ppi 201502ZU4645
Esta publicación científica en formato digital es continuidad de la revista impresa
ISSN-Versión Impresa 0798-1406 / ISSN-Versión on line 2542-3185Depósito legal pp
197402ZU34

CUESTIONES POLÍTICAS

Instituto de Estudios Políticos y Derecho Público "Dr. Humberto J. La Roche"
de la Facultad de Ciencias Jurídicas y Políticas de la Universidad del Zulia
Maracaibo, Venezuela

Vol.41 *Nº 79*
Octubre
Diciembre
2023

Cuestiones Políticas Vol. 41, Nº 79 (2023), 113-127
IEPDP-Facultad de Ciencias Jurídicas y Políticas - LUZ

Requirements for Contract's Form According to Ukrainian and EU Laws

DOI: https://doi.org/10.46398/cuestpol.4179.08

Olena Cherniak *
Sergii Panchenko **
Mykola Stefanchuk ***
Alla Kiryk ****
Tetiana Fedorenko *****

Abstract

The purpose of the article was to determine the peculiarities of the legal norms concerning the form of the contract in the law of the European Union EU. For this purpose, the following methods were used: special-legal, analysis and synthesis, inductive, systemic, generalization, forecasting and comparative. The authors insist on the need to rethink conventional law through the prism of European contract law. Attention was paid to the desirability of refusing to regulate issues related to the form of the contract, without dividing into certain requirements for the form of contracts. It is emphasized that "soft law" acts themselves require in some cases a certain formality (for example, a written form on a durable medium) for a specific legal act, and national laws often require a written form or other formalities. Especially with regard to specific objects, in particular land and other real estate. Unilateral gift obligations and consumer contracts are cited as examples of restrictions to the requirements for the free choice of the form of the contract. It concludes by arguing for the importance of rethinking national approaches to understanding contract form and its legal simplification.

* PhD., in Law, professor at the Department of International and European law Leonid Yuzkov Khmelnytskyi, University of Management and Law, Khmelnytskyi, Ukraine. ORCID ID: https://orcid.org/0000-0001-5104-6648. Email: chernyack.lena@gmail.com

** PhD., in Law, Law Office "Panchenko & Partners", Mykolaiv, Ukraine. ORCID ID: https://orcid.org/0000-0001-8257-0661. Email: sergey.panchenko@ukr.net

*** Doctor in Law, Professor, leading researcher scientist of the Department of Private Law Problems, Academician F.H. Burchak Scientific Research Institute of Private Law and Entrepreneurship, National Academy of Legal Sciences of Ukraine, Kyiv, Ukraine. ORCID ID: http://orcid.org/0000-0002-2983-2770. Email: stefanchuk@gmail.com

**** PhD., in Law, Senior Lecturer at the Department of International and European law Leonid Yuzkov Khmelnytskyi University of Management and Law, Khmelnytskyi, Ukraine. ORCID ID: https://orcid.org/0000-0002-0729-5986. Email: alla_kiruk@univer.km.ua

***** PhD., in Law, associate professor, director of the Institute of Law and Public Relations of the Open International University of Human Development "Ukraine", Kyiv, Ukraine. ORCID ID: https://orcid.org/0000-0002-3447-9078. Email: vixen@ukr.net

Recibido el 01/08/23 Aceptado el 16/09/23

Keywords: conventional law; recodification; form of contract; adequacy of legislation; private law.

Requisitos para la forma del contrato de acuerdo con las leyes de Ucrania y la Unión Europea

Resumen

El objeto del artículo fue determinar las peculiaridades de las normas jurídicas relativas a la forma del contrato en el derecho de la Unión Europea UE. Para este fin se emplearon los métodos: especial-jurídico, análisis y síntesis, inductivo, sistémico, generalización, previsión y comparado. Los autores insisten en la necesidad de repensar el derecho convencional a través del prisma del derecho contractual europeo. Se presto atención a la conveniencia de negarse a la regulación de cuestiones relacionadas con la forma del contrato, sin dividir en ciertos requisitos para la forma de los contratos. Se enfatiza que los propios actos de "derecho indicativo" requieren en algunos casos una cierta formalidad (por ejemplo, una forma escrita en un soporte duradero) para un acto jurídico específico, y las leyes nacionales a menudo requieren una forma escrita u otras formalidades. Especialmente en lo que respecta a objetos específicos, en particular, terrenos y otros bienes inmuebles. Se citan las obligaciones de donación unilateral y los contratos celebrados con los consumidores como ejemplos de restricciones a los requisitos para la libre elección de la forma del contrato. Se concluye argumentando la importancia de repensar los enfoques nacionales para comprender la forma del contrato y su simplificación jurídica.

