

# Peculiarities of legal language in civil law contracts concluded via the Internet

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**Abstract.** Informatization of the society leads to the fact that more and more often civil contracts are concluded between contractors who are far away from each other and they communicate only via the Internet. Peculiarities of legal language in contracts are studied. Moreover, contracts concluded by accepting public offers, exchanging messages, contracts concluded while purchasing goods and services in internet shops and using internet applications are studied. It is determined that the contracts concluded via the Internet do not have a unified text, signed by the sides, they contain links to other documents and sources, contain linguistic structures, excluding the possibility to agree on the contract's terms. The contractor offering to conclude the contract usually includes terms profitable for him - on restraining responsibility, on applicable law, on jurisdiction of disputes. Such contracts always imply that the joining side will learn the agreement's terms, though in most cases it does not happen, and the joining side can be deceived about the agreement's content and the contractor's identity

## 1 Introduction

The fact that communication is easily performed via the Internet leads to the fact that civil law contracts are seldom concluded by creating a unified document in paper form, signed by the sides. Contracts are concluded through exchange of electronic documents and with the help of specific means provided by the Internet (e.g. adding a document to the form by clicking). However, the substitution of traditional communication forms to exchanging messages in electronic form entails a number of legal problems connected to difficulties with defining identity of a contractor, formulating of the contracts, suggested for profit by the side that had created the contract's project. Privacy of data and extra possibilities of malpractice of contractors to each other are separate problems [1]. Understanding the peculiarities of the technique of legal contracts concluded via the Internet makes it possible to solve arising legal problems, particularly the problem of the person joining the contract being obliged by the clauses formulated for the contractor's profit.

## 2 Materials and methods

Data was analyzed and summarized, which was posted in the Russian segment of the Internet – texts of public offers of companies providing legal and educational services, texts of user agreements, rules of selling, published on the websites of electronic internet trading platforms and Internet shops, materials of the practice of courts of the Russian Federation. A hypothesis was tested, which states that the legal language of civil contracts concluded via the

Internet has peculiarities influencing the content of the contract's terms and its further fate.

## 3 Results

Public offers published on the Internet contain links to other documents or appendices to the offer, which allow determining precisely the contract's subject, have the structure of a contract, made as a unified document, contain linguistic structures that exclude the possibility of adjustment of the contract's terms. The side accepting the offer will most likely be tied with all of its terms (if they do not contradict the law directly), as the offer's text allows the contractor to comprehend it from the beginning.

In most cases there is no unified text signed by the sides in contracts concluded via exchanging electronic documents. That is why the text of every document, its coordination with the actions of the sides, the possibility to identify the person the document is coming from, become important.

In agreements concluded by addressing a website or a mobile application, the side who has composed the contract or the terms of use, has a lot of possibilities to act upon its interests. The contractor offering to conclude a contract usually includes conditions on restraining responsibility, applicable law, jurisdiction of disputes. Such contracts always imply that the joining side will learn the terms of the agreement, though in most cases this does not happen and a consumer can be misled into wrong belief about the agreement's content and the contractor's personality.

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## 4 Discussion

Most contracts concluded in accordance to Russian civil legislation require a written form.

A written form is necessary for several reasons. Thus, the sides of the contract must specifically express their intention to take the liabilities of the contract upon themselves. The declaration of intent must be defined in such a way so that it would be clear to the sides, third persons, the court, the court of arbitration, rating and other state authorities. The sides must not have the opportunity to change the content of their agreement on their own, it should be possible to keep the document for a long time in an unchanged condition. The document can serve as proof if a conflict between the sides occurs. In some cases, accrual of rights and responsibilities is connected to the written form [2].

The written form means that information is recorder on a medium. For document to have importance for relationships between the sides, it must have elements showing its authorship. A signature and a stamp can be such elements.

A document in electronic form is undoubtedly different from one in written form. It is hard to distinguish the concept of an original and a copy for the former; it is easier to make amendments; its authorship is not always obvious. An electronic document can only exist as such or can represent an electronic form of a written document. Electronic documents can be signed with a digital signature and in this case are equal in power to paper documents.

The content of the sides' agreement can be reflected in the text of the documents that the sides exchange. If it is possible to distinguish structural units (a preamble, terms on the subject, rights and responsibilities of the sides etc.) in the text of the document, there's no unified text in the document exchange. The text of the documents that the sides exchange must contain at least the minimal set of required terms.

According to Russian civil legislation, a contract is concluded by sending an offer by one side and it being accepted by the other side. The offer to conclude a contract is addressed to one or several specific persons. An offer containing all the main clauses of the contract addressed to an unspecified circle of people, from the content of which a will to conclude a contract with anyone who responds is a public offer. The Internet provides unlimited possibilities for placing public offers.

