Artículo de investigación

Evolution of basic doctrines and principles of contract law in Europe

ЭВОЛЮЦИЯ БАЗОВЫХ ДОКТРИН И ПРИНЦИПОВ ДОГОВОРНОГО ПРАВА В ЕВРОПЕ

Evolución de doctrinas básicas y principios del derecho contractual en Europa

Recibido: 29 de mayo del 2019 Aceptado: 23 de julio del 2019

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Abstract

The objective: This article is devoted to surveying the evolution of basic doctrines and principles of contract law in Europe. The researcher considers law principles as being the fundamental ideas that can be implemented both in lawmaking and law realization and focus on a gradual change in ideas about the principles of contract law in Europe and the results of the unification and harmonization of the current views introduced in EU Directives and the Principles of European contract law. The methodology: The author considers the provisions of Principles of European Contract Law, Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union; some EU Directives -1985 Council Directive 85/374/EEC on the liability for defective products, 1993 Council Directive 93/13/EEC on unfair terms in consumer contracts, etc. The obtained results: The author concludes among other things that the authors of the Principles used the methods of comparative law and tried to take into account those provisions of national private law systems that were deserved to be applied in the EU and this initiative is being developed within the Framework Project of General Provisions [of European Private Law].

Аннотация

Цель: Данная статья посвящена исследованию эволюции базовых доктрин и принципов договорного права в Европе. В качестве отправной точки работы выступает представление и принципах права, как основополагающих идеях, которыми руководствуются как при правотворчестве, так и при реализации права. Предметом авторского внимания становится поэтапное изменение представлений о принципах договорного права в Европе и результаты унификации и гармонизации сложившихся на текущий момент представлений в директивах ЕС и Принципах европейского договорного права. Методология: автор рассматривает положения Принципов европейского договорного права, Консолидированные версии Договора о Европейском Союзе и Договора о функционировании Европейского Союза; некоторые директивы ЕС - Директиву Совета 85/374/ЕЭС «Об ответственности за выпуск дефектной продукции» (1985 г.), Директиву Совета 93/13/ЕЭС «О несправедливых условиях в договорах с потребителями» (1993 г.) и т.д. Полученные результаты: Автор приходит к выводу, среди прочего, что авторы Принципов использовали методы сравнительного права и пытались учесть те положения национальных систем частного права, которые заслуживали применения в ЕС, и эта инициатива разрабатывается в рамках Рамочного проекта

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Keywords: Europe; European Union; principles of law; contract law; harmonization of law; unification of law; Principles of European contract law; EU Directives; consumer rights protection.

общих положений [европейского частного права].

Ключевые слова: Европа; Европейский Союз; принципы права; договорное право; гармонизация права; унификация права; Принципы европейского договорного права; директивы ЕС; защита прав потребителей.

Resumen

El objetivo: este artículo está dedicado a estudiar la evolución de las doctrinas y principios básicos del derecho contractual en Europa. El investigador considera los principios del derecho como las ideas fundamentales que pueden implementarse tanto en la legislación como en la realización del derecho, y se enfoca en un cambio gradual de ideas sobre los principios del derecho contractual en Europa y los resultados de la unificación y armonización de los puntos de vista actuales introducidos en Directivas de la UE y los principios del derecho contractual europeo. La metodología: el autor considera las disposiciones de los Principios del Derecho contractual europeo, las versiones consolidadas del Tratado de la Unión Europea y el Tratado de Funcionamiento de la Unión Europea; algunas Directivas de la UE: Directiva 85/374 / CEE del Consejo de 1985 sobre la responsabilidad por productos defectuosos, Directiva 93/13 / CEE del Consejo de 1993 sobre cláusulas abusivas en los contratos de consumo, etc. Los resultados obtenidos: el autor concluye, entre otras cosas, que los autores de Los Principios utilizaron los métodos del derecho comparado y trataron de tener en cuenta las disposiciones de los sistemas nacionales de derecho privado que merecían aplicarse en la UE y esta iniciativa se está desarrollando dentro del Proyecto Marco de Disposiciones Generales [del Derecho Privado Europeo].

