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CRITERIA FOR THE APPLICATION OF THE PRINCIPLE OF REASONABLENESS IN CONTRACTUAL OBLIGATIONS UNDER MARTIAL LAW IN UKRAINE

The scientific article is devoted to the study of the criteria for applying the principle of reasonableness in contractual obligations under martial law in Ukraine. It is substantiated that the traditional criteria for applying the principle of reasonableness in contractual obligations, developed by doctrine and case law for ordinary circumstances, require reconsideration and adaptation to the realities of wartime. In view of the above, the outlined topic is relevant and requires thorough theoretical elaboration.

The purpose of the article is to explore the criteria for applying the principle of reasonableness in contractual obligations under martial law in Ukraine based on the analysis of doctrinal sources, legal acts, and judicial practice.

The methodological basis of this scientific article consists of general scientific and special legal methods of cognition. In particular, the method of legal analysis made it possible to reveal the content of the criteria for applying the principle of reasonableness in contractual obligations, to study the genesis of this principle, to identify its connections with other principles of civil legislation, and to determine the possibility of its application to specific legal situations. The modeling method was applied as a universal tool for scientific argumentation of a number of conclusions regarding changes in the criteria for applying the principle of reasonableness under martial law in Ukraine. The concept of the principle of reasonableness was clarified through the use of methods of analysis and synthesis. The dialectical method made it possible to highlight the dynamics of the development of the principle of reasonableness under the new conditions of the armed aggression of the Russian Federation. The systemic method was used to determine the place of the principle of reasonableness within the system of civil law principles of Ukraine. The method of legal forecasting allowed to identify possible directions for harmonizing the civil legislation of Ukraine, which enshrines the principle of reasonableness in contractual obligations, with the principles of European contract law. The comparative legal method was applied when comparing the provisions of the Civil Code of Ukraine with one another, as well as with the provisions of international codifications of the principles of private law and national legislation.

The authors analyzed the provisions of the Civil Code of Ukraine that enshrine the principle of reasonableness and concluded that it is most vividly manifested in the sphere of contractual obligations. Particular attention was paid to doctrinal approaches to defining the principle of reasonableness and its interpretation in international codifications of the principles of private law. The practical significance of this principle for the effective functioning of the system of contractual obligations is substantiated.

Based on the conducted research, the main criteria used to assess the compliance of the actions of contractual parties with the principle of reasonableness were identified, namely: objectivity, consideration of specific circumstances, predictability of consequences, and balance of interests. It is concluded that under martial law in Ukraine, all these criteria of applying the principle of reasonableness in contractual obligations undergo changes: in terms of objectivity, the very standard of a «reasonable person» is transformed; when considering specific circumstances, risks caused by wartime must be taken into account; the temporal dimension of applying the criterion of predictability of consequences is altered; in balancing the interests of contractual parties and public interests, the latter gains greater weight. This indicates the development of the principle of reasonableness in contractual obligations under new legal realities, which, in the context of the renewal of civil legislation in Ukraine, may serve as a foundation for further scientific research.

Keywords: contractual obligations, principles of civil legislation, foundations of civil legislation, reasonableness,

good faith, fairness, martial law, harmonization, international codifications of private law principles, EU legislation, contract.

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Критерії застосування принципу розумності в договірних зобов'язаннях в умовах воєнного стану в Україні

Наукова стаття присвячена дослідженню критеріїв застосування принципу розумності в договірних зобов'язаннях в умовах воєнного стану в Україні. Обґрунтовано, що традиційні критерії застосування принципу розумності в договірних зобов'язаннях, вироблені доктриною та судовою практикою для звичайних умов, потребують переосмислення та адаптації до реалій воєнного часу. З огляду на вищезазначене окреслена тематика є актуальною та потребує ґрунтовного теоретичного напрацювання.

Метою статті є дослідження критеріїв застосування принципу розумності в договірних зобов'язаннях в умовах воєнного стану в Україні на підставі аналізу доктринальних джерел, нормативно-правових актів та судової практики.

