

Summary

In the article, analyzing the provisions of the national legislation on combating corruption, the peculiarities of bringing civil liability for corruption offenses are investigated. It is concluded that the use of compensation for harm and other means of civil influence, in connection with the perpetration of such offenses, may have an independent effect of corrupt behavior.

Keywords: *civil liability for corruption-related harm, corruption and corruption-related offenses, case law.*

UDC 346.34:347.44

DOI 10.31733/2078-3566-2019-5-146-151



**Inna
BOLOKAN**[®]
Dr of Law, Ass. Prof.
(Zaporizhzhya
National University)

**Dmytro
SANAKOYEV**[®]
Ph.D., Ass. Prof.,
(Dnipropetrovsk
State University
of Internal Affairs)



PROBLEMATIC ISSUES OF NORMATIVE SETTLEMENT OF CERTAIN TYPES OF SALES CONTRACTS

Інна Болокан, Дмитро Санакоєв. ПРОБЛЕМНІ ПИТАННЯ НОРМАТИВНОГО ВРЕГУЛЮВАННЯ ОКРЕМИХ РІЗНОВИДІВ ДОГОВОРУ КУПІВЛІ-ПРОДАЖУ. Значну частку цивільного і господарського права становлять договірні відносини. При врегулюванні тих чи інших їх аспектів законодавець доволі часто залишає на розсуд сторін вирішення тих чи інших питань, натомість базові моменти, як правило, законодавець доволі чітко врегулює, або, принаймні, пропонує певне регулювання, надаючи сторонам право у своїх конкретних договорах змінити ці положення. Нормативне врегулювання лише тоді може бути визнане ефективним, коли норми не потребують зусиль щодо свого тлумачення, коли вони однозначні у сприйнятті, що значно покращує процес їх реалізації. Одним із недоліків норм договірної права є «подвійне» врегулювання одних і тих самих договірних конструкцій.

У статті аналізуються позитивні та негативні аспекти «подвійного» нормативного врегулювання таких різновидів договору купівлі-продажу, як міна, контрактація сільськогосподарської продукції, постачання енергетичними та іншими ресурсами через приєднану мережу у Цивільному та Господарському кодексах України. Зазначається на наявності дублювання, акцентується на потребі приведення до уніфікованого вигляду дефініцій цих договорів, які наразі суттєво відрізняються, що ускладнює процес тлумачення, а, відтак, і реалізації нормативних положень. Пропонуються можливі варіанти вдосконалення нормативного врегулювання, натомість аргументується доцільність закріплення дефінітивної норми в одному кодифікованому акті та бланкетної норми з посиланням на інший кодифікований акт, або закріплення в одному з актів лише бланкетної норми та концентрація загальних норм в іншому кодифікованому акті. Зважаючи на дещо звужений, порівняно з цивільними відносинами, суб'єктний склад господарських відносин, обґрунтовується доцільність такої концентрації саме у Цивільному кодексі України. Як на істотний недолік нормативного врегулювання вказується на відсутність нормативного визначення (дефініції) предметів більшості з договорів, аналіз яких проводиться у публікації.

Ключові слова: *договір міни, договір контрактації сільськогосподарської продукції, договір постачання енергетичними ресурсами, сільськогосподарська продукція.*

Problem statement. A significant part of both civil and commercial law are contractual relations. When regulating certain aspects of the law, the legislator often leaves the parties to decide on certain issues, but instead the bases, as a rule, the legislator quite clearly regulates, or at least proposes some regulation, giving the parties the right in their specific contracts to

© Bolokan I., 2019

ORCID iD: <https://orcid.org/0000-0003-1868-7552>
innabolokani@gmail.com

© Sanakoyev D., 2019

ORCID iD: <https://orcid.org/0000-0002-6783-3168>
d_sanakoyev@ukr.net

change these provisions. Normative regulation only then can be recognized as effective when norms need no effort to interpret, when they are unambiguous in perception, which greatly improves the process of their implementation. One of the drawbacks of contract law is the "double" regulation of the same contractual structures.

