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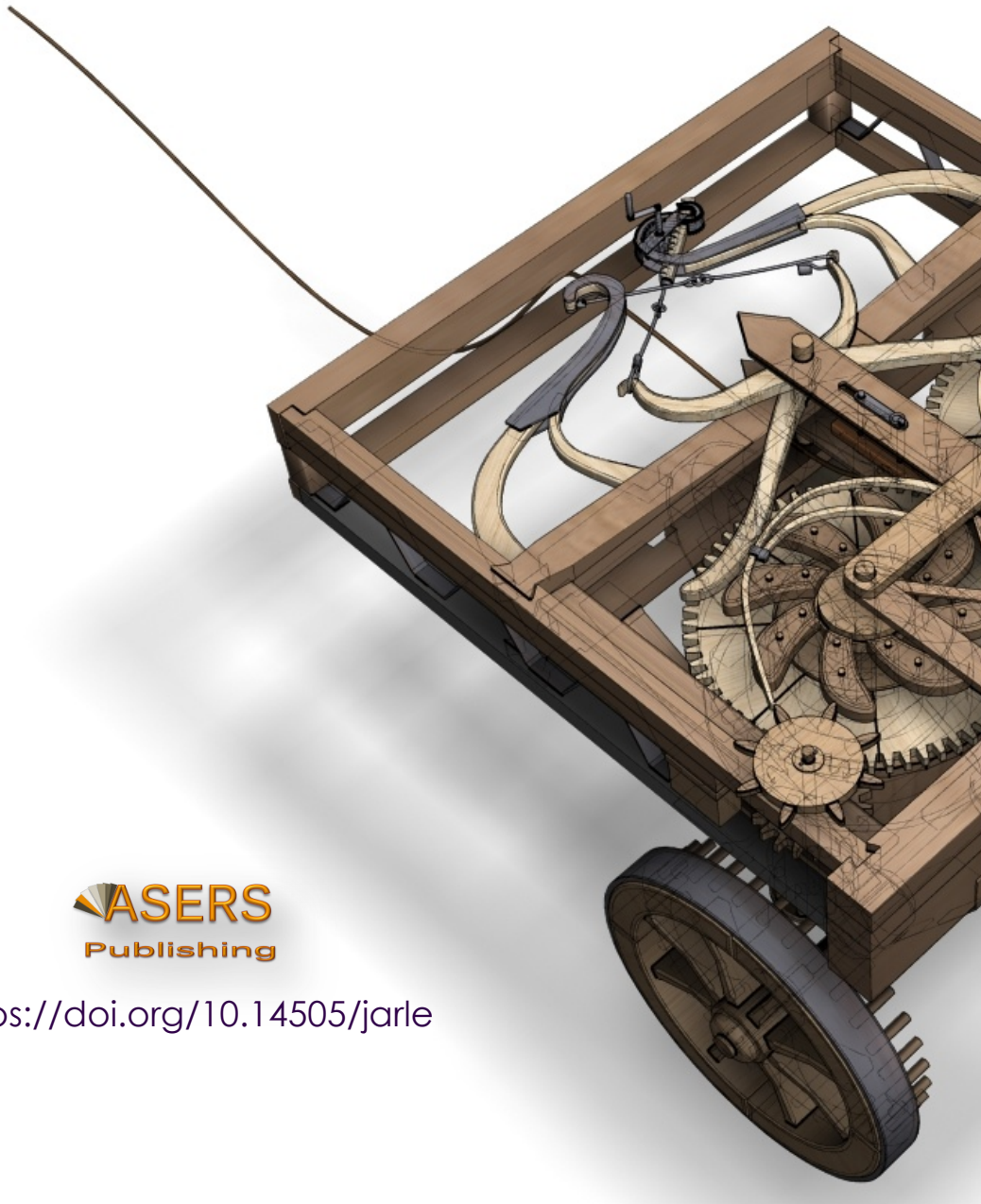

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Actual Issues of Treaty Law in CIS Countries

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Abstract:

The development of social relations requires changes in various spheres of human activity and, accordingly, in the relations between the state and society, between the state and the individual. In addition, one of the effective regulators of these relations is a treaty, which can be used in various spheres. To date, the science has not developed a unified view of the contract, and its issues are discussed by representatives of various scientific fields, with the contract being studied as a legal fact, agreement, legal relationship, document and in this regard is defined differently. Moreover, contractual relationship is in constant flux and suffer from changes caused by various factors of legal validity. Therefore, treaty law and the rules governing contractual obligations are given a great deal of attention during improving the process of reforming civil law and ensuring its further effective implementation in the CIS.Within the framework of the conducted research and comparative analysis of the legal bases and practice of application in the sphere of treaty law, the author has formulated grounded positions on the outlined and topical issues, which are as follows: (1) the peculiarities of the use of terminology in the context of the problem of interpretation of contract terms are revealed; (2) identified problems that arise during the termination of treaties in the CIS; (3) the influence

of innovative technologies and globalization and the nature of contractual relations in the territory of the CIS countries are established; (4) approaches to 'smart-contracts' and a public contract are disclosed; (5) the discussion approaches to understanding the concept of 'freedom of contract' are analyzed; 6) a conditional list of the most pressing issues of contract law that arises in the CIS are formed.

