisdiction govern the contractual relationship on service delivery on the territory of Ukraine. Therefore, legal rules regarding conclusion, modification, and termination of contracts on service delivery can be divided into the following groups:

- a. the establishing governing general (fundamental) provisions of all types of civil contracts (chapters 52, 53 of the CC);
- b. the rules establishing general provisions regarding contracts on service delivery – relevant both for named and unnamed types of contracts, which subject is the delivery of various services (chapter 63 of the CC);
- c. the rules establishing a special procedure for the delivery of services in specific areas (the laws of Ukraine “On auditing service”, “On communication”, “On housing services”, etc.);
- d. the rules establishing limits for the conclusion of service delivery contracts (part 3, art.633 of the CC, the laws of Ukraine “On protection of consumers’ rights”, “On licensing of certain types of activities”, etc.).

A typical trait for civil legislation which regulates relations on service delivery is that subjects of these relations need broad autonomy, freedom to conclude contracts, and, hence, the need for consolidation of dispositive legal rules. However, in order to protect interests of a consumer, which is often the weaker party to a contract, the legislator in the Civil Code of Ukraine and in other special regulations (the laws of Ukraine “On protection of consumers’ rights”, “On tourism”, “On housing services”, etc.) rather widely formulates restrictions of freedom of a contract. First of all, we may see it in a way construction of a public contract was consolidated in the art. 633 of the CC of Ukraine.

Thus, service industries today is one of the most promising sectors of the economy, which, moreover, rapidly develops. It covers trade and transportation, finance and insurance, utilities, educational and medical institutions, show-business and so on. Almost all organizations deliver services in a varying degree (Tkachenko, 2003). Therefore, relations on their delivery require proper legal regulation, which also will protect a weaker party to a contract. Protecting the interests of the economically weaker party can be manifested through the limitation of freedom of a contract when pre-contract opportunities are unequal. In the foreign doctrinal studies, this concept covers a wide range of situations that arise when concluding a contract between economically unequal parties (Zweigert, 1998). However, the current Ukrainian legislation considers inequality of pre-contract opportunities in a more narrow sense - as a basis to encourage a monopolist to conclude a contract. An example of this might be the law of Ukraine “On natural monopolies”, which provides opportunities to restrict freedom of contract in the interests of a weaker party, namely: a) it is prohibited to unreasonably refuse to conclude a contract; b) there

is an obligation to conclude a contract on equal terms with everyone.

Based on the content of the art.5 of the law of Ukraine "On natural monopolies" activity of natural monopolists is applicable to such services as transportation of petroleum, petroleum products, natural gas and petroleum gas by pipelines; storage of natural gas; transmission and distribution of electric energy; transmission and distribution of water supply and sanitation; specialized services of transport terminals, ports, airports (the Law of Ukraine "On natural monopolies", 2000).

That is to say, as A. Yu. Kabalkin reasonably pointed out, by regulating of various public relations on service delivery, granting their members with relevant rights and obligations, establishing liability for non-fulfillment or improper fulfillment of obligations, legal rules endue this relationship with stability and order, direct their development for the benefit of the whole society and individual citizens (Kabalkin, 1988).

Considering the fact that service industries have sizable legislation and subordinate regulations, we consider it appropriate to draw attention to the correlation between 63 chapter of the Civil Code of Ukraine and other laws in this area. So, currently, legal doctrine gives two points of view on this question:

1. separate laws should be based on the general provisions of the Civil Code of Ukraine; when discrepancies are detected between the rules of law and rules of the CC, provisions of the Civil Code shall be applied (Maidanyk, 2012);
2. affirmation of the Civil Code as the main act of civil legislation in Ukraine does not mean that this code has a higher force compared to other laws, so long as acts of civil legislation must match each other, that is to be logically consistent (Scientific-practical commentary to the civil legislation of Ukraine, 2010).

In view of stated above, it should be noted that features of the civil law are affected by economic, political, social and ideological factors. The impact of these factors on the condition and effectiveness of legal regulation is clearly traced in historical context because in different periods of Ukrainian society these factors influenced the nature and content of civil legislation.

