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CHARACTERISTICS OF COMMITTING TRANSACTIONS WITH INFORMATION

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ABSTRACT

This scientific article considers problematic issues related to the usage of information in transactions, which is now widely used in modern social life in relation to various subjects of civil relations in the field of intangible goods. The article deals with problematic issues of the possibility of committing transactions with non-property goods. In the period of development of society and social relations, new types of civil relations arise, which require appropriate legal regulation.

The author analyzes the essence of the concept of "information", its meaning, and the possibility of carrying out transactions with information as a personal non-property right. The subject of research of the article in question is the norms of civil legislation regulating intangible goods, as well as provisions of legal practice. This study aims to investigate the current state of social relations related to such intangible goods as information. The methodological basis of the research consists of general scientific and special methods, in particular, theoretical, comparative legal, analysis, and synthesis methods. The scientific novelty of the research lies in the fact that, on the basis of available knowledge in the field of civil law science, the need for the legal regulation of information transactions is substantiated.

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1. INTRODUCTION

In spite of the fact that the civil law contract is one of the tools that can be used to carry out such circulation, a number of difficulties arise in the civil law of the theoretical perception of contracts with information. Firstly, different types of information are considered by the legislator as different types of objects. For example, commercial information refers to the results of intellectual and creative activity, and information about the personal life of an individual, about their health is a personal non-property good. This is despite the fact that information can be considered as an independent object, different from such intangible goods as the results of intellectual, creative activity, and personal intangible goods. Yet, it is known that different types of objects have different legal regimes. Secondly, according to Art. 302 of the Civil Code of Ukraine, the right to information is a personal non-property right. Thus, according to Art. 269 of the Civil Code of Ukraine, personal non-property rights are inalienable, belong to individuals for life, and have no economic content. This characteristic of the right to information called into question the possibility of concluding information contracts. The need, as written by S.N. Berveno referring to the works of G. Dernburg and K.F. Chillarja, also arises because many scientists justify exclusively the property nature of legal relations arising from the contract since the latter formalizes the process of commodity circulation and, therefore should be considered as means of the mechanism of regulation of property relations (Berveno S., 2006).

It can be said that the issue of the possibility of concluding a transaction with information is significant.

It should be noted that the above-mentioned issues have already received attention in the works of individual scientists, among which the works of Ch.N. Azimov, O.V. Kokhanovska, O.O. Pidipryhora, and others, but, as noted,

there is no unanimity of opinion among scientists regarding ways to solve these issues (Azimov, Ch. 1986; Kohanovska O. 2001; Pidiprygora O. 1997) The need to create a regulatory basis for regulating civil relations regarding information naturally arises from the formation of an information society and approaches to the regulation of private relations, the main regulation mechanism of which is now the contract. The separation of the general provisions on contracts into a special subdivision and the increase of the normative array and types of individual contracts is also important for the further development of legal and methodological bases for non-traditional types and types of contracts that are not included in the list established by the current legislation.

2. MATERIALS AND METHODS

The methodology of the chosen problem is a systematic approach, as well as dialectical, formal-logical and structuralfunctional methods and other general scientific research methods, as well as special legal methods: comparative law and formal law. The methodological basis of the study is theory cognition, its general method of materialist dialectics. The following were used as general scientific research methods: formal-logical and systematic methods.

3. RUSULT AND DISCUSSION

The classic object of civil law is things. These are objects of the material external world, created by human labor or in their natural state. Civil law, which arose during the time of Ancient Rome, is constantly developing as a branch of law that regulates the equivalent exchange of objects of the material world. The nature of intangible (ideal) objects is associated with a number of features that affect their legal regime. Thus, intangible objects are not consumed (do not disappear) as a result of usage and are not amortized. They do not age physically, while only their moral aging is possible. The prerequisite for using an ideal object

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is not to possess it but to know about it. At the same time, there is no need to have any of the material media in which this object is expressed (described). Intangible objects can be associated with material carriers or expressed (incorporated) in material objects, but they can be separated from them and fixed in other material forms just as freely. In addition, there is a situation when it is almost impossible to take back information that has been disclosed once.