Palabras clave: derecho convencional; recodificación; forma de contrato; adecuación de la legislación; derecho privado.

Introduction

Despite the long history of development and legal traditions of domestic private law, one should admit the dynamism of historical experience of legal regulation. Modern tendencies of Europeanization of Ukrainian private law, in particular conventional law, require constant rethinking and clarification. Such a need was actualized with the granting to Ukraine of the status of a candidate country for joining the EU and the deepening of cooperation within the framework of economic relations, the strengthening of requirements for the national legal system in the context of the rapprochement of the legal systems of Ukraine and the EU.

We must admit the fact of revolutionary amendments in the Ukrainian private legal system after the adoption of the Civil Code of Ukraine in 2003. The new idea of civil legislation required changes in the way of thinking, understanding the role of law and justice in society. However, such changes were based on close cooperation with the countries of the post-Soviet space and therefore did not fully take into account the tradition and democratization of conventional law, which already prevailed in European countries at that time.

The content of the Civil Code of Ukraine of 2003 mostly did not include the norms of conventional law recognized in the EU even taking into account that the Partnership and Cooperation Agreement with the EU was concluded back in 1994 and despite the fact that the developers considered the traditions of German and French civil legislation.

As a result, there is the fact of the Civil Code of Ukraine, which, on the one hand, determined the basic principles of private law regulation, but could not deviate from the legal tradition that placed relations between subjects of contractual relations on a certain regulated level (especially with regard to such subjects as legal entities under private and public law).

Considering the above, the national conventional law within the modern European integration vector should be reformed. The issues of the contract's form are of particular importance, since modern private law gives the form an important meaning for establishing the actual fact of the obligation itself, as well as its validity.

Part of the legal community still supports the importance and value of a written contract's form, especially in relation to b2b contracts. However, it is necessary to state that the coordination of national policy and EU standards on the form of the contract is the basis for the harmonization of conventional law. The current legislation of the EU Member States, the EU in the whole, and Ukraine, contains a sufficient number of differences regarding the regulatory requirements for the contract's form (Harmonization of contract law, 2015: Article 142).

It is worth noting that the Concept of Recodification of Civil Legislation of Ukraine began to be implemented at the level of legislation only in 2020. The authors of the Concept of Updating the Civil Code of Ukraine claim that the need for recodification stems from the logic of further systematic transformation of society, including the formation of a real and effective market economy as an integral component of civil society and the European integration orientation of all components of society (The concept of Updating the Civil Code of Ukraine, 2020: Article 5).

The study of the requirements for the contract's form becomes relevant also by the reason of spreading the practice of concluding electronic transactions and the need to simplify the procedure for concluding the

contract itself due to the lack of time, the impracticality of using the written form of contracts for counterparties who have many years of effective business practice (especially in case when we are talking about international counterparties under the contract), including the currently available admonition from the national legislation regarding the form of purchase and sale agreements in accordance with the content of the United Nations Convention on Contracts for the International Sale of Goods.

The purpose of the article is to determine the peculiarities of legal norms regarding the contract's form in the law of the EU and certain EU countries, the problems of legalization of strict requirements within the civil legislation of Ukraine in regard to the contract's form and the consequences of its non-compliance through the prism of bringing the legislation of Ukraine into the compliance with the EU legislation. To reveal the purpose is possible by solving the following objectives: to provide general characteristics of the contract's form under the law of the EU and EU Member States, to analyze the current situation of Ukrainian civil legislation regulating the issue of the contract's form, to determine the development directions for the national legislation in this area.