Analysis of publications that started solving this problem. The problematic issues of normative regulation of contractual relations although the attention of scientists, instead research mainly focus on the shortcomings of normative regulation of specific types of contracts. Thus, T. Tillayev (1990) devoted his dissertation to the features of the contract. Stanislavsky (2006), Yu.Yu. Buckeye (2010), E.O. Samsonova (2010), M.E. Krivko (2015), A.O. Gutorov (2017); Peculiarities of legal regulation of contracts for the supply of energy resources Guivan (2000), V.V. Sergienko (2001), S.S. Nemchenko (2010), G.V. Brain (2012), S.V. Kurchenko (2013), R.V. Pozhojuk (2016), D.P. Guyvan (2017); the peculiarities of legal regulation of the exchange agreement – VV Lysenko (2012), OS Prostibozenko (2005), V.V. Halyasyuk (2017) and many other legal scholars who are specialists in civil, commercial, agricultural, environmental and other fields of law. Instead, there are questions about the regulatory issues of any contractual structure, that is, common to many contracts, and this issue is not given enough scientific attention. In addition, in the writings of these and other scholars, too little attention is paid to the analysis of problematic issues of "double" normative regulation in different legal acts of the same contract. A striking example of this situation is the settlement of certain agreements by the Civil and Economic Codes of Ukraine (hereinafter – the Central Committee of Ukraine and the Civil Code of Ukraine, respectively). First of all, we will mention the long-held discussion of the expediency of coexistence of two codified regulatory sources with simultaneous existence in the legal set of national legal acts (the discussion boils down to the expediency of the existence of the Civil Code of Ukraine, when some scientists are convinced of the inappropriateness of such a solution because two codified acts, which regulate a large part of similar relations, while others justify the specifics of economic and legal relations and insist on the expediency of the Civil Code of Ukraine. – IB, DS). Without going into this discussion, it should be noted that the fact that there is a dual regulatory framework for individual issues should not create difficulties in interpreting the relevant rules and applying them.

The article's objective. Substantiation on the basis of the analysis of the norms of the Civil Code and Civil Code of Ukraine, which regulates certain varieties of sales contracts, the need for unification of such regulation, which is one of the ways of its improvement; identification of positive and negative aspects of the normative regulation of these contracts by the specific rules of these codified acts; formulating proposals to remedy the identified shortcomings.

Basic content. Even when superficially reviewing the content of contract law, it firstly draws attention to the application of different variations of titles in the Civil Code and the Civil Code of Ukraine regarding the same contracts (ex., energy supply in the Civil Code of Ukraine, and supply of energy resources through an affiliated network in the Central Committee of Ukraine; construction contract in the Central Committee of Ukraine and the contract for capital construction in the Civil Code of Ukraine); second, differences in the formulation of the definition of the contracts themselves; thirdly, the legislator's consistent approach to the "selection" of those agreements that are regulated in the Civil Code of Ukraine; fourth, the degree of detail of the regulatory settlement is different, where a detailed settlement is fixed for one of the contracts in one of these two codified acts, and there is no detail in the other; or – there is no detailed regulation in both of these codified acts, or – there is identical detail in both legislative acts. And if there is nothing to add to the first remark, only the statement of the use of different names by the legislator, which does not facilitate the process of interpretation and application of such rules in practical contractual activity, then in the case of other comments, we will explain our opinion about the desirability of appropriate regulation.

First of all, let us define the contracts that will be considered within the scope of this publication, which are both regulated in the Central Committee and in the Civil Code of Ukraine, and since there are many such agreements, let us dwell only on the group of contracts that are attributed to the varieties of purchase and sale in the Central Committee of Ukraine: exchange contracts, contracting and supply of energy resources.

1. One of the variants of the contract of sale, which is regulated by both Codes, is a exchange agreement, which is referred to in them as "exchanhe (barter)", although such designation is somewhat different in the Central Committee and the Civil Code of Ukraine. If in Art. 293 of the Civil Code of Ukraine already in the name there is a certain duality – "Exchange

(barter) in the sphere of management", then in the Central Committee of Ukraine in the name §6 and in the name of Art. 715 is only an exchange, and in the very text of Part 1 of Art. 715 is formulated "exchange (barter)". It should be noted that the mentioned version of the contract of sale (under the Central Committee of Ukraine) and the contract mediating economic and trading activities (under the Civil Code of Ukraine), is insignificantly (in terms of volume) normatively regulated, since the Central Committee of Ukraine enshrines only two articles (Art. 715, 716), and in the Civil Code of Ukraine – only one article (Article 293).