Keywords: interpretation of contract terms; public contract; termination of contracts; CIS countries; 'smart contract'; freedom of contract.

JEL Classification: K10; K12; K15; K33.

Introduction

The modern dynamics of development of both the civil turnover and the market economy as a whole causes the emergence of a variety of ways of constructing the obligatory relations of its participants, as well as their constant transformation into something more mobile and efficient. The main instrument of civil turnover for the emergence of an obligatory legal relationship is the contract as the most flexible mechanism, covering the preliminary negotiations, contract conclusion, execution and other related issues (order of change and termination, liability, etc.) (Rozhkova 2010). Undoubtedly, in today's realities without a treaty it becomes impossible to improve and develop the civil turnover, and to satisfy its subjects of their needs and interests.

It should be noted that today in science there is no unified view of the contract, and its problems are discussed by representatives of various scientific fields, with the contract being studied as a legal fact, agreement, legal relationship, document and in this regard is determined in a different way (Beklenishcheva 2006). However, the differences in the definitions of the above concept and of the whole conceptual categorical apparatus in the field of contract law depend largely on the direction of the research, their goals and the tasks of the country to which the development of a particular scientific school is related. The following further emphasizes the complexity and ambiguity of the civil legal categories in the research area. One area of research is the study of the contract as an element of the mechanism of civil law regulation or a means of self-regulation (contractual regulation). Scientists recognize that, as a regulator, the contract acts in accordance with the law and is used to regulate contractual obligations (Aleksashina 2012a). Civic literature increasingly uses the term 'contractual regulation', and in the writings of scholars emphasize that the problems of contractual regulation are the subject of complex legal studies, and the idea of the treaty as an effective legal instrument for the regulation of social relations has become a traditional and conditioned reality (Kuznetsova 2012). The inexhaustible interest of researchers in the contract and contractual regulation is explained by the presence of serious problems in the practice of contracting, modification and termination of contracts, as well as in the performance of contractual obligations. Issues of contractual regulation are among the most widespread and complex, which is why they occupy a prominent place in the statistical materials of courts of various instances. Court cases are littered with contractual disputes, so that in order to resolve them equally, the higher courts of the CIS member states are being taken over by the ongoing generalization of contractual matters and the development of recommendations to improve law enforcement practices.

In the texts of the codified civil legal acts of the aforementioned states, a considerable number of articles are devoted to treaties: general provisions on a civil legal treaty and certain types of contractual obligations (Getman *et al.* 2012). In addition, there are a number of other rules that are also aimed at settling contractual relationships. Therefore, contract law and the rules governing contractual obligations are given great attention when working to improve civil law and ensure its further implementation on the territory of the CIS states.

The relevance of the topic chosen for the article, due to the complexity and versatility of the category of the contract, the lack of uniformity in the concept of contractual regulation is determined by the need for scientific reflection and legislative solutions to a number of theoretical and practical problems in the field of legal regulation of the participants in civil, in the conclusion, modification and termination of contracts and in the performance of contractual obligations. The constant updating of the civil legislation in the CIS territory, which is produced by external and internal factors of reform of national legal systems, is also updating.

Taking into account the above mentioned, the main purpose of this article is to highlight the current issues of treaty law in the CIS countries. In view of the established goal, the following research objectives were formulated: (1) to reveal the peculiarities of the use of terminology in the context of the problem of interpretation of the terms of the contract; (2) to identify problems that arise during the termination of treaties in the CIS; (3) to establish the impact of innovative technologies and globalization and the nature of contractual relations in the territory of the CIS countries; (4) to analyze discussion approaches to understanding the concept of 'freedom of contract'; (5) to outline other current issues of contract law.

1. Literature Review

Scientists in all CIS countries devoted their work to contract law, forming a complex cross-border civilistic doctrine. Thus, pre-revolutionary scholars devoted their works to the civil law treaty and the principle of freedom of contract, such scholars as: Gauze 1972; Golevinskii 1872; Grimm 1904; Guliaev 1913; Meyer 2003; Pereterskii *et al.* 2004; Pobedonostsev 2003; Pokrovsky 1917; Tutriumov 2004; Shershenevich 1911). Among Soviet civilians, the distinguished subject was explored by Agarkov 2012; Braginsky and Vitryansky 1999; Bratus 1963; Grave 1950; Ioffe 1967; Novitsky 1960; Krasavchikov 1972; Mozolin and Farnsworth 1989; Serebrovsky 1999; Khalfina 1954; Yakovlev 1985; and others.