An offer placed on a company's website offering goods or services, is generally named public. This indication on the contrast with mentioning that "the information is not an offer" allows to avoid the uncertainty of the document's status. The subject publishing an offer expresses his will to conclude a contract on terms listed in the offer with a person who accepts the offer. Therefore, offers are often named "contract-offer".

Details of only one subject offering to conclude a contract are described in the offers published in the Internet. If a special permission (a license) is required to carry out the action, it is listed in the offer too.

An offer to conclude a contract is distinguished by the fact that only one side of the contract is known, and terms are formed exclusively by this side. A minimal content of an offer are essential terms recognized as such by the law. A subject is a term that must be in any contract. Formulating the terms of the contract's subject can be somewhat difficult, as the specific content of liability is unknown. In order to overcome this problem, several means can be used, including linguistic.

A structure formulating a subject of a contract can correspond to the linguistic structure used by the Russian civil code for this type of contract. For instance, according to the paid services agreement, "According to the terms of the present Offer, The Customer authorizes, and the Contractor undertakes to perform legal services for the Customer, and the Customer undertakes to accept and pay for them"

For all that, there is no specified list of goods or services formulated as a contract's subject. This could be evidence of inconsistency of the present term. However, generally in an offer links for websites, references to other documents are used, which together with the offer make it possible to wholly identify the contract's subject. For example, it is a list of goods and services, their price, rates and rules of rendering services. The question of defining the subject can be solved by references to appendixes, where different variants of rendering services. Accordingly, the customer or the contractor chooses the goods or services they are interested in.

In the offer itself a mechanism of concluding a contract is set. After the insight with the content of the public offer, a potential contractor or customer chooses the goods or services that interest them and sends an inquiry to the executive. In their turn the contractor or the customer sends a bill to the buyer or the customer. Payment means that the subject of the contract was confirmed by the sides.

Public offers generally contain a phrase saying that the payment for services means an acceptance of the offer's terms, accordingly the contract is concluded on the offer's terms. For example, "a person interested in concluding a contract accepts the terms listed in an offer", "payment for the services by the Customer means acceptance of the offer, which is considered equivalent to concluding the Contract on terms listed in the offer". These linguistic structures do not imply that it is possible to negotiate any terms and it means an unconditional acceptance of the suggested option. The contract concluded by accepting a public offer implies an exchange of documents between the sides. However, only the offer contains a logically connected text; that is why if any dispute occurs, the text of the offer will be examined by the court for interpretation.

In most offers the acceptor is required to pay for 100% of the contract price. This way to some degree solves the problem connected to the uncertainty of the contractor and the possibility of neglecting liabilities from his side. At the same time, this approach can lead to malpractice from the offeror's side, who may not provide the service or not pass the goods, while getting the payment beforehand.

Generally, in public offers, terms that are going to be used later on are defined. These could be such terms as:

public offer, acceptance, contractor, customer, services, website, contract, invoice, order form, client's email, contractor's email.

Defining the way of documents exchange is an important element of public offers published on the Internet. A certain way of exchange is proposed in the offer and so is the way of defining a real address of the contractor. There can be a request for the person accepting the offer to create a profile on the offeror's website.

It can be set that electronic documents in a form of scanned copies of paper documents, which the sides exchange, have the same power as the original written documents on following conditions. A paper original is signed by the contract's side or a person entitled to act on the side's behalf and the signature is reflected in the electronic scanned copy; the electronic documents are sent from an appropriate email address from one side to an appropriate email address of the other side. Consequences of sending a file in an unreadable form can be discussed separately. In one of the offers there is the following term: "an electronic document is considered delivered to the receiver-side on condition that the file attached is readable. The receiver-side must inform the sender immediately if the file is unreadable [3].

An offer can contain its validity period. If such period is not indicated, then the offeror's offer is valid until the moment it changes or is deleted from the website.

If it is implied that the offer can be accepted by a physical body, then the offer must contain a clause on consenting personal data processing. For example, like this: "Sending an inquiry to the Contractor, the Customer (a physical body) gives consents to gathering, systemizing, storing, specifying (updating, changing), using, blocking, destroying their personal data given to the Contractor – their surname, name, patronym, passport details, email address, phone number. The actions with the Customer's personal data listed above are performed in order to conclude and execute the present Contract".

If the contract is to be concluded with a legal entity or an entrepreneur, the offer must contain a clause enable to perform an examination of their good conscience and reliability [4].