Legislative acts regulating relations on service delivery are official documents adopted in the established procedure and containing legal rules aimed to regulate studied relations. They are one of the important factors that affect the quality of service delivery and have a significant impact on the ordering of relations in this area. The mechanism of construction and interaction of contracting institutions should allow applying only adequate and effective rules to a specific obligation (Liutykova, 2008). It is, therefore, advisable to support the thesis of R. A. Maidanyk, that implementation of civil legislation must comply with the rule on a correlation of general and special rules (Maidanyk, 2012).

For example, legislative approaches to the regulation of relations arising in the field of tourist services. First of all, it should be noted that considering the briefness of the Law of Ukraine "On tourism", these relations are regulated extremely perfunctorily. Such legislative approach, as reasonably noted by M. M. Hudyma, not only creates uncertainty for activity of tour operators (travel agents) but also puts legal status of tourists out of a special legal regulation, leaving them face-to-face with the tour operator (travel agent); eventually, tourists and travel agents conclude contracts, which, as a rule, significantly infringe the rights of consumers of tourist services (Hudyma, 2012). However, in the art. 2 of the Law of Ukraine "On tourism" the legislator provides a general rule according to which property relations in tourism, based on equality, autonomy of will and property independence of their participants are regulated by the Civil and Economic Codes of Ukraine with the specifications established by this Law (Fedorchenko, 2012). Thus, for quite a long time there was a problem to determine a proper defendant under contracts for tourist services, because under the Law of Ukraine "On tourism" there was certain

ambiguity in the allocation of obligations and responsibilities between a tour operator and a travel agent. Furthermore, it should be noted that civil law has some inherent contradictions in terminology in the field of service delivery. For example, there is a terminological controversy between the art. 901 of the CC of Ukraine (examined contracts are referred to as service contracts) and the art. 20 of the Law of Ukraine “On tourism” (defines this contract as a contract for tourist maintenance); this, as stated in legal literature does not correspond to the essence of this contract and does not give a clear answer to the question of its legal nature (Hudyma, 2012).

This legislative approach to the definition of a contract for tourist maintenance does not reveal the meaning of a “service” and makes it impossible to differentiate the categories of “maintenance” and “service”. Solution to this conflict is complicated because the Civil Code of Ukraine states that the service is one of the objects of civil rights (art. 177 of the Civil Code of Ukraine).

Perhaps the use of such term as “a contract for tourist maintenance” in the Law of Ukraine “On tourism” is influenced by the Civil Code of the RSFSR (1964), which classified all contracts for commercial, contracts of public maintenance and general public contracts. Thus, analysis of above-mentioned legal acts gives us the possibility to deduce that normative regulation of relations on service delivery is deprived of a systematic approach, mainly because these acts were taken at different times. For example, analyzing the approach for regulation of relations on service delivery enshrined in legislative acts we have noticed the legislator’s intention to determine: a) rights and obligations of parties to a contract on service delivery; b) a list of significant conditions which, according to the legislator, should be agreed by parties. It seems that in general, the legislator’s approach is quite reasonable, however, legislator’s “affection” to establish a growing range of essential terms in multi-leveled regulations should be treated with caution.

An important regulator of relations on service delivery is a civil contract, which in all legal systems of the world, according to a justified expression of N. S. Kuznietsova, is a key element of the rule of law and order, which legally provides the validity of exchange processes in order to meet the needs of society, its individual citizens or their associations (Kuznietsova, 1993). Analyzing the works of famous scholars in the field of civil law, we have found different definitions of a contract. In particular, a contract is sometimes called a transaction, a legal relationship, the basis for obligation, a legal fact, an obligation itself, a document that fixes an agreement, a special type of regulation, etc. (Brian, 2010). But no one doubts the assertion that the consent, concord, and agreement are the essences of a contract law.

Summarizing conceptual definitions that exist in the theory of contract law, we can say that a contract is considered in several senses.