Методологічною основою цієї наукової статті стали загальнонаукові та спеціально-правові методи наукового пізнання. Зокрема, використання методу правового аналізу надало можливість розкрити зміст критеріїв застосування принципу розумності в договірних зобов'язаннях, дослідити тенеу цього принципу, виявити його зв'язки з іншими принципами цивільного законодавства та можливість застосування до конкретних правових ситуацій. Метод моделювання застосовано як універсальний для наукової аргументації низки висновків щодо зміни критеріїв застосування принципу розумності в умовах воєнного стану в Україні. З'ясування поняття принципу розумності здійснено з використанням методів аналізу та синтезу. Діалектичний метод дослідження надав змогу висвітлити динаміку розвитку принципу розумності в нових умовах воєнної агресії російської федерації. Системний метод використано для визначення місця принципу розумності в системі засад цивільного законодавства України. Використання методу правового прогнозування дало змогу визначити можливі напрями гармонізації цивільного законодавства України, яке закріплює принцип розумності в договірних зобов'язаннях, із принципами європейського договірного права. Порівняльно-правовий метод застосовується при порівнянні норм Цивільного кодексу України між собою, а також положень міжнародних кодифікацій принципів приватного права та національного законодавства.

Авторами проаналізовано норми Цивільного кодексу України, які закріплюють принцип розумності, та зроблено висновок, що найбільш виразно він проявляється саме у сфері договірних зобов'язань. Акцентовано увагу на доктринальні підходи до дефініції принципу розумності та його розуміння в міжнародних кодифікаціях принципів приватного права. Обґрунтовано практичне значення цього принципу для ефективного функціонування системи договірних зобов'язань.

На основі проведеного наукового дослідження виокремлено основні критерії, які використовуються при оцінці відповідності дій суб'єктів договірних зобов'язань принципу розумності, зокрема: об'єктивність, врахування конкретних обставин, передбачуваність наслідків та баланс інтересів. Зроблено висновок, що в умовах воєнного стану в Україні усі зазначені критерії застосування принципу розумності в договірних зобов'язаннях зазнають змін: в об'єктивності як критерії принципу розумності змінюється сам еталон «розумної особи»; при врахуванні конкретних обставин потрібно враховувати ризики, спричинені воєнним часом; змінюється часовий вимір при застосуванні такого критерію розумності як передбачуваність наслідків; у балансі інтересів суб'єктів договірних зобов'язань та суспільних інтересів посилюється перевага останнього. Зазначене свідчить про розвиток принципу розумності в договірних зобов'язаннях в нових правових реаліях, що в умовах оновлення цивільного законодавства України може стати ґрунтом для подальшого наукового дослідження.

Ключові слова: договірні зобов'язання, принципи цивільного законодавства, засади цивільного законодавства, розумність, добросовісність, справедливість, воєнний стан, гармонізація, міжнародні кодифікації принципів приватного права, законодавство ЄС, договір.

Problem Statement. The principle of reasonableness, enshrined in Article 3 of the Civil Code of Ukraine (hereinafter – CC of Ukraine) [1] as one of the fundamental principles of civil law, acquires particular significance under martial law conditions. Traditional criteria for assessing the reasonableness of participants' conduct in civil legal relations, developed by doctrine and judicial practice for ordinary conditions, require reconsideration and adaptation to wartime realities.

Martial law, introduced in Ukraine on 24 February 2022 due to Russian aggression, has radically altered the conditions for the performance of civil-law obligations [2]. Widespread infrastructure destruction, population evacuation, mobilization measures, curfews, and movement restrictions have created an unprecedented situation where fulfilling contractual obligations often becomes impossible or unreasonably burdensome.

Under such conditions, the principle of reasonableness becomes a key tool for judicial interpretation of contracts, determining the limits of liability of the parties, and ensuring a fair balance of their interests. However, the application of this principle requires clear criteria that would allow courts to objectively evaluate the parties' conduct and make substantiated decisions. Considering the above, the topic is relevant and requires thorough theoretical analysis.

Analysis of Recent Research and Publications. The principle of reasonableness, as one of the basic foundations of civil legislation in general and contractual obligations in particular, has been repeatedly discussed in private law doctrine. The issue has been addressed in the works of Ukrainian scholars such as T. V. Bodnar, N. Yu. Holubeva, S. D. Hrynko-Rusu, O. V. Dzera, N. S. Kuznetsova, R. A. Maidanik, O. O. Merezhko, M. O. Stefan-chuk, Yu. A. Tobota, Ye. O. Kharitonov, and others. Nevertheless, the study of the transformation of the criteria for applying the principle of reasonableness in contractual obligations under martial law remains largely unexplored.

The aim of this article is to investigate the criteria for applying the principle of reasonableness in contractual obligations under martial law in Ukraine based on an analysis of doctrinal sources and judicial practice.

