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Legal Nature of the Termination of Obligations in the Context of Modern Legislation

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ABSTRACT: In this article, the author proposes a concept for understanding the termination of a civil obligation in the context of modern legislation. The study aimed to build a doctrine on the concept of the legal nature of the termination of obligations in the context of modern domestic legislation. To solve this, the study analyzed the available theoretical approaches, set out in theoretical studies and educational literature on determining the termination of an obligation. It further analyzed law enforcement practices to determine the answer to the question posed, as well as generalization and systematization of the data obtained. To solve the set tasks, the author analyzed the available approaches to understanding the termination of obligations. The paper presents the results of the research performed, based on the analysis of the current rules of civil legislation, aimed at regulating the issues of termination of obligations through the concept of existing legal links between the elements of the corresponding obligation relationship. The methodological basis of the research is the method of analysis, the sequential study of individual aspects, and the synthesis of the results obtained, integrating them into a single whole. The structural basis of the study is made up of aspects of law enforcement practice, in order to establish through them the desired concept, the study of the Soviet and sovereign civilian array, substantiating individual provisions of the declared topic, and building a general picture based on the results of a generalized analysis of the material presented. The study made it possible to conclude that when a civil obligation's structure is destroyed, due to the interruption of legal ties between any of the elements, which constitutes the legal nature of the phenomenon under consideration, the obligation is terminated by operation of law.

Keywords: obligation; termination of an obligation; destruction of a structure; elements of an obligation; legal connection; subjective right; subjective duty.

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О правовой природе прекращения обязательства в контексте современного законодательства

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Аннотация. В статье автором предложена концепция понимания прекращения гражданско-правового обязательства в условиях современного законодательства. Целью исследования выступило построение учения о понятии правовой природы прекращения обязательства в контексте современного отечественного законодательства. Для этого был осуществлен анализ имеющихся в исследованиях и учебной литературе теоретических подходов к определению прекращения обязательства, анализ правоприменительной практики, обобщение и систематизация полученных данных. В работе приведены результаты осуществленного исследования, базирующегося на анализе действующих правил гражданского законодательства, направленных на регулирование вопросов прекращения обязательств через концепцию имеющихся правовых связей между элементами соответствующего обязательственного отношения. Методологической основой исследования выступает метод анализа, последовательного изучения отдельных аспектов и последующее синтезирование полученных результатов в единое целое. Структурную основу исследования составляют аспекты правоприменительной практики, изучение советского и современного цивилистического массива, обосновывающего отдельные положения заявленной темы, и построение общей картины по итогам обобщенного анализа представленного материала. Проведенное исследование позволило сделать вывод о прекращении гражданского обязательства при разрушении его структуры, обусловленнov прерыванием правовых связей между любыми из элементов, что составляет правовую природу рассмотренного явления.

Ключевые слова: обязательство; прекращение обязательства; разрушение конструкции; элементы обязательства; правовая связь; субъективное право; субъективная обязанность.

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Unlike the relationship mediating the dominion over an object, which by its nature is perpetual, the obligation has certain temporal limits, such as the absence of duration and permanence of their existence, unlike rights in rem [1]. Fundamentally, their existence will come to an end, i.e., the so-called obligatione terminationem ("the end / termination of the obligation") transpires. Thus, correct termination of obligations must be the basis of a stable economic and civil turnover [2].

The significance of the termination of an obligation is that it terminates the existence of a given social relation in whole or in part, commensurate to the circumstances that preceded the event. This situation is essential for the purpose of the obligation dynamics in question and for the creditor to realize his interest within it [3]. This is most often the case when the main purpose is achieved, i.e., when solutio in faciendo (the fulfillment in the obligation of the proper and expected fulfillment of such). However, an obligation under civil law may also terminate without the realization of the main objective or the causation achievement, e.g., if it cannot be fulfilled due to circumstances beyond the control of the persons involved.

Understanding obligatione termination as a legal category is crucial, considering its consequences and significant. M.A. Egorova noted that in the modern literature, no precise idea of the legal essence of the termination of obligations exists [4, 5]. However, no definitive definition of the studied category has been formulated in the legislation. Currently, regarding the designated problems, there remains a clear inadequacy in theory and legislation. Official sources, particularly the Civil Code of the Russian Federation[1] (hereinafter referred to as the Civil Code of the Russian Federation) [6], do not provide a definition of the termination of obligation (Article 407 of the Civil Code of the Russian Federation), nor disclose its legal nature, including law enforcement agencies (for example, paragraph 1 of the Resolution by the Plenum of the Supreme Court of the Russia Federation dated 11.06.2020 № 6 "On some issues of application of provisions of the Russian Civil Code on the termination of obligations").