1. As a reciprocal will of its members, an agreement between parties, aimed at establishment, modification or termination of certain rights or obligations. From this perspective, a contract is a legal fact, the main basis for a binding relationship. Analyzing definition of a contract given by part 1, art. 626 of the CC of Ukraine, we can assume that developers of the Civil Code proceeded from this position, as far as a contract was defined as an agreement aimed at establishment, modification or termination of civil rights and obligations.
2. As a legal relationship that arises from a contract (transaction), because rights and obligations of the parties exist only within a legal relationship. It should be noted that the legal doctrine has thoughts about similarity between a contract, a relationship, and obligation (Khalfina, 1959), which caused quite reasonable objections that the concept of a contract should not be confused with the concept of an obligation, since obligations may arise not only out of contracts and have both contractual and non-contractual nature (Ioffe, 2004).

3. As a form of transaction, i.e. a document that fixes rights and obligations of the parties. This understanding of a contract is quite arbitrary, because an agreement of the parties may be expressed not only in a form of a single document signed by parties.
4. As a regulator of social relations existing on the same level with the law. Moreover, today on the pages of legal periodicals views are expressed that contractual self-regulation of civil relations has prevailing significance compared to the external (state) legal regulation (Pohribnyi, 2012). We can support this thesis regarding the relationship we study only by making some reservations; because contracts on service delivery are often characterized as public contracts and contracts of accession, so they must meet binding rules established by legal acts and valid at the time of its conclusion. That is why legal doctrine suggests a more broad interpretation of subordination of a contract to mandatory rules of law or other legal acts (Sadykov, 2002).

Thus, in legal relations on service delivery by means of such powerful tool as a civil contract, agents may regulate their relations without the use of standards stipulated by the legislator, except in cases specified in the para. 2, part 3, art. 6 of the CC of Ukraine; because when participants of legal relations use their right to contractual self-regulation it automatically prevents them from the implementation of the relevant civil legislation of Ukraine to these relations, which regulates them differently than it was defined in a contract.

Contractual regulation of service delivery is individual; it gives obligatoriness to a specific order of contractors' actions. Contractual regulation in the studied field of relations is expressed in the establishing order of their conclusion, modification and termination, fulfillment of obligations by parties, and liability for non-fulfillment or improper fulfillment of such obligations. So, contractual relations on service delivery are regulated by a civil contract, which is an individualized relationship between a customer and a contractor bound by rights and obligations that determine the extent of possible and appropriate behavior in certain activities or specific actions in favor of a customer.

The current Ukrainian legislation has very specific regulations in the field of contractual relations on service delivery, which are standard form and sample contracts. The main purpose of these sources is, in our opinion, the state's needs to define where it is important, desired patterns of behavior for participants of contractual obligations and simplify the process of concluding specific agreements on service delivery.

A standard form contract may contain both mandatory and discretionary recommendations, which do not deprive standard form contract of normative features if it is approved by a competent authority and registered as a legal act.

According to the part 4, art. 179 of the CC of Ukraine standard form contracts are approved by the Cabinet of Ministers of Ukraine and other state authorities in the order prescribed by law. This means that contracts on service delivery should be concluded on the basis of standard terms and conditions if this is binding under legal act approving such conditions.

At the same time, there is a question, if such conditions weren't approved by competent national authorities, but resulted by activities of certain subjects of civil relations. In this case, we conclude the impossibility to recognize conditions that were resulted by, for example, a legal entity as standard, because a fact of their promulgation is absent and legal consequences for a party who was not familiar with them are unknown. Thus, according to the art. 630 of the CC a contract can establish that its individual terms are defined in accordance with standard terms of contracts of a certain type, promulgated in the prescribed manner. If promulgation of standard conditions did not happen, these conditions can only be used as business customs if they meet the requirements of the art. 7 of the CC, which defines the concept of a business custom and a

procedure of its application.

