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Abstract

International commercial arbitration is one of the most important institutions of modern law, an important form of resolving disputes arising in foreign economic activity. The history of international commercial arbitration has significantly affected its current state and therefore needs detailed consideration. To study this topic, it is necessary to clearly distinguish between the types of arbitration that existed at one time or another.

The article is devoted to the stages of development of international commercial arbitration and its application to resolve international commercial disputes. The article examines the provisions of legal acts that for the first time define the concept and legal status of international commercial arbitration.

Keywords: *arbitrator, international commercial arbitration, arbitration, state court.*

UDC 347.45/.47
DOI: 10.31733/2078-3566-2020-5-133-138

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FEATURES OF THE IMPLEMENTATION OF A PUBLIC OFFER AGREEMENT IN E-COMMERCE IN UKRAINIAN, POLISH AND RUSSIAN LAW

Олександр Косиченко. Ілля Клиницький. ОСОБЛИВОСТІ РЕАЛІЗАЦІЇ ДОГОВОРУ ПУБЛІЧНОЇ ОФЕРТИ В E-COMMERCE В УКРАЇНСЬКОМУ, ПОЛЬСЬКОМУ І РОСІЙСЬКОМУ ПРАВІ. Всесвітня мережа, розвиваючись стрімкими темпами, фактично відразу стала засобом для встановлення зв'язків між людьми, і в таких відносинах далеко не останнє місце займають послуги й товари. Необхідно відзначити, що з 90-х років XX століття, на тлі росту популярності Інтернет-технологій, суттєво розвивається напрямок економічних відносин в електронному середовищі - електронна комерція. Установлення комерційних відносин у мережі має ряд значимих переваг: швидкість - ухвалення рішення про угоду може займати секунди, а його акцептація (офіційне виявлення згоди) дуже часто обумовлюється виконанням декількох нескладних дій, що

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не вимагають істотних матеріальних витрат і займають дуже незначний проміжок часу; доступність - нині, виходячи з даних 2019 року опублікованих американською компанією Hootsuite, світовою мережею користуються близько 5 мільярдів 111 мільйонів людей. Це визначає великий ринок, який і визначає високу швидкість росту електронної комерції у світі (починаючи з 2016 року природній приріст користувачів всесвітньої павутини протягом наступних трьох років склав ~ 2 мільярди) [1]; опосередкована анонімність - умови здійснення угоди можуть обмежуватися тільки проведенням грошової транзакції або використання анонімних і умовне анонімних засобів розрахунку (криптовалюта, електронні грошові системи). Враховуючи певну специфіку надання послуг і реалізації товарів у мережі Інтернет, договір публічної оферти є найпоширенішим і наближеним до електронного формату способом закріплення угоди. Однак в Україні, у Російській Федерації й Республіці Польща, як і в інших країнах, використання цього виду правових інструментів має ряд проблем, пов'язаних із правовим регулюванням і процедурою укладення угоди. У даній роботі вивчені основні аспекти правової реалізації договорів публічної оферти в зазначені вище країнах. Таким чином, предметом дослідження виступає договір публічної оферти, як правове явище. Ціль роботи полягає у визначенні основних проблем укладання договору публічної оферти в електронному режимі, і в знаходженні оптимальних рішень у контексті заявленої проблематики, ґрунтуючись на законодавчій базі та практиці обраних країн.

Ключові слова: *Інтернет, договір публічної оферти, правове регулювання, електронна комерція, електронні грошові системи.*

Relevance of the study. The Internet has had a significant impact on the global community since its inception. The WWW, developing at a rapid pace, actually immediately became a means for establishing connections between people, and in such relations, services and goods are far from the last place. It should be noted that since the 90-s of the twentieth century, against the background of the growing popularity of Internet technologies, the direction of economic relations in the electronic environment - e-commerce - has been significantly developing. Establishing commercial relationships in the network has a number of significant advantages:

- speed - making a decision to conclude a transaction can take seconds, and its acceptance is very often due to the implementation of several simple actions that do not require significant material costs and those (i.e. actions) take a very short period of time;
- accessibility - now, based on data published in 2019 by the American company Hootsuite, the world Wide web is used by about 5 billion 111 million people, which is a significant market, which causes a significant growth dynamics of Internet commerce in the world (since 2016, the natural increase in users of the World Wide web over the next three years was ~2 billion) [1];
- anonymity - the terms of the transaction may be limited only to the conduct of a monetary transaction or the use of anonymous and conditionally anonymous means of payment (cryptocurrency, electronic money systems).

