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FEATURES OF PUBLIC CIVIL CONTRACT APPLICATION

This article deals with the nature of public contract and its specific application in connection with the problems of interaction of mandatory and discretionary rules in civil law and coordination of public and private interests.

Modern civil law laid down entirely new principles of legal regulation of property and personal relations, greatly enriching the judicial system with paper work.

The author pays attention to a public contract in civil law which coordinates private and public interests against government interference in economic relations.

The Civil Code of Ukraine has preserved continuity in the development of contract law, has improved existing and laid down new institutions, aiming at the development of market economy. One of the general principles of civil law is the principle of contractual freedom (Articles 6, 626 CC of Ukraine), which is recognized as the cornerstone of private law in foreign countries.

Contractual freedom allows creating and using new models of contracts which are not legally regulated. However, freedom of contract is not unlimited, as the lack of legal mechanisms and unlimited freedom can lead to violations of the rights, freedoms and interests of the civil law, cause misuse of rights. Therefore, in order to protect the rights

and legitimate interests of certain categories of civil law, legislator has established public regime for some range of contracts.

Public contract as an independent institution is a legal phenomenon based on the combination of mandatory and discretionary principles of civil law. Connection of discretionary and mandatory legal rules is manifested primarily in their common aim to create conditions for legal relations regulation, solution of the conflict of civil interests and harmonious development of relations in the field of civil law. The existence of discretionary and mandatory rules is interdependent and quite necessary at present conditions of civil relations.

According to the Civil Code of Ukraine (Article 633 of CC), public contract is a contract in which one party – the entrepreneur – has a duty to sell goods or services to anyone who applies for them (retail, common carrier transportation, communication, medical, hotel, banking services, etc.). Public contract application is provided for potential monopoly areas.

Legislator clearly sets forth rules of a public contract application. In legal literature scholars recognize all public contracts under “Consumers Rights Protection Law.”

Public contracts include a number of so-called statutory civil contracts,

including typical conditions (typical contracts are generally contracts of adhesion).

It should be noted that there are problems in application of public contract on

practice caused by imperfection of its regulation and absence of appropriate rules as for public contracts rendering health care service, public services, and so on.

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LICENSE AGREEMENT AS A FORM OF COMPLEX INTELLECTUAL PROPERTY

According to the Constitution of Ukraine, which guarantees every citizen freedom of the literary, artistic, scientific and technical creativity, our independent state successively creates its own mechanisms of creation, consolidation and implementation of intellectual property rights, moral and material interests, which arise from its different types, which are the expression of complex intellectual property.

Results of scientific and technical activity and their implementation in the form of complex intellectual property, their safe legal protection and use will ensure sustainable economic development through continuous improvement of technical processes which are peculiar to modern production and provide output, competitive both in domestic and global market.

Certain aspects of the license agreement for the use of copyright items, including complex intellectual property and appearance of civil rights and responsibilities thereof as well as other issues were considered in the writings

of many domestic and foreign scholars.

The license agreement must be concluded in writing. In the case of non-written form of agreement for use of a literary work, such an agreement is declared invalid (Part 2 of Art. 1107 of the Civil Code of Ukraine). Exceptions may be established by law considering cases when such a contract may be concluded verbally. According to Paragraph 1 of Art. 33 of the Law of Ukraine "On Copyright and Related Rights" verbal agreement may be negotiated for the use (publication) of work in periodicals (newspapers, magazines).

Parties to a license agreement are: the licensor – the person who owns the exclusive intellectual property rights (the person who has economic rights) and licensee – the person to whom the contract grants permission for use of intellectual property rights (license).

The content of the license agreement includes the following terms: 1) the type of license. In terms of the rights granted, there are exclusive, individual and non-exclusive licenses.