2. An analysis of the content of these articles has led to the following conclusions: 1) unlike many other treaties, which are simultaneously regulated by these Codes, the construction of both normative definitions of a exchange agreement is quite similar, whereas in other treaties the codified acts mentioned often differently formulate the definitions of treaties; 2) the provisions of both codified acts contain similar norms, which differ only in the wording (the text), not the content (for example, the provisions on the status of the parties to the contract, each of which acts both as a seller and as a buyer – Part 2 of Art. Article 715 of the Civil Code of Ukraine, Part 2 of Article 293 of the Civil Code of Ukraine; Provisions on the possibility of additional payment for goods of lower value – Part 3 of Article 715 of the Civil Code of Ukraine, Part 3 of Article 293 of the Civil Code of Ukraine. (an indication of the "monetary" co-payment, as well as clarification that such co-payment is only possible for me that this "does not contravene the law"); the thesis on the application of the provisions of other agreements to the contract – Article 716 of the Civil Code of Ukraine, part 5 of Article 293 of the Civil Code of Ukraine, where the list of relevant contracts in the Civil Code and Civil Code of Ukraine coincides (purchase and sale, delivery , contracting, etc.), and the differences relate only to the imperative norm set out in the Civil Code of Ukraine on the possibility of applying the provisions of these contracts not only when it corresponds to the essence of the obligation (both in the Central Committee and in the Civil Code), but also in cases where it is does not contradict the legislation (only in the Civil Code of Ukraine); 3) the differences in the legal regulation of a exchange agreement relate to only a few aspects, one of which is related to the subject of the exchange agreement. Thus, in particular, the Civil Code of Ukraine: a) lists certain objects that cannot be exchanged – fixed assets with respect to two forms of ownership – state or public utility, if one of the parties is not an appropriate (state or public utility) type of enterprise; b) provides for the possibility of fixing by other legislative acts the peculiarities of exchange transactions in respect of certain types of property (Part. 294). The Civil Code of Ukraine establishes an exception to the general rule on exchange – "property for property", when parties to a specific contract are given the opportunity to exchange "property for service" or "property for work" (Part 4 of Article 715).

3. Another aspect, which is regulated differently in the Central Committee and the Civil Code of Ukraine with regard to exchange transactions, concerns the jurisdiction of the acquirer. In the Civil Code of Ukraine, unlike the Central Committee of Ukraine, it is not only about the transfer of ownership of the goods from one party under the contract to the other, but also about the possibility of transferring the goods, which is one of the subjects of the exchange agreement, into full economic management or operational management of the other parties. In addition, the Central Committee of Ukraine regulates separately in a dispositive way the issue of the moment of transfer of ownership of the exchanged goods – at the same time after fulfillment of obligations to transfer property to both parties, and the dispositive is to give the parties the right to change this general rule in the terms of their contract. In addition to this possibility, another legislative (by the rules of other special laws) regulation of this issue is envisaged.

Therefore, normative regulation of the exchange agreement can be significantly improved by eliminating a number of shortcomings, in particular:

1. Dual regulation of certain provisions of this contract (duplication), which is an undesirable phenomenon, especially considering that these codified acts provide for the possibility of regulating the contractual relations of the exchange by other laws, and, therefore, the need for simplification of regulation at least with respect to the general provisions becomes clear. . The Civil Code of Ukraine establishes this possibility by separating the part of the article which deals with the possibility of foreseeing in the other laws (the so-called "special rules") the peculiarities of concluding and executing a exchange agreement (Part 6 of Article 715 of the Civil Code of Ukraine), while Part 4 Art. 293 of the Civil Code of Ukraine refers to "legislation", which is also ambiguous for the term, since there is still no unified approach to the question of whether the content of "legislation" is only laws (narrow understanding), or it in-

cludes by-laws (broad understanding of the concept) "legislation"). Note also that in the above provision of Part 6 of Art. 715 of the Civil Code of Ukraine does not refer to the possibility of foreseeing in other laws the peculiarities of the termination of the contract of exchange, and, therefore, the question arises whether the relevant norms on peculiarities, for example, termination of the contract, if they will be enshrined in special legislation.