Identification of problems in doctrine and finding ways of their gradual effective solution became possible thanks to scientific researches of Alekseev 1962; Beklenishcheva 2006; Belov 2003; Bogdanov 1997; Borisova Borisova *et al.* 2011; Vlasova 1998; Volkov 2009; Gambarov 1911; Gnitsevich 2009; Gribanov 2001; Dikovskaya 2015; Egorov 2005; Ershov 2001; Zeckel 2007; Iering 2013; Karapetov 2012; 2013; Cartwright 1951; Kecekian 1958; Komarov 1991; Korkunov 1909; Krasheninnikov 1979; Kokhanovskaya 2017; Kucher 2005; Lando 2013; Maidanyk 2007; Maydanik 2008; Manigk 1928; Marchenko 2014; Matveev 1951; Pevzner 1958; Pervomaysky 2018; Pobedonostsev 2003; Poghribny 2006; Pokrovsky 1899; Puginsky 2002;Rennenkampf 1880; Savigny 1876; Sybilov 2011;Sukhanov 2011; Taranovsky 1917; Tikhomirov 1982; Tolstoy and Sergeev 2005; Tretyakov 2007; Fleischitz 1948; Hesselink 2006; Zimmermann 1992; Shershenevich 1911; Shimon 2012; Shpoltakov 2015; and other scientists.

Problems related to the development of contract law in the territory of Ukraine have become the subject of research made by such scientists as: Bezkluby 2008; Belianevich 2006; Berveno 2018; Beliaev 2004; Bodnar 2004; Borodovskii 2014; Dzera 2002; Kalaur 2009; Kossak 2001; Kuznetsova 2012; Kucherenko 2007; Luts 2001; Luts 2009; Marusheva 2012; Milash 2016; Oliukha 2005; Pavlenko 2019; Pylypenko 2015; Sybilov 2011; Spasibo-Fateeva 2015; Stefanchuk 2002; Fursa 2015; Khanyk-Pospolitak 2018; Kharitonov 2010; Khatniuk 2002; Chuchkovskaia 2007; Shevchenko 2003; Shyshka 2013; Shcherbyna 2013; Yavorska 2014; and others.

The development of many scientific views has been reflected in the works of modern scientists, which include doctoral dissertations performed on the territory of the Russian Federation, namely: Kazantsev 2008; Ilyushina 2019; Kozlova 2015; Morozov 2010; Romanets 2013; as well as scientific works of Beklenishcheva 2006; Puginsky 2002; Safiullin and Khokhlov 1978; and others. In the territory of Kazakhstan, general issues of contract law, business agreements, restriction of contractual freedom and the ratio of public and private principles in the regulation of civil relations were considered in the works of Suleimenov 2011; Didenko 2001; Basin *et al.* 2004; Skriabin 2009; Klimkin 2011; Ispaieva 2006; and some other authors.

However, today there is no comprehensive and complete doctrine of the mechanism of contract law reformation in the conditions of influence of modern factors of legal reality in the CIS. This phenomenon not only slows down the legislator's opinion, but also does not provide flexibility of contractual conditions in dynamic property turnover. These circumstances determine the need to acquire new knowledge in the field of contract law. In this context, the interest of research into the most recent problems of contract law in connection with the reform of civil law and the corresponding introduction of new norms that require their substantive interpretation is increasing in the legal community. At the same time, a characteristic feature of the latest developments is the lack of consistency in the presentation of certain approaches and not entirely convincing argumentation due to the lack of a strong theoretical base in civilistics on the extensive aspects of contractual relations. The above makes it possible to conclude the need for continuous updating of scientific approaches to modern contract law and updating the list of its most important issues in the CIS countries.

2. Methodology

The methodological basis of the study was first of all the relevant laws of materialistic dialectics (essence and phenomenon, content and form, general, special and individual, analysis and synthesis) as well as general scientific and private methods of cognition – historical, formal-logical, sociological, statistical, etc. Methods of systematic, comprehensive analysis, comparative jurisprudence and historical comparison, clarification of the determining facts and factors, principles and results in the field of treaty law of the CIS countries were also used.

Using special epistemological methods (linguistic, legal, structural and functional), an analysis of the normative-legal material related to the research topic was made, which became the basis for the author's list of the most actual issues of treaty law in the CIS. The use of private scientific methods of cognition (formal, legal, historical and legal) allowed to reflect the genesis of the features of contract law in the countries studied, which was reflected in the legislation and law.

It is necessary to point out a special place of the comparative legal method which allowed to carry out a detailed analysis of legislation, case-law and factors of transformations of public relations in the territory of the CIS countries. The aforementioned method was used, first of all, in evaluating the norms and practices of law enforcement of the treaty interpretation institution, in outlining the features of the impact of globalization and innovation on its content and grounds for its termination. This comprehensive use of methodological procedures has several advantages in terms of stated problems and allows to analyze more fully the current issues of treaty law in the CIS countries.

3. Results

In the context of globalization, all modern world states are under the necessity of reforming the modern legal foundations or updating them in order to be in line with the realities of today. The CIS countries are no exception and are gradually improving the understanding, nature and features of contractual relationship and their regulators. Thus, the renewed perception of constant problems takes on a new dimension and is analyzed from other perspectives, based on the factors of transformation (Aleksashina 2012b). The issues of contract law that have worried scientists over the past decade are justifiably recognized as obsolete, though still only fragmentarily resolved. The study highlighted only a few of the most common contractual issues in the field of contract law that are becoming most relevant today, and legislators, scientists, and practitioners are only beginning to address them gradually.