Palabras clave: Europa; Unión Europea; principios de derecho; Derecho contractual; armonización de la ley; unificación de la ley; Principios del derecho contractual europeo; Directivas de la UE; protección de los derechos del consumidor.

Introduction

Law can be considered in terms of geographical and cultural ideological aspects. The results would be the same. Thus, both Western European and Eastern European legal cultures, when viewed from a retrospective point of view, are based on a single civilization model, and naturally reflect all its characteristic features. The main difference in the cultural and ideological aspects is that Rome was the source of the further development of civilization in the West, while Constantinople had an impact in the East. In this regard the principles of law are very important. In terms of the worldview, "principles of law" are understood as the fundamental ideas which can be implemented both in lawmaking and in law realization. In the methodological framework, the principle of law is, on the one hand, a general prescription of how an activity should be carried out, and on the other, a concentrated expression of the content of law as a result of a higher-level regulatory synthesis (Alekseev, 1999).

In the literature, there are different views on formation of the fundamental principles which became the basis of all principles of law in general and contract law in particular. But we cannot observe the unanimity about what principles can be regarded as the contract law ones (Vilkova, 2002). For example, M.G. Rosenberg (2006) identified ten principles that can be considered as both general principles and principles of contract law. These include:

- The first is conscientiousness and its necessity in international trade;
- The second is the presumption of a custom well-known in the trade, even if there is no reference to it in the agreement;
- The third is the coherence of the parties based on the existing practice of their relations;
- The fourth is the cooperation of the parties in the commitment's implementation;
- The fifth is the criterion of "reasonableness" in the case of

interpretation of statements or parties behavior;

The sixth, which is important in case of breach of obligations, presents the possibility of either real execution or equivalent compensation;

- The seventh is the differentiation between significant and insignificant of violations and granting the aggrieved party the right to refuse the contract in case of significant violations;
- The eighth is the right to suspend the execution or to determine a contract by the party, foreseeing the violation of obligations by the other party;
- The ninth is the right to claim damages, that could have been foreseen at the conclusion of the contract as a probable consequence of its violation;
- The tenth is the right of the aggrieved party to make a transaction instead of a failed one due to a breach of obligations by the other party with a price difference presented to it.

The authors used the above classification, as they consider it useful from a theoretical point of view (although Rosenberg developed it for other purposes). Modern principles of contract law are the following: consideration of the economic interests of the parties; justice; information disclosure; respect for agreements reached; consideration of adverse circumstances; adequate legal protection, taking into account the ratio of the actual performance of the obligation and damages compensation. These principles have specific peculiarities. They are not only fixed and developed in the norms of law and fill in the gaps in the legislation, but also directly applied, often contradicting the content of specific legal norms. Thus, there is a transition from absolute principles orientation with partial exceptions to paired dialectical principles. This allows judgments to be made based on opposing interests. For example, the principle of justice may abolish the principle of damages compensation. There is also a differentiation in contract relations regulation between the professional and non-professional parties of the contracts. Despite the difference in their views, scientists are unanimous in the fact that these treaty principles have evolved and are developing now. In this development, it is possible to distinguish several stages, focusing on how the contents change.

Thus, in this context, the purpose of the research is to study the stages and patterns of the formation and development of the principles of contract law in Europe.

The study covers the stages of development of those ideas that were spread before and after the formation of national states, as well as at the time of the formation of the European Union (hereinafter " EU"). It is known that law in Europe was influenced by Roman and canonical law; therefore, some principles of current contract law develop precisely within the framework of this right (Poldnikov, 2016).

The materials, methods, and procedures of the research are based on materialistic dialectics and perform data collecting through the analysis of the legal acts. The authors used a descriptive approach to the legal regulations and reflective practice.