This legal phenomenon has been interpreted differently in civil law. Pre-revolutionary, Soviet, and contemporary civil lawyers attempted to define the termination of obligations by revealing its legal nature. C. Sanfelippo pointed out that when the property goals (property value, as designated by I.A. Pokrovsky [7]) are achieved by the creditor, the obligation has no reason for existence and therefore it is abolished. In his opinion, the essence of the obligation is transient in nature: it arises precisely because of the natural tendency to cease to exist [8].

V.I. Sinaisky expressed the same sentiments as above and indicated that the satisfaction acquired by the creditor from his existing obligation is, in its original and immanent nature, the objective for which it was created. Therefore, once this aim has been achieved, the commitment relationship terminates without a reference point for its subsequent development. Thus, we believe that understanding the termination of obligation and the corresponding relation via the prism of retirement from circulation of the target ground (causa) itself is logical [9]. O.S. Ioffe stated that the termination of obligation is the fallout from the turnover as such originally established obligation that mediated in a particular form the arisen corresponding social relations having a binding nature for the incorporated in them individualized persons [10]. He considered it unacceptable to confuse obligation termination (obligatione terminationem) with obligation modification (mutatio in obligatione), noting that where a previously defined type of obligation continues to exist under any change or modification undergone, the question of its termination cannot be raised; conversely, where the originally defined type of obligation relationship is dissolved, the obligation relationship terminates, whatever its elements remain [10].

Although the above statement seems convincing, it remains inconsistent and does not correlate with the modern content of the definition enshrined in Article 407(1) of the Civil Code in which the legislator has only defined that a civil obligation is fully or partially terminated on grounds established by the Code, as well as by other laws or legal acts, or by agreement between the parties.

Traditionally, in the domestic academic and scientific literature, the phenomenon under analysis is understood as the termination, through repayment, of the rights and obligations of the parties to the obligation, which form, in their unity and integrity, the content of the obligation relation[2]. The termination of obligation means the disappearance of the existing legal bond established between its participants, losing owing to the subjective rights and obligations that form in their totality the content of the obligation or in the relevant part of such, if there exists a fragmentary termination of obligations, with the preservation of the remaining part [11]. A similar interpretation is the thesis that termination is the elimination by the will of the parties or due to objective reasons of the existing legal bond established earlier between

[1] Civil Code of the Russian Federation (Part One) [Articles 1-453]: Federal Law of the Russian Federation dated November 30, 1994, No. 51-FZ (in edition dated 09.03.2021). ConsultantPlus". URL: http://www.consultant.ru/cons/cgi/online.cgi?rnd= 2F23A35B6D01C4E702C25181D33E5AD2&base=LAW&n=378831&dst=4294967295&cacheid=35143974863E68B0CF2F83ABE17FC387&mode=rubr&req=doc#4ykvmmvryf (accessed on: 10.04.2021).

[2] See, for example, Russian Civil Law. Course of lectures. Part 1 / Braginsky M.I., Zalessky V.V., Klein N.I., et al. Ed. by O.N. Sadikov. Moscow: Jurid. lit., 1996. P. 278; Civil law: Textbook in 4 Vol. 3. Obligatory Law. Ed. by E.A. Sukhanov. Moscow: Wolters Klover, 2006. P. 58.

the personified creditor and debtor, generating the loss of their mutual and conditional-corresponding rights and obligations, without the subsequent formation in their place other related legal consequences (the right to recover any losses, application of responsibility in the established forms, and so on)[3].

Several researchers noted that in an obligation at its termination undoubtedly takes place exactly the extinguishing of the existence of the latter in objective and legal reality, when the persons involved in it are no longer bound by those subjective rights and legal duties that were apparent from the obligation and arose from it and under the prescriptions of the law of the relevant State were subject to execution [12]. This situation, as T.A. Faddeeva continues, means that an empowered person is no longer able to realize its claims against an obliged person with respect to any claims based on an existing circumstance. The obligation subjects are released from possible liability to each other under such an obligation, just as they are deprived of the opportunity to assign their rights and/or obligations under it to third parties in the manner prescribed by law[4].

However, in our view, these definitions of the termination of obligations do not reveal the essence of the termination itself as a special structural legal relationship. It remains unclear what happens to the structure of the commitment relationship. In the formal-legal structure of the commitment relation, by analogy with the general structure of any legal relationship, the following structural elements are distinguished: the subjective composition represented by the creditor and the debtor; the substantive component expressed in rights and obligations; the object of the incurred obligation and the subject of performance for it [16][5]. Concurrently, it should be emphasized that the named structural parts are in the construction of an individually defined obligatory relation not in a chaotic and abstract form, but in a system-architectural interconnectedness and functional conditionality [14]. Ultimately, we believe that the termination of obligations directly intrudes the construction of a binding legal relation.