It should be noted that today regulation of contractual relations on service delivery tends to the expansion of the range of standard form contracts. Here noteworthy are reservations expressed in the literature as to what: a) provisions of these contracts must not contradict the Civil Code of Ukraine and other laws of Ukraine; b) standard form contracts, which have mandatory prescriptions and are approved by legal regulations, may be applied only to public contracts (first of all, this refers to the service delivery to such monopolies as Ukrzaliznytsia (Ukrainian Railways), Ukrtelecom (telecommunication company), etc.); otherwise mandatory prescriptions will contradict with the principle of freedom of contract (art. 3 of the Civil Code of Ukraine) (Berveno, 2006).

Thus, the typization of contractual forms for service delivery should be held rather cautiously and, as rightly noted by A. B. Hryniak at the level of recommendatory, but not mandatory nature (Hryniak, 2013); so, standard form contracts which are approved by legal regulations and have mandatory prescriptions may be applied only to public contracts, because otherwise mandatory prescriptions will contradict with the principle of freedom of contract.

Meanwhile, sample contracts in relations on service delivery are advisory in nature since non-fulfillment of this kind of recommendations does not entail the occurrence of adverse effects for their parties. Accordingly, parties to a contract have the right not only to modify certain conditions as agreed between them provided by sample contracts but generally regulate relations at their discretion.

We should also note that in the field of service delivery rather common are contracts of affiliation, under which the legislator suggests the contractual terms set by one of the parties to which the other party may only join, since deprived of the right to propose its own terms of contract (part 1, art. 634 of the CC). So, terms in affiliation contracts in the field of service delivery are the instrument securing rights and obligations of the parties, which fixes the will of a performer to a contract while a customer either accepts such conditions without discussion or refuses entry into contractual relations. In other words, the rules set forth in the standard form (text) of a service contract of affiliation are binding for all potential contractors of a performer. Thus, in the contracts of affiliation we are dealing with externally contractual form of relations between subjects of obligation on service delivery, but by essence, it is unilaterally (individually) formulated set of rules applicable to the undetermined number of persons. Therefore, it is advisable to agree with the conclusion of O. A. Belianezych that a contract of affiliation is not so much an act of self-regulation, autonomous towards external regulation, but a rule-making act of one party (author of a contract), which is also quite autonomous from legal regulation (Belianezych, 2006).

Analyzing correlation between contracts of affiliation, standard form contracts, and sample contracts, we should emphasize the need for their differentiation, as far as standard form contracts and sample contracts are regulatory sources of social regulation of relations on service delivery. That is to say, parties when entering these relations must follow terms established by a standard form contract independently of their will. In other words, concluding a contract for service delivery based on a standard form, both contractors are unable to coordination their wills. While contracts of affiliation fix the will of only one party to a contract, which is an autonomous economic entity.

Therefore, we come to the conclusion that standard form contracts, sample contracts and contracts of affiliation as sources of legal regulation of relations on service delivery are specific types of regulatory acts, which imperatively establish rights, obligations, and conditions to be detailed by parties or specified in a contract for their consideration. Civil legal customs play an important role in the system of sources of civil law which, as R. A. Maidanyk claims, are the primary source of Ukrainian law that generated the

other sources and possess their critical point (Legal doctrine of Ukraine, 2013).

In general, a custom is one of those concepts, which despite the significant number of devoted publications, are not so clearly investigated by the theory of law. For example, researchers of the history of law almost unanimously conclude that a custom appeared at the infancy of law and is the oldest its source (Kashanina, 1999). Scholars often emphasize the fact that most legal relics of archaic period of law development (even those that may be considered as legal regulations) is nothing like written statement of legal customs prevailing before elevated to the rank of political will (Marchenko, 2001). As S. S. Alekseev reasonably stressed: "civil regulations (in a form of legal customs, precedents, and then – laws) started forming and enter into practice all that original, unique, socially thorough and regulatory-sophisticated, that was typical for law as the highest form of social regulation of relations in civilization" (Alekseev, 1999).