As a rule, offers have clauses on constraining and excluding liability. To formulate these conditions the following or similar phrases can be used: "The combined measure of liability of the Contractor on the Contract, including the size of fines (mulcts, forfeits) and/or compensated losses on any suit or claim concerning the Contract or its executor, is constrained to 10% of the price of the Services of the Contract", except the sums that are specifically marked as irrecoverable.

The Contractor has no liability for all consequences, caused by the Customer providing inaccurate and incomplete information.

Public offer is composed by a subject that has been working in a certain sphere for a long time, always concluding and executing typical contracts. So, they know the difficulties that can appear in the relationship with the client (customer, buyer). Accordingly, there are clauses in the offer that make it possible to avoid conflicts and contradictions in such formulations that exclude different exposition. The structure of the public offer repeats after

the contract's structure, as it actually becomes the contract after the contractor's acceptance.

Availability of information published on the Internet as a public offer does not mean that the possibility of deceiving the acceptor about the contract's content is excluded. There is a presumption that if a person acts upon executing the contract, they agree with all of its terms. However, publishing a public offer on the Internet can create an illusion of legality and legitimacy of the offeror's actions, joining the contract's terms does not always mean that they are clear to the contractor [5].

Thus, public offer published on the Internet contain links to other documents or an appendix to the offer, which makes it possible to define the contract's subject. They also have the structure of a contract, composed as a unified document, have linguistic structures that exclude the possibility to conform the contract's clauses. The side accepting the offer will be bound by all of its clauses (if they do not openly contradict the law), as the offer's text enables the contractor to comprehend its meaning.

Contracts on the Internet can be concluded by exchanging documents via email. Proofs must be presented to the court, stating that the person conducting the correspondence, had authority to act on behalf of the contractor and was sending the messages to the other side of the contract. There is a presumption according to which the message sent from the email address listed in the official documents, is considered a message from the contract's side. A contract can be concluded via email messages or by exchanging of scanned copies of the documents.

Receiving or sending a message using an email address, known as an email of the person or a company email if its competent employee, attests that the actions were performed by the person until they prove otherwise (in establishment of abiding the way of examination and seizure of evidence) [6].

For example, in one of the cases the email correspondence about concluding a contract, obtaining bank requisites of the side, obtaining the contract's project, was not accepted by the court as an evidence confirming the fact of the contract's conclusion, as authority of the person conducting the correspondence was not established to act on behalf of the supposed contractor [7]. In another case the court decided that the sides recognize the juridical power of informational and auxiliary documents (inquires, answers to granting information etc.) obtained through communication channels, which the sides exchange also by email in order to speed up their interactions. That is why the court found that the customer was avoiding fulfilling their contract duties by not answering the contractor's emails [8].

The sides of the contact can exclude the possibility of communication via email upon their agreement, determining a list of the ways of exchanging messages [9]. However, on the contrary, the sides mostly agree on a possibility of email correspondence, using the following phrases in the contract, for instance: "To speed up the interaction between the Customer and the Contractor, the sides have agreed to conduct information exchange using email via the Internet".

Courts accept as evidence in quarrels connected to contract relationships not only emails, but also correspondence in messengers, such as WhatsApp. The sides usually exchange messages in social media and messengers in the process of executing the contract, for example if some flaws of goods or services are found. Such messages can be a proof that the whole lot of goods was accepted without any reservations [10]. At the same time, if the agreement implies that it is needed to create a two-sided act or another document, the messages exchange in messengers will not be considered a proof of the existence of the listed reservations [11]. It is necessary to note that the language used in messengers is mostly colloquial and not official, which does not always let to determine the text's meaning.

In case if the contact is concluded by exchanging emails, there is no unified text, from which the agreement's clauses follow. The agreement's content can be determined only based on the emails' text, documents and the sides' actions. The exchange of scanned copies of paper documents lets to agree on the sides' will more precisely. In case of document exchange via email, the question of identification of the agreement's side is principal: if the message reliably comes from one side and is received by another, then its content connects the sides.

A proposal to conclude a contract can be not only in a separate document, published on the Internet and directly named a public offer. A contract can also be concluded via some actions on a website. For instance, it could be buying goods, ordering services via an online shop or an internet auction, and also via a smartphone app.

The following types of expressing willingness to conclude a contract (accept) while doing it at a website are distinguished: clickwrap and browsewrap. A consent can be expressed by clicking in certain forms on a website ("I consent") after reading and accepting the conditions. The browsewrap consent does not imply a direct expressing of the user's will by any action to confirm familiarity with the conditions – it is implied that the user consents just by using a website or an application.