Literature Review

Domestic and foreign scientists focus their attention on the analysis of European contract law principles. The authors address the following works:

- Clive E. European Initiatives (CFR) and Reform of Civil Law in New Member States: Differences between the Draft Common Frame of Reference and the Principles of European Contract Law. Juridica International XIV/2008. pp. 18-26. URL: http://www.juridicainternational.eu/index.php?id=12719 (Access date: 25.08.2016);
- Zweigert K. and Quetz X. Introduction to Comparative Jurisprudence in Private Law. V.2. Translated from German. Moscow. International relationships. 2000;
- Lando O. and Beale H. Principles of European Contract Law, Part I: Performance, Non-performance and Remedies. Ed. by Lando O. and Beale H. 1995;
- Anners E. The History of European Law. Translated from Swedish. European Institute. Moscow. Nauka. 1994. URL: http://www.studfiles.ru/preview/1713763/ (Access date: 03.12.2016), etc.

Methodology

The author in this work proceeds from objectively subjective matter of any external phenomena and processes and applies general

scientific and special research methods. We can identify the following ones: formal and dialectical logic combined with induction and deduction, hypotheses and analogies, analysis and synthesis, systemic analysis. Thus, the method of systemic analysis, alongside with induction and deduction, is used in the analysis of European jurisprudence and Principles of European Contract Law (PECL). It clarifies its basic statements and the correlation with other regulations. Methods of formal and dialectical logic are used for understanding the cohesion among different stages of the development of such principles. Materialistic view of the external processes and phenomena contributes to the understanding that the transformations in this sphere lead to a better understanding of the vectors of the of contract law development in the EU and other countries.

Results

At present, the principles of contract law in the EU are being influenced by the harmonization and unification of European contract law. The purpose of harmonization is to create a common legal regime in the EU internal market and to ensure at least a minimum level of protection of the consumers' interests. In this context the imperative restriction for actions and conditions of contracts and the presumption of responsibility for the products and services are applied. Such a development of legal norms contributes to the emergence of new principles of contract law, namely, justice and protection, and justification of expectations. The goal of this unification is to separate legal regulation from national law. That contributes to the balanced and harmonized development of the continental and general legal systems. Principles of European Contract Law meet the requirements of modern society, developing previously existing absolute, classical principles, either limiting them or formulating new ones. Thus, the replacement of the theory of party autonomy by the theory of expression of the will contributed to the restriction of the freedom-of-contract doctrine by imperative norms, honest business practice and good faith. As a result of the distinction between the concepts of "general" and "individually indefinite", a new criterion for the terms of the contract appeared, namely, "injustice" one. Therefore, the principle of justice was identified. The principle of justification and protection of expectations is also introduced in the Principles of European Contract Law and has become the norm for all contracts irrespective of the status of parties. In our opinion, this principle expresses the modern concept of human rights and freedoms protection, presenting a broader concept than the principle of binding contract. Identified trends in the development of the principles of European Contract Law may be useful for the development of Russian civil law.

Discussion

Before the formation of national states, contract law developed from commercial relations, forming strict principles of contract law, based on the principles of Roman law of obligations, guaranteeing the execution of contracts.

Roman law was widely recognized in Western Europe and during the 11-19 centuries merged with sources of European states (except England). Although England and Ireland have never experienced the reception of Roman law, its influence remains to this day in their commercial, maritime law, and in the practice of the court of justice.

When the European states had been formed, law became an expression of national sovereignty (Montesquieu, 1995); although contract law hardly provided conditions for normal interstate trade.

When the "conflict rules" by Bartolo de Sassoferrato were adopted, it was possible to overcome disagreements in contract law. Basic principles of the rules were the following:

- Local contract law (lex loci contractus) is applicable to the formal requirements (locus regit actum);
- Laws of the place of the trial (lex fori) should be determined by the local judiciary;
- Legal actions of the contract are determined by the law of the place of its conclusion (lex loci contractus);
- Decisions on the payment are made according to the laws of either the place of payment or the fulfillment of an obligation

These "rules" are still valid (Belikova, 2015; Belikova, n.d.).

In 20 century, the extension of economic relations outside states was followed by changes in the economic and legal matter of contractual relations. European countries united into the economic communities, and later into the European Union (Belikova, 2005).