Conclusively, the termination of obligations is the destruction of the links between the constructive parts of the commitment relationship (its elements), resulting from the action of various subjective or objective factors. Obligatione termination is the irrevocable destruction of the construction of the previous commitment relation, in consequence of which the obligation ceases to exist as it was in the period preceding the destruction [15]. However, discussing the termination of obligations (even fragmentarily) in cases where the original obligation structure is preserved in a modified (deformed) form that creates prerequisites for the possible reanimation and restoration of the vanishing obligation relationship. In the latter, there may be a transformation of the obligation. Moreover, M.A. Rozhkova's rightfully and fairly pointed out that transformational influence on the structure of commitment relation we may observe in consequence of: 1) change of persons, participating in such, 2) replacement of commitment relation content by new rights and duties, not inherent in its previous format; and destructive influence on commitment relation is observed at 1) replacement (change) of the obligation subject, 2) change of subject composition, at which arises confusion, 3) extinguishing of all the rights and obligations of the participants of such, which form its content [14]. Thus, the destruction of the obligation structure means the termination of the existence of one or more elements from its structure, forming, as noted by S.K. Solomin, its essential characteristic [16].

In the legal literature, legal connection (iuris coniunctionem) is distinguished among the constructive elements, the withdrawal of which due to the actual termination of their existence inherently generates obligatione terminationem. Thus, according to T.A. Fadeeva, the termination of an obligation relationship implies the destruction, resulting in the loss of legal bindings of the subjects of this relationship, who in this regard lose their subjective rights and obligations that constituted the content of this obligation relationship[6], and also leading to the abolishment of an additional potential opportunity (potential additional) to implement a certain compulsion in relation to a faulty debtor so that such person fulfills the obligation properly [17]. Some previous authors also indicated that termination is the liquidation or completion of the relationship between the two parties of the corresponding obligation relationship [18, 19], which sometimes saves the creditor from vain and unjustified hopes for the possible fulfillment of obligations by the faulty party [20].

Despite that most researchers did not disclose the concept of "legal nexus," it can be assumed that they are referring to the legal bond between the subjects of the obligation, although, as mentioned above, such a bond is present between all the constructive elements of the binding relation. The corresponding legal connection of the elements

[3] See: Civil Law: Textbook. Part 1/Edited by T.I. Illarionova, B.M. Gongalo, V.A. Pletnev. Moscow: publishing house Infra-M, 1998. p. 447.

[4] See: Civil Law. In 3 vols. Vol.1 Textbook/Edited by J.K.Tolstoy, A.P. Sergeev. Edited 6th revised and supplemented. Moscow: Prospect Publishing, 2005. p. 744 (author of the chapter - T.A. Faddeeva).

[5] See also: Civil right: Textbook. Part 1/Under edition of A.G. Kalpin, A.I. Maslyaev. Moscow: Jurist, 1997. p. 352-353; Soviet civil law. Vol. 1. Textbook. Ed. by V.P. Gribanov, S.M. Korneev. Moscow, 1979. p. 479.

[6] See: Civil Law: Textbook. Part 1/Edited by Y.K. Tolstoy, A.P. Sergeyev. Moscow: PBOUL L.V. Rozhkov, 2000. P. 601 (author of the chapter - T.A. Faddeeva).

is a vital source of strength for the obligatory relationship, as for any other, which binds the disparate parts into a single whole and forms the final product — in our case, the social relationship of a binding nature. Thus, we believe that the withdrawal of any construction element, i.e., breaking the legal connection between them in the considered relation, leads to the destruction of the obligation construction as a whole and to its destruction (termination). The retirement of any fragment from the chain of legal ties represents a point of no return, the achievement of which abolishes the obligation without the possibility of its reanimation.

The termination of obligation comes with the termination of the existence of a legal bond between any and each of the constructive elements in the binding relation, immanently fixing and maintaining the vitality of this legal entity in the legal space continuum. This causes the termination of the obligation as such due to the inability to realize the functions entrusted to it for the transfer of economic good from one person to another one [21]. This circumstance was pointed out by V.M. Khvostov [22].

In this regard, the destruction of iuris coniunctionem between the subjects of the obligation, as discussed by T.A. Faddeeva, does not fully reveal the whole essence of the termination of obligation and is a limited (narrow) understanding of the essence of the issue under study. The intrinsic potency of such a phenomenon as the destruction of iuris coniunctionem between the subjects of an obligation is not sufficient by itself to bring down the entire legal construct.

