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PRE-CONTRACTUAL LIABILITY OR "CULPA IN CONTRAHENDO" AS A PERSPECTIVE FOR UKRAINE

The importance of legal regulation of pre-contractual liability, so called "culpa in contrahendo", both in Austria and other European countries has long ceased to be a subject of scientific debate. However, there are still many questions when it comes to the implementation of this institution in the legislation of other states.

Today Ukrainian civil law does not contain clear legal regulation of the institute of pre-contractual liability, unlike most EU countries, which is why the topic is relevant and requires further research in the context of comparative legal analysis.

Unfortunately, Ukrainian civil law does not contain special rules of such content, but we can draw the same conclusion gathering all the general rules of the Civil Code of Ukraine into one. Therefore, I think it would be appropriate to formulate similar rule in the Civil Code. In particular, I propose to put it in Book 5 "The Right of Obligation", Section 2 "General Provisions on Agreement" Art. 627 "Freedom of Agreement", where item. 1 provides that pursuant to Article 6 of this Code, the parties shall be free to conclude an agreement, to select a counter agent and to determine the provisions of the agreement taking into consideration the requirements of this Code, other acts of civil legislation, customs of business turnover, requirements of rationality and justice. It seems logical to go further in this direction and to supplement this article with another part in order to more clearly delineate the boundaries of the principle of freedom of agreement in civil matters. In particular, it is proposed to formulate it as follows: "If one of the parties during the negotiations before the conclusion of the agreement, intentionally or due to gross negligence (not reporting about the circumstances that could and should have been foreseen and which hinder the conclusion of the agreement), by its actions or omissions misled the other party as to the validity of its intention to enter into the agreement, these actions should be considered violation of the principle of freedom of agreement, since such behavior is contrary to general principles of good faith, rationality and justice. The party in breach of the principle of freedom of agreement has to reimburse damage caused to the party relying on the fair conduct of its counterparty as a result of not signing the contract".

Thus, as we can see, the Constitution of Ukraine and the Civil Code of Ukraine contain a number of important basic rules which can form the basis for further development of the institute of pre-contractual liability in civil law of Ukraine. Therefore, we fully agree with the position of O.S. Komarov regarding his idea that the party negotiating in good faith, before the start of contractual relations deserves to legally protect its interests. In my opinion, the aforementioned general principle of good faith in civil matters, effective at the stage of negotiation, is the basis for the formulation in the civil law of Ukraine of new law that would bring us closer to those business standards that exist in Europe, where good faith is the core, which supports market economy of strong European states. Thus, the legal regulation of pre-contractual liabilities require further study and introduction of appropriate amendments to the current legislation of Ukraine, which is particularly important in the context of European integration processes that takes place in our country.