The existing diversity of legal systems within the EU required new means of legal regulation and certain general principles of contract law, based on the experience of international conventions, UNIDROIT Principles of International Commercial Contracts and the Principles of European Contract Law (Belikova, 2006).

Nowadays, however, the contract law of different countries varies. Freedom-of-contract doctrine remains common to all national legal systems, although it is insufficient to overcome existing discrepancies in the contract law of different states.

To solve the situation, it is necessary to develop unified legal structures of contract law with specific content according to their category (subject composition).

The practice of the EU shows that there are two approaches to the development of the contract law, namely, harmonization and unification. Harmonization causes changes in the national law in the EU Member State according to the recommendations of the Directives. This allows create a uniform legislative regulation of the internal market. The unification provides the development of the "Principles of European Contract Law", covering contracts between merchants, and between consumers and merchants (pp. 1-101(1)).

In the course of harmonization, contract law is purposefully converted into EU internal law. Cross-border obstacles for consumers (their status prevails in the internal market) are eliminated by imperative directives related to contract law. Their goal is to protect consumers with the help of a number of principles.

The principle of "providing information", its changes in an understandable, clear and written form is enshrined in most European directives. They determine the content of specific agreements, developing the requirements for the time of provision and content of information depending on the type of activity. As a result, information becomes a mandatory part of the contract for the providers of particular services.
As far as the language is concerned, the EU has a guarantee of freedom of language, so information should be presented to the consumers in the languages of the Community (CCC & EP, 1993).

The principle of justification and protection of expectations is an innovation. As it is restricted in the Directives, it is based on the presumption of responsibility for the quality of the product or service and the consumer's right to a free choice upon to the termination of the contract. The Directives determine terms and rules for damages compensation and fine sanctions, depending on the subject and the reasons for this termination.

The Liability of Defective Products Directive of 1985 sets the criteria for the product defect evaluation (Art. 6) and establishes the presumption of liability for damage with a defective product, regardless whether there is negligence on the part of the manufacturer or supplier. This corresponds to the approach of common law countries. Depending on the situation, the Directive determines joint and several liability of jointly acting persons responsible for damage.

The Consumer Sales and Guarantees Directive (1999) confirms the seller's obligation to deliver the goods in accordance with the contract and its liability in case of non-compliance.

The regulations on compensation in case of non-provision of services or their provision in a manner that contradicts to the contract are covered in the following Directives: on independent trading agents (Art. 17), on cross border credit, and on integrated tours (Art. 4.6 and 7). Special compensation in case of illegal actions is provided by The Data Protection Directive (Article 23.1). The Late Payment Directive requires debtors to pay interest and the reasonable recovery costs to the creditor if they do not pay for goods or services on time (Art.3). Moreover, this Directive provides interest as a fine in the case when the payment date is fixed, and also when such a date is not fixed.

In cases of contract termination by the consumer or supplier due to a reason other than the fault of the consumer, some Directives (on distance contracts (Art. 7.2) and on package travel (Art. 4.6)) give the consumer the right to demand the refund for all the payments according to the contract. Some Directives give the right to refuse a contract without penalty and without giving reasons within 7 days (on distance contracts - Art. 6; on contracts concluded outside the place of business - Art. 5).

The provisions of the Directives are implemented into national law and the Directives are not entitled to make direct horizontal regulation. As a result, the EU Contract Law is developing depending on the need, fragmentarily. This is explained by the fact that contract law does not

exist as a set of laws per se, but is aimed at achieving the goals, set in the Treaty on the EU of 1992 (2012), including the unified legal regulation of trade in the internal market.

It is the second direction of the EU contract law development, namely, unification, which aims to eliminate such fragmentation and is based on The Resolution of the European Parliament of May 26, 1989. In its preamble it is declared that contract law is the subject of unification, being the most important private law institution for the common market development.