2. The inconsistency of the legislator to formulate the provisions of the relevant norms (on the example of the Civil Code of Ukraine, when in the title of the paragraph, the relevant articles (Articles 715, 716) about the contract referred to as a exchange, and only in the definition of this contract is formulated "exchange (barter)". In some legislative acts, for example, in the Law of Ukraine "On Regulation of Commodity Exchange (Barter) Transactions in the Field of Foreign Economic Activity", the wording "Commodity Exchange (Barter) Operation", "Barter Agreement" etc. is used. If we were to choose one normative act in which we would settle the general provisions of the treaty, preference would be given to the Civil Code of Ukraine.

The next contract, designated by the Central Committee of Ukraine as a type of contract of sale, is the contract of agricultural production. It is separated into a separate paragraph of Chapter 54, which consists of only one article, consisting of three parts. It should be noted that the Central Committee of Ukraine has a direct indication that the contracts of supply, contracting, supply of energy resources are varieties of sales and purchase agreements. This instruction is carried out directly not only in text formatting, but also in structural construction, since the listed contracts are placed though in different paragraphs, but within one chapter of the Central Committee of Ukraine. At the same time, there is a specific formulation of this provision in the Civil Code of Ukraine (Part 4, Art. 263), which states that economic and trading activities are mediated by a number of contracts, including delivery, contracting of agricultural products, energy supply, purchase and sale, exchange, as well as specific such as renting and leasing. We emphasize on the formulation of "economic and trading" activity, because the trade usually means transactions, which result in the transfer of ownership of goods.

In addition to the fact that the normative regulation of the contract of agricultural products in the Codes is rather small in volume (three articles in the Civil Code of Ukraine), neither of them defines the subject of this agreement ("agricultural products"), and its definitions are contained in others regulations, including those who have lost their validity.

At present, the current legislative acts do not define the concept, which is a disadvantage, because they are special legislative acts, which refer specifically to this subject (an example is the Law of Ukraine "On State Regulation of Imports of Agricultural Products", which deals with the import of agricultural products the law does not explain). In our view, special laws should, if not specified, at least refer to another act in which such a definition is provided. Another group of legislation generically defines the concept of "agricultural products" by referring to other regulations. An example is paragraph 2.15 h. 1 Article. 2 of the Law of Ukraine of 24.06.2004 No. 1877-IV, part 1 of Art. 1 of the Law of Ukraine dated 25.06.2009 No. 1561-VI, Art. 1 of the Law of Ukraine of November 6, 2012 No. 5479-VI, part 1 of Art. 1 of the Law of Ukraine dated 10.07.2018 No. 2496-VIII. All the above laws, defining "agricultural products", refer to certain groups of the Ukrainian Classification of Goods of Foreign Economic Activity. 14.1.234 PC of Ukraine, which defines "agricultural products (agricultural goods)" and which "sends" to groups 1-24 of the Ukrainian Classification of Foreign Economic Activities, specifying a number of requirements for these goods, is constructed on a similar principle relevant to taxation issues (subject to the regulation of this codified act). Among the by-laws are those that provided definitions of the term, but have now lost their validity. An example is the NBU Resolution of 15.12.2004 No. 637, and those that do not allow to form an idea of the subject, because they are highly specialized and focus not on the concept but on the issues of accounting for the relevant goods (for example, the Order of the Ministry of Finance of Ukraine from 18.11.2005, No. 790 and from 15.11.2017, No. 943).

Important, which in some way facilitates the interpretation of the rules of the Civil Code and the Civil Code of Ukraine regarding the subjective composition of the contract of agricultural production, has also item 14.1.235 of the PC of Ukraine, which defines the agricultural producer. However, this paragraph clearly states that this definition is relevant only for the purposes of Chapter 1, Section XIV, of the PC of Ukraine. More meaningful and understandable to the parties to the agricultural contract, we consider the definition given in the Draft Treaty establishing a Constitution for Europe, where "agricultural" refers to products grown on land, livestock and fishery products, as well as primary processing products. due to these products.