1. Methodology of the study

The article is based on the study of international legal acts, acts of the European Union and Ukraine in terms of setting requirements in regard to the contract's form. The solution of the set objectives was made possible due to the processing of materials published in the legal literature by national researchers and comments on the "soft law" acts of the EU. The principles of the research were regulatory legal acts of Ukraine, of certain European countries, the "soft law" of the EU and international legal acts in the sphere of regulating contractual relations.

Solution of the set objectives is possible by using the system of general scientific and special methods of scientific cognition by the authors of the article. Thus, the use of the dialectical method made it possible to reveal understanding of the contract's form and approaches to its norming. The methods of analysis and synthesis contributed to reveal the current situation of civil regulation of the contract's form under the legislation of Ukraine and the EU, to identify the archaic nature of the national legal system and the need for its modernization.

The axiological method assisted to reveal the meaning of the contract's form for its validity. The formal and logical method made it possible to identify the system of building directions for improving the civil legislation of Ukraine in the researched area.

2. Analysis of recent research

The contract's form has repeatedly become the subject matter of domestic and foreign research. The article by Maryna Velikanova "Theoretical issues of concluding civil law contracts" should be the focus of attention among the modern scientific works on the specified issue, which defines the general procedure for concluding civil contracts, methods of their conclusion, as well as considers the forms of civil contracts (Velikanova, 2011).

The scientific achievements of the scientist were used by the authors of this research to establish specific features of written documents that confirm the written form of the contract or are accompanying documents for the execution of the contract. Serhii Tenkov in his scientific article defined the specifics of the written form of the contract, the moment when the contract becomes effective, and outlined the types of documents that can confirm the fact of the written form of the contract (Tenkov, 2004).

The authors of this publication also used the definition of the written form of the contract, which was offered by Anna Chuchkovska within her dissertation research "Legal regulation of business contracts made through telecommunication networks" (Chuchkovska, 2004, 35). One of the authors of this article (Cherniak Olena) also repeatedly pointed out in other publications the need to rethink the national system of legal regulation of the contract's form according to the European legal tradition (Dyminska, 2016; Cherniak and Abrosimov, 2020). The authors of the article also agree with the conclusions made in the publication by Iryna Davydova regarding the importance of regulating electronic contracts, the role of written and electronic forms of contracts (Davydova, 2020).

Analysis of scientific research, as well as direct legal regulation regarding the form of contracts, emphasizes the constant interest of scholars in this problematic. This provision is due to the fact that unequal requirements for the contract's form within the Ukrainian legal system and in the EU may suspend or complicate commercial and other relations under various contracts, when its participants are residents of different countries. The current domestic international private law follows the path of mandatory written form for certain types of contracts, since it follows the United Nations Convention on Contracts for the International Sale of Goods.

3. Results and discussion

3.1. Requirements for the contract's form within the law of the EU and certain European countries

Conventional law is a dynamic legal institution. Therefore, taking into account the expansion of the scope of EU law to an increasing number of

national legal systems, partial regulation in this area, which provides for the possibility of establishing additional contractual mechanisms within certain countries, is insufficient in our opinion. However, it should be noted that these warnings were not an obstacle to systematic work within the EU on the creation of informal unifications or acts of harmonization in the field of conventional law.

It is also possible to state the fact that the work in this direction has been suspended for the last few years. It can be explained by the EU's reluctance to legalize acts offered by various working groups. For example, we can name the Principles of European Contract Law (PECL) (1995-2002), Acquis Principles (2005), Draft Common Framework of Reference (DCFR) (2009), etc.

Thus, the idea of a single EU Civil Code has been relegated to the background, taking into account the withdrawal of Great Britain from the EU, the general "crisis" of the EU as a political and legal entity, the definition of additional powers of the EU in regard to the possibility of establishing unified rules within private and legal sphere in general and in the sphere of conventional law, in particular. However, those norms of soft law, which have already been developed for several decades, demonstrate an example of maximum consideration of the legal systems of the EU Member States, international acts, the development of contractual relations between residents of different countries, including within electronic communications.