The unification of contract law in the form of the general Principles of European contract law (PECL, n.d.) (hereinafter - the Principles) is the most appropriate form of the cooperative approach to overcoming of existing contradictions. The Principles were not based on a particular legal system, but the national systems of all EU member states were considered. In addition, the international conventions and the UNIDROIT Principles of International Commercial Contracts were developed and applied, as they provided the way to unify the principles of the general and continental systems of law. Structurally, they represent a set of provisions of the particular parts of the contract law and a number of the issues of the general part of it, namely: conclusion, validity, interpretation of the content, execution and prevention of obligation default, conditions and the impact of illegality. In accordance with Article 1:101 (1), the rules of law established by the Principles are common to any contractual relationship, while the Article 1:104 (2) enshrines the principle of the custom presumption.

Modern interpretation of freedom-of-contract doctrine contributes to the fact that the Principles consolidated the provision according to which the parties are entitled to enter into a contract and to determine its content at their discretion. They also restricted such freedom with good faith and fair business practice, as well as peremptory norms provided in the Principles (Art. 1: 102).

The specificity of this rule is determined by Art. 2: 101 (1) as the freedom of form principle. This means that neither the legal basis of the transaction nor consideration is necessary for the contract to be considered as valid. In other words, the regulations develop the rule of the continental Europe countries. The principle of freedom-of-contract is restricted by the requirement of a mandatory written form of the contract terms changes (Art. 2: 106 (1)).

Article 1:201 of the Principles introduces the principle of good faith and fair business. This will provide the possibility to overcome multisystem law disagreements related to the necessity of information disclosure that is essential for the counterparty for its entering into an agreement. In this case, the concept of "good faith and fair business" depends on the quality of the presented information, provides protection for misleading (Article 4: 106) and fraud (Article 4: 107), and establishes the responsibility presumption for incorrect information, even if it was not the cause of a significant error (Art. 4:106). It should be noted that the principle of good faith (bona fides) was widely applied in Roman law, and is presented in French and Italian legal system. German law refers to the concept of "good conscience" (Treu und Glauben); and states with the general system of law use the term "good faith" (Zemskova, 2009). In relation to the agreement conclusion procedure, the Principles consolidate the provision on the free will theory instead of the theory of autonomy of will, since the statements of the parties reasonably understood by each other are followed by their intention to be legally related. These provisions contain the issues which the parties want to express to each other before concluding an agreement.

The intention to conclude an agreement and the content of the essential conditions are basic components of the offer (Article 2:201), while no other requirements are stipulated.

According to Article 2:202 of the Principles, an offer may be withdrawn by a party until accepted by the other party. The only exception to this general rule pertains to offers indicating a period of time for acceptance, after which offer withdrawal is no longer legitimate. The rules of common law countries do not recognize fixed time period as the reason that would render the offer irrevocable, although the rules of continental law do. Thus, the Principles provide the conditions that would permit offer withdrawal under the continental law.

Moreover, under Article 2:208 of the Principles, a response to an offer containing or implying new (additional or changing) conditions is recognized as a rejection of the initial offer, due to which a new offer can be made only if it contains significant changes to the conditions of the initial offer. This stipulation expresses the combined approach of the continental and common legal systems.

According to Article 2:105 (1), a takeover provision (the fact that all conditions are provided and agreed upon by the parties) can be accepted only if it has been individually determined. Thus, the principle of justice disclosed by the term "injustice" is presented in Unfair Contract Terms Directive 1993. The main criterion for the recognition of an unfair contract is the lack of individual clearness of its terms (Art. 3 (1). If the consumer could not influence the content of the contract, the terms of which were developed in advance in a standard form, the conditions of the latter should always be considered as individually indefinite (Art. 3(2)). The requirements of this Directive are applied for non-commercial (Art. 2 (b)) consumption of goods (services). The Directive comprises a list of 17 conditions (Art. 3 (3), 4 (1), 4 (2), Appendix) that are qualified as unfair, although it is not explicit, but approximate, due to significant differences in the laws of the EU countries (Zweigert and Quetz, 2000). Article 3 (1) of the Directive considers the individually indefinite condition of the contract to be unfair and therefore not binding on the consumer (Art. 6(1)). Moreover, Article 2:104 clearly indicates that it is insufficient to simply mention the takeover provision in the contract.