First of all, it is advisable to focus on such an issue, which is characteristic of all branches of law, as the inconsistency of terminology. Today, studying the ways of forming the conceptual and categorical apparatus through the prism of European legal thinking contributes to the creation and development of qualitatively homogeneous and conceptually common pan-European foundations of the systems of national civil legislation of the CIS countries and its harmonization with the legislation of European states. Legal experts' attention to developing new legislative concepts, terms and categories, as well as specifying and supplementing those that have already established themselves as sources of the universally recognized unified regulator of public relations in the contractual sphere and serve as a basis for the perception of modern legal definitions, are quite justified.

Analysis of the conceptual apparatus, which reflects the essence of legal relations, indicates that the clarity of legal orders, which can be achieved only with adequate understanding and reasonable use of legal terminology, are the most important conditions for effective implementation of legislative and legal policy by the state. During enforcement, certainty of legal norms is necessary, which presupposes their sufficient accuracy and ensures their correct and effective application. Considering the right, we can conclude that the need to preserve the freedom and autonomy of the individual in terms of multidimensionality and multi-entity social relations, in the process of implementation of which is achieved by the free agreement of everyone with each and everyone with everything. A social contract that aims at a decent human life regulates relationships within the society. This goal is achieved by the existence and functioning of the state, which is understood as organized by certain principles of law society (Assesorova 2014). Referring to the term ‘treaty’, which defines one of the most important categories of modern jurisprudence, it can be stated that there is no semasiological certainty in view of the identification with the ‘civil contract’ (Azrilian 2007), which is more semantically specific term. As a result of this approach, the contract is often interpreted as a way of mediating economic activity, as a legal regulator (Kazantsev 2008), using which persons at their own will and self-interest interact and thereby regulate their relations (Abashin 2003). In practice, the contract is usually understood as a written document confirming the validity of the performed business transactions, the only sense of development of which is a comprehensive preparation for possible judicial review of violations recorded in the contract obligations (Karpeev 2013). The legal literature on this issue points to the possibility of different interpretations of the terminology used in the legislation(Kochan 2014), which leads to a situation where the variability of approaches to defining the meaning of the concept is inevitably reflected in the peculiarities of the use of the corresponding term in oral and written professional speech.

The problem of interpreting the terms of the treaty on the territory of the CIS countries, which both the parties to the contractual relations and the judicial authorities face, is quite close to the conceptual apparatus and definitions of the categories of the treaty. Contemporary publications on the subject of interpretation of the civil law treaty have already paid attention to the fact that this institute is unreasonably left out of the civic doctrine of the CIS countries (Karapetov 2013). In the legal literature, there is a significant lack of specialized research that would take into account the current trends in the development of the institution of treaty interpretation in Western legal systems. To close the gap, scientists need to pay close attention to the European experience in the near future with a view to further validating good foreign practices. It is worth noting that the general orientation of the national courts to apply the literal meaning of the terms of the treaty without exploring the relevant circumstances of its interpretation, which

testify to the content of the will of the parties, does not correspond to the approaches to the interpretation of the treaty, acceptable and established in European countries.

Based on the fundamental principles of civil law autonomy of the will and freedom of contract, clarifying the true will of the parties to the contract is the main purpose of interpretation. The commitment of the national judicial institutions of the CIS member states to the literal meaning of the terms of the treaty when applying the normative legal acts of civil legislation testifies to self-removal from discretionary powers, complex investigation of specific cases and contractual relations. At the same time, it is difficult to overestimate the importance of the interpretation of the treaty for the science and practice of civil law.The scope of this institute is quite extensive, as differences about the meaning of the terms of the contract may arise when resolving various types of contractual disputes. As a rule, issues of interpretation of the terms of the contract arise when considering disputes about the conclusion and validity of the contract, responsibility for breach of its terms, as well as in many other cases. With all the variety of disputes about the content of the terms of the contract, it would be advisable to develop common unified approaches to their solution in practice. It should be acknowledged that the CIS countries doctrine and practice have not been developed yet.

The results of the comparative analysis make it possible to conclude that in practice the differences between the different legal systems of the CIS member countries are not as critical and significant as it seems at the present stage of the development of the studied countries, due to the active development of case law and numerous exceptions to the general rules adopted in one jurisdiction or another (Zweigert and Kötz 1988; Treitel 1988). If we consider the approaches of European countries to the procedure of termination of the treaty, there is a qualitative variability in the procedure and characteristics of such process in comparison with the CIS countries. However, in a more detailed comparative analysis, it was found that over the last decade, the development of the legal systems of the CIS countries has rapidly intensified, taking into account the processes of globalization of the world economy and the desire for the unification of legal regulation. In particular, due to the numerous reformative legislative changes and refinements that permeate current case law and jurisprudence, the legal approaches of the studied countries with European countries are gradually beginning to converge, seeking to unify approaches to resolve many current issues of the contract law.

