CIVIL LIABILITY IN THE RENTAL AGREEMENT
DOI: https://doi.org/10.24115/S2446-622020206Extra-B611p.180-184

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ABSTRACT
In this article, the author attempts to analyze the institution of civil liability arising from the movable property lease agreement, using the example of Russian legislation and the legislation of a number of European states. Within the framework of this study, the author also raises more general doctrinal issues related to the place of liability under a rent agreement in the system of civil liability, as well as in the system of legal liability in general. In order to determine the place and role of the institutions under consideration, the author considered various views and interpretations of the terms under study, as well as studied the individual historical aspects of the formation and development of the civil liability institution. Among other things, the main part of the study is devoted to the consideration of individual measures and cases of contractors' liability under the rent agreement. At the end of work, the researcher assessed the effectiveness and efficiency of the Russian model of legal regulation of civil liability arising from the rent agreement.

Keywords: Legal liability. Civil liability. Rent agreement. Movable property lease. Legal doctrine.

RESPONSABILIDADE CIVIL NO CONTRATO DE LOCAÇÃO

RESUMO
Neste artigo, o autor tenta analisar a instituição da responsabilidade civil decorrente do contrato de arrendamento de bens móveis, usando o exemplo da legislação russa e da legislação de vários estados europeus. No âmbito deste estudo, o autor levanta também questões doutrinárias mais gerais relacionadas com o lugar da responsabilidade do contrato de arrendamento no sistema de responsabilidade civil, bem como no sistema de responsabilidade legal em geral. Para determinar o lugar e o papel das instituições em consideração, o autor considerou vários pontos de vista e interpretações dos termos em estudo, bem como estudou os aspectos históricos individuais da formação e desenvolvimento da instituição de responsabilidade civil. Entre outras coisas, a parte principal do estudo é dedicada à consideração de medidas individuais e casos de responsabilidade dos contratantes no âmbito do contrato de aluguel. Ao final do trabalho, o pesquisador avaliou a eficácia e eficiência do modelo russo de regulação legal da responsabilidade civil decorrente do contrato de aluguel.


RESPONSABILIDAD CIVIL EN EL CONTRATO DE ALQUILER

RESUMEN
En este artículo, el autor intenta analizar la institución de la responsabilidad civil derivada del contrato de arrendamiento de bienes muebles, utilizando el ejemplo de la legislación rusa y la legislación de varios estados europeos. En el marco de este estudio, el autor también plantea cuestiones doctrinales más generales relacionadas con el lugar de la responsabilidad bajo un contrato de alquiler en el sistema de responsabilidad civil, así como en el sistema de responsabilidad legal en general. Para determinar el lugar y el rol de las instituciones consideradas, el autor consideró diversas visiones e interpretaciones de los términos en estudio, así como también estudió los aspectos históricos individuales de la formación y desarrollo de la institución de responsabilidad civil. Entre otras cosas, la parte principal del estudio se dedica a la consideración de medidas individuales y casos de responsabilidad de los contratistas en virtud del contrato de alquiler. Al finalizar el trabajo, el investigador evaluó la efectividad y eficiencia del modelo ruso de regulación legal de la responsabilidad civil derivada del contrato de alquiler.

INTRODUCTION

Legal structures and legal matter, united by the legal liability institution, rightfully took one of the key positions in the internal structure of the civil law branch. The legal liability institution, namely civil liability, is a synthesized legal matter, which is a set of individual legal structures presented in the form of protective civil law norms. The above regulatory provisions of this institution act as a kind of guarantor, ensuring the operation of the sectoral legal principles of the restoration of civil rights and their judicial protection.

Thus, civil liability, being an integral part of legal liability as a whole, in the opinion of the Russian civil science representatives, in particular E. A. Sukhanov, is one of the forms of state-compulsory influence on offenders, which consists in applying sanctions - liability measures entailing additional adverse consequences for such offenders - stipulated by the law (General Doctrine of Tort Obligations in the Soviet Civil Law, V.T. SMIRNOV et al. M.: CONTRACT, 2012).

A similar position was reflected in the works of O.S. loffe, who believed that “... the peculiarity of civil liability is that even after an offense, its consequences may be eliminated voluntarily by the offender himself/herself, without the intervention of judicial or other state bodies, due to the mere possibility of coercion and on the basis of the offender's awareness of the nature of actions committed by him/her and their negative significance for the socialist society” (LOFFE, LIABILITY LAW, 2010). These views are similar in terms of the presence of references to adverse consequences, as well as to the presence of a certain self-awareness and mention state-coercive influence. Thus, it is fair to assume that the progressive development (SHERSHEVICH, 1984) of the civil liability institution, transforming the concept itself, leaves its main aspects unchanged, and accordingly, the above approaches can be considered as the main ones and act as key features of civil liability within the framework of this study.