The issue of the contract's form within the framework of EU law is mostly considered through the interpretation of the content of the principle of freedom of contract. There are several aspects of freedom as a fundamental principle in private law. As a rule, freedom of contract includes the freedom to choose the counterparty, the content and form of the contract (Dyminska, 2016).

These are the main ideas defined in DCFR and PECL. Freedom of contract has the same meaning in the UNIDROIT Principles. Besides, the parties can agree on the possibility of changing the terms of the contract in any form that will differ from the form of the contract itself, or its termination at any time.

> European legislation and "soft law" act currently make exceptions only for a limited range of contracts (the written form is mandatory for the safety conditions of using products for consumers, for gift contracts, etc.), which is due to the need to protect the interests of the participants of such contracts (Cherniak and Abrosimov, 2020: 50).

The complexity of the formation of European conventional law is caused, first of all, by the types of legal systems. Despite the fact that the continental and general systems have common features regarding the

conclusion of contracts through the traditional division into two expressions of will (offer and acceptance), there are also differences that, at first glance, seem impossible to correlate, which, among other things, concern the very understanding of the contract and its form. As a result, a set of rules balanced between different legal systems has been achieved within PECL and DCFR, based on the United Nations Convention on Contracts for the International Sale of Goods and the UNIDROIT Principles.

It does not mean that the contract's formation rules set out in the PECL and DCFR or their entire text have been created on the basis of combination or dominance by selecting the most appropriate norms or rules that are common to different legal systems.

On the contrary, the specified acts testify to their specific system, they are built on the basis of ensuring commercial relations between the EU Member States under the influence of developed trade practices and on the basis of providing own autonomous interpretation of the rules of international trade in accordance with the principles of uniformity and good faith. The principle of freedom of the form in this context provides that the offer and acceptance do not necessarily have to be in writing.

Besides, the Art. 2:101 of the PECL reduces the formal requirements for concluding a contract so that a contract is considered concluded, if the parties intend to be legally bound and reach a sufficient agreement without any additional requirements. It means that a contract can be concluded without the presence of formal and typical requirements of the common law system (negotiation and custom). Such freedom is also in line with the general principle embodied in the UNIDROIT Principles.

As a general rule, contracts regulated by the PECL and DCFR are not subject to any form or evidentiary requirements to determine their validity, effectiveness, or contractual intent. The contract can be concluded orally or in writing, including by e-mail correspondence.

The Article 2:101 of the PECL makes it clear in this regard that a contract should not be concluded or certified in writing, nor it is subject to any other requirement regarding the form. The contract can be confirmed by any means, including witnesses (Principles of European Contract Law, 1995-2002). Accordingly, the Art. II.-1:106 of the DCFR indicates that a written form is not required for concluding, drawing up or confirming a contract or other legal act, if no requirements are established regarding the form (Principles, Definitions and Model Rules of European Private Law. Draft Common Frame of Reference, 2009).

In some cases, the model rules themselves require a certain formality (e.g. written form or written form on a durable medium) for a particular legal act, and national laws often require written form or other formalities, especially in relation to particular objects, namely land plots and other immovable property.

However, according to the drafters, the indication of such exceptions is not justified within the scope of the studied acts, since it follows from the general principle that special provisions prevail over more general ones (Draft Common Framework of Reference, 2009: Art. I.–1:102). Any legislator using model rules is surely entitled to determine the obligation of a written form or any other formality in relation to the conclusion of any type of contract. However, it is important to establish the basic general rule, according to which there are no formal requirements, unless otherwise provided by law.

Thus, the principle of freedom of the form is widespread in the countries of the continental system, although the common law systems have become less strict with regard to the requirements for concluding contracts in written. Writing or other formalities are not required for the validity of the contract in most EU countries. It is applied, in particular, to France, Denmark, Sweden, Finland, Greece, Germany, etc.

Polish legislation defines the principle of freedom of the contract, according to which the contract must not be concluded or certified in writing, and it is not subject to any other form requirement. However, there are legal requirements regarding the form of certain contracts. Such forms are: written, written with official certification of the date, written with notarized signatures, notarial deed. The form requirement can perform various legal functions, for example, to justify an action, to prove an action, or to cause specific consequences of an action. Other restrictions may also be established by the parties themselves (Act of 23 April 1964 Civil Code: Article 76).