Given the specific nature of the provision of services and the sale of goods on the Internet, the public offer agreement is the most common and close to the electronic format method of securing a transaction. However, in Ukraine, the Russian Federation and the Republic of Poland, as in other countries, the use of this type of legal instruments has a number of problems related to legal regulation and the procedure for concluding an agreement.

It should be emphasized that this paper will study the main aspects of the legal implementation of public offer contracts in the above-mentioned countries. Thus, the subject of the study is the contract of a public offer, as a legal phenomenon.

Given the specifics of the provision of services and sales of goods on the Internet, the contract of public offering is the most common and close to the electronic format of the agreement. However, in Ukraine, the Russian Federation and the Republic of Poland, as in other countries, the use of this type of legal instruments has a number of problems related to the legal regulation and the procedure for concluding an agreement. This paper examines the main aspects of the legal implementation of public offer agreements in the above countries. Thus, the subject of the study is the contract of public offering as a legal phenomenon.

Recent publications review. It should be noted that the problem of concluding electronic contracts has been studied by many well-known scientists, among them: S.N. Bratus, F. Nikishin, I.P. Petrovsky, M.K.Savinov, E.B. Sokolova, K.V. Spodar. A public offer agreement is one of the types of agreements, which consists in the provision of services and the sale of goods under the terms of an offer directed to an indefinite circle of persons. The specificity of this type of transactions consists, first of all, in the peculiarities of legal regulation.

The article's objective is to determine the main problems of concluding a public offer contract in electronic mode, and to find optimal solutions in the context of the stated issues, based on the legal framework and practice of selected countries.

Discussion. *Analysis of the Ukrainian legal framework***.** Ukrainian legislation does not contain separate provisions for the conclusion of such contracts, but based on the sign of publicity (one party always assumes the obligation to provide a certain service or product to everyone who applies to it), this type of transaction is generally regulated by Articles 633 and 641 of the Civil Code of Ukraine. Thus, in accordance with Article 633 of the Civil Code of Ukraine, the contract of a public offer is public, and the offer to conclude an agreement must contain the essential terms of the contract and express the intention of the person who made it to fulfill its own obligation-Article 641 of the Civil Code of Ukraine [2]. Taking into account the specifics of relations based on information and telecommunication systems, public contracts in the field of Internet commerce are characterized by the electronic form of contract conclusion, which in part two of Article 639 of the Civil Code of Ukraine is equated with a written form.

For a public agreement in electronic commerce, there is also the possibility of regulation by special normative legal acts, in particular the Law of Ukraine "On Electronic Commerce". Although the field of e-commerce is relatively regulated, there are significant restrictions for contractual relations in this case. So, according to Part 2 of Article 1 of the Law of Ukraine "On Electronic Commerce", transactions requiring state registration and subject to notarization cannot belong to the sphere of Internet commerce in information and telecommunication systems [3, p. 410].

According to A.F. Nikishin, such complications significantly "hinder" the development of the Ukrainian real estate market, however, the specificity of notarization and state registration in this matter is due to the increased degree of security that a public agreement cannot provide. At the same time, the legislation of Ukraine does not contain provisions regarding the simplification of state registration for contracts that are concluded within the Internet [4, p. 12]. They also highlight the following problematic aspects in the implementation of contractual relations under a public offer agreement:

- the complexity of personal identification;
- specific requirements for acceptance;
- lack of legal regulation of cryptocurrencies.

In particular, this opinion is contained in the works of scientists I.P. Petrovsky and E.B. Sokolov. Thus, relations on the Internet are ephemeral in nature, which, according to a public contract, may not have significant content, however, the technical specifics of making electronic payments very often requires the actual provision of certain payment data by the buyer (customer) to the seller (performer), these may be:

- personal data (name, surname, patronymic);
- number of a bank account or other instrument for making payments.