Considering this term, foreign legal thought defines it as follows: "civil liability is legal liability in the form of payment of money for damage to the health, business or property of another person", as seen from the approach outlined in the Cambridge Business English Dictionary. Another, more specialized approach is presented in the Cornell Law School Dictionary: "civil liability is a legal obligation that requires a party to pay damages or comply with other legal action. Unlike criminal liability, which is often imposed by the state to remedy a public wrong, civil liability is usually used by a private party to sue for damages or to impose injunctions."

Thus, it can be concluded that the legal doctrine has developed an approach that links civil liability with the presence of the need for compensation associated with any infringement of the rights and legitimate interests of a person. It is also indicated that, in the presence of a certain role of the state, the main role is played by a person whose interests have been violated (NAGUMANOVA, 2016; YANNOPoulos, 1962).

METHODS

This work was made using the dialectical method. Legal study is also facilitated by logical techniques in the form of analysis and synthesis, induction and deduction, comparison and generalization, analogy and typology. With their help, an idea of the place of civil liability under the rent agreement in the system of civil liability in particular and legal liability in general has been developed. The formal legal technique made it possible to understand the essence and significance of legal norms, both directly and indirectly related to civil liability arising from the rent agreement.

RESULTS AND DISCUSSION

The civil law contractual structures have found their application and widespread use in all fields of society, from the provision of services and household contracts to public procurement and public-private partnerships. In addition, the growing role of contractual elements in the economy and everyday life is associated and correlated with an increase in the share of small and medium-sized businesses. These transformations of social and legal reality, in aggregate, play the role of a catalyst that contributes to an increase in the number of potential conflict situations, while an increase in the number of possible conflicts and controversial situations determines the growth of actually arising civil conflicts, which, of course, manifests itself in all activity fields, including the field of providing movable property for rent for the implementation of individual economic needs or other satisfaction of personal needs.
Civil liability for relations arising from the rent agreement, like any legal liability, has its main goal to stimulate both the minimization of conflict situations and the pre-trial settlement of the conflict that has arisen. A feature of consumer relations is the clearly punitive nature of civil liability in relation to the consumer's counterparty, while the civil liability of the consumer himself/herself is regulated at the level of civil legislation and is not specifically regulated by consumer protection legislation.

However, due to the absence of special legal regulation of rent contracts in the consumer protection legislation, it is impossible to talk about the application of special civil liability rules under the consumer protection legislation to relations under the rent agreement, in our opinion.

Liability is determined by the legal structure that takes place in the potential disputed legal relationship. With regard to the legal structure of the civil liability of the parties to the rent agreement, it can be noted that the lessor acting as an economic entity bears innocent responsibility for violation of the rent agreement, more precisely, the fault in violation of the obligation has no significant legal value and is not included in the legal structure-basis to bring to civil liability. A citizen-consumer, on the contrary, can be brought to civil liability only if he/she is guilty of violating the contract, because the legislation in this case does not establish the grounds for the innocent responsibility of the citizen-consumer.

The legal structure of the facts that make it possible to bring the subject of the rent agreement to civil liability is the following facts:

- Failure to fulfill or improper fulfillment of obligations arising from the rent agreement (violation of the rent agreement),
- Damage caused by violation of the rent agreement,
- Causal relationship between the violation of the rent agreement and the losses incurred by the victim,
- Fault in violation of the rent agreement (relevant only for the case of bringing the consumer to civil liability).

Taken together, these facts allow the interested person to initiate the procedure for bringing the violator to civil liability.

It should be noted that the lessor's liability for harm caused to third parties as a result of the use of the rented property cannot be applied, if the damage is caused by deliberate or careless actions of the lessee, especially if he/she has been warned by the lessor about the peculiarities of using the rented property. In this case, the responsibility for harm caused to third parties shall be borne by the consumer-lessee himself/herself.

However, in our opinion, when considering cases of compensation for harm caused to the health or property of third parties due to structural or other shortcomings of the rented property, as well as due to the provision of inaccurate or insufficient information about the rented property to the lessee, in any case, it is necessary to involve the lessor in the case, because it formally remains the owner of the rented property.

Thus, it is logical to conclude that civil liability under the rent agreement and according to the Russian law is a multifaceted institution associated with a number of features determined both by the subject composition, individual aspects and actual circumstances associated with the transfer of rented movable property.

Within the framework of this study, foreign experience is of additional interest, in particular, the experience of countries that have embodied in their legislation individual institutions and ideas of the Roman private law.

