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Civil legal interpretation of securing the fulfillment of an obligation using the neustoika (penalty) method

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Annotation: In this article, the issues of normative legal regulation regulating the penalty method of ensuring the fulfillment of obligations, as well as the concept and forms of neustoika are analyzed from a theoretical and legal point of view.

Key words: obligation, debtor, creditor, legal neustoika, fine, penalty, agreement on penalty, business entities.

In the system of social relations, relations regulated by civil law occupy a large place. Especially these relations are often found in mutual economic transactions between people, in actions aimed at meeting daily needs [1].

In particular, according to Article 8 of the Civil Code of the Republic of Uzbekistan, civil rights and duties arise from the bases provided for in the legislation, as well as from the actions of citizens and legal entities that, although not provided for in the legislation, give rise to civil rights and duties according to the general principles and content of the civil legislation will come.

Civil rights and duties arise from the following:

- from contracts and other transactions stipulated by the law, as well as from contracts and other transactions, although not stipulated by the law, but not contrary to it;
- from the documents of state bodies or self-government bodies of citizens, which are provided by law as the basis for the creation of civil rights and duties;
- from the court's decision defining civil rights and duties;
- as a result of acquiring property on the grounds permitted by law;
- as a result of creation of works of science, literature, art, inventions and other intellectual activities;
- as a result of harming another person;
- as a result of unjust enrichment;
- as a result of other actions of citizens and legal entities;
- as a result of events that the legislation connects with the origin of civil-legal consequences.

The rights to property subject to state registration, unless otherwise provided by law, arise from the moment of registration.

The civil rights and duties arising in the cases specified in this norm, in turn, create certain obligations between the parties.

According to the civil law, obligations are also considered civil legal relations, based on which one person (debtor) performs a certain action in favor of another person (creditor), such as: handing over property, performing work, rendering services, paying money, etc., or refraining from a certain action. will be obliged to keep, and the creditor will have the right to demand the fulfillment of his obligations from the debtor.

Obligations arise from contract, tort, and other grounds specified in this Code [2].

By the way, most of the obligations arise from contracts, as a result of non-fulfilment or improper fulfillment of the terms of the contract.

In fact, non-fulfillment of the terms of the contract by one of the parties is considered a breach of the contract and creates civil liability. Contractual liability is generally based on the principle of full compensation for damage caused by breach of obligations [3].

Existence of guilt in violation of the terms of the contract. In legal science, there are views that guilt is manifested in the offender's mental attitude to his act and its consequences - he committed it voluntarily

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and consciously, he can control himself, he can see the consequences and whether he wants them to happen or not [4].

It is clear from this that non-fulfillment of the terms of the contract creates contractual liability and is the basis for the application of liability measures and requires the taking of measures to compensate for the damage in accordance with the contract and the law.

In this case, it is important to ensure that the debtor's obligations to the creditor are fulfilled in the manner and within the terms specified in the law and the contract, and the creditor has the right to take measures to ensure the fulfillment of obligations and to demand.

In particular, according to Article 259 of the Civil Code of the Republic of Uzbekistan, the fulfillment of the obligation can be ensured by means of lien, pledge, retention of the debtor's property, guaranty, guarantee, zakat and other methods provided for by law or contract.

The above listed are methods of ensuring the fulfillment of obligations and ensure the fulfillment of obligations.

It should be noted that securing the obligation by any of the listed methods creates a legal relationship of obligations between the creditor and the debtor (or another person who ensures the obligation of the debtor) [5].

It can be seen that the fulfillment of obligations is carried out in different ways. Methods of ensuring the fulfillment of obligations can be applied depending on the type of obligations and their legal status.

It is necessary to take into account the specific features of this or that method of securing the obligation and its application in specific situations. For example, neustoika and zakalat simultaneously represent measures of civil-legal responsibility and as such encourage the debtor to perform obligations in such a way at the risk of application of actual liability, because the collection of neustoika or penalty in a fixed amount does not require a serious effort from the creditor, e.g., when it is necessary to justify and prove their size in the case of damages [6].

In practice, neustoika is considered the most common method of securing obligations, and it is collected based on the amount that has arisen as a result of non-fulfillment of obligations.

The widespread use of neustoika for the purpose of securing contractual obligations is primarily explained by the fact that it is a convenient means of compensating the creditor's losses caused by the debtor's non-fulfillment or improper fulfillment of obligations [7].

According to Article 260 of the Civil Code of the Republic of Uzbekistan, the amount of money that the debtor must pay to the creditor in the event that the debtor does not fulfill or does not properly fulfill the obligation established by law or contract is considered a default.

The creditor is not obliged to prove the damage caused to him in case of demand for payment of neustoika.

With neustoika, only real demand is provided.

If the debtor is not responsible for the non-fulfillment or improper fulfillment of the obligation, the creditor has no right to demand payment of default.

It can be seen from this article that neustoika is considered a special way of securing an obligation, and it differs from recovery of damages caused by law or by contract.