In Ukraine, a unified approach to understanding the legal nature of information (confidential information) has not been developed. To some extent, it is explained by the fact that information is not a classic object of civil law. In this regard, it should be noted that information in the Ukrainian law doctrine, especially civil law, is currently being studied conditionally in three guises. Thus, in the Civil Code of Ukraine, information is defined as a separate object of civil rights (Article 200 of the Civil Code of Ukraine); in Book II of the Civil Code of Ukraine, it is considered as an object of personal non-property rights of an individual; in Book IV, it is an object characterized by an additional creative element; in addition, the entire sphere of contractual relations is permeated with an informational component, including the most researched in domestic science the contract on the provision of various types of information services – in legal relations with the participation of mass media, archival, library, reference activities, advertising, etc. (Kokhanovska O., 2016).

Therefore, we can see that information is a complex object. Thus, some scientists and practitioners question the categorical nature of the theory of contractual regulation exclusively of property relations. It has become a common phenomenon in contractual practice to include in traditional contracts (purchase-and-sale, suborder contracts, and others) conditions on the confidentiality or secrecy of certain information that is transferred, arises, or is created in accordance with such contracts. Thus, L.V. Fediuk does not exclude the relationship of personal non-property rights with contractual obligations. She notes that individuals can enter into agreements with each other that are not

regulated by the law, if they do not contradict it, therefore a situation is possible when the contract will be related to personal non-property rights.

Nowadays, there are many different definitions of the concept of information. The very term "information" comes from the Latin "informatio", which is defined as explanation, clarification, or message. Meanwhile, the multifaceted nature and lack of a single unified set of concepts lead to a diversity of opinions among scientists in defining the concept of "information", its ambiguous interpretation when some concepts are replaced by other even more uncertain ones.

So, information is understood as any data about some previously unknown events; meaningful description of the object or phenomenon; selection result; signal content, message; degree of diversity; reflected diversity; reduced uncertainty; degree of complexity of structures, degree of organization; the result of the reflection of reality in a person's mind, represented by their inner language; a product of scientific knowledge, a means of studying reality; the main content of the display; essential substance of living matter, psyche, consciousness; an eternal category contained in all elements and systems of the material world without exception, which penetrates into all "pores" of the life of people and society; a property of matter, its attribute, some reality that exists alongside material things or in the things themselves; the language of the world as a living whole. (Iasechko S., et al 2021)

It is clear that philosophical definitions of information will not be able to reflect all aspects of information fully and allow determining its role and features.

The legal definition of information given in Art. 200 of the Civil Code of Ukraine, Art. 1 of the Law of Ukraine "On Information", emphasizes that information is any information and (or) data that can be stored on physical media or displayed in electronic form. Therefore, the legislator, both in the Civil Code of Ukraine and in the Law of Ukraine "On Information" notes that in order to be

recognized as information as an object of law, information (data) must be stored on a physical medium or in electronic form.

Art. 1 of the Law of Ukraine "On Information" states that a material medium containing information, the main functions of which are its preservation and transmission in time and space, is a document.

It is worth noting that the concept of information is also provided in other normative legal acts, in particular, the Law of Ukraine "On Telecommunications", where information is defined as data presented in the form of signals, signs, sounds, moving or still images or in a different way. The Law of Ukraine "On Protection of Economic Competition" gives the following definition of information: "Information is data in any form, stored of any media (including correspondence, books, notes, illustrations (maps, diagrams, organizational charts, drawings, schemes, etc.), photographs, holograms, films, video films, microfilms, sound recordings, databases of computer systems, or full or partial reproduction of their elements), explanations of individuals and any other publicly announced or documented data."

Thus, all the above definitions have in common that information is defined as "data". In turn, these data are the result of the human consciousness reflecting the surrounding reality, or more precisely, the properties of this "something" (the so-called "data object"). However, since the information has an intangible nature, in order to circulate in society, it must be known by human consciousness.