Certain reservations regarding the form are also found in the legislation of EU countries. For example, if the defendant is not a commercial entity, courts in France will not recognize proof of a contract for more than €1,500 unless it is in writing. According to the Art. L.110-3 of the French Commercial Code oral certification of contracts concluded between business entities is allowed. Belgium and Luxembourg have similar rules regarding the confirmation of the fact of the conclusion of the contract in relation to its price (Act of 23 April 1964 Civil Code).

It is not admissible in the Italian legal system, with some exceptions, to justify the conclusion of the contract by witnesses for contracts for a specified amount. Besides, the Art. 2724 of the Civil Code of Italy provides that witness evidence is admissible in all cases where there is prima facie written evidence; if it was morally or materially impossible for the party under the contract to provide any written evidence; when the contracting party accidentally lost the documentary evidence (Italian Codice Civile, 1942).

One of the cases, when a formal requirement regarding the form of the contract may arise is certain unilateral donation obligations. A number of legal systems establish formal requirements in such cases in order to provide evidence that the promise was actually fulfilled ("the function of evidence") was to be legally binding and at the same time such regulation is aimed at additional consideration by the parties regarding the conclusion of such contracts and taking on obligations that may turn out to be burdensome or impossible to fulfill. Such norming is defined in the DCFR within the Book IV, Part H related to donation.

The importance of the written form within the scope of the researched acts is also established for contracts concluded with consumers (Draft Common Framework of Reference, 2009: Art. IV.G.–4:104). At the same time, the requirement for a mandatory written form for pre-contractual relations has already been established for a part of such relations at the EU level.

Similar requirements are contained in the European Contract Code (ECC) in regard to the form of the contract. In particular, the Art. 34 of the ECC indicates the consequences of non-compliance with the form of the contract, which is provided by law. The Article 37 provides for the freedom of the contract's form, where the parties who previously agreed on a certain form of the contract, if it does not contradict the norms of the national legal system, must adhere to this form while concluding the contract. Some norms of the ECC also define the specifics of the written form for contracts regarding real estate, donations, etc.

However, the ECC is an act of private and legal unification, which currently imposes the strictest requirements regarding the contract's form (compared to the DCFR norms). The principles of contractual freedom regarding the contract's form are not so comprehensively defined and establish that the restrictions are subject to purchase and sale contracts for real estate, donation contracts and other contracts that are of special importance and the form of the contract contributes to the additional protection of the interests of the parties under such contracts (European Contract Code, 2003: Article 34).

However, the Art. 185 of the ECC indicates that there are no special requirements regarding the form of the contract for the purchase and sale of movable property. Accordingly, the Art. 37 of the ECC indicates the obligation to conclude a contract in writing only if it has been agreed by the parties. In other cases, the principle of freedom of the form is applied to purchase and sale contracts, where it is not mandatory to express the contract in a special form. Except for the cases and for the purposes that are directly provided by the rules of the ECC. Essentially, identical requirements are contained in the Art. 11 of the United Nations Convention on Contracts for the International Sale of Goods and the Art. 6 of Common European sales law (CESL).

However, there is a stipulation in the Article 36 of the ECC regarding the purpose of proving the fact of the conclusion of the contract. This norm establishes the requirements for the value of such a contract (5,000 euros) or the legally established form of the act to confirm the conclusion of the contract.

Thus, formal approaches in essence (with certain very narrow exceptions) to determining the form of the contract are contained in the legislation of most Member States in the sense that there are no general requirements for a written or other form. However, the typical rules established by the PECL and DCFR generally require formality in fewer specific cases than many statutes. In our opinion, formal requirements can hinder the quality of economic relations and can allow the parties to avoid obligations without good reasons. Obviously, most systems have developed mechanisms to limit unjustified deviations from the written form of the contract, but a better approach is to direct such formal requirements to cases, when they are really necessary, giving the priority and importance to the principles of freedom and safety of the contract.

3.2. Problems of determining the contract's form in the civil legislation of Ukraine

Legal regulation of the contract's form in the Ukrainian legal system mainly consists in its established requirements and the consequences of their violation. The task of the relevant requirements is the fact that they should be able to more precisely record the relations of the counterparties, remove all possible grounds for disputes in the future regarding the very fact of concluding the contract and the content of its terms.