Also, according to Article 34 of the Law of the Republic of Uzbekistan "On the Contractual-Legal Basis of the Activity of Business Entities", regardless of whether he has paid a neustoika (fine, fine), the party who violated the contractual obligations shall compensate the other party for the part of the damage he caused as a result of this damage.

According to the basis of origin, contractual (defined in the contract) and legal (defined by law) neustoika are divided [8].

Contractual default is determined by the contract on compensation for damages caused by non-fulfillment or improper fulfillment of the terms of the contract and is carried out in the manner specified therein.

Legal neustoika is enshrined in Article 263 of the Civil Code of the Republic of Uzbekistan, according to which, regardless of whether the payment of neustoika is stipulated in the agreement of the parties, the creditor has the right to demand the payment of neustoika (legal neustoika) established by law.

The amount of legal maintenance can be increased by agreement of the parties, unless prohibited by

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law.

It can be seen from this article that legal neustoika is characterized by the right to claim by the creditor, regardless of whether it is determined by the agreement of the parties.

In particular, the measures of responsibility for non-performance or improper performance of business contracts are defined by the Law of the Republic of Uzbekistan "On the Contractual-Legal Basis of the Activity of Business Entities" and include the following:

- Liability for late delivery of goods, incomplete delivery, non-performance of works or non-performance of services;
- Responsibility for the delivery of goods (works, services) of inappropriate quality, assortment and type;
- Responsibility for the delivery of non-Idol goods;
- Liability for delivery of goods without a brand mark, as well as without containers or packaging;
- Liability for non-use of letter of credit;
- Liability for delay in sending payment, goods transport documents;
- Liability for failure to select or reject goods;
- Failure to pay for goods (works, services) or on time; liability for non-payment.

The parties may specify a higher amount of legal notice in their agreement. Thus, the amount of legal neustoika, which is considered a strict standard, should be applied clearly, the amount of legal neustoika regulated by dispositive defined norms is used if the parties did not envisage a special amount of neustoika [9]. In particular, as we have listed above, specific amounts have been determined in the liability measures provided for in Articles 25-32 of the Law "On the Contractual-Legal Basis of the Activity of Business Entities".

Now, if we turn to the procedure for calculating the amount of money that makes up the neustoika, they can be different:

- in the form of interest from the amount of the contract or its unfulfilled part;
- in multiple proportion to the amount of non-fulfilment or improper fulfillment of obligations;
- in a fixed amount expressed in monetary units, etc.

However, regardless of the appearance of neustoika, the civil-legal contract cannot provide for one of the parties to be empowered to determine the amount of neustoika in each individual case of breach of obligations [10]. It can be seen from this that the amount of money constituting the default in contractual and legal liquidation cannot be determined separately for each case of non-fulfillment, in the form of interest on the unfulfilled part of the contract or obligation.

It should be noted that there are cases where the neustoika does not apply, and the creditor has no right to demand the payment of the neustoika if the debtor is not responsible for the non-fulfilment or improper performance of his obligations [11]. This provision is defined in Article 349 of the Civil Code, according to which, if it becomes impossible to fulfill the obligation due to a situation for which neither of the parties is responsible, it becomes void. Basharti, if the debtor cannot fulfill the obligation due to the creditor's culpable actions, the creditor has no right to demand the return of what he has performed under the obligation.

In civil law, there are two types of neustoika, fine and penalty, which are used in accordance with the law and the contract.

A fixed sum of money is considered a fine [12]. According to the second part of Article 261 of the Civil Code of the Republic of Uzbekistan, it is defined as follows, "a non-sustainable fine that is paid in cases where the debtor does not fulfill his obligations or does not fulfill them properly and, as a rule, is calculated in a fixed amount of money."

Also, in the third part of Article 261 of the Civil Code of the Republic of Uzbekistan, it is specified that the debtor pays when he delays the fulfillment of his obligations, and for each day of the missed period, the penalty is calculated as a percentage of the unfulfilled part of the obligation.

Penalties are applied in case of late performance of obligations and are calculated for each day of the missed period for a certain period of time or for the entire period of delay. It is usually determined as a percentage of the unpaid portion of the obligation [13].

There are also some aspects of the application of Neustoika, according to paragraph 3 of the decision

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of the Plenum of the Supreme Economic Court of the Republic of Uzbekistan dated 15.06.2007 No. 163 "On some issues of application of civil legislation on property liability for non-performance or improper performance of obligations" [14] if the contract specifically if payment of neustoika is provided for the violation of one obligation in the form of both a fine and a fine, the courts should take into account that, unless otherwise provided by law, the plaintiff has the right to demand the application of only one form of neustoika.

According to Article 262 of the Civil Code of the Republic of Uzbekistan, the agreement on neustoika must be made in writing. A neustoika agreement can be included as a term of the contract and can be created separately from the obligation secured by neustoika [15].

According to the above, if we conclude, neustoika is considered as one of the methods of fulfilling the obligation, it is the amount of money that the debtor must pay to the creditor in the event that the debtor does not fulfill the obligation or does not fulfill it properly.

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