Analysis of the Polish legal framework. Based on Polish law, the term "Public Offer Agreement" may be mistakenly adopted as a "Public Offer" (english - "public offer", "IPO"). This term, accordingly, refers to the terminology and tools of financial markets, rather than to the field of e-commerce in the context discussed above. The closest in functional purpose should be considered "Regulamin" ("Procedure for application"). Accordingly, this kind of legal document is more intended to establish the rules for the use of one or another Internet resource. The legal basis for drawing up such an act must be considered the relevant law on the provision of services by electronic means - Ustawa z dnia 18 lipca 2002 r. o świadczeniu usług drogą elektroniczną (Dz.U. 2002 nr 144 poz. 1204) [13].

In accordance with the definition contained in the law on the provision of electronic services, a service provider is a natural person, legal entity or organizational unit without legal personality, which, through side, commercial or professional activities, provides services by electronic means. The provision of electronic services means the performance of a service provided without the simultaneous presence of the parties (at a distance), by transmitting data at the individual request of the recipient, sent and received using electronic processing equipment, including digital compression and data storage, which is fully broadcast, received or transmitted through telecommunications network. This definition shows that every person who provides any services or goods, who operates an online store, must develop and place an application procedure (polish - "Regulamin") on their website.

The Polish legislator went further than the Ukrainian one, pointing directly to the elements that should be in the order of application. Based on Art. 8 paragraph 3 of the Law on the

provision of electronic services must specify:

1) types and scope of services provided in electronic form;

2) conditions for the provision of electronic services, including:

2.1) technical requirements necessary for interaction with the system, used by the service provider;

2.2) prohibition on receiving illegal content by the recipient;

3) conditions for the conclusion and termination of contracts for the provision of electronic services;

4) the procedure for drawing up complaints.

Analysis of the Russian legal framework. In the context of Russian law, this category of contracts is provided for at the level of the constituent entities of the Federation, which gives rise to the obligation to equally interpret and apply public offer contracts on the territory of all constituent entities of the Russian Federation without exception. According to the Federal Law of 26.01.1996 (as amended on 18.03.2019, as amended on 28.04.2020, hereinafter referred to as the Civil Code of the Russian Federation), Article 494 provides that the offer of goods in its advertising, catalogs and descriptions of goods, addressed to an indefinite circle of persons is recognized as a public offer (paragraph 2 of Article 437) if it contains all the essential conditions of the retail sale and purchase agreement. In addition, part two of this article establishes that displaying goods at the point of sale (on counters, in showcases, etc.), demonstrating their samples or providing information about the goods being sold (descriptions, catalogs, photographs of goods, etc.) at the point of sale or on the Internet, it is recognized as a public offer, regardless of whether the price and other material terms of the retail sale contract are indicated, unless the seller has clearly determined that the relevant goods are not intended for sale.

Based on the practice of drawing up public offer contracts, it should be emphasized that there is no specific structure or form in both Russian and Ukrainian law. In this case, a widespread principle in contract law is triggered - freedom of contract (proclaimed in both the Civil Code of Ukraine and the Civil Code of the Russian Federation). As additional provisions, the public offer agreement most often includes:

1) obligations and rights given to the seller;

2) the obligations and rights of the client;

3) responsibility of the parties;

4) privacy policy;

5) other sections reflecting the specifics of the organization's activities.

Analyzing the public offer agreements of Ukrainian and Russian Internet resources, it is also necessary to highlight an additional practical feature, which is that the name of the public offer agreement may not always exactly correspond to the name established in the above-mentioned codes of civil law. For example, the agreement of the public offer of the project https://olx.ua is presented as “User Agreement for olx.ua services”, thereby embracing with its meaning not only the main domain of the project, but also all subdomains on which information is posted and it is possible to order a service or product. It should be noted that not always the conditions of security and protection of personal data are placed in the main contract. The most common practice is to create a separate Privacy Policy agreement. This is also the case in the contract of the above service [8].

Based on the analysis of public offer agreements of such Russian and Ukrainian organizations as: LLC Emarket Ukraine, LLC Ovoks Biay, it should be noted that the civil legal nature and dispositiveness of such documents contributes to their formation based on the economic interests of organizations (current commercial offers, and also the way of rendering services) [9]. There are, of course, negative phenomena. Mainly, this characteristic is manifested in the structure of such agreements. In some cases, there is a disregard for the legal style, as well as inalienable elements of contracts, which contributes to the ambiguity of the conditions formulated by the owner of the Internet resource; the data of the seller-party are also not formulated (for example, see the terms of use of the Rozetka website) [10].