If there are additional requirements, contracts can be concluded only in a certain form (forms). Strict legal regulation of the form of contracts is undoubtedly of great importance both for the parties themselves and for the entire civil turnover. The legal requirements in regard to the contract's form make it possible to more accurately and objectively record the relations of the parties according to its terms, which is intended to facilitate the real and proper execution of the contract in the future avoiding uncertainties regarding certain terms of the contract and even the very fact of concluding the contract.

Some legal norms provide a public nature to the act of recording a contract. It is related to the state control over its execution for the benefit of third parties, assistance to the parties in clarifying the legal consequences of their legal actions, as well as information to concerned parties about concluded contracts.

However, it is worth talking about the tendency of expanding the freedom of the form of contracts within the modern conditions of Ukraine, according

to which minimal formal requirements are imposed on the parties while forming their legal relations. The reason for the need of such an extension is that any additional requirement in regard to the contract's form objectively leads to the complication and slowing down of the contract conclusion procedure. Obviously, when it comes to the transfer of ownership of real estate or other contracts complicated by the object or party, we will not assert the expediency of simplifying the form of such a contract. Within the scope of the research, we just stated the expediency of simplifying the form of contracts with the participation of individuals and legal entities, which by their nature can be confirmed by the cost, accompanying documents or actions that indicate the fact of concluding and executing such a contract.

The main provisions on the contract's form are contained in the Civil Code of Ukraine dated from January 16, 2003 (Civil Code of Ukraine, 2003), which is significantly updated compared to the Civil Code of the Ukrainian SSR of 1963 (Civil Code of the Ukrainian SSR, 1963). However, it did not solve the existing problems, but laid the grounds for creating new ones.

Thus, the legislator removed the reference to the division of the written form into simple and notarial from the special Article concerning the form of the transaction, by indicating in Part 1 of the Art. 205 of the Civil Code of Ukraine that "the transaction may be executed orally or in written (electronic) form".

Anna Chuchkovska notes that the written form of the contract is a method of objectification of thoughts with the help of writing and conventional signs on different carriers, the content of which is determined by the mutual rights and obligations of the parties in the field of economic activity (Chuchkovska, 2004).

The requirements for the written form are established in the Art. 207 of the Civil Code of Ukraine. At the same time, there are two methods of written transactions: 1) recording the content of the transaction in one document; 2) recording the content of the transaction in several documents, letters, telegrams exchanged between the parties.

We should agree with Serhii Tenkov that all documents accompanying the contract are divided into two groups: 1) documents related to the fact of concluding the contract, i.e. confirming its written form; 2) documents related to the execution of already concluded agreement. In this regard, it is necessary to distinguish between written (or electronic) documents, which are themselves the written form of the contract, and documents that are written evidence of the fact of the existence of the disputed contract in oral form (Tenkov, 2004).

The main feature, which assists to assign certain documents to the first or second group is their ability to exist independently. Maryna Velykanova explains, if a specific document mediates a certain operation arising from a

specific contract, in this case it will be the document of the second group. If this document reflects all the essential terms of the contract, it will be the document of the first group (Velikanova, 2011).

In order to consider some documents as a written form of the contract, they must contain all the essential terms of such a contract and they should conclude that the parties have agreed to those terms. In this context, we face another outdated domestic concept of the essential terms of the contract, which is inherent in national legal proceedings and is absent in European acts.

Part 4 of the Art. 639 of the Civil Code of Ukraine titled "Form of Contracts" contains provisions that regulate the issue of mandatory notarization of a contract in cases when the parties have previously agreed on such certification. Besides, Part 1 of the Art. 54 of the Law of Ukraine "On Notary" still has a reference to "mandatory notarial form". Such inconsistency of the legislator led to a wide discussion among scholars and practitioners regarding the existence of the division of the written form of contracts into simple and notarial in the current legislation.

Besides, in accordance with Part 3 of the Art. 640 of the Civil Code of Ukraine "A contract subject to notarial certification is concluded from the date of such certification".