The methodological basis of this scientific article comprises general scientific and special legal methods of research. In particular, the use of the method of legal analysis allowed for revealing the content of the criteria for applying the principle of reasonableness in contractual obligations, examining the genesis of this principle, identifying its connections with other principles of civil legislation, and its applicability to specific legal situations. The modeling method was applied as a universal tool for scientifically arguing several conclusions regarding changes in the criteria for applying the principle of reasonableness under martial law in Ukraine. The concept of the principle of reasonableness was clarified using methods of analysis and synthesis. The dialectical method made it possible to highlight the dynamics of the development of the principle of reasonableness in the new conditions of Russian military aggression. The systemic method was used to determine the place of the principle of reasonableness within the framework of civil law principles in Ukraine. The method of legal forecasting allowed identifying possible directions for harmonizing Ukrainian civil legislation, which enshrines the principle of reasonableness in contractual obligations, with the principles of European contract law. The comparative legal method is applied when comparing the provisions of the Civil Code of Ukraine among themselves, as well as the provisions of international codifications of private law principles and national legislation.

Main Material of the Study. The principle of reasonableness has a long history and traces its roots to Roman law. Therefore, the Romano-Germanic legal system, which absorbed the best norms of Roman law, was formed on the idea that society should be guided by the norms of reason [3, p. 71]. Although in legal literature, there is a view that the principle of reasonableness in Ukrainian civil law has its roots in the Anglo-American legal tradition, where the «reasonable person» criterion is used to assess the lawfulness of the conduct of legal subjects [4, p. 54]. The continental legal system, to which Ukrainian law belongs, borrowed this approach and adapted it to its own characteristics.

The CC of Ukraine enshrines the principle of reasonableness in paragraph 6 of part 1 of Article 3 as one of the foundations of civil legislation, alongside other principles – good faith and reasonableness. It is noteworthy that doctrinal sources emphasize that the sequence of this triad of principles in Article 509 of the codified civil legislation differs from that in Article 3, indicating imperfection in legal drafting. Therefore, in the context of recodifying Ukraine's civil legislation, it is advisable to harmonize these articles and present the three general foundations of civil legislation in the same sequence [5, p. 80].

In the codified act of Ukrainian civil legislation, the term «reasonableness» is mentioned 53 times in general and 39 times in the norms regarding types of contractual obligations. Hence, it can be asserted with confidence that the principle of reasonableness is most prominently manifested in the sphere of contractual obligations, where participants are especially required to rationally assess the terms of the contract, their own capacities, and potential risks. This principle is explicitly mentioned in the CC of Ukraine in certain articles regulating contractual relations (Articles 627 and 749), and in most cases, it is specified through categories such as «reasonable time» (Articles 666, 670, 672, 678, 680, 681-1, 684, 688, 690, 700, 704, 776, 846, 852, 857, 858, 872, 877, 884, 919, 935, 938, 939, 1004, 1017, 1041, 1082), «reasonable price» (Article 874), «reasonable payment» (Articles 903, 916, 931), and «reasonable remuneration» (Article 1074). The principle of reasonableness in contractual obligations applies at all stages – from contract formation to performance and, if necessary, liability for breach of contract terms. As V. H. Zhornokui notes, the analysis of the CC of Ukraine provisions indicates that through categories such as good faith and reasonableness, the limits of exercising civil rights are established, thereby preventing abuse of rights by participants [6, p. 202]. In this context, V. I. Borysova's position is also relevant, noting that reasonableness and unreasonableness have legal significance in cases explicitly provided by law [7, p. 29].

Despite the wide application of the principle of reasonableness in contractual obligations, its concept is not codified in the CC of Ukraine. The absence of a legal definition has led to various interpretations and doctrinal understandings. According to N. S. Kuznetsova, based on the principles of reasonableness and fairness, parties should consider each other's reasonable interests during negotiations. All contractual obligations should be interpreted according to the principles of reasonableness and fairness. In contrast, the concept of good faith is more related to subjective factors and is used to determine the mental intentions of the party [8, p. 16].

According to Yu. A. Tobota, «reasonableness in civil law is a property of the external manifestation of behavior (actions or inactions) of a participant in civil relations related to good faith and fairness, assessed from the perspective of legality, justification, expediency, and the possibility for the participant to foresee circumstances that may affect their own rights and obligations, as well as the rights and obligations of other participants» [9, p. 84].