The problem of acceptance of conditions by the parties to the public offer. Considering the process of accepting a public offer agreement using user interfaces, one cannot ignore the specifics of providing a person's consent regarding the terms of the agreement. So, in this matter, the element of exclusive consent is quite important. Expression of such before performing a certain paid service for a client or selling a product using an information and telecommunication system must be considered mandatory, because very often the owners of Internet resources place corresponding contracts on their basis. In this case, the buyer, when executing a transac-

tion, does not have the opportunity to confirm or refuse the terms of the agreement. A situation is created in which the public offer agreement cannot be considered valid, because there is no proper consent of the acceptance - the specified problem has a practical nature, which is due to the incorrect construction of Web interfaces from a legal point of view, as noted in the work of M.K. Savinov [6, p. 4].

Based on the above researched Ukrainian and Russian Internet resources, it is not always clear what should be considered the acceptance of the agreement by the parties. The most widespread international practice of asking for consent before providing a service (selling a product) has not become widespread today when performing such actions. This cannot be said about the processes directly related to the processing of personal data (for example, registration). In this case, the requirement for consent by performing a certain action on the part of the client should be more frequent. Nevertheless, it should be emphasized the importance of adding the above-described opportunity for clients, as evidenced by the recommendations of Roskomnador for the Russian Federation [11]. The Ukrainian jurisprudence goes a little further: the court recognized the moment of acceptance of the delivered goods by the client by the conclusion of the purchase and sale agreement, while the terms of the agreement were the provisions of the public offer, confirmed by the client before the purchase [12]. A similar legal position takes place in Polish practice: based on the Civil Code of the Republic of Poland, a sales contract can be considered concluded after the exchange of the will of the parties (Polish: "wymiana oświadczeniami woli stron"). The procedure for use ("regulamin"), based on Article 661 of the Civil Code of the Republic of Poland, is mandatory on the basis of the obligation to inform the buyer about the procedure for concluding a purchase and sale agreement, which also confirms to a certain extent the civil nature of this kind of documents, as well as in Russian, Ukrainian law. An important issue is also the method of making payments, because among the means of making payments, cryptocurrencies are also distinguished: electronic currency instruments that allow anonymous payments and their units have a certain market value. These include the following: Bitcoin, Litecoin, Namecoin and others [7, p. 22].

Conclusions. The modern legislation of the three states under consideration, having a similar legal approach in relation to public offer contracts (in the Republic of Poland, the preparation of such is a legislative obligation on the part of the seller), does not even provide for a terminological base for the above means of calculation. This leads to significant difficulties in the legal regulation of contracts that provide for just such a means of payment for goods or services. This is also a problem of modern legislation, which deprives of all rights and guarantees of the offeror and acceptor in the contractual obligation. Thus, the problems of concluding public offer contracts are both issues related to legislation and practical mistakes on the part of the parties to such a transaction (most often on the part of the offeror). Improving legislation in this case cannot be considered the only mechanism for solving the indicated difficulties of concluding the above type of transactions, because increasing legal literacy among business representatives will also significantly improve the use of this type of legal instruments when making an economic exchange of purchase and sale.

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Submitted 17.12.2020

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Abstract

Given the specifics of the provision of services and sales of goods on the Internet, the contract of public offer is the most common and close to the electronic format of the agreement. However, in Ukraine, the Russian Federation and the Republic of Poland, as in other countries, the use of this type of legal instruments has a number of problems related to the legal regulation and the procedure for concluding an agreement. This paper examines the main aspects of the legal implementation of public offer agreements in the above countries. Thus, the subject of the study is the contract of public offering as a legal phenomenon. The purpose of the work is to determine the main problems of concluding a public offer contract in electronic mode, and to find optimal solutions in the context of the stated issues, based on the legislation and practice of selected countries.

Keywords: *Internet, agreement of public offer, legal regulation, electronic commerce, electronic cost systems.*