Clarifications and alterations to the Civil Code of Ukraine, which took place in 2015 and are related to the use of information technologies while preparing and concluding transactions, also attract attention, since the practice analysis indicates noticeable shifts in the direction of simplifying the conclusion of transactions.

In particular, it became possible to conclude contracts and execute other transactions in electronic form, which provides for recording the terms of the agreement not on paper, but with the help of electronic documents, the familiarization of which must necessarily be accompanied by the use of special equipment. Therefore, the electronic form of transactions arises, which led to the introduction of amendments to the Articles 205 and 207 of the Civil Code of Ukraine. The Law of Ukraine "On Electronic Commerce" also introduced such concepts as "electronic trade", "electronic transaction", "electronic contract", etc.

However, it is necessary to talk not only about the electronic form of the transaction, but about the formation of a new category, which is a consequence of the formation of the informatization of society. This possibility to perform transactions in electronic form without concluding paper contracts, the presence of the parties during their conclusion, etc. is only a "transitional" stage and provides the grounds (basis) for the formation of transactions of a "new type" (so-called "smart" agreements, which are more often denoted the term "smart contracts").

Iryna Davydova rightly points out:

> Customary (traditional) transactions, as a result of the spread of information technologies, are transformed into electronic transactions, smart contracts, etc., which can be concluded by legal entities without personal contact, paper texts of contracts, personal (handwritten) signatures, etc. It is a new phase of the development, a turning point that should take place not only in the field of technical support for the possibility of concluding such transactions, but also in the consciousness of every person (Davydova, 2020: 19).

According to the Concept of Recodification of Civil Legislation, it is necessary to rethink the provisions on the forms of transactions, because it is impossible to ignore the scientific and technical development that contributed to the emergence of internet banking, smart contracts, e-commerce, etc. In this aspect, attention will be paid to formulating modern approaches to understanding and regulating the forms, which may contain transactions. Given this, "it is suggested to pay attention to the provisions on the written form and signature contained in the Articles I.-1:106, I.-1:107; as well as on the calculation of terms (Art. I.-1:110) of Book I "General Provisions" DCFR" (The Concept of Updating the Civil Code of Ukraine, 2020: Articles 113-114).

Understanding the complexity of proving the fact of the contract's conclusion, as well as executive discipline, which takes place in Ukraine in contrast to European law and the European contractual tradition, the authors of this research insist that the requirements for the contract's form should be simplified in the sense that the parties independently have to resolve the issue of such a form. Nowadays, those realities that exist in Ukraine in regard to electronic digital signatures and electronic documents circulation only indicate that it is difficult for the parties to certain contracts having different jurisdictions or locations to conclude contracts quickly and efficiently and accordingly to fulfill them taking into account the requirements regarding the contract's form.

Conclusions

The expansion of the sphere of private and legal contractual regulation of social relations, including due to the increase in the role of the contract as an important regulator of such relations, currently requires rethinking of the concept of domestic conventional law. Such changes are also caused by the Europeanization of domestic private law. The specified processes will definitely be complex and long-term, taking into account the approaches suggested at the EU level in regard to understanding the principles of conventional law, the general principles of regulation related to the definition of its form.

However, such changes are not so much a tribute to cooperation with the EU, but an urgent need at the present time, because without large-scale and in-depth work on the conventional law system, there will be the moment when effective private legal cooperation of business and private individuals with counterparties from other countries becomes impossible. In addition, the number of opportunities and formations of written counterparts of contracts, which is currently provided by the development of the Internet, should only accelerate the formation and operation of the contractual concept, and not slow it down due to the need to comply with formalized written forms with the seals and other requirements.

Therefore, it is currently important to move away from the regulation of issues related to the contract's form, without dividing it into separate requirements for the form of contracts for different types of participants in civil relations.

It is also necessary to talk about changing the essence of contractual relations considering the principles of maximum protection of the contractual relationships participants from its non-fulfillment or improper fulfillment, to the formation of such a legal concept and consciousness that will adjust to contractual hygiene and responsibility, when the counterparty concluding the contract directs all real opportunities for the fulfillment of own obligations, and not looking for options, how not to fulfill such contractual obligations.