Thus, the principle of reasonableness in civil law should be understood as a legal requirement that entails the necessity for participants in civil legal relations to use common sense, rational thinking, and prudence in exercising their rights and performing obligations. Its enshrinement in Article 3 of the CC of Ukraine highlights the legislator's recognition of the special role of intellectual and rational aspects in participants' behavior.

The significance of the principle of reasonableness lies in establishing certain limits to the freedom of action of parties in contractual obligations, reflecting what is considered proper and justified behavior in specific circumstances. It serves as a benchmark for assessing the lawfulness of participants' actions from the perspective of the reasonable person standard.

Considering that an important direction for the development of Ukrainian private law, even under martial law, is the harmonization of Ukrainian civil legislation with EU law, attention should be paid to the understanding of reasonableness in international codifications of private law principles. According to Art. I-1:104 of the Principles, Definitions, and Model Rules of European Private Law, «reasonableness should be established objectively, taking into account the nature and purpose of the act, the circumstances of the case, as well as relevant customs and established practice» [10]. In the UNIDROIT Principles of International Commercial Contracts, a general definition of reasonableness is not provided. Instead, it is detailed in specific cases, such as «reasonable means of protection regarding a contract» or «reasonable price». According to Art. 3.3.1 of these Principles, «if a mandatory rule does not expressly provide consequences for the contract, the parties may use such legal remedies with respect to the contract as would be reasonable under the circumstances. Determining what is reasonable requires, in particular, consideration of: a) the purpose of the rule violated; b) the class of persons protected by the rule; c) any sanction applicable under the violated rule; d) the seriousness of the breach; e) whether the party or parties knew or should have known about the breach; f) whether the breach was necessary for performing the contract; and g) the reasonable expectations of the parties». Particular attention is paid to reasonableness in determining the price under Art. 5.1.7 [11].

Defining the criteria for applying the principle of reasonableness enshrined in Article 3 of the CC of Ukraine is a complex theoretical and practical task, as reasonableness is evaluative and cannot be formalized by precise formulas or algorithms. Nevertheless, based on doctrinal sources and judicial practice, several key criteria can be distinguished for assessing the conformity of parties' actions to the principle of reasonableness in contractual obligations.

First criterion – Objectivity. Reasonableness implies evaluating the actions of a party not from the perspective of their subjective perception but from the standpoint of the typical behavior of an average person in similar contractual relations. Civil law norms, business customs, established practice between contract parties, and other factors forming the standard of reasonable behavior are taken into account. The enshrinement of the principle of reasonableness in Article 3 CC of Ukraine emphasizes its objective nature and general applicability to all participants in civil legal relations.

Second criterion – consideration of the specific circumstances of the case. Despite its objective nature, the principle of reasonableness cannot be applied abstractly, without taking into account the specifics of each particular situation. When assessing the reasonableness of the actions of participants in contractual relations, all material circumstances must be taken into account: the terms of the contract, the purpose of its conclusion, the existing relationship between the parties, their experience and professional status, etc. As V. V. Luts notes, the concept of a «reasonable time» implies the need to consider all specific circumstances in which the participants of legal relations act [12, p. 5-6]. A similar point of view is expressed by N. Yu. Holubeva, indicating that the reasonableness or unreasonableness of the parties' behavior or the term of performance of an obligation can only be determined by a court, taking into account the factual circumstances of the case [13, p. 144].

Third criterion – foreseeability of consequences. Reasonableness implies the ability of a person to foresee the possible consequences of their actions or inaction, taking into account ordinary experience, knowledge, and established business practices in the sphere of contractual obligations.

Fourth criterion – balance of interests. Enshrined in Article 3 of the Civil Code of Ukraine, the principle of reasonableness requires striving to achieve an optimal balance between one's own interests and those of the counterparty. This does not mean that a party must neglect its own interests, but it must avoid actions that clearly and unfairly infringe upon the rights and interests of the other party. This is repeatedly emphasized in the practice of the Supreme Court. Thus, in the Resolution of the Grand Chamber dated 2 November 2021 in case No. 917/1338/18, it is stated that «fairness, good faith, and reasonableness belong to the general foundations of civil legislation provided for in Article 3 of the Civil Code of Ukraine, which limit the freedom of contract by establishing certain boundaries of behavior for participants in civil legal relations. These general foundations are embodied in the norms of law and contract terms, regulating specific legal relations so that each participant is obliged to conscientiously exercise their civil rights and fulfill civil duties, protecting their own rights and interests while also taking into account the rights and interests of other participants, including anticipating the possibility that their actions (inaction) may harm the rights and interests of other participants» [14]. A similar statement is made in the Resolution of the Supreme Court, Third Judicial Chamber of the Cassation Civil Court, dated 12 February 2025 in case No. 679/1103/23, which notes: «the principles of fairness, good faith, and reasonableness imply, in particular, the obligation of a person to take into account the needs of other persons in civil turnover, exercise reasonable care, and conduct negotiations in good faith» [15].