The Principles identify the "individually indefinite" and "general" terms of an agreement. The latter are presented as provisions, drawn up in advance for an indefinite number of agreements of any kind, as stipulated by Article 2:209 (3).

Imperative provisions of Article 4:110, which reflect the unfair terms of the contract, cannot be omitted when concluding the contract; however, the party that is perceived as weaker should take the initiative to change or eliminate this condition. According to Article 4:110, neither the court nor the arbiter are allowed to assess the fairness of the subject of the contract and its price. Nonetheless, in order to protect the weaker side, rules on procedural injustice can be applied, namely: on error, on misrepresentation, on fraud, and on extremely unfair advantage (Art. 4:103, 4:106, 4:107, and 4:109, respectively).

The Principles specify when the cases and the amount of the information on the quality and use of goods or services, offered by professional suppliers (other persons in the business chain [Art 13. pp. 792−798]), are recognized as a contractual obligation (Art. 6:101 (2−3)).

Thus, the Principles combine "general" and "special" legal norms, using a sequence of the condition definitions, such as "general" − "individually indefinite" − "unfair." In addition, they introduce quality criteria that characterize both information about the product or service, and the product or service itself.

The results of adopting such approach are summarized below:

- Establishment of the unfairness presumption of individually indefinite conditions
- Providing a general list of conditions that are qualified as unfair
- Prescribing requirements for information about the product (volume, quality, and terms of provision)

According to the provisions of the Principles, contract interpretation is based on the terms of the contract, as well as the statements and intentions of the parties. If any of these elements cannot be identified, a combination of the continental and common law approaches to contract interpretation should be used. As a result, the contracts are interpreted according to the meaning given to their content by a reasonable person in the particular circumstances.

The obligation of the contract for the parties is a basic principle that is strictly accepted in all countries. This principle is enshrined not only as the responsibility of all parties to fulfill their respective obligations even if this becomes more burdensome (Art. 6:111), but also as an opportunity to transfer the requirement to fulfill the contractual obligation to a third party (Art. 6:110) and to restrict this right by the creditor (Art. 9:101 (2)).

A party can repudiate the contract only if the contract itself or one of its conditions would create an excessive advantage for one party due to the insufficient negotiation experience of the other party (Art. 4:109).

The possibility to repudiate the contract if it contains significantly unfair or individually indefinite conditions that contradict the principles of good faith and fair business, resulting in inequality of the rights and obligations of the parties, is a new addition to the Principles. In other words, the principle of justice provided by the Directive is extended to all contracts without differentiating the status of the parties.

In case of violation of obligations (specific performance, according to the common law terminology), the Principles give precedence to the continental approach and establish the principle of the actual performance of the obligation. Consequently, the party that has suffered damages (including cases of improper performance) has the right to demand the fulfillment of any obligation, except monetary payments in kind (Art. 9:102 (1)). Compensation for non-performance in monetary form can be established only if payments for performance has not been received or has been duly refused (Art. 9: 307), or when a party provided property or another performance but did not receive payment from the other party (Art. 9:308 and 9:309).

According to the concept of contract liability due to non-fulfillment by a party of any of the obligations of the contract, which is adopted in common law countries, the Principles use the term non-performance to define the concept of the contract breach. The difference between the concepts of "non-execution" and "violation" in common law countries results in different legal consequences. The violation is regarded as non-execution and gives the party the right to demand damage compensation. Non-execution allows the use of other means of legal protection, namely: termination of the contract, suspension of execution, etc., but not the refund. According to Article 9:301 (1), a party has the right to terminate the contract in case of a significant non-execution of the contract obligation by the other party.

