International Journal Of Law And Criminology
(ISSN – 2771-2214)
VOLUME 03 ISSUE 03 Pages: 17-24
SJIF IMPACT FACTOR (2021: 5. 705) (2022: 5. 705) (2023: 6. 584)
OCLC – 1121105677
Crossref doi Google Scholar WorldCat MENDELEY

Publisher: Oscar Publishing Services

Journal Website: https://theusajournals.com/index.php/ijlc

Research Article

OBLIGATION LAW: PAST AND FUTURE

Submission Date: March 14, 2023, Accepted Date: March 19, 2023,
Published Date: March 24, 2023
Crossref doi: https://doi.org/10.37547/ijlc/Volume03Issue03-03

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ABSTRACT

In the article, based on looking at the past and future of the law of obligations, which is an important institution of civil law, along with the explanation of various views on this matter, its emergence is evaluated from a historical approach. As well as the rules of the ancient contractual obligations of the Uzbek people, a comparative analysis of the concept of an obligation exists in the civil legislation of national and foreign countries. Based on the analysis, suggestions will be put forward to improve the norms of the Civil Code of the Republic of Uzbekistan on the concept of obligation.

KEYWORDS

Obligation, civil law, civil legal relationship, the law of obligation, contract, Avesta, creditor, debtor, commonality of interests.

INTRODUCTION

Look at the glorious past of the ancestors; it opens a way to the future of the generations.

Everyone communicates with each other in their daily life. Their relationship, which is formed based on these communications, continues from early morning until they go to sleep in the evening. In the course of these relations, people have certain rights and must fulfill certain obligations.

Obligations can be found in different forms in our life. For example, obligations that arise between a state and an individual, parents and children, grandparents and grandchildren, husband and wife, teacher and

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student, friends, neighbors. The scope of such obligations is extremely wide.

THE MAIN RESULTS AND FINDINGS

If we want to explain how important the role of obligations is in the process of marriage, quote the following scriptures regarding the obligations between a parent and a child: "If one or both of them became old in your presence, oh child, don't say "uff" to them at all. Do not tear them apart; spread your wings of mercy on them.

In this article, we will look at the past and future role of the law of obligation, which is an important institution of civil law.

Obligation law regulates the most important and broad field of property relations in our society with its rules of a civil legal nature [1].

Business activities are carried out through obligation: goods are sold and bought, the property is leased, production facilities and residential buildings are built, passengers and goods are transported by various means of transport, services are provided, loans are given, accounting is carried out, a person himself and his property are insured, joint business activities are carried out, the results of intellectual activity are used, the life, health and property of citizens are protected, etc. [2].

The right of obligation did not appear today, although there is no consensus on its emergence, it has become a "tradition" to connect it directly with Roman law.

In our opinion, the idea of directly connecting the writings on the law of obligation with Roman law is not very correct, because even before that there were legal sources such as "Avesta".

It has been 3000 ears since the creation of our most respected, ancient manuscript "Avesta". This rare book is the spiritual and historical legacy of our ancestors who lived on this land between two rivers thirty centuries ago [3].

According to the Eastern theory, the homeland of "Avesta" is Khorezm oasis [4].

The name "Avesta" itself is translated by most commentators as "law" (from the word "upasta" meaning base, legislation) and indicates that it was accepted by Zoroastrians as the main source of law. Although all parts of the "Avesta" contain socio-political and legal ideas [5], Vandidod is the true legal compendium of the book [6].

In "Avesto" it is mentioned separately the institution of contractual obligations of the law of obligation. For example, in one of the oldest hymns of "Avesta" - Mihr Yasht (hymn of Mithras), the prophet of the supreme god Ahura Mazda, Spitam addressing Zoroastrian, says:

Wicked destroys the country,

He doesn't keep his word.

He is worse than a hundred fools

He destroys the pious.

You are given the contract

Be faithful to it, Spitam

And to the liars

And to those faithful to the religion.

After all, the word contract

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Belongs to both

Even to liars, and

To the honest ones.

"Avesto" also includes norms that regulate binding relationships in contracts and the law and payment of damages [6].

Other types of obligations are mentioned in the contract, including, firstly, to be rich, secondly, to marry and thirdly, to be wise ("Vandidod", IY fargard, paragraphs 126-30) [7].

In our opinion, it is time to give up views such as strictly linking the creation of the law of contracts and obligations directly to Roman law.

In this regard, the civilist scholar V.R. Topildiev's "Roman jurists used the concepts related to civilistics (civil law), i.e. ... contracts, the law of obligations, ... and most expressions and words used in other civil law and all these are fully used in the civil law of the Republic of Uzbekistan and other areas of law. Of course, while citing the opinion that these concepts were created 25 centuries ago [8], we would like to draw your attention to the phrase "these concepts were created 25 centuries ago".

