ANALYSIS OF LEGAL REGULATION OF CONTRACTUAL OBLIGATIONS IN THE CIVIL LAW SYSTEM

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Abstract: *Contractual obligations are the most common type of obligation. They arise on the basis of the concluded contract and their conditions are defined both by the law, and the agreement of the parties. At the same time, in the modern world, there is a dynamic increase in the value of contractual obligations, which necessitates in-depth study of them. In addition, the analysis of the possible legal consequences of the COVID-19 pandemic on contractual obligations is relevant within this topic. The purpose of the study is to analyse the legal regulation of contractual obligations in the civil law system, as well as to identify gaps in legislation and possible ways to improve it in this area. During the writing of the article the author used general scientific methods of cognition: analysis, synthesis, inductive and deductive methods, analogy, comparison, dialectical logic and systems approach. In addition, special methods were used in the work: formal-legal, formal-logical, historical-legal, method of comparative legal research. In particular, the application of the comparative law method has contributed to a comprehensive study of contractual obligations in civil law in comparison with different countries. The historical-legal method has contributed to the study of the evolution of research in the field of contractual obligations in civil law, beginning with research conducted during the Roman Empire. The formal-legal method helped to reveal the peculiarities of the provisions of regulations on contractual obligations. The article is devoted to the theoretical development of contractual obligations in the system of civil law. In addition, international and European experience in the development of contractual obligations has been studied. The author also focuses on the analysis of COVID-19 as a circumstance that prevents the performance of the contract and releases the parties from liability, in particular, examines in detail whether COVID-19 can be considered a force majeure.*

Keywords: civil obligations, litigation, bilateral agreements, freedom of contract, force majeure, COVID-19.

Modern civil legislation of Ukraine is entering a new stage of its development. That is why the regulation and proper application of the law on contractual obligations determine the level of the legal protection of private interests of citizens, which directly affects the quality of their lives. Problematic issues are becoming apparent today, mostly related to the improvement of the existing model of contractual obligations. In particular, there are problems of both conceptual and private nature. The latter becomes apparent in the practical application of civil law. In this case, the law of obligations is

dominated by a set of rules that govern only contractual obligations[1]. That is, the most common type of civil law is a contractual obligation, because it is with their help to regulate public relations for the production and sale of products, works and services[2].

Due to the regulatory nature, contractual obligations determine the lawful conduct of the subjects of civil law, ensure its observance by all participants in civil proceedings,[3] and in case of violation of the rules of this conduct – create an opportunity to apply appropriate civil liability measures[4]. That is, contractual obligations are legal relations that provide for the commission or withholding of certain acts of property and non-property nature, which arises based on a contract between the creditor and the debtor and applies only to these persons[5]. Judicial practice shows that contracts are often concluded negligently, do not contain the necessary conditions aimed at the realisation of the interests of the parties, do not include measures to secure contractual obligations. Complications often arise during the implementation of such agreements, the same conditions are interpreted differently by the parties, and, as a result, there is a massive default by the parties, which leads to numerous conflicts. That is why the most important task of modern legal science and practice is to create legal mechanisms that allow to most effectively ensure the proper performance of contractual obligations and to compensate the injured party for losses caused by their non-performance or improper performance[6].

In addition, the spread of COVID-19 coronavirus infection, as well as the measures taken by the authorities may lead to disruption of deadlines and measures, non-fulfilment of contractual obligations.[7] Thus, the coronavirus raises the question of whether it can be considered a force majeure in a

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[1] T.V. Bondar, N.S. Dzera, *Contract Law of Ukraine. The general part*, Jurinkom Inter, Kyiv, 2008.

[2] Y.A. Svirin, V.V. Kulakov, A.A. Mokhov, S.N. Shestov, V.P. Sorokin, "Balance of interests as a principle of civil law: Some aspects of legal consciousness", in *Journal of Advanced Research in Law and Economics*, 2019, vol. 10, no. 3, p. 940-947.

[3] S. Dmytriiev, "The notion and elements of the applicant's civil procedural status in separate proceeding", in *Law Journal of the National Academy of Internal Affairs*, 2021, vol. 15, no. 1, p. 231-241.