As A.S. Komarov (1991) rightly points out, most of the leading European comparatists assume that the rule on judicial termination of the contract ‘does not meet the requirements of the dynamics of commercial turnover and complicates its development, hampering the mobility of entrepreneurs for a time until the formal procedure of termination of the contract is completed». Such a position seems to be quite right and is gradually gaining more supporters in the post-Soviet space. In particular, it seems appropriate, on the basis of an analysis of the laws and jurisprudence of Western countries, to propose conceptual universal approaches to the specific issue, which are as follows:

(1) virtually all the legal systems of developed countries and all acts of international unification of contract law provide for a unilateral rejection of a breached treaty, but in the CIS, this approach is rarely used, giving prerogative to a long-established judicial procedure. It should be noted that the outlined approach is supported in countries such as England, USA, Germany, Austria, Switzerland, Scandinavian countries, many Eastern European countries, China, Japan and many others;

(2) almost all countries, in one form or another, with one or another feature, recognize that a breach by the debtor in order to give the creditor a reason to terminate the contract must be sufficiently serious. Most countries seek to replace the principle of materiality of the violation with a more formal and predictable mechanism for determining the validity of the breach in their legislation, however, the need to assess the significance of the breach by certain criteria remains a legalized norm. For the most part, representatives of doctrine and practice in the CIS hold the view that termination of the contract without good reason may act as an abuse of the rights of the party to the contract, which in turn may not lead to significant harm, however, it will be possible to talk about the missed opportunities of the injured party;

(3) most countries, either at the level of law or of jurisprudence and legal doctrine, recognize the possibility of termination of the contract before the expiry date, if the debitor expressly declares that he or she breaks the contract, if this becomes evident in the light of objective circumstances. In this case, the creditor acquires the right to a pre-termination of the contract if it first seeks, but does not receive from the debtor the corresponding explanations, assurances or guarantees;

(4) in most CIS countries, if the debtor has defaulted, the creditor's right to withdraw from the breach of contract is lost if the creditor fails to implement it within a reasonable time after he/she has learned it or should have been aware of the improper performance.

The comparative study held is conditional and has as its ultimate goal the preparation of the problem field and the coordinate system of possible solutions. Further development of a balanced doctrine of termination of a breach of the treaty will be much more effective if it places certain issues and possible solutions in the appropriate comparative legal context taking into account the current changes in the legal systems and realities of the CIS countries.

The expediency of legal regulation of 'smart-contracts' in the territory of the CIS countries is becoming a very pressing issue of contract law and very debatable in the context of intensification of the development of information and technological innovations. Referring to the legal community's perception of this phenomenon in today's realities, let us first note that the term 'smart contract' was coined in an article by American cryptographer Nick Sabo, which dates from 1994. The scientist emphasized that such a contract should be considered as a computerized transaction protocol that fulfills the terms of the contract (Sabo1994). The same performance, according to N. Sabo (1994), is the key to minimizing the costs and mistakes associated with the human factor. At the same time, smart contracts are intended to gradually replace intermediaries who are now directly involved in securing and fulfilling contractual obligations. From the point of view of the author of the concept of 'smart contracts', the latter will become a stable basis for providing the highest degree of security of transactions and provide protection against fraudulent transactions.

It is important to understand that the term 'smart contract' can have a very different interpretation, as it is increasingly understood by a computer program that is quite indirectly related to the usual legal contracts (Sabo 1998). Therefore, the meaningful content of this term depends directly on the scope and specificity of its use. At present, scientists and practitioners have proposed two sound approaches to understanding the 'smart contract' that are used and supported in the CIS (Stark 2016).

(1) 'Smart contract' as a legal contract. This approach is most widespread among the legal community. The term is used by legal practitioners to refer to legal contracts or their separate elements, which are concluded electronically, and to ensure that the obligation is fully automated and controlled by computer software (Teryaev 2018). At present, it is not uncommon to attempt to define a legally accurate definition, which is to say that a 'smart contract' is understood as a substantially typical contract with all the essential conditions inherent in a particular type of contract, which is wholly or partially fixed and executed (or provided) by the algorithms of an automated computer program;

(2) 'Smart contract' as a computer program. The founders of this approach are programmers who view the term as an element of code programmed to accomplish clearly defined tasks in the presence of a driving factor (fulfilling some predefined condition) (International Swaps and Derivatives Association 2017). Also, a 'smart contract' can be considered as an autonomous computer program hosted at a specific address in the blockchain system, which can be restarted an infinite number of times and can be programmed to meet the diverse needs of the business community (Lauslahti *et al.* 2017). Summarizing the technical approaches to the definition of the concept, it can be stated that the 'smart contract' is a cryptographically protected code (Raval 2017). An example of such a computer program is the program for storing integers 'Simple Storage' (Introduction to Smart Contracts 2016), the only functionality of which is the storage of integers. In this case, the 'smart-contract' is deprived of the parties, the content of any rights and obligations of the parties, that is, nothing that lawyers are used to when it comes to the contract (Mariano 2016).Another example of a smart program is the simplest 'smart contract' presented on the Etherium project site called 'Hello, world!'. The result of the operation of the specified 'smart contract' is the display on the screen or other device of the meaningless phrase: 'Hello, world!'(Creating Ethereum Smart Contracts 2019). Thus, a 'smart contract' is not always understood as a legal contract. However, some smart contracts fall within the concept of a contract as a legally significant agreement.