Bibliographic References

BELOUSOV Yu. V.; BEK Yu. B.; DYMINSKAYA E.Yu. 2015. Harmonization of contract law. Khmelnitsky University of Management and Law. Khmelnitsky, Ukraine.

CHERNIAK, Olena; ABROSIMOV, Serhiy. 2020. "Updating the contract law paradigm in the context of the recodification of the civil legislation of Ukraine" In: Scientific bulletin of public and private law. Vol. 02, No. 06, pp. 48-52.

CHUCHKOVSKA, Anna. 2004. "Legal regulation of business contracts concluded through telecommunication networks" In: Summary thesis. Kyiv, Ukraine.

COMMISSION ON EUROPEAN CONTRACT LAW. 1995-2002. Principles of European Contract Law – PECL. Available online. In: https://www.trans-lex.org/400200/_/pecl/#head_21. Consultation date: 27/06/2023.

DAVYDOVA, Iryna. 2020. "Contracts" and "deal" in the context of the recodification of civil legislation. Shereshevsky's readings. Update of

the Civil Code of Ukraine: conceptual principles: Mater. All-Ukrainian science and practice conference. Phoenix. Odesa, Ukraine.

DYMINSKA, Olena. 2016. "The legal nature of certain principles of EU contract law" In: University scientific notes. Vol. 58, No. 02, pp. 213-219.

EUROPEAN COMMISSION. Common European sales law. Available online. In: https://commission.europa.eu/business-economy-euro/doing-business-eu/contract-rules/common-european-sales-law_en. Consultation date: 25/06/2023.

GOVERNMENT OF ITALIAN. 1942. Royal Decree No. 262 "Italian Codice Civile". Available online. In: https://www.trans-lex.org/601300/_/italian-codice-civile/. Consultation date: 27/06/2023.

GOVERNMENT OF POLAND. Civil Code. 1964. In: Journal of Laws Dz.U. 2014 item 121.

STUDY GROUP ON A EUROPEAN CIVIL CODE AND THE RESEARCH GROUP ON EC PRIVATE LAW (ACQUIS GROUP). 2009. "Principles, Definitions and Model Rules of European Private Law. Draft Common Frame of Reference (DCFR)". Outline Edition. Edited by Christian von Bar, Eric Clive and Hans Schulte-Nölke. Available online. In: https://sakig.pl/wp-content/uploads/2019/01/dfcr.pdf. Consultation date: 26/06/2023.

TENKOV, Sergii. 2004. Commentary on judicial practice in economic cases. Yurinkom Inter. Kyiv, Ukraine.

THE CONCEPT OF UPDATING THE CIVIL CODE OF UKRAINE. 2020. ArtEk Publishing House. Kyiv, Ukraine.

UNIVERSITA DI PAVIA. 2003. European Contract Code. In: Book 1, Titles 1-2: Arts. 1-24; Book II, Arts. 174-180. Available online. In: https://www.eurcontrats.eu/site2/newdoc/Norme%20_LibroII-inglese_.pdf. Consultation date: 27/06/2023.

VELIKANOVA, Maryna. 2011. "Theoretical issues of concluding civil law contracts" In: Legal Bulletin. Air and space law. No. 01, pp. 57-61.

VERKHOVNA RADA OF UKRAINE. 1963. Civil Code of the Ukrainian SSR No. 1540-VI. Available online. In: https://zakon.rada.gov.ua/laws/show/1540-06#Text/. Consultation date: 24/06/2023.

VERKHOVNA RADA OF UKRAINE. 2003.Civil Code of Ukraine No. 435-IV. Available online. In: https://zakon.rada.gov.ua/laws/show/435-15#Text. Consultation date: 24/06/2023.

UNIVERSIDAD DEL ZULIA

CUESTIONES POLÍTICAS

Vol.41 Nº 79

Esta revista fue editada en formato digital y publicada en octubre de 2023, por el ***Fondo Editorial Serbiluz, Universidad del Zulia. Maracaibo-Venezuela***

www.luz.edu.ve
www.serbi.luz.edu.ve
www.produccioncientificaluz.org