The above understanding of the essence of the termination of obligation is, in our opinion, the most complementary, given that a different interpretation would constitute a limited understanding of the legal essence of the phenomenon and process in question. For example, in the case of a change in the subject composition due to a change of persons in the obligation, on the basis of the relevant grounds, the existing relationship between the original specific debtor and the creditor is terminated, but the obligation remains intact, because the place of the retired subject (participant) is taken by another person by virtue of legal succession (if this is possible). This also happens in the case of the individual's death. However, the death of the obligation subject (creditor or debtor) terminates the obligation, which is inseparably linked with the personality of the deceased individual, as the transfer of rights and obligations in such an obligation in the succession order is not allowed (Articles 383 and 418 of the Civil Code, Para. 15 of the Resolution of the Plenum by the Supreme Court of the Russian Federation dated 29.05.2012 № 9 "On judicial practice in inheritance cases", point 28 of the Resolution of the Plenum by the Supreme Court of the Russian Federation dated 17.11.2015 № 50 "On application by the courts of the legislation when considering certain issues arising in enforcement proceedings"). In all other obligations, the place of the deceased individual is taken by his/her legal successor (Articles 382, 391, and 392.2 of the Civil Code), including with the transfer to him/her of all rights and obligations resulting from the mechanism of protection of the respective right initiated before that (paragraph 23 of the Review of Judicial Practice of the Russian Federation Supreme Court № 1/2019, adopted by the Presidium of the Russian Supreme Court on 24.04.2019).

We believe that in the context of the destruction of the commitment relationship elementary structure, two groups of factors influencing this phenomenon must be differentiated, namely, factual circumstances and legal facts. Factual objective circumstances of the external world must be regarded as the cause (cause or condition) of the termination of obligations, if by virtue of law they are endowed with the capacity to produce relevant legal consequences when they occur. Namely, designated potential ability to cause the onset of certain legal consequences is the most important feature in differentiating actual objective circumstances of the external world, which can affect the binding relation dynamics [23]. Legal facts [13; 24–28] act as the grounds for the termination of obligations. They are enshrined in laws, other legal acts, or contracts (paragraph 1 of Article 407 of the Russian Civil Code) [6].

An open list of grounds in relation to the termination of binding relations is contained in the provisions of Chapter 26 of the Russian Civil Code. Analyzing the relevant legal provisions revealed that the cause and the ground coincide in some cases, integrating into a single whole. For example, based on the Article 418 of the Russian Civil Code, an obligation is terminated by an individual's death. It follows from the law (Article 47 of the Civil Code) that if the natural person's death is ascertained in accordance with the procedure established by it, the cause and the ground for the termination of the obligation coincide concurrently, i.e., coincide. However, when a natural person is declared dead by the court (Articles 45, 1113, and 1200 of the Russian Civil Code), the cause and the ground for the termination of the obligation are legally and temporally separated. The reason for the termination of an obligation when a natural person is declared dead are the circumstances (conditions) sufficient for the court to decide on declaring a natural person dead, and the basis is the court decision itself, which has entered into legal force. The existence of circumstances (conditions) for declaring a natural person dead (reason) in the absence of a positive court decision (reason) does not automatically terminate the obligation.

The grounds included in the above open-ended list of grounds are a variety of preclusive legal facts. Some of the grounds are directly dependent on the will of the parties to the obligation, being one- or bilateral transactions in nature. These include due performance, compensation, set-off,

novation or forgiveness of debt. Other grounds do not relate to the expression of the will of a person aimed at achieving the relevant legal consequences, and destroy the obligation, regardless of the achievement of the purpose and desire of the subjects of this relationship. Such grounds are the following: the coincidence of the debtor and the creditor in one person (confusion); impossibility of fulfilling an obligation (impotentia execution ab obligatione); publication of a regulatory act by a public authority or local government; death of a natural person (civis mortis) that is a debtor or creditor involved in an obligatory relation that is exclusively personal to the deceased; liquidation of a legal entity. The above-mentioned legal facts form the system of grounds for the termination of obligations enshrined in the Civil Code.

Conclusively, a sufficient and necessary condition for the termination of an obligation is the breakdown of the existing legal bond between some of its individual constructive elements, which form in their totality a single complex, an obligatory relation, which is a legal phenomenon. The termination of obligation means the destruction of its structure, resulting in an irreversible severance of the legal bond between its individual constructive elements. This leads to a complete or fragmented extinguishing of existing subjective rights and obligations of its participants, which formed until the relevant moment the content of the obligatory legal relation, without the occurrence of other legal consequences, as well as transformation into another legal phenomenon.

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