As pointed out by O.M. Dotsenko, if personal life is considered as an "object of information" as a social being, then it can be concluded that the meaningful value of information about the personal life of an individual is information about facts that are in an irreversible flow from the past through the present in the future and are happening and (or) happened with an individual person. The translation of the received information about a person's personal life into a symbolic form allows us to say that they cease to be only subjective reality

and become objective reality, that is, such an object as information about personal life appears (Dotsenko O., 2014). Information about the private life of a natural person, like any phenomenon or object of reality, becoming the object of rights, acquires a certain legal form, and legal characteristics precisely as an object of rights. The value of an object can be property or non-property, depending on whether this object serves as a means of satisfying property or non-property rights. The property nature of the object's value is revealed in its economic value. In this case, the object becomes a commodity in the economic sense, and the property interest is ensured by the possibility of receiving exchange value from it (Dotsenko O., 2014).

The ability of information to be transferred determines its ability to be in civil circulation, which allows actions to be taken with it regarding the disposal of information, including payment. Obviously, the transfer of information can satisfy the property interest in entering information into civil circulation and obtaining economic (exchange) value from it, because in this case it is the value of information that determines its value and allows it to participate in equivalent payment relations, which is the subject of civil law (Iasechko S., et al., 2020).

In May 25, 2018, the European General Data Protection Regulation (GDPR) came into effect. The first-of-its-kind policy showed great promise during development; it was intended to harmonize privacy and data protection laws across Europe while helping EU citizens to better understand how their personal information was being used, and encouraging them to file a complaint if their rights were violated. As a new regulatory framework, the GDPR was an acknowledgement that the digital economy — fuelled by (personal) information — should operate with the informed consent of users and clear rules for companies who seek to do business in the European Union.

The General Data Protection Regulation (Regulation (EU) 2016/679) (GDPR) is a European Union law which entered into force in 2016 and, following a two-year transition period, became directly applicable law in all Member States

of the European Union on May 25, 2018, without requiring implementation by the EU Member States through national law. A 'Regulation' (unlike the Directive which it replaced) is directly applicable and has consistent effect in all Member States. However, there remain more than 50 areas covered by GDPR where Member States are permitted to legislate differently in their own domestic data protection laws, and there continues to be room for different interpretation and enforcement practices among the Member States.

In Austria, the laws concerning the implementation of the GDPR have been adopted gradually. In summer 2017, the existing Data Protection Act 2000 (Datenschutzgesetz 2000) was amended by the Data Protection Amendment Act 2018 (Datenschutz-Anpassungsgesetz 2018) which constituted the first implementation of various regulations related to GDPR, and was intended to enter into force simultaneously with GDPR. The 'Data Protection Act' (Datenschutzgesetz, DSG) has considerably amended the Data Protection Act 2000. In addition to the GDPR, it is now the central piece of legislation in Austria regulating data privacy. The Privacy Deregulation Act 2018 (Datenschutz-Deregulierungs-Gesetz 2018) further amended the DSG. The DSG, as amended by the Privacy Deregulation Act 2018, came into force on May 25, 2018 and is now the applicable regulation in Austria. The DSG also includes the implementation of the Directive (EU) 2016/680. In addition to the DSG, further amendments to other statutory laws were adopted in order to implement the GDPR (mostly to adapt to the terminology of the GDPR). These amendments were included in the General Data Protection Adjustment Act (Materien-Datenschutz-Anpassungsgesetz 2018) and the research-sector specific Data Protection Adjustment Act – Science and Research (Datenschutz-Anpassungsgesetz 2018 – Wissenschaft und Forschung – WFDSAG 2018). Further amendments in other laws have been made by the Second General Data Protection Adjustment Act, which was passed in June 2018 and applies retroactively. Finally, ordinances were also passed regulating respectively the

cases where a data privacy impact assessment is obligatory (the Obligatory DPIA Ordinance - DSFA-V) and the exemptions from the obligation to conduct a data privacy impact assessment (the DPIA Exemptions Ordinance - DSFA-AV).