In the CIS countries, 'smart contracts' are considered today as a civilistic innovation that is not currently regulated by civil law and other legislative acts. The issue arises as to the expediency of using such contracts and their legalized legal nature, which does not correlate with the current content of contractual relationships. In this context of qualitative dimension and actualization, the issues of the use of public contracts, in particular in the field of e-commerce, are becoming increasingly important. Yes, almost all CIS member states intend to enter the European market and at the same time must be guided by both national and European norms of law. Therefore, the approach to the design and content of the public contract, its Europeanisation and its compliance with EU directives are currently being updated.

The Institute of Public Contract was introduced to regulate such an area of property relations, to which thousands of subjects and practically the whole society are involved, therefore it has a special social significance,

the effectiveness of its influence depends on the rule of law and the stability of the state as a whole (Maydanik 2008). The social importance of contracts relating to public, especially clearly manifested in the context of constant inflationary processes, causes a sense of social insecurity of the population, negatively affects the dynamics of business activity and the state of law and order. Since the declaration of independence, the legislation of the CIS countries has changed substantially over two decades. For the first time, the principle of freedom of contract and public contract are enshrined at the legislative level. The principle of freedom of contract, despite its widespread content, cannot be absolute in the rule of law, so it is constantly subject to certain restrictions on the part of the state in the interests of one and all, on grounds of security of public interest. On example of this restriction is the introduction in the CIS Civil Codes of public contract rules, which naturally caused problems of both theoretical and practical plan, since the term 'public contract' is not only a relatively new but also an appraisal category in law, which should be explained through the prism of the qualifying features of the said contract, which should make its content as a legal definition. However, the shortcomings of the legislative definition of a public contract lead in practice to ambiguous understanding and application of legal rules about it.

Legal relations covered by the norms devoted to public contracts as an exception to the principle of freedom of contract constitute a major part of the civil turnover in socially significant areas and concern the interests not only of individuals but also of practically the whole of society. By constantly using the services of public transport, catering, retail, communications, etc., consumers do not think that they become, on a daily and hourly basis, direct parties to the legal relationship to which the scope of public contracts extends. Unfortunately, in the territory of the post-Soviet countries, archaically constructed social justice does not allow society to properly understand the role and place of public contracts in relation to other contractual structures based on the principle of freedom of contract. For example, the case law of Kazakhstan is not represented by publications on the subject, there are no thematic reviews and generalizations of the practice of civil cases related to the settlement of disputes under public contracts. The situation in the territory of Ukraine, Belarus and the Russian Federation is similarly disappointing in this area. We can only observe a fragmentary reflection of the indirect effectiveness of dispute resolution on the substantive content of a public contract solely on the basis of single court decisions set out on official portals of judicial bodies. Therefore, at present, there is insufficient attention being paid to the recognition of the international community for the construction of a public treaty in the CIS (Idrysheva 2012).

It could be stated that the category of 'public contract' refers to valuation concepts in law, which has not been proven in economic and law enforcement practice. Therefore, taking into account the justified impact of public contracts on social relations, which entails the need to establish public order in society, and not only in a specific contractual relationship, when concluding, executing public contracts and resolving disputes by the courts, the specified issue requires additional practice justification given the realities of today.

The comparative analysis made it possible to single out the following current issues of treaty law in the CIS countries, in particular:

(1) problematic issues of the general theory of contracts (debt recognition, offers, legal facts and other issues);
(2) conditional agreements as an effective mechanism for contractual relations;
(3) terms of civil agreement. Problems of binding the term of the contract and fulfillment of obligations to circumstances that do not inevitably occur;
(4) invalidity of contracts;
(5) the principle of good faith in civil law;
(6) mixed and unnamed contracts;
(7) effect of the contract in time (provision of the terms of the contract of retroactive effect, displacement of the moment when the agreement enters into force for the future, etc.);
(8) preliminary contract (specifics of registration, consequences of evasion from the conclusion of the main contract);
(9) innovations in the legal regulation of pre-contractual relations and pre-contractual liability for unfair negotiations;
(10) practical issues of signing the contract (use of facsimile, mechanisms of initial verification of authenticity of signature, analysis of cases of forgery and possible abuses);
(11) conclusion of contracts through the exchange of documents, requirements for tender and acceptance;
(12) peculiarities of concluding a contract with conclusive actions;
(13) conclusion of contracts by fax and other technical means (analysis of the main advantages and risks etc.);

(14) typical errors in the execution of acceptance (overhead, acts of acceptance-transfer, acts of acceptance of works etc.);
(15) methods of effective use of foreign exchange clauses in treaties in the context of volatile exchange rate conditions;
(16) actual problems of offsetting counterclaims;
(17) general rules on liability (force majeure and other grounds for discharge, differences of force majeure from the case, specifics of force majeure reservations, limits to the freedom of contract in the scope of liability grounds etc.);
(18) recovery of contractual losses, problematic issues of collection of penalties;
(19) remedies for breach of contract and others.

It is worth noting that the above list does not claim to be complex and unconditional, especially considering the dynamics of modern contractual legal relations and the realities of legal reality. Moreover, the above list needs to be constantly updated, supplemented and may serve as a signpost for further scientific developments for representatives of the civilistic doctrine in the CIS countries.