Relations on service delivery may be regulated by a business custom – a rule of behavior which is not prescribed by legislative acts but is so widely used in a particular area of relations that became sustainable (art. 7 of the CC).

As for international commercial customs, according to the current Ukrainian legislation, their use is permitted with reservation, that custom application to specific relations is not prohibited by the laws of Ukraine and is associated with the ability of the parties in certain cases to deviate from the provisions of a legal act. When concluding contracts by business entities of Ukraine of all forms of ownership, the International Rules for the Interpretation of Commercial Terms (hereinafter – Incoterms), prepared by the International Chamber of Commerce in 2000, may be applied.

In accordance with the art. 1.8 of The principles of international commercial contracts "Custom and practice", parties are bound by any custom to which they have agreed, and practices that they have established in their relations. Paragraph 2 of this article prescribes criteria for establishing a custom, which is applied in the absence of special agreement between parties. In this situation, a necessary condition for application of a custom is that a custom should be widely known and constantly observed in the relevant sphere (The Principles of International Commercial Contracts, 2003).

In general, it should be noted that in obligations on service delivery business customs are applied in the following cases: a) if there are no mandatory prescriptions defining relations between participants; b) if there are no agreements between a customer and a contractor; c) if there are no dispositive norms. That is, in the absence of the abovementioned three levels of legal regulation of relations on service delivery, business customs are applied.

Judicial practice takes a special place in the system of sources of legal regulation of contractual relations on service delivery. The activity of courts is one of the most important elements for legal regulation in any modern democratic society. Thus, the influence of rules of the CC on a disputed situation has a vertical character, since these rules contain an abstract prescription with a side indication of the circle of relations and their subjects. But the court's influence on the disputed situation is specifically expressed since it is aimed at resolving the dispute that arose between the parties to a contract on service delivery in the shortest possible time and taking into account all existing realities. Moreover, the main task of the judiciary is the ability to resolve disputes between the parties to contractual relations, even in the absence of an appropriate rule of law or contract provision, to protect violated subjective rights that have not received legislative or individual consolidation. As a consequence, there is a need to create legal rules by a court decision that will be supported by the state and used in all similar cases.

A special place in the regulation of civil relations in general and contractual relations, in particular, belongs to the decisions of the Constitutional Court of Ukraine, which as regards to

civil legislation acts are also sources of civil law.

An equally important place for adoption of appropriate decisions by the courts belongs to the practice of the European Court of Human Rights. Thus, according to the art. 17 of the Law of Ukraine “On implementation of decisions and application of practice of the European Court of Human Rights” (the Law of Ukraine “On implementation of decisions and application of practice of the European Court of Human Rights”, 2006), the practice of this court is the source of law in Ukraine. Thus, the practice of the European Court of Human Rights has methodological significance and is an effective tool for national judicial interpretation of legal rules and contractual provisions.

At the same time, it is necessary to pay attention to the fact that in our country only the Supreme Court of Ukraine has the right, through analytical analysis of evidence in the case and by specific circumstances, by its justification to create new rules of law, without changing existing ones; as far as existing rules and contractual provisions of parties are not always able to foresee all possible life situations.

It is advisable to emphasize the particular interest in discussing the ideas of judicial rule-making in professional circles of national science and practice. That is, the mere fact of the scientific formulation of these issues and the length of the discussion show that judicial practice can not be attributed to either regulatory sources or other (non-legal) sources of law, since judicial practice as a source of judicial regulation has intrinsic combination of formal legal sources, non-legal sources, and contractual self-regulation.

Conclusions

Thus, considering the above-mentioned, we believe it is possible to acknowledge legal doctrine as a factor influencing the law-making and law enforcement practice because close cooperation with European institutions today makes it possible to enrich the experience and traditions of law-making by achievements of global and national legal thought.

The above suggests that civil law can not ignore these problems because only a stable scientific doctrine may be an appropriate basis for harmonization with EU standards of national legislation in general and in the field of regulation of service contracts in particular. Therefore, domestic lawyers always paid attention to topical problems of legal regulation of obligations of service delivery.

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