As noted, the concepts of the right of obligation in Roman law were created 25 centuries ago, while the "Avesta" was created 5 centuries before it, more precisely, 30 centuries ago.

We mentioned that "Avesta" consists of a complex of "laws".

The 4th chapter "I a" of "Avesta" is devoted to "Contracts and crimes" and has six variations. The first contract is reinforced with words; the second - with a handshake; the third is to pledge the sheep; the fourth is to pledge the ox; the fifth is to put a person as a hostage; the sixth - it is recognized that there are contracts related to pledging fertile land [9].

In contrast to Roman law, the fulfillment of the obligations specified in the 6 contracts recorded in the "Avesta", created in the territory of Uzbekistan almost 3000 ears ago, was strengthened by giving a word. It can be seen that it is built based on mutual trust.

Speaking about aspects related to the regulation of relations related to the law of obligations in the East and the West, it should be noted that the provisions of the law of obligations on contracts are related to customs in Roman law, oral contracts expressed in the form of (conditional) and written (literal) contracts.

At first, creditors had home account books, in which it was written who owed and how much. The debtor also kept some kind of note for himself. But since these records were one-sided, there were sometimes disagreements and it was difficult to prove their authenticity.

In the East, especially in Uzbekistan, the rules governing contractual relations have become strict. For example, documents relating to contractual obligations dating back to the beginning of the 7th century, which represent the strict rules of the contract, can be found in the "Mount Mugh Sogd Archive" complex [10] [11] [12] [13].

The provisions of the ancient contractual obligations of the Uzbek people in Sogdian legal documents can be understood from the opinion that "According to the contract, no one else will be allowed to enter this land, and the buyers undertake to use it peacefully and carelessly" [14]. Here it is worth noting that "faithfulness to a written or oral contract was

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considered a particularly valuable feature among the peoples of Central Asia" [7].

Looking at today, it is worth noting that there are different views on the right of obligation. In particular, according to G.F. Shershenevich's recognition, in civil relations, an obligation is created for the sake of property interest [15].

M.M. Agarkov on the types of actions that make up the essence of the right of obligation: "1) transfer of the object by the debtor as the property of the creditor; 2) giving from the debtor of a specific item to the creditor; 3) giving the creditor the right to claim material right or obligation without property right or obligation by the debtor; 4) describes the division into obligations aimed at providing some service or work" [16].

Although the essence of the right of obligation is interpreted differently by legal scholars, these opinions lead to a single conclusion that it is manifested in the fact that it is built based on interest.

In a word, the benefit expected from social relations, arising as a result of need is regulated by the right of obligation. "Gratefulness", "adaptability" and "adaptation to the environment" specific to a person in satisfying their needs are norms specific to the content of individual interests.

In the law of obligation, it is necessary to ensure the "common interests" of the subjects of the obligation.

If we talk about the principle of "Combination of interests" in the law of obligations, it should be noted that it stipulates that the interests of "creditor - debtor - third parties" should be equal.

In our opinion, only the interest of the creditor is secured in the obligation relationship. For example, according to the contract of sale, the creditor's interest is guaranteed by the payment of the money due, but the debtor's interest is not guaranteed due to the quality of the purchased item. Also, the rights of "third parties" are not guaranteed in the law of obligation. The use of recourse rights by third parties who have fulfilled their obligations against an economically insolvent debtor is ineffective.

In contractual obligations, the interests of the creditor, debtor and third parties must be equally guaranteed.

As we try to understand how necessary " a combination of interests" is in the law of obligations, it is important to first understand the concept of obligation.

There is no exact opinion among legal scholars in explaining the concept of obligation. In particular, G. F. Shershenevich states that obligation means a legal relationship that represents the acquisition of the right of one person to perform a certain action [15].

Kh.Rakhmonkulov states that obligation is a property relationship regulated by the norms of civil law, therefore it has the form of a legal relationship. Two parties participate in such relations, one of them is called the debtor and the other is called the creditor. The debtor is obliged to perform certain actions in favor of the creditor, and the creditor has the right to demand the performance of this action [2].

Statement of obligation in this way is also observed in other legal pieces of literature [17] [18] [19] [20] [21].

The analysis of opinions shows that the general concept of obligation expresses the implementation of

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a certain action or the refraining from its implementation.

According to Article 234 of the Civil Code of the Republic of Uzbekistan, an obligation is a civil legal relationship, based on which one person (the debtor) must perform a certain action for the benefit of another person (the creditor), such as transfer of property, the performance of work, servicing, paying money, etc., or refrain from certain actions, and the creditor - has the right to demand the debtor to fulfill his obligations.

Also, such description is in Article 268 of the Civil Code of the Republic of Kazakhstan, based on the obligation, one person (the debtor) performs a certain action in favor of another person (the creditor), such as transfer of property, the performance of work, payment of money, etc. or from a certain action will be obliged to defend himself, and the creditor will have the right to demand the fulfillment of his obligations from the debtor. The creditor is obliged to accept the performance from the debtor.