"Personal data" is defined as "any information relating to an identified or identifiable natural person" (Article 4). A low bar is set for "identifiable" – if the natural person can be identified using “all means reasonably likely to be used” (Recital 26) the information is personal data. A name is not necessary either – any identifier will do, such as an identification number, phone number, location data or other factors which may identify that natural person. Online identifiers are expressly referred to in Recital 30, with IP addresses, cookies and RFID tags listed as examples. The GDPR creates more restrictive rules for the processing of "special categories" (Article 9) of personal data (including data relating to race, religion, sexual life, data pertaining to health, genetics and biometrics) and personal data relating to criminal convictions and offences (Article 10). The GDPR concerns the " processing" of personal data. Processing has a broad meaning, and includes any set of operations performed on data, including mere storage, hosting, consultation or deletion. Personal data may be processed by either a "controller" or a "processor". The controller is the decision maker, the person who "alone or jointly with others, determines the purposes and means of the processing of personal data" (Article 4). The processor "processes personal data on behalf of the controller", acting on the instructions of the controller. In contrast to former legislation, the GDPR imposes direct obligations on both the controller and the processor, although fewer obligations are imposed on the processor. The "data subject" is a living, natural person whose personal data are processed by either a controller or a processor.

Processing of special category data is prohibited (Article 9), except where one of the following exemptions applies (which, in effect, operate as secondary bases which must be established for the lawful processing of special category

data, in addition to an Article 6 basis): with the explicit consent of the data subject et al.

In this way, investigating the problems of the ratio of the usage of personal non-property goods and property rights, which relates to issues of commercialization of the individual, both in Ukrainian legislation and in the legislation of the EU countries, the usage of personal non-property rights of a person is possible, if such a person gives consent to the usage of such rights. We can confidently note the proposition that a citizen's consent to the usage of their name, surname, pseudonym, or image can take the form of either a unilateral executive act or a contract.

An integral part of the contract, valid for the law, was the recognition of the will. The necessity of having a true volitional desire to enter into this particular transaction is explained by the fact that a person can unequivocally declare their intentions by will. Consent to the implementation of this or that legally binding action indicates two abstractly coincident moments: a true desire, an expression of the will, to enter into an obligation and an outward manifestation of this desire, a formal embodiment of the depth of the will in life and individual actions, which are called manifestation of the will. When the will and manifestation of will coincide when committing acts, there are no problems with their selection and demarcation.

According to S.O. Slipchenko, with whom we fully share the point of view, a person's consent to use an object of personal non-property legal relations cannot be attributed to an event, since an event is a circumstance that proceeds (develops) regardless of someone's behavior (Slipchenko S., 2013). Given the aforementioned data, giving consent is a legal act. Moreover, since actions, depending on the extent to which they comply with the rules of law, are divided into lawful and unlawful, it is obvious that giving consent is, in its essence, a lawful action (Slipchenko S., 2013).

Such a statement indicates that persons who give (receive) consent to the usage of an object of intangible goods must be aware of the nature of their actions, at the time of their execution, and the goal to which they are directed (Slipchenko S., 2013). Giving consent to actions that allow a person to intervene in the sphere of their personal non-property rights or intangible goods (for example, by signing an informed consent, the patient confirms that they are familiar with the methods and consequences of treatment and allow this medical intervention).

A.O. Kodynets, defining the intangible nature of information as a non-property good that can have different forms of external expression, indicates that within the limits of civil turnover, there is no circulation of information (the provision or transfer of information from the right holder to the acquirer), but the circulation of rights to information. The transferability of information rights in the legal sense (circulation of information at the household level) is an important feature of this object of legal protection, which, on the one hand, allows to distinguish information as a type of intangible goods from non-transferable objects of civil rights (personal non-property goods, which ensure the physical existence of a person), and, on the other hand, encourages the formation of a complex of contractual structures that should ensure information exchange between participants of civil legal relations. Such contractual constructions cannot be based on the mechanisms of alienation of material goods, the specifics of turnover of which provide for the delivery (provision or transfer) of such material goods to the buyer (Kodinets A., 2016).

Information is distributed, as a rule, not by itself, but with the help of a material carrier, on this carrier, which makes it possible in some cases to calculate information samples through saw that it was contained (Kokhanovska O., 2006).