4. Discussion

Today, in the context of the transformation of social relations under the influence of economic globalization in the CIS, the question of whether the principle of freedom of contract is so absolute and unrestricted, or whether there are any restrictions on the law in this field, is increasingly being raised. It is obvious that unlimited freedom in the legal sense is not a qualitative and effective indicator of the functioning of modern civil trafficking, since it can be a ground for violation of law and abuse of the right granted (Bazedov 2011). Therefore, the objective conditions for the development of civil trafficking require the establishment of limits to the freedom of contract, which are expressed in the establishment of its limits and the consequences of non-compliance with statutory restrictions.

I.O. Pokrovsky (1917) drew attention to the fact that any treaty is a realization of the private autonomy of a person, the exercise of the active freedom that forms the necessary assumption of the civil law itself. As a result, the principle of contractual freedom is the supreme principle and basis in this field. Along with the emergence of private property, this principle is one of the cornerstones of all modern civilian systems. Destruction or unjustified restriction of this principle would mean complete paralysis of civilian life, condemning it to permanent static. Didenko (2001) points out that the treaty is one of the key elements of the rule of law in the economy, an instrument of freedom and democratization of the economy, and because of it the society, because according to its nature it provides for independence and autonomy of the parties, recognition of the value of one's self in the property sphere. The most important (but not the only) deep requirement of the economy is to act under contract.

It is also advisable to point out the position of scholars who consider freedom of contract through the lens of law. A.G. Karapetov (2012) points to the need to highlight the fundamental political and legal issues of freedom and individualism, paternalism and social justice, the permissible role of the state in the economy when exploring the concept of freedom of contract (Stepanyuk 2013, 136). Such a position seems quite appropriate in the context of current political and legal transformations in the CIS.

Turning to the discussion of the contract freedom content, it should be noted that I.O. Pokrovsky (1917) stated that on the negative side, the principle of contractual freedom means that no one is obliged to enter into a contract against their will. From a positive point of view, the principle of contractual freedom means the right of individuals to conclude contracts of any content. Some modern researchers are more open to the content of contract freedom. Yes, A.V. Luts (2001) believes that in addition to choosing a contractor and determining the content of the contract, his freedom also includes: (a) free expression of a person's will to enter into contractual relations; (b) freedom of choice by the parties to the form of the contract; (c) the right of the parties to enter into both contracts provided for by law and contracts not provided for by law, but which do not contradict it; (d) the right of the parties to their agreement to modify, terminate or extend the contract concluded by them; (e) determine ways of securing contractual obligations; (f) the right to establish the forms (and measures) of liability for breach of contractual obligations, etc. A narrow understanding of the content of the freedom of contract seems justified. Thus, E.O. Sukhanov (2011) calls the aspects of manifestation of the principle of freedom in the conclusion of the contract the absence of coercion to enter into contractual relations; freedom to determine the nature of the contract to be concluded; freedom to determine the terms of the contract.

In such a way, a conversation could be led that the freedom of contract, as a manifestation of freedom as a whole, is closely linked to the law and is not limitless. In this sense, one of the legislator's tools, along with such as invalidation of the agreement, the application of countervailing measures etc. is the institute of recognition of the contract not concluded, which provides for the possibility of qualifying the relations of the parties as absent, and

violation of the principle of freedom of contract. However, at the same time, it is far from always possible to set limits to the exercise of contract freedom with a negative aspect. The variability of approaches to the essential content of the freedom of the contract and the possibilities of the state to establish the limits of its implementation by the parties of the contractual legal relations testify to the relevance of this issue in the context of the realities of today and the transformations of the economic space and society.

The current world tendencies of economic globalization and introduction of innovative and technical component produce changes in contractual relations, while the latter, as a powerful regulator of social relations, lead to qualitative transformations of the stability of the state. Thanks to the contract, all vital processes are taking place today. In turn, post-Soviet countries are just beginning to reform the substance of both the treaty itself and contractual relationships as a whole, choosing the vector of innovation and adaptation to the realities of today in the context of positive European practices. It has been found that over the last decade, the development of legal systems in the CIS countries has intensified rapidly, given the need to improve legal regulation. In particular, due to the numerous reformative legislative changes and refinements that permeate current case law and jurisprudence, the legal approaches of the studied countries with the European countries are gradually beginning to converge, seeking to unify approaches in order to resolve many current issues of treaty law.

Conclusions

According to the results of the research it has been found out that contract law issues were highlighted by many CIS scholars and practitioners, however, given the dynamic nature of law as such, and contractual in particular, the list of such issues requires constant updating and supplementation, taking into account already settled aspects of legal relations. The comparative analysis highlighted only a few of the most common contractual issues in the field of contract law, which are becoming most relevant today, and legislators, scientists, and practitioners are only beginning to solve them gradually.Today the study of ways of forming the conceptual-categorical apparatus of contractual relations through the prism of European legal thinking contributes to the creation and development of qualitatively homogeneous and conceptually common pan-European foundations of the systems of national civil law of the CIS countries, but at present unifying the elaboration of approaches, conditions for both the parties to the transaction and the judiciary. The need to preserve the freedom and autonomy of the individual in the context of the multidimensionality of social relations, in the process of realization of which the result of the free agreement of everyone with each and everyone with all is the guarantee of the freedom of contract inherent in all legalized norms of contract law in the CIS.

The term ‘smart contract’, which is gradually being introduced into the practice of business turnover in the CIS, can have a rather variant interpretation, as it is increasingly understood as a computer program that is quite indirectly related to the usual legal contracts. Therefore, the meaningful content of this term depends directly on the scope and specificity of its use. Currently, scientists and practitioners have proposed two sound approaches to understanding the ‘smart contract’ that are used and supported in the CIS. However, the need and appropriateness of legalizing such an up-to-date regulator of contractual relations still remains beyond the focus of legislators. In addition, in the context of the latest approaches to e-commerce in the CIS, there is a qualitative rethinking of the essence and content of the public contract, its Europeanization.

The article offers a list of other relevant issues of contract law in the countries studied. However, the comparative study conducted is conditional and has as its ultimate goal the preparation of the problem field and the coordinate system of possible solutions. Further development of a balanced list of topical issues of contract law will be much more effective if one or other issues and possible solutions are placed in the appropriate comparative legal context taking into account the current changes in the legal systems and realities of the CIS countries.

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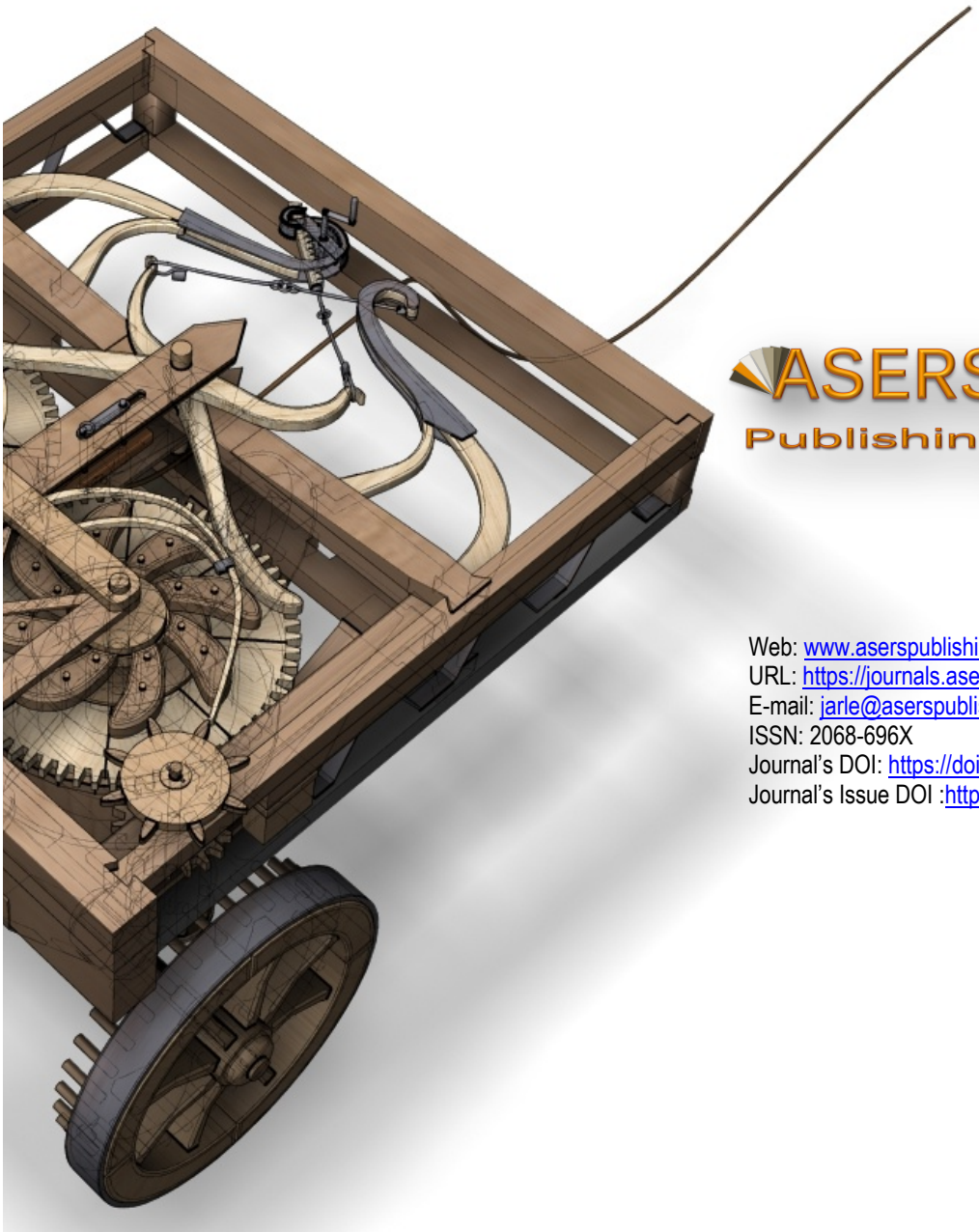

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