Generally, such contracts are concluded with consumers, i.e. with physical bodies who are ordering goods or services for their personal needs. A certain way is used to conclude such contracts – it implies a link to other documents that are on the website. This particular way distinguishes such contracts and puts the consumer in an unprofitable position, compared to the entrepreneur. As a rule, unfair contract terms are hidden behind hyperlinks and one has to make a lot of effort to find contract's terms.

The main legal problem is the question of whether the consumer is tied with the contract's terms in case if he never actually learned them. In this case it should not be about the legal language of the agreement itself, but about the means, including linguistic, which can help the consumer to learn the terms of the contract they are going to conclude [12].

Modern research shows that most contracts published on internet shops' websites do not contain standard terms, restraining the buyers' rights – arbitration, refusal of consequential damages, etc. [13]. At the same time, participants of internet trade do not neglect such means.

For instance, in the terms of use of a taxi service Uber there are conditions that do not correspond to the user's interests. They are the terms of restraining responsibility – «In no event shall Uber's total liability to you in connection with the services for all damages, losses and causes of action exceed five hundred euros (€500)» [14]. Moreover, the legislation of the Netherlands is named as applicable law, except the norms of the conflict of laws.

Actual learning of terms and conditions are out of the seller's reach; that is why if a conflict arises, the court can decide that the consumer was not tied with the contract's terms he had joined. It is worth noting that there is research on terms of use, according to which even for offers where consumers have to confirm that they have read and agreed to the conditions before purchasing the product, and these conditions are available and noticeable, the percentage of consumers actually reading the terms is between 0,05% and 0,22% [15].

It is required for the consumer to have an actual possibility to learn terms of use and not to be able to conclude a contract without viewing them first, i.e. learning the conditions must happen before concluding the contract. The viewing must also be convenient for the consumer. The access to the terms must be provided before and after concluding the contract, it should be possible for the consumer to come back to them. Terms of the contract must be clear and readable, typed in a clear font. If the terms are defined in different documents, they cannot contradict each other. The consumer must have a clear choice between consenting and refusing the terms. Without a clear consent, ordering goods or services must not be possible. The process of agreement must have reasonable means to find mistakes in the order – for example, the possibility to view the online order before the payment [16].

The consumer must clearly understand the consequences of their choice, and for that unambiguous phrases and words should be used, such as "Yes", "No", "I consent", "I do not consent", etc.

However, in some cases sellers avoid using clear and short formulations, they aim at getting as many permissions from the user as possible. For example: "Pressing the button ("confirm order"), you confirm your majority, agree on processing of personal data according to the Terms, and the Terms of selling" (Ozon) [17], "I confirm that I have learned the following documents: The rules of processing transactions Alibaba.com, Alipay Agreement, Terms and conditions of sales (Alibaba)" [18].

Posting the form of the contract in such a way that makes it impossible for the user to read it, should facilitate informing the consumer and protect their interests. Even learning the contract's conditions does not lead to critical assessment from the consumer, even if the contract contains unfair terms, leads to the conclusion of the contract [19].

The entrepreneur is forced to overcome gaps in the legislation, providing the customer with protection from possible malpractice from the persons, offering to conclude a contract via the Internet. For example, a customer using service to order a taxi might have an impression that also the service the contract is concluded with, even though legal relationships can be made in such

a way that the service itself is performed by another body. That is why the Plenum of the Supreme Court of the Russian Federation explains that if a passenger thinks that he is concluding a contract with the body he is turning to order a taxi, then this body is responsible for any damage caused [20]. The court often finds the customer not tied to the contract concluded via the Internet, even if they formally agreed to all the terms. For instance, in the case *B Specht v. Netscape*, 306 F.3d 17 (2d Cir. 2002) the court noted «an offeree, regardless of apparent manifestation of his consent, is not bound by inconspicuous contractual provisions of which he is unaware, contained in a document whose contractual nature is not obvious» [21].

## 5 Conclusion

The core of the contract does not change because it is concluded in the electronic form, however, using the means offered by the Internet gives some peculiarities to contractual relationships and in particular to the juridical technique of contracts.

The texts of the contracts concluded via the Internet are structured in a certain way: in most cases there is no unified document, signed by the sides, links to other texts and sources are used. The language used is easy to comprehend.

As a rule, this is the contract of joining; that is why its text is created by one side, which can add any terms, including ones that break the balance of the sides' interests. The terms set only for one side's benefit are openly demonstrated – the other problem is that the joining side does not wish to learn the content of the agreement that is being concluded. That is why the contracts concluded via the Internet can serve as means of malpractice, and the court can further recognize such side not tied with the contract's terms.

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