Martial law as a legal regime significantly affects the criteria for applying the principle of reasonableness in contractual obligations. Traditional criteria of reasonableness, formed under peacetime conditions, require adjustment to the specifics of wartime.

First, objectivity as a criterion of the principle of reasonableness changes because the very standard of the «reasonable person» shifts. Behavior considered reasonable under normal conditions, corresponding to generally accepted business practices, may, under martial law, be recognized as reasonable even if it would be deemed excessively cautious or economically inefficient in peacetime.

Second, the scope of circumstances that must be considered when evaluating the criterion of reasonableness as consideration of specific circumstances expands. In addition to ordinary factors, specific circumstances (risks) caused by wartime are included: the threat of shelling, inability to move, lack of communication, evacuation of personnel, etc.

Third, the temporal dimension changes when applying the criterion of foreseeability of consequences. If in peacetime decisions are considered reasonable based on their long-term effectiveness, under martial law priority is given to measures aimed at survival and minimizing current losses, even if they are not optimal in terms of long-term efficiency.

Fourth, in implementing the criterion of balance of interests, the issue of balancing the interests of contractual parties and public interests becomes especially acute. In Ukraine, performing monetary and other obligations in favor of the Russian Federation, its citizens and legal entities, as well as Ukrainian companies where the Russian Federation, Russian citizens, or legal entities are the ultimate beneficial owners holding at least 10% of the charter capital, is prohibited. This prohibition was introduced by the Resolution of the Cabinet of Ministers of Ukraine dated 3 March 2022 No. 187. Such changes demonstrate the predominance of social interests over the private interests of individual participants in contractual relations [16].

The application of the principle of reasonableness has its peculiarities depending on the type of contractual obligation. Under martial law, these peculiarities become even more pronounced. In sales contracts, the principle of reasonableness is primarily applied in terms of the adequacy of measures taken by the parties to ensure the performance of obligations. For the seller, reasonable measures include preserving the goods, transporting them to a safe location, and insuring them against wartime risks. For the buyer, reasonable measures include ensuring payment and organizing the acceptance of goods under limited transportation conditions.

In construction contracts, criteria of reasonableness primarily relate to assessing the feasibility of performing work under martial law. It is reasonable for a contractor to refuse to perform work in an active combat zone or to evacuate from such a zone. At the same time, it is reasonable to continue work in relatively safe areas while observing safety measures. In the context of implementing the principle of reasonableness, ensuring safe performance of work is important: arranging shelters, insuring personnel, using specialized equipment for transportation, etc.

In service contracts, the principle of reasonableness is manifested in adapting the method of providing services to martial law conditions, organizing service provision in safe locations, and similar measures.

Conclusions. The foregoing research allows us to assert that the principle of reasonableness is one of the fundamental principles of civil law, which has particular significance for regulating contractual obligations.

The principle of reasonableness in contractual obligations should be understood as a legal requirement that entails the necessity for participants to use common sense, rational thinking, and prudence in exercising their rights and performing obligations. The significance of the principle of reasonableness in contractual obligations lies in establishing certain limits to the freedom of action of participants, corresponding to the notion of proper and justified behavior in specific circumstances.

Based on an analysis of doctrinal sources, legal acts, and judicial practice, the main criteria for assessing compliance with the principle of reasonableness have been identified: objectivity, consideration of the specific circumstances of the case, foreseeability of consequences, and balance of interests. However, under martial law in Ukraine, all these criteria undergo changes: the standard of the «reasonable person» shifts as the criterion of objectivity; when considering specific circumstances, risks caused by wartime must be taken into account; the temporal dimension changes for the criterion of foreseeability of consequences; and in balancing the interests of contractual parties and public interests, the latter is given priority. These changes indicate the development of the principle of reasonableness in contractual obligations under new legal realities, which, in the context of reforming Ukraine's civil legislation, may provide a foundation for further scholarly research.

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Стаття надійшла 17.08.2025

Стаття прийнята до друку 21.09.2025