Thus, for the purposes of this study, rental agreement will be understood in foreign legislation as a "deposit agreement" [Study Group on European Civil Code, Research Group on EC Private Law (Aquis Group), Principles, Definitions and Model Rules of European Private Law, p. 1,809 – 1,868. (2009; Rada, Postolache, Micara, Genoiu, Steluta Ionescu, Marilena Manea, Manuela Nitu, The deposit contract and its various forms, C.H. Beck Publishing House], based on the literal translation and admissibility of the interpretation of this term as movable property lease agreement. The deposit agreement is reflected in all European legislation and is regulated at the level of civil or commercial codes, depending on the country. In civil law, a deposit agreement is based on the Roman concept of a deposit, an actual contract that was made by transferring ownership of property from a depositor to a depositary (from a lessor to a lessee). The deposit agreement in the Roman law could cover only movable property. It was used to transfer the right to property possession only, but not the ownership of this property (Lutz-Christian – Wolff The relationship between contract law and property law).
As an example of foreign experience in regulating a rent agreement, one can refer to the legislation of Romania. Thus, in this country, relations under a rent agreement, as well as under a deposit agreement, are regulated by the Civil Code of Romania. Without going into the interpretation of the agreement in question and its content, it is important to note its specifics. Thus, Romanian legislation assumes that the deposit agreement can be either gratuitous or non-gratuitous. Thus, it is indicated that the property is provided free of charge, unless it follows from the agreement of the parties, common practice or other circumstances (such as profession of depositary) that the remuneration shall be paid. Classification of an agreement into the category of gratuitous or non-gratuitous has various consequences from the point of view of the depositary's liability.

For example, in the case where the deposit agreement is gratuitous, the burden of proof of the depositary's liability rests with the depositor, who shall prove that the counterparty acted with less care and attention than it would have done with its own property. The second situation concerns the non-gratuitous deposit agreement, in which the depositary shall act prudently and in good faith. Based on the letter of the law, it seems fair to assume that the depositor in this case shall prove only damage to property, since the depositary shall prove that the damage has arisen for reasons other than lack of prudence and discretion on its part.

Turning to the legislation of other European countries, it can be noted that domestic regulations also did not completely abandon the traditional nature of the deposit agreement, while allowing it being concluded for reasons of financial interest, especially when it is of a commercial nature. In most cases, the same rules apply to both gratuitous and non-gratuitous legal relationships, but the depositary's liability differs depending on whether the deposit is gratuitous or not. In France, the same rules apply to both paid and unpaid deposits, but the prudence and good faith to be demonstrated by the depositary is lower when the contract is free of charge. In Austria, deposit agreements can also be gratuitous and non-gratuitous.

At the same time, the safety of property can be implemented only through the availability of tools for imposing material liability. It should be noted that, according to the Austrian law, the depositary's liability is not less when the contract is free of charge since this in no way relieves the depositary of liability. Germany has a provision similar to that found in the Romanian Civil Code, according to which the depositary is liable for a gratuitous deposit, unless it has acted with the discretion with which it would treat its own goods. In Italy and the Netherlands, the deposit agreement may be gratuitous and non-gratuitous, while the depositary's liability is less stringent in case of gratuitous agreement. A slightly different decision was made in Poland, where two types of agreements were covered: a deposit agreement, which can be concluded only on a gratuitous basis, and a "property preservation" agreement, which can be concluded both free of charge and provide for remuneration (Anemari Ortolu Deposit contracts in Romanian Civil Code, DCFR and European legislations. Acta Universitatis George Bacovia. Juridica).

**SUMMARY**

This article highlights practical issues on which there is no single point of view regarding the application of the rent agreement, as well as the liability for it. In addition, the experience of implementing this institution in several European countries was considered, which made it possible to see different approaches to the grounds for the emergence of liability, as well as to conclude that the subjects of both liability and evidence in disputes arising from the movable property lease agreements can be as both the lessee and the lessor, and the main aspect that determines the model of relations in resolving a dispute is the nature of agreement and the actual circumstances.

**CONCLUSIONS**

Consideration of civil liability in the structure of application mechanisms for the enforcement measures is very appropriate for several reasons. First of all, civil liability in itself is a security measure: the possibility of its application psychologically induces the debtor to properly fulfill the obligation undertaken. In addition, the application result of almost any measure to ensure the fulfillment of obligations (be it a forfeit, surety or pledge) always results in civil liability. Another thing is that civil liability is not always borne by the debtor under the main obligation (for example, the guarantor acts as the responsible person in the surety), and civil liability is not always expressed in property sanctions (SMETANNIKOV, 2009) (for example, when the property is retained, the structure of the main obligations that negatively affect the offender's property interests (namely, there is no direct material damage), liability is expressed in incurring additional costs, and possibly indirect losses).
With regard to consumer relations (and we adhere to the position according to which the rent agreement shall be consumer in nature), it is possible to apply the civil liability of the consumer’s counterparty in case of harm to others as a result of using rented property, this position is reflected in both Russian and foreign legislation.

ACKNOWLEDGEMENTS

The work is performed according to the Russian Government Program of Competitive Growth of Kazan Federal University.

REFERENCES


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Received: 20 Oct. 2020
Approved: 01 Dec. 2020