The concept of "significant non-execution" is enshrined in Article 8:103 and substantively corresponds to Article 25 of the Vienna Convention of 1980, and Article 10 of the Hague Convention of 1964. Non-execution is considered to be significant if:

a) The essence of the contract requires strict compliance with its terms, as in case of any deviation from the agreed conditions, the essence of the contract is recognized to be changed at a basic level, which leads to the release of the party from obligations;

b) The result of the non-execution for the aggrieved party is that it is largely deprived of legitimate expectations under the contract, unless the other party did not expect and reasonably did not foresee the possibility of such a damage to the aggrieved party;

c) Non-execution is clearly intentional and allows the aggrieved party to reasonably doubt about the performance of the contract by the other party in the future.

The Principles provide the differentiation of violations into significant and non-significant non-execution, that allows the aggrieved party to use any means of protection in the case of significant violations, including the repudiation of contract (Article 4: 119). The legitimate reason for the aggrieved party to refuse the contract may be its mistake (error), even if it has other reasons allowing use other methods of protection against non-execution.

In case of a contract performance delay, the aggrieved party can terminate the contract only after it notifies the other party about reasonable additional term for the execution and if the other party fails to fulfill the obligations required (Art. 8: 106(3)).

The Principles follow the general approach of national legal systems in the framework of determination of a reasonable period and consider the following:

- If short period of time was initially accepted for execution, the same additional period may be adopted;
- If the aggrieved party insists on a quick execution;
- Type of execution (complicated or simple) requires accordingly more or less time;
- The delay can be caused by a gross negligence of the party or force majeure;
- Possibility for the aggrieved party to send a notice of automatic termination of the contract if it fails to fulfill the obligation within the established period.

The presumption of responsibility of the party that failed to fulfill the contract is uniform in common law countries, and the possibility to demand a compensation by the counterparty is limited only by the damage that the party has foreseen or could foresee, unless the non-performance was committed intentionally or was caused by a gross negligence (Article 9: 503).

The liability release as a force majeure result (Article 8:108) is limited to the period of time during which this obstacle exists (Article 8: 108 (2)). Its permanent character terminates the contract automatically (Article 9: 303 (4)).

The liability release is possible with a radical change of circumstances (Article 6: 111). In this case, the parties should start negotiations on the adaptation of the contract to new conditions or its termination.

Article 6:111 is not compulsory, therefore, at the conclusion of the contract the parties have the right to determine the risk sharing in such situations. As we can see, the approaches of the continental and general legislative systems coincide in these spheres.

Conclusions

The authors of the Principles used the methods of comparative law and tried to take into account those provisions of national private law systems that were deserved to be applied in the EU. Ole Lando considers the provisions of the Principles regarding the powers of agents as the best example of this approach. These provisions were based on the German concept of Vollmacht (Lando and Beale, 1995).

Another similar initiative is the Framework Project of General Provisions [of European Private Law], which is a revised and updated version of the Principles of European Contract Law (PECL) with the permission of the developers (Ole Lando Commission) (Clive, 2008). Thus, the entire text of the Principles, with the exception of seven articles, is incorporated into the books 1-3 of the Project. The authors excluded the following articles:

- Articles 1-103 (the non-binding nature of the Principles, their characterization as soft law);
- 1-104 (peremptory norms);
- 1-107 (the scope of the Principles is to extend them to agreements, unilateral promises and behavior that demonstrate the intention of the parties (according to the Project (Appendix 1). A contract is an agreement that serves as the basis or expresses the intention to serve as the basis of legal relations that have binding force or other legal consequences).

The other four excluded articles relate to the powers of agents and indirect representation. New materials are concentrated in Books 4-10.

Thus, it can be stated that today a principle of freedom of contract has significantly changed from complete freedom declared in the 18th-19th centuries to the introduction of restrictions on the freedom of commercial and consumer contracts. These restrictions were caused by the concepts, accepted by society, declaring the state necessity to maintain competitive market relations in the economy (Belikova et al., 2017) and protect the weak side of any of the contracts. These concepts were based on the fact that any contract should be executed with the most useful result for the parties. This means that the result should be economically effective for both parties and perform a positive social function.

Acknowledgment

The publication has been prepared with the support of the RUDN 5-100 project.

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