[4] V.Y. Horielova, V.A. Omelchuk, O.F. Kalinichenko, I.V. Naida, Y.V. Sagaydak, "The doctrine of human rights in the field of private law relations: Legal theoretical aspects", in *Asia Life Sciences*, 2019, no. 2, p. 795-819.

[5] S. Pylypenko, "Contractual obligations in the civil law of Ukraine, England and the United States (comparative legal aspect)", in *Prykarpattya Legal Bulletin*, 2015, no. 3, p. 52-55.

[6] A.B. Hryniak, O.B. Hryniak, "Contractual grounds for the emergence of housing ownership", in *Journal of the National Academy of Legal Sciences of Ukraine*, 2021, vol. 28, no. 1, p. 115-127.

[7] T. Gamkrelidze, "COVID-19 in Georgia: State emergency as political non-law and its impact on pluralism", in *Democracy and Security*, 2021. Available at doi:10.1080/17419166.2021.1972288; A.I. Guerra, M.J. Machado, M.M. Fernandes, P.A. Azevedo, S.T. Tomás, S.S. Machado, "General data protection regulation (GDPR): Legal, ethic and other issues, especially in COVID-19 time", in *Revista De Direito, Estado e Telecomunicacoes*, 2021, vol. 13, no. 2, p. 28-41.

contractual relationship, which also requires a detailed theoretical understanding.[8]

International and European experience in the development of contractual obligations is also useful in this regard. In particular, given Ukraine's European integration aspirations, it is important to study contractual obligations in the context of the European Civil Code, which, although of a recommendatory nature, can be assumed that this project will indirectly accelerate the Europeanisation of contract law, including contractual obligations. For example, K. Dobkina and E. Klueva consider it one them from the components of the lex mercatoria system[9]. For example, it can serve as a model for those states that re-form their law of obligations, or make changes to existing ones. In addition, there are grounds to assume that the courts will focus on the European model, in particular after the Ukrainian law of obligations requires additions and expansion of some interpretations. Thus, there is no doubt that over time, the European Civil Code will have a significant impact on the further development of contract law in Europe. Given all the above, there is no doubt about the theoretical and practical significance of the issues of contractual obligations in the civil law system.

For example, the research of the famous German scholar F. Savigny is one of the most complete and in-depth analyzes of binding Roman law. In particular, he studied the concept and content of obligations, the subject composition and objects of obligations. The author also paid considerable attention to the various grounds for the occurrence of obligations, among which he studied in detail the contractual obligations[10].

It should be noted that contractual obligations are often associated with a civil contract. In this case, the contract is one of the grounds for the formation of binding legal relations, along with such as: harm, unilateral agreements, unjust enrichment and others. A contractual relationship is essentially a type of binding relationship, and a contract is an obligation between the parties. That is why, in order to comprehensively analyse the contractual obligations in civil law, it is necessary to examine the contract. Thus, D. Meyer recognised the contract as a source of obligation in the sense that the right to another's action derives directly from the mutual agreement of persons, and not from the definition of the law. According to the scientist, the contract gives rise to the right to another's action related to the legal (property)

[8] A. Lee, "Public health actions against COVID-19 to protect our rights to health", in *Medicine and Law*, 2020, vol. 39, no. 2, p. 205-222.

[9] K. Dobkina, E. Klueva, "Legal bases of application of European principles of contract law in the legislation of Ukraine", in *Legal Scientific Electronic Journal*, 2017, no. 3, p. 39-42.

[10] I. Spasibo-Fateeva, "Implementation and protection of the right to freedom of expression in Ukrainian civil law: Modern problems", in *Baltic Journal of European Studies*, 2019, vol. 9, no. 3, p. 205-223.

interest. One party promises to take the action specified in the contract, and the other party takes the above promise[11].

It should be noted that for a long time the study of the contract engaged in well-known civilians, but so far in legal science has not developed a single approach to defining the contract. For example, Professor O. Ioffe understood a contract as an agreement between two or more persons on the emergence, change or termination of civil relations. However, he pointed out that sometimes the contract refers to the obligation arising from such an agreement, and in some cases the term refers to a document that records the act of obligation at the will of all its participants[12].