So, with regard to information about personal life, as noted by O.M. Dotsenko, it is objectified in the form of symbols, signs, waves, fixed on material (including electronic) media, as a result of which it can be separated from its creator or producer or have the property of exemplification and participate in

circulation. Thus, information about personal life is negative, because being embodied in a material form, information about personal life is objectified and can pass from one subject to another, that is, a person can familiarize themselves with it, perceive such information, or have access to it. The given circumstance indicates its capacity for negation (as opposed to personal life) and autonomous existence from the person to whom this information relates, both during life and retaining its useful properties after the death of the person to whom it relates (Dotsenko O., 2014).

The information transferred from one subject to another simultaneously belongs to two participants of the information relationship. This is the main difference in information from a thing (Iasechko S., 2011).

So, for example, as a result of concluding an agreement on the transfer of trade secrets, the previous owner must, so to speak, forget the information that they transferred under the agreement. It is actually about concluding a contract, which provides for the owner's refusal of information.

As noted by O.V. Kokhanovska, the possibility of entering into any contract carries a certain limitation in this case, and this limitation is explained by the specificity, and immaterial nature of any information, not just commercial secrets. A private case is only a confirmation of specificity, the particularity of information in civil law circulation. Therefore, when a commercial secret is transferred, its previous owner knows about its content, but their rights regarding this secret acquire certain restrictions, and in some cases, the restrictions practically lead to the absence of the right in question. A person owns what they have no right to use (Slipchenko S., 2008).

As shown earlier, information has always played an important role in a market economy. For its effective functioning, it is necessary that the participants in the transaction have complete and reliable information about the state of supply and demand, as well as other factors that influence the decision-making process to

commit a transaction. At the same time, this state of information saturation of the market is unattainable in real life; if any person had access to such information at any time and without burdens, then it would not have any market value and would not bring competitive advantages to its owner (Boyle J. Shamans at al., 1997). The collection, systematization, and updating of such information would not have commercial appeal. As a result, a paradox arises: on the one hand, the market needs as much open information as possible to function as efficiently as possible; on the other hand, the same market determines the transformation of information into a resource, which implies the need to limit access to it in order to ensure the possibility of making a profit from its introduction into circulation.

The legal response to this paradox was the variety of legal regimes of information, which ensure the possibility of its introduction into circulation (the regime of commercial secrets, copyright, special database rights, etc.). In addition, possessing commercial value, information can also be provided as part of the provision of services, such as informational services. Some types of information, despite the willingness of individual participants in the transaction to pay for access to it due to considerations of public order, are withdrawn from circulation due to the creation of a special legal regime (state and official secrets, other types of professional secrets, etc.).

Paying attention to the types of contracts proven by practice in the information field, they also ambiguously determine what is the subject of such contracts.

Furthermore, the position that the subject of transactions is rights and obligations has found its embodiment in the current civil legislation of Ukraine (Part 1 of Article 202 of the Civil Code of Ukraine). If the transaction is an action that is aimed at the emergence, change, or termination of rights and obligations, and the philosophical concept of the subject says that the subject is what the action is aimed at, in our case the subject of the transaction is rights and obligations. Thus, if the subject of the transaction is civil legal relations, and civil

legal relations are certain subjective rights and obligations (the content of legal relations) that arise, change, or terminate between certain subjects (subject composition of legal relations) in relation to certain objects (object of legal relations), then, in fact, these elements of the structure of legal relations in unity constitute the subject of the transaction. In turn, subjective law is a way of satisfying needs, and the means of their satisfaction are tangible and intangible goods, so we adhere to the point of view that the subject of transactions with information is rights and obligations regarding intangible goods.

4. CONCLUSIONS

The categorical opinion that information, as a personal non-property good, cannot be the subject of a transaction, loses its essence. Acts that regulate personal non-property relations may contain information as a subject and change or terminate rights to it. The conclusions drawn are not only important for law-enforcement and law-enforcement practice but also for the theory of civil law. In particular, they point to the need for further research into the possibility of concluding transactions with intangible benefits and the types of legal consequences of such transactions. The implementation of information rights in the conditions of the information society should provide for the ease of contractual procedures for ensuring the distribution and exchange of information, granting and receiving rights to information, and ensuring communication exchange in society.

Therefore, the issues of scientific analysis of the commission of transactions with intangible benefits are relevant from a theoretical and practical point of view, which determines the expediency of considering the relevant issues within the framework of a special study.

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