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**THE LANGUAGE DIFFICULTIES OF COMPREHENDING THE TEXT OF A
CONTRACT AND WAYS TO OVERCOME THEM**

***AS DIFICULDADES DE LINGUAGEM PARA COMPREENDER O TEXTO DE UM
CONTRATO E FORMAS DE SUPERÁ-LAS***

***LAS DIFICULTADES DEL LENGUAJE PARA COMPRENDER EL TEXTO DE UN
CONTRATO Y FORMAS DE SUPERARLAS***



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ABSTRACT: In modern civil circulation, a significant number of contracts are those of adhesion. As confirmed by judicial practice, the joining side may not understand the contract's content or have a mistaken notion about it. The aim of the article is to research the reasons and consequences of lack of language clarity on the contract's terms for the side that joins the contract, in order to determine the ways to eliminate them. The empirical method, the methods of description and interpretation, and the theory of formal and dialectic logic are used in the article. The reason for not understanding a contract's terms might not be the objective complexity of the text, but the fact that the contractor does not read it. A conclusion is made that juridical means of protecting a contract's side that has concluded a contract due to wrongous influence, are not always effective. The legal and linguistic design of a contract implies using any means of visualization that lets the contractors comprehend the meaning of a contract.

KEYWORDS: Language clarity. Contract's language. Contract's text. Linguistic influence. Legal design.

RESUMO: Na circulação civil moderna, um número significativo de contratos é de adesão. Conforme confirmado pela prática judicial, a parte contratante pode não entender o conteúdo do contrato ou ter uma noção equivocada sobre ele. O objetivo do artigo é pesquisar as razões e consequências da falta de clareza na linguagem dos termos contratuais para a parte contratante, a fim de determinar as formas de eliminá-las. O método empírico, os métodos de descrição e interpretação e a teoria da lógica formal e dialética são usados no artigo. A razão para não entender os termos de um contrato pode não ser a complexidade objetiva do texto, mas o fato de o contratante não o ler. Conclui-se que nem sempre os meios jurídicos de proteção à parte contratual, que tenha celebrado o contrato por influência ilícita, são eficazes. O desenho jurídico e linguístico de um contrato implica a utilização de qualquer meio de visualização que permita aos contratantes compreender o significado de um contrato.

PALAVRAS-CHAVE: Clareza da linguagem. Linguagem contratual. Texto contratual. Influência linguística. Design jurídico.

RESUMEN: En la circulación civil moderna, un número importante de contratos son los de adhesión. Tal como lo confirma la práctica judicial, la parte que se suma puede no comprender el contenido del contrato o tener una noción equivocada al respecto. El objetivo del artículo es investigar las razones y consecuencias de la falta de claridad del lenguaje en los términos del contrato para la parte que se adhiere al contrato, con el fin de determinar las formas de eliminarlos. En el artículo se utilizan el método empírico, los métodos de descripción e interpretación, y la teoría de la lógica formal y dialéctica. La razón para no comprender los términos de un contrato puede no ser la complejidad objetiva del texto, sino el hecho de que el contratista no lo lee. Se llega a la conclusión de que los medios jurídicos para proteger a la parte de un contrato que ha celebrado un contrato debido a una influencia ilícita no siempre son eficaces. El diseño jurídico y lingüístico de un contrato implica utilizar cualquier medio de visualización que permita a los contratantes comprender el significado de un contrato.

PALABRAS CLAVE: Claridad del lenguaje. Lenguaje del contrato. Texto del contrato. Influencia lingüística. Diseño legal.

Introduction

Russian legislation regulates the procedure of concluding contracts in enough detail, implying that the sides have the possibility to agree upon all the necessary terms and get a text fully reflecting all their intentions and interests as a result. The relationships connected to concluding adhesion contracts, i.e., those that imply *approval of terms suggested by one side to another*, are also regulated. In adhesion contracts, the joining side is free to choose a contractor, offering the most suitable terms.

However, the joining side may enter contractual relationships without reading the contract's text, not understanding the terms, or understanding them incorrectly. It is necessary to establish what terms might lead to such situations, whether they are connected to the contract's text, the contract's language, linguistic influence of one side on another. We will ascertain what might impede understanding of a text and what the consequences are of contracts not being read or comprehended. Also, the means that help minimize the number of situations, where the contractor does not understand the content of the contract they are concluding, are to be determined.

Materials and methods

The development of online commerce, concluding contracts via smartphone applications, the appearance of smart contracts, the development of credit and insurance relationships mean that more and more adhesion contracts are being concluded. However, the paradox is that the joining side might not understand the contract's terms for various reasons, even though the text might be available for studying and comprehending. Adhesion contract are a subject of scientific research usually from perspective of whether the consumer is bound by its terms (BARNES, 2007). At the same time, the aspects of the texts' design and legal language seem to be insufficiently studied, however, this problem