Today, from the point of view of the doctrine of common law, the contract is made in return, a promise is given, secured by a sanction – the opportunity to go to court[13]. However, in countries that use the continental legal system, the definition of the contract is based, in particular, on the French Civil Code, which is accepted as the leading one. In this definition, the emphasis is on reaching an agreement that creates an obligation for the parties to transfer something, to do or not to do[14].

That is, the contract is an agreement of the parties. Any agreement provides for equality of the parties, otherwise it is not an agreement, but a relationship of power and subordination. However, civil relations are considered only equal relations. The conclusion of a civil contract is associated with the parties agreeing on the essential terms of the contract.

Materials and methods

Given the goal and objectives, certain materials and methods were selected for the study. In addition, the work used a set of regulatory principles, techniques and methods by which knowledge of the specifics of contractual obligations in the civil law system was achieved. Therefore, in order to conduct the study, a number of methods and materials were used in the article. In particular, in solving the tasks the authors relied on modern methods of cognition, identified and developed by science and tested in practice. In

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[11] Y. Chornous, N. Volkova, A. Zghama, Y. Tsal-Tsalko, O. Tsybulska, "Res judicata in civil, economic and criminal proceedings in Ukraine", in *Journal of Advanced Research in Law and Economics*, 2019, vol. 10, no. 3, p. 753-761.

[12] I. Izarova, B. Szolc-Nartowski, A. Kovtun, "Amicus curiae: Origin, worldwide experience and suggestions for east European countries", in *Hungarian Journal of Legal Studies*, 2019, vol. 60, no. 1, p. 18-39.

[13] N. Golubeva, K. Drogoziuk, "Web-page screenshots as an evidence in civil procedure of Ukraine", in *Masaryk University Journal of Law and Technology*, 2019, vol. 13, no. 1, p. 87-113.

[14] I. Kalaur, N. Fedorchenko, "Normative and individual regulator in the mechanism of regulation of legal relations under transfer of property in use", in *Transformations in Business and Economics*, 2018, vol. 17, no. 1, p. 38-49.

particular, during the writing of the article, the authors used general scientific methods of cognition: analysis, synthesis, inductive and deductive methods, analogy, comparison, dialectical logic and systems approach. In addition, special methods were used in the work: formal-legal, formal-logical, historical-legal, method of comparative legal research. In addition, the research process used methods of integrated analysis of research results conducted by other authors on similar issues. The main method of the study was dialectical, which revealed the features of contractual obligations in civil law. It is with the help of the dialectical method in the study of contractual obligations in the civil law system, new results were derived and new studies were presented based on researches in this area.

In addition, the study is based on a systematic approach, which is to examine the complex system of relationships between contractual obligations in civil law. In particular, the problem situation was formulated using the method of system analysis; research objectives, as well as criteria for achieving the objectives, were defined. In addition, the method of systems analysis helped to find a solution to the problem. At the same time, the inductive and deductive methods helped to study the components of contractual obligations in civil law. The formal-legal method helped to reveal the peculiarities of the provisions of regulations on contractual obligations. However, the formal-logical method was used to define the basic concepts and legal categories relating to the analysis of the content and legal regulation of contractual obligations in the civil law system. The historical-legal method has contributed to the study of the evolution of research in the field of contractual obligations in civil law, beginning with research conducted during the Roman Empire. In addition, the method of comparative legal research was used in the work. In particular, the application of the comparative law method has contributed to a comprehensive study of contractual obligations in civil law in comparison with different countries. After all, in today's world, the issue of unification of civil law in Europe and the creation of common rules of economic turnover in the context of economic globalization and the need to increase the investment attractiveness of the legal system acquire a great role[15]. In this regard, it is not necessary to deviate from the dominant approaches in international law without good reason, as this distances legal regulation from generally accepted standards. Although on the other hand, all this does not mean the necessity to copy the experience of other countries. The experience of other countries is of interest only as an occasion to think about ways to solve the problems of the most effective and fair legal regulation in today's realities.

[15] B. Derevyanko, Y. Zozulia, L. Rudenko, "Money assets of internally displaced persons as financial resources of commercial banks", in *Banks and Bank Systems*, 2017, vol. 12, no. 4, p. 211-217.

The normative basis of the study consists of legislation that contains rules governing contractual obligations in civil law. The empirical basis of the study is the materials of law enforcement practice on contractual obligations.

The theoretical basis of the study was taken as fundamental monographs, scientific articles of scholars in the field of contractual obligations in civil law[16]. However, the scientific novelty of the study is due to the necessity to study the theoretical and practical issues of contractual obligations in the civil law system, taking into account the latest legislation.

Results and discussion

Depending on the cause, all obligations are divided into two types: contractual and non-contractual. Contractual obligations arise on the basis of the concluded contract, and non-contractual ones allow other legal facts as their existence. The significance of the division of all obligations into two types is that the content of contractual obligations is determined not only by law but also by agreement of persons involved in the obligation, while the content of non-contractual obligations depends only on law or law and the will of one of the parties to the obligation. That is, contractual obligations arise by agreement and consent of parties, while non-contractual obligations arise regardless of the will of parties, are generated by such legal facts as damage, unjust enrichment, etc[17].

It should be noted that the institution of contract law has its origins in ancient Roman law. However, non-contractual obligations arose at first; as it may seem at first glance, and obligations related to torts, i.e. offences. This is due to the fact that in ancient times, the state authorities did not interfere in

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[16] Y.A. Svirin, V.V. Kulakov, A.A. Mokhov, S.N. Shestov, V.P. Sorokin, 'Balance of interests as a principle of civil law: Some aspects of legal consciousness", in *Journal of Advanced Research in Law and Economics*, 2019, vol. 10, no. 3, p. 940-947; V.Y. Horielova, V.A. Omelchuk, O.F. Kalinichenko, I.V. Naida, Y.V. Sagaydak, "The doctrine of human rights in the field of private law relations: Legal theoretical aspects", in *Asia Life Sciences*, 2019, no. 2, p. 795-819; S. Pylypenko, "Contractual obligations in the civil law of Ukraine, England and the United States (comparative legal aspect)", in *Prykarpattya Legal Bulletin*, 2015, no. 3, p. 52-55, K. Dobkina, E. Klueva, "Legal bases of application of European principles of contract law in the legislation of Ukraine", in *Legal Scientific Electronic Journal*, 2017, no. 3, p. 39-42; I. Spasibo-Fateeva, "Implementation and protection of the right to freedom of expression in Ukrainian civil law: Modern problems", in *Baltic Journal of European Studies*, 2019, vol. 9, no. 3, p. 205-223; Y. Chornous, N. Volkova, A. Zghama, Y. Tsal-Tsalko, O. Tsybulska, "Res judicata in civil, economic and criminal proceedings in Ukraine", in *Journal of Advanced Research in Law and Economics*, 2019, vol. 10, no. 3, p. 753-761.

[17] N. Fedorchenko, I. Kalaur, "Legal regulation of obligations on service delivery in the context of the development of Ukraine's economy", in *Transition Studies Review*, 2017, vol. 24, no. 1, p. 71-85; I.I. Banasevych, R.M. Heints, M.V. Lohvinova, O.S. Oliinyk, "Features of the legal status of subjects of civil law", in *Journal of the National Academy of Legal Sciences of Ukraine*, 2021, vol. 28, no. 2, p. 181-188.

the relations of individuals – to respond to violations of interests was the responsibility of the victims themselves.

Later, contractual obligations began to appear, which at that time were united by the following common features: they are all strictly formal (have legal force only if the exact form established by law is observed); species difference between them is also determined not by content but by form; the same formality determines their abstractness; compliance with the form of the contract entails its validity, regardless of the basis, purpose, etc.; they are all one-sided – one party has only rights and the other has only responsibilities; they all have protection because they are contracts of civil law and give rise to civil obligations.[18] In this case, the contracts meant the agreements of the parties (agreements), secured by legal protection[19].

A simple agreement of the will of the parties (consensus) has already given rise to contractual obligations, regardless of the form of expression. Not without pathos, Article 1134 of the French Civil Code gives the principle of pacta sunt servanda the following wording:

Contracts concluded in accordance with the law have the force of law for their participants"[20]. Today, contractual obligations are the core of civil law, as most civil law obligations arise from contracts.

One of the general principles of civil law in general and contractual obligations in particular is the freedom of contract, which is enshrined in Article 2 of the Civil Code of Ukraine[21].

However, for example, in accordance with Article 380 of the Civil Code of the Republic of Kazakhstan coercion to enter into a contract is possible by virtue of the Civil Code, legislation or voluntary obligation (legislation in this case includes the Civil Code, other laws of the Republic of Kazakhstan, decrees of the President of the Republic of Kazakhstan, which have the force of law, resolutions of Parliament, resolutions of the Senate and the Majilis of Parliament)[22]. That is, freedom of contract does not preclude state interference in contractual relations.

The vast majority of agreements are bilateral agreements, as contracts usually arise binding obligations, and the obligation is characterised by the

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[18] A.V. Kostruba, V.A. Vasylyeva, "Termination of right in the mechanism of civil legal relations", in *Rivista Di Studi Sulla Sostenibilita*, 2020, no. 1, p. 287-300.

[19] O.I. Kharitonova, E.A. Kharitonov, *Comparative Law of Europe: Fundamentals of Comparative Law. European traditions*, Odysseus, Kharkiv, 2002.

[20] K. Zweigert, H. Kötz, *Introduction to comparative jurisprudence in the field of private law*, International relations, Moscow, 2000.

[21] Civil Code of Ukraine, 2004. Available at: https://zakon.rada.gov.ua/laws/show/435-15?find=1&text=%D1%81%D0%B2%D0%BE%D0%B1%D0%BE%D0%B4%D0%B0#w1_5.

[22] Civil Code of the Republic of Kazakhstan (General part), 1994. Available at: https://online.zakon.kz/document/?doc_id=1006061&doc_id2=1006061#pos=529;-108&pos2=3671;-110.

presence of two parties whose interests are opposite: one has the right to claim (a creditor), the other – the corresponding obligations (a debtor). It should also be noted that in legal doctrine, contractual obligations are usually classified as follows:

1) simple and complex; it all depends on the scope of rights and obligations of the parties;

2) unilateral and bilateral; in unilateral obligations, the party has either rights or obligations; in the case of bilateral contractual obligations, individuals have both rights and obligations;

3) passive multiple (when there are several debtors) or active multiple (if there are several creditors) and others.

In addition, the classification of contractual obligations by the following types is quite common:

1) obligations to transfer property (for example, contract of sale, gift, supply, etc.);

2) obligations to transfer property for use (for example, lease agreement, leasing, loan, etc.);

3) obligations to perform works (contract, construction contract, technological works contract, etc.);

4) obligations to provide services (credit, transportation, freight forwarding, etc.);

5) obligations to dispose of intellectual property rights (license agreement, commercial concession, etc.);

6) obligations from unilateral transactions (joint activity, simple partnership)[23].

However, R. Shishka[24] classifies contractual obligations depending on the economic criterion:

1) paid, according to which the provision of one party determines the counter property provision from the other party. Such agreements are exchange contracts in which the scope of legal obligations and the number of benefits received in return are specific and defined. Price is usually economically justified by the ratio: quality and price or supply and demand. Business contracts are payable due to the peculiarities of taxation. The exception is the donation agreement;

2) free of charge, for which the provision is made only by one party without receiving a counter-property from the other party (contract of gift, gratuitous use of property). Some contracts can be both remunerative and free of charge (contract of agency, retention). But all business contracts as business

[23] F. Seatzu, "The European court of justice in 2016: The year of the restoration of a lost competence", in *Global Community Yearbook of International Law and Jurisprudence*, 2017, vol. 17, no. 1, p. 463-470.

[24] R. Shishka, "Characteristics of contracts", in *Legal Bulletin*, 2015, no. 4, p. 121-127.

transactions are payable, where the amount paid for them is the basis for taxation[25].

Some scholars divide the rules of contract law into rules of general action (located in Chapter 52 of the CCU "Concepts and conditions of the contract", Chapter 53 of the CCU "Conclusion, amendment and termination of the contract") and special action (Chapters 54-77 CCU)[26]. Thus, it can even be argued that the set of rules governing contractual obligations has its general and special part, which gives every reason to recognise the existence of a general institution of contract law[27].

Thus, there is a great deal of doctrinal work on how contractual obligations can be classified. To all of the above, it is also possible to add classification of contractual obligations depending on the nature of the transfer of material goods: the transfer of property ownership; on the provision of property for use; on performance of works; on transportation; on the provision of services; on calculations and lending; on insurance, etc.

It should be noted that despite the complexity of classifying all the variety of existing contractual obligations, attempts to divide and classify are justified by both methodological (ease of study), theoretical (formation of material for scientific analysis and synthesis) and practical purposes (use of results for codification or systematization of relevant legal norms). To this end, it is necessary to streamline and systematize the Civil Code of Ukraine. In particular, it would be appropriate to distinguish between contractual and non-contractual obligations in order to create a clearer structure of the CCU.

Given Ukraine's European integration aspirations, an analysis of the European Civil Code is also important. It should be noted that the European Parliament in three resolutions (in 1989, 1994, 2001) initiated the creation of the European Civil Code, which was to be prepared by legal scholars. In 1999, the EU Council authorised the Commission to prepare a report on this issue. The action plan for 2003 suggested that the plan be implemented in cooperation with existing research projects. The aim of such cooperation should be to develop a common framework for a European Civil Code (with an emphasis on the law of obligations), the terminology of which would contain basic principles and concepts. In 2009, a six-volume collection entitled "Principles, Definitions and Model of the Regulation of European Private

[25] T.O. Nikolaychuk, "Innovative forms of experience services in business activities", in *Scientific Bulletin of Mukachevo State University. Series "Economics"*, 2021, vol. 8, no. 3, p. 46-59.

[26] Civil Code of Ukraine, 2004. Available at: https://zakon.rada.gov.ua/laws/show/435-15?find=1&text=%D1%81%D0%B2%D0%BE%D0%B1%D0%BE%D0%B4%D0%B0#w1_5.

[27] T.V. Bondar, N.S. Dzera, *Contract Law of Ukraine. The general part*, Jurinkom Inter, Kyiv, 2008.

Law" was published with the subtitle "Preparatory Work on European Civil Law"[28].

It should be noted that the European Civil Code does not have any normative force, it is a rule of soft law. In particular, they are designed to improve the internal coherence of the EU acquis[29].

The joint work covers all sections of the subject, which are the evidentiary part of the Civil Code, in particular, the instructions on the origin of obligations, on sanctions for obligations, on the majority of creditors and debtors, and so on. The general definitions are supplemented by special regulations for specific obligations: such as the purchase of items, rent, lease, services, etc.

Thus, it can be assumed that the European Civil Code will indirectly accelerate the Europeanization of contract law, including contractual obligations. It can serve as a model for those states that are re-formulating their law of obligations or amending existing ones. In addition, there is reason to believe that the courts will focus on the European model, in particular after the law of obligations requires additions and extensions of certain interpretations. Thus, there is no doubt that over time, the European Civil Code will have a significant impact on the further development of contract law in Europe.

According to the main principle of contractual obligations, namely the principle of binding contract, the party to the contract is liable for non-performance of its obligation, even if the reason for non-performance is not subject to its will and was not or could not be foreseen at the time of signing the contract[30]. Due to the fact that effective economic activity is impossible without a reliable commitment, the importance of this principle is unconditional. However, on the other hand, practice has shown that in many cases adherence to this principle can lead to the opposite result.[31] That is, the situation that exists when concluding a contract subsequently changes so much that the parties, acting as reasonable people, would not have entered into a contract or would have concluded it on other terms if they had known about these changes or could have foreseen them. The question of whether it is

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[28] Principles, definitions and model rules of European Private Law, 2008. Available at: https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/EUROPEAN_PRIVATE_LAW/EN_EPL_20100107_Principles__definitions_and_model_rules_of_European_private_law_-_Draft_Common_Frame_of_Reference__DCFR_.pdf.

[29] V.O. Pankratova, "General principles of law as a source of European Union law", in *Legal Horizons*, 2021, vol. 14, no. 2, p. 111-117; O.O. Hrabovska, O.S. Zakharova, O.O. Karmaza, "Tendencies of reforming legislative regulation in the field of evidence in civil procedure of Ukraine", in *Journal of Advanced Research in Law and Economics*, 2019, vol. 10, no. 7, p. 1984-1988.

[30] N.V. Hlushchenko, V.O. Sahaidak, "Features of administrative liability of legal entities", in *Legal Horizons*, 2021, vol. 14, no. 2, p. 44-49.

[31] O. Bratel, "Refusal of the proceedings in a case: the problem issues of civil procedure", in *Scientific Journal of the National Academy of Internal Affairs,* 2021, vol. 97, no. 4, p. 160-170.

possible to avoid the binding of contractual obligations due to further abrupt change of circumstances, known to the legal science of continental Europe for a long time and is expressed in the principle of Rebus sic stantibus ("under constant circumstances"), which implies that reality of a contract depends on the invariability of the circumstances under which it was concluded[32] [20]. In the event of a significant change in the circumstances from which the parties proceeded when concluding the contract, one of the parties may request in court to change or terminate a contract.[33] In order for such a claim to be satisfied, it is necessary that a number of conditions are met: at the time of concluding the contract, the parties assumed that such a change would not occur; the change of circumstances is caused by circumstances which the interested party could not overcome, even with due diligence; performance of the contract on preconditions will break the balance of interests of the parties; it does not follow from the customs or the substance of the contract that the risk of a change in circumstances is borne by the interested party.

In this context, it should be noted that on March 11, 2020, the World Health Organisation declared a pandemic of the coronavirus infection COVID-19 in the world[34]. It should be noted that the Verkhovna Rada of Ukraine at an extraordinary meeting on March 17 adopted the Law No. 530-IX "On Amendments to Certain Legislative Acts of Ukraine Aimed at Preventing the Occurrence and Spread of Coronavirus (Covid-19)". Relevant amendments were made to the Law of Ukraine "On Chambers of Commerce and Industry in Ukraine"[35]. The proliferation of COVID-19 has certain implications for contractual obligations. In particular, governments are trying to curb the spread of the new coronavirus, using different means. In addition, the rapid progression of the virus has created a situation where the parties are unable to meet their contractual obligations due to a wide range of factors, including social distancing, lack of infrastructure, supply chain problems, and so on. Given that the non-performance or improper performance of obligations by the parties in this situation is not always caused by the intention or fault of the party, to mitigate the consequences of such a situation in Ukrainian civil law provides for the possibility of applying the effects of force majeure, which is

[32] O. Melnichuk, M. Melnichuk, "The right to education in the system of the constitutional rights of Ukraine (comparative analysis)", in *Boletin Mexicano De Derecho Comparado*, 2019, vol. 51, no. 154, p. 539-568.

[33] U. Vorobel, "Legal mechanism of the court fee refund in civil proceedings", in *Social and Legal Studios*, 2021, vol. 3(13), p. 57-66.

[34] CEO's opening remarks at COVID-19 Press Briefing, 2020. Available at:: https://www.who.int/ru/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020.

[35] E. Bakonina, "What are the consequences of recognizing quarantine as force majeure?" 2020. Available at:: https://liga.ligazakon.net/news/194022_kakie-posledstviya-priznaniya-karantina-fors-mazhorom.

aimed primarily at excluding liability for breach of obligation of the party who objectively failed to perform it properly. In an attempt to justify non-performance of the contract or potentially terminate the contract, the provisions on force majeure will become much more important in the future. For example, in Article 617 of the Civil Code of Ukraine, a person who has violated an obligation is released from liability for breach of obligation if he proves that the breach occurred as a result of accident or force majeure[36]. In addition, in Article 218 of the Commercial Code of Ukraine, an economic entity for breach of economic obligation is economically liable if it does not prove that proper performance of the obligation was impossible due to force majeure, i.e. extraordinary and unavoidable circumstances under these conditions of economic activities[37].

It should be noted that the legislation does not provide a complete list of force majeure. In different specific cases, they may be different. From the definition of force majeure, it can be concluded that these circumstances must be extraordinary and inevitable. In particular, after analysing the legislation, it can be concluded that force majeure must meet such criteria. First of all, they must be unforeseen. It follows that if any of the parties foresaw the occurrence of a certain event, then such a circumstance cannot be considered force majeure. Force majeure does not include the difficult financial situation of one or even several related companies, nor can it include those circumstances that give rise to commercial risks, such as price changes, adverse conditions, and so on. That is, force majeure must be extraordinary and undesirable for both parties. This means that when concluding a contract, the parties want to fully fulfil their obligations and do not want force majeure and other circumstances. However, the inevitability indicates that the parties are unable to prevent force majeure caused by inevitable force. It should be noted that force majeure includes various circumstances, including epidemics, the introduction of curfews, mass riots, long breaks in transport, emergencies, restrictions by public authorities and more. An indicative list of force majeure can be found in the Law of Ukraine "On Chambers of Commerce and Industry in Ukraine" and the Regulations for certification of the Chamber of Commerce and Industry of Ukraine and regional chambers of commerce and industry of force majeure (force majeure)[38]. However, it should be noted that the impossibility of fulfilling the obligation due to force majeure is a very high standard, to

[36] Civil Code of Ukraine, 2004. Available at: https://zakon.rada.gov.ua/laws/show/435-15?find=1&text=%D1%81%D0%B2%D0%BE%D0%B1%D0%BE%D0%B4%D0%B0#w1_5.

[37] State Code of Ukraine, 2003. Available at: https://zakon.rada.gov.ua/laws/show/436-15#Text.

[38] V. Fronchenko, "Pandemic of coronavirus (covid-19) as a force majeure circumstance for the fulfillment of contractual obligations", in *Actual Problems of Jurisprudence*, 2020, no. 2, p. 125-130.

achieve which it is necessary that the party cannot fully fulfil the obligation as a result of an objectively inevitable random event that does not depend on its will and capabilities, not because of a difficult situation or the fact that the contract has simply become more onerous. For example, hostilities in the supplier's country that have made it impossible to export goods is force majeure. However, the absence of goods on the market, which makes it difficult for a supplier to fulfil the obligation, does not release a supplier from this obligation.

That is, in the case of force majeure, an event must not be foreseeable at the time the agreement is entered into, and an event must have such an effect on the contractual obligations that it is impossible to fulfil them. However, the absence of a reservation on force majeure in the contract does not mean that force majeure cannot be referred to. In this case, the general principles apply. If the agreement does not contain a reservation on force majeure, the breach of the agreement due to the coronavirus may be based on the 1980 UN Convention on International Contracts for the Sale of Goods (hereinafter – the Vienna Convention). For example, Article 79 of the Vienna Convention states that a Party shall not be liable for failure to fulfil any of its obligations if it proves that it was caused by an obstacle beyond its control and that it was unreasonable to expect it to take this obstacle into account in concluding a contract or avoiding or overcoming this obstacle or its consequences[39].

Conclusions

The paper analysed doctrinal approaches to the classification of contractual obligations. It should be noted that despite the complexity of classifying all the variety of existing contractual obligations, attempts to divide and classify were justified by both methodological (ease of study), theoretical (formation of material for scientific analysis and synthesis) and practical purposes (use of results for codification or systematization of relevant legal norms). To this end, it is necessary to streamline and systematise the Civil Code of Ukraine. In particular, it would be appropriate to distinguish between contractual and non-contractual obligations in order to create a clearer structure of the CCU. In addition, it can be assumed that the so-called European Civil Code will indirectly accelerate the Europeanisation of contract law, including contractual obligations. In addition, there is reason to believe that the courts will focus on the European model. Thus, there is no doubt that,

[39] United Nations Convention on Contracts for the International Sale of Goods, 1980. Available at: https://zakon.rada.gov.ua/laws/show/995_003#Text; I.S. Lukasevych-Krutnyk, *Theoretical principles of legal regulation of contractual relations for the provision of transport services in the civil law of Ukraine*, FOP V.A. Palyanytsia, Ternopil, 2019.

over time, the European Civil Code will have a significant impact on the further development of contractual obligations in Europe.

In addition, the article considered force majeure as a circumstance that makes it impossible to fulfil contractual obligations, as well as analysed whether the coronavirus pandemic COVID-19 can be considered a force majeure. It should be noted that force majeure is characterised by such features as non-standard, the necessity for a separate approach in each case; unpredictability, which means that the parties do not have the opportunity to predict the circumstances at the time of a contract; independence from the will the parties to the agreement, which excludes the involvement of the parties in the circumstances; the inevitability of the circumstances, the lack of opportunity for the parties to influence its offensive, as well as its consequences. Therefore, the epidemic itself cannot be considered force majeure. However, if, due to a pandemic, a debtor is unable to fulfil its obligations and any other person in the debtor's place is unable to fulfil the contractual obligation, then the COVID-19 coronavirus pandemic can be considered force majeure.