In Article 307 of the Civil Code of the Russian Federation, an obligation is one of the common types of civil law relations. It is expressed in the form of the transfer of goods and material assets from one person to another person.

This definition of the obligation is also stated in Article 509 of the Civil Code of Ukraine and Article 296 of the Civil Code of the Kyrgyz Republic.

According to paragraph 241 of the German Civil Code, "The creditor has the right to demand the performance of the obligation from the debtor. It is noted that the fulfillment of the obligation may also consist of the implementation of an action.

Although there is no specific concept of obligation in the French Civil Code, the obligation is expressed in the form of a legal relationship between people, to perform an action or refrain from acting as a creditor who is another person [22].

Although the legal structure of the Swiss Obligation Act is based on the concept of obligation, it does not contain the concept of obligation.

Although the law of most states of England and America has not given a concept of obligation with a normative nature in their legislation or precedent law, in the legislation of some states there is a norm regarding its concept. For example, Article 1427 of the Civil Code of the State of California (1872) states that "A liability is a legal obligation of a person to do something or not to do something" [23].

It should be noted that the obligation of the debtor to perform a certain action in favor of the creditor or to protect himself from a certain action, and the right of the creditor to demand the performance of his obligations from the debtor is expressed.

In the expression of the concept of obligation, a point of view has been formed, showing the obligation on the part of the debtor, and the right on the part of the creditor, and assuming that the obligation and the right are exchanged between the debtor and the creditor.

In our opinion, this point of view is not very correct, because the exchange of creditor and debtor does not always happen in the obligation.

In this regard, it would be appropriate to quote the following opinions of legal scholars: "Each of the parties to an obligation can be both a creditor and a debtor at the same time (for example, building a house

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according to the order of a citizen), but there are obligations in which one part is always a creditor, and the other is a debtor, and their positions never change (for example, when one person lends money to another) [24].

At the same time, the concept given to obligation in part 1 of Article 234 of the Civil Code of the Republic of Uzbekistan represents the meaning of unilateral obligation.

According to a unilateral obligation, if one party has the right to demand, the other party undertakes the obligation to fulfill this demand. However, in addition to unilateral obligations, there are also bilateral or multilateral obligations.

In bilateral obligations, both parties jointly participate in the implementation of the obligation, and both parties assume the obligation together with having the appropriate right. The majority of civil legal relations are bilateral obligations.

In our opinion, the concept of obligation cannot be fully explained with the conclusion that in the concept of obligation, the rights on the one hand, and the obligation on the other hand, are constantly alternated. This situation does not fully comply with the requirements of legal documents.

In all contracts from Article 386 to Article 975 of the Civil Code of the Republic of Uzbekistan, the norms expressing unilateral obligations or bilateral obligations are exempted only from the obligations. According to them, one party can perform certain actions, i.e. transfer property, perform work, provide services, etc. undertakes the obligation to perform, and the other party undertakes the obligation to pay the fee (except in cases where the law makes an exception).

In most cases, the existence of obligations on both sides is reflected. The concepts expressed in separate types of these obligations should be reflected in the concept of obligation.

Also, in Article 234 of the Civil Code of the Republic of Uzbekistan, the concept of obligation is limited to expressing the provisions of contractual obligations, while according to the second part of this article, it is stated that obligations arising from the contract, the result of damage and other grounds.

In our opinion, in understanding the obligation, the rules regarding all situations that give rise to the obligations specified in the second part of Article 234 of the Civil Code of the Republic of Uzbekistan should be reflected.

Based on the mentioned circumstances, the first part of Article 234 of the Civil Code of the Republic of Uzbekistan should be reworded as follows: an obligation is a civil legal relationship, according to which one party performs certain actions for the benefit of the other party, the other party and undertakes to accept the results of these actions and to pay for them, or one party must compensate the damage caused to the other party as a result of its illegal action or inaction.

Such an understanding of the right of obligation and its application in practice protects the legal interest of the subjects of the obligation, along with the formation of a deeper understanding of their rights and a sense of responsibility. This situation gives rise to beneficial legal relations between the obliged parties. As a result, the "common interest" of all those participating in the fulfillment of the obligations is ensured.

The perspective of the obligation law can be seen in the provision of "common interests" of all parties involved

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in the obligation relationship. "Community of interests" benefits the subjects of civil law, as well as the state and society, and creates a basis for further growth of social and economic development.

CONCLUSION

In conclusion, it should be noted that the role of the law of obligation in the development of civil law is incomparable. Civil rights, on the other hand, when there are certain gaps in the legal documents regulating family, labor and use of natural resources and environmental protection, fill them and contribute to the development of the state and society and the protection of the legal interests of individuals. makes a worthy contribution.

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