

SIGNIFICANCE OF A CONTRACT AND CONTRACTUAL REGULATION WITHIN A MARKET ECONOMY DEVELOPMENT

Lubov Shevchenko – *Doctor of Science (Law), Professor, Deputy head, Fuel and Energy Complex Legal Regulation Department, International Institute of Energy Policy and Diplomacy, MGIMO University, Russia. E-mail: shevchenkoli@mail.ru*

Advanced economy is characterized by a high degree of complexity and uncertainty in all of its aspects – industrial, investment and other, significant increasing degree of the risk. As reported, these characteristics can't be considered as its drawbacks, they are its immanent attributes that guarantee market ease flexibility and force market participants to an active search for more efficient solutions.

With an eye to avoid undesirable and devastating effects of a decentralized market economy, there should be formed appropriate institutions in economy that are capable to help market participants to minimise market uncertainties, narrow a gap between expected and actual results, ensure stability and coordination of market participants' actions. Naturally a state can guarantee such state of affairs by elaboration of uniform and universally binding rules of conduct for market agents. In these conditions rises a social value of a contract, which is a considerably stable structure that has been used for several thousands of years irrespective of socio-economic order of one society or the other as a legal form of relations realization within the stream of commerce. More significance gains a necessity for a wider use of its regulatory capabilities. Enshrined in law the principle of dispositivity and freedom of contract provide business entities with an opportunity to freely, on their own initiative, independently and according to their own interests choose variants of appropriate behavior for achieving their goals. Thus, for market participants there are formed conditions for realization their opportunities for self-organization, self-regulation of contractual relations.

A contract as a market instrument obtains the following organising capacities. Firstly, the parties' entrance into institutionalized contractual links within the scope of commodity exchange by itself must be considered as an organising moment. In market conditions production and exchange of goods are set in motion by personal interest and initiative, active power of market participants. Therefore a contract serves as a ground for obligations legal relations to arise, modify and cease.

Further, harmonization by contracting parties their business ties in the process of establishment of mutual rights and obligations at their own discretion and creative initiative serves as an institutional factor. Conditions of a contract are determined by not so much regulatory prescriptions as the parties' declaration of intent. There is a rise of significance of formation of initiative conditions, which are entirely designed by the contracting parties by themselves. By means of such conditions the parties have an opportunity to take into account special aspects of the economic relation that is being established.

In juridical literature there is an attempt to consider contractual regulation as a form of legal regulation being realized according to a pattern: "conventional rule – juridical fact – legal relationship" [1] that obviously doesn't provide insight into contractual regulation. Other scientists try to explain the functional point of contractual regulation through perceiving it as a form of individual legal regulation, others – place it to subnormative means of social relations regulation.

Consideration of contractual regulation as a form of individual legal regulation will inevitably lead to equating a contract to administrative acts or judicial decisions. Placing a contract to subnormative means narrows down the conception of a contract to a method of exercising of positive law norms and has little in common with actual subject matter of a contract and contractual work practice [2].

In nowadays economy a contract is a main instrument of market relations organisation, and a contractual regulation, in its turn, is an independent legal method of organisation of concrete individual contractual ties of market participants, which exists along with statutory regulation. Thereby contract law norms create only legal basis of business activities, determine standard models according to which contracting parties taking into account particular circumstances form contractual obligations serving their interests. Thus within the boundaries established by the legislation intentions of the contracting parties form not only necessary for them conditions but also perform regulatory process.

It should not go unmentioned that within a market it is a contract through which into a spontaneous market mechanism are being brought the elements of systematic organization as to the level of business entities by themselves and economy as an integral whole that is being achieved by means of creation a contractual system.

The thesis about the key role of a contractual system in creation of a mechanism for production plans coordination between different firms, originally elaborated in the works of the American scientist J.K. Galbraith [5], gained recognition and further development in works of other foreign scientists. According to the mentioned approach business agents can eliminate uncertainty connected with a market to one another, entering into contracts where they can specificate conditions of the relationships that gives entrepreneurs an opportunity to plan their own production and satisfy the needs of their partners. A network of interrelated contracts creates “vegetative-planned system” that doesn’t require centralized, prescriptive, administrative planning. However it doesn’t mean that contracts are able to secure coordination of actions of all market participants taken as a whole and guarantee sustainability and effectiveness of economic development for extended perspective. Firstly, it is typically for cooperative producers, secondly, for long-term contracts regulating business ties for extended perspective.

References

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