Continuing on the topic of normative regulation of contractual relations on agricultural

contracting, we note that even in the definition of the contract, which is provided in Art. 713 of the Civil Code of Ukraine (part 1) and in Art. 272 of the Civil Code of Ukraine (Part 2), one can notice the differences that are related to: a) the emphasis on the transfer of agricultural produce produced by the producer to the Central Committee of Ukraine; b) with a certain, albeit insignificant difference in the characteristics of one of the parties to the contract (in the Central Committee of Ukraine – the procurer (contractor) or designated by the recipient; in the Civil Code of Ukraine – the procurement (purchasing) or processing enterprise or organization (contractor); c) in the definition the two main obligations of the contractor – to accept the products and pay for them – in the Central Committee of Ukraine, and adding to this one more of his duty – to promote the manufacturer in the production of the said products by the standards of the Civil Code of Ukraine. In addition, the Civil Code of Ukraine emphasizes separately on such terms of this agreement as the terms of production, its quantity and assortment. The differences in regulation can be enumerated further, but the ones we have mentioned were chosen precisely because they were defined in the contract, which, as a rule, should only reflect the most essential features.

Therefore, we emphasize the inappropriateness of the definitions of the same concepts in different acts, which are also different (definitions), and express the opinion that only one of the definitions should be left, or that the double definition of the present definition be left, but aligning with already existing regulatory definitions. At the moment we can state that the Central Committee of Ukraine almost does not regulate this agreement, but instead indicates its existence, points to it as a kind of a sales contract, indicates the possibility of its regulation in terms of peculiarities of concluding and executing other legislative acts, one of which we refer to the Civil Code of Ukraine. In its turn, the Civil Code of Ukraine has a much narrowed sphere of regulation, since the article, in which this contract is defined, begins with the fact that public procurement is carried out under these contracts, and the reason for their conclusion is a state order for delivery (Part 1 of Article 272). At present, in the regulation of this contract, we will note both positive and negative economic and legal standards. The first is the existence of a list of essential terms of this contract, and the second is a non-exhaustive list of these conditions and a reference to a standard contract approved by a by-law, which does not yet exist. Therefore, in the current realities of the absence of a standard contract, the existence of a list of essential conditions is positive. Instead, the appearance of this model treaty will again create a duality in the settlement, as it will probably have all the conditions listed in Part 3 of Art. 272 of the Civil Code of Ukraine. On the whole, positively assessing the existence of normative regulation of the peculiarities of performance of contracting contracts in Art. 273 of the Civil Code of Ukraine, among the shortcomings we note the presence in it of a blanket rule (Part 5), which "sends" to a non-existent by-law. Positive is the existence of a separate rule on liability for non-compliance or improper performance of the contract with specific sanctions, which is not often the case in the settlement of contractual relations under the Civil Code and the Civil Code of Ukraine.

Just like all the contracts mentioned above, the contract of supply of energy and other resources through an affiliated network is regulated by the Central Committee of Ukraine, which designates it as a kind of a contract of sale, and the Civil Code of Ukraine, with almost the same volume (Article – Article 714 of the Central Committee of Ukraine and two articles – Articles 275-276 of the Civil Code of Ukraine). Similarly, there is a lack of a unified approach of the legislator to the definition of this contract, the differences in the formulation of which, among other things, are somewhat different in the degree of detail the formulation of the name of the contract (in Part 1 of Article 714 of the Civil Code of Ukraine refers to the contract of supply of energy and other resources through acceptance Article 275 of the Civil Code of Ukraine – energy supply contract).

A common drawback of both codified acts is the lack of definition of the object of the contract – energy resources, which (a drawback) in the Central Committee of Ukraine is supplemented by the wording "and others" (meaning other than energy resources). What it is – the legislator leaves the discretion of the parties. In the Civil Code of Ukraine the relevant contract is narrowed on the subject. The same applies to the indication in the CC of the "connected network" and "power equipment" as mandatory features of this contract, and only to "power equipment" in the Civil Code of Ukraine. Since the Civil Code of Ukraine is about energy resources, the legislator accordingly provides an exhaustive list of these resources – electricity, steam, hot and overheated water. There is no such detail in the Central Committee of Ukraine, because the subject of this agreement is wider here than at the expense of designating in it "other (except energy) resources". In other aspects, the definitions of the relevant contract are similar. The same as in the contracts under consideration, the Central Committee of Ukraine provides for the possibility of

extending the relevant contract of sale and delivery, provided that otherwise it will not be regulated in any other (as seen – in a special) law or will not follow from essence of the relations of the parties (Part 2 of Art. 714), and also fixes the possibility of regulating by other laws the peculiarities of concluding and executing the contract of supply of energy and other resources. As the Civil Code of Ukraine regulates the energy supply relations in more detail, it enshrines more rules governing the respective supply relations, formulated mainly in an imperative way (for example, fixing in part 2 of Article 275 requirements for the impossibility of supplying energy without a contract), or by fixing blanket norms. Instead, the Central Committee of Ukraine regulates a wider range of contractual relations in this area (not only energy, but also other resources), so it is difficult to determine unequivocally the most optimal placement of the relevant norms in the Central Committee or in the Civil Code of Ukraine.

Regarding the method of formulating the references, the legislator in the Civil Code of Ukraine is inconsistent, since in some cases such a link is clear (indicates a specific law), while in others it is a generalized reference to certain standards or specifications. Both ways have both positive and negative aspects. On the one hand, the instruction of a specific law facilitates the further search for the necessary norms, on the other – in case of changing the name or adopting a new law, it becomes necessary to change the corresponding blanket norm in the Civil Code of Ukraine. Abstract and unspecified references make it much more difficult for the parties to find the required regulatory framework governing certain aspects of their contractual relationship. In general, most of the provisions set out in the Civil Code of Ukraine on the energy supply contract (in terms of quantity, quality, terms) only indicate the need to agree certain terms in the contract.

Conclusions. Therefore, the analysis of the norms governing the contractual relations of the exchange, the contracting of agricultural products and the supply of energy and other resources, as well as the authors' suggestions and suggestions regarding possible improvement of national legislation on these issues, may be the subject of further discussion, since the formulation of a single scientific subject understanding the rules of contract law is the key to its adoption by the legislator, which will result in changes in regulatory framework and simplification of the process of interpretation and implementation of relevant rules.

Applying different variations of titles to the same contracts; differences in wording of contract definition; different degree of detail of normative regulation; the presence of completely duplicate rules, which differ only in textual presentation, but not in content; absence of normative definitions of concepts that make up the subject of the contract; the use of ambiguous wording and definitions in contract law due to the lack of normative fixing require regulation, in particular the ways we have proposed in our work, which will help to improve normative regulation and application of exchange agreements, contracting, supply of energy and other resources.

References

1. Цивільний кодекс України. *Відомості Верховної Ради України* (BBP), 2003, №№ 40-44, ст.356.
2. Господарський кодекс України. *Відомості Верховної Ради України* (BBP), 2003, № 18, № 19-20, № 21-22, ст.144.

Received to editorial office 18.11.2019

1. Tsyvil'nyy kodeks Ukrainy [Civil Code of Ukraine]. *Vidomosti Verkhovnoyi Rady Ukrayiny (VVR)*, 2003, №№ 40-44, st.356. [in Ukr.]
2. Hospodars'kyi kodeks Ukrainy [Economic Code of Ukraine]. *Vidomosti Verkhovnoyi Rady Ukrayiny (VVR)*, 2003, № 18, № 19-20, № 21-22, st.144. [in Ukr.]

Summary

The article analyzes the positive and negative aspects of "double" regulatory settlement of such types of sales contract as exchange, contracting of agricultural products, supply of energy and other resources through the affiliated network in the Civil and Economic Codes of Ukraine. It points to the existence of duplication, emphasizes the need to bring to a unified view the definitions of these treaties, which are currently significantly different, which complicates the process of interpretation and, consequently, the implementation of regulations. Possible options for improving normative regulation are proposed, instead of arguing for the appropriateness of fixing a definitive norm in one codified act and a blanket norm with reference to another codified act, or securing in one of the acts only a blanket norm and another code and other normative codes. Given the somewhat narrowed-down, in comparison with civil relations, subjective composition of economic relations, the expediency of such concentration in the Civil Code of Ukraine is substantiated. A significant drawback of normative regulation is the lack of a normative definition (definition) of the majority of contracts that are analyzed in the publication.

Keywords: *exchange agreement, agricultural products contract, contract of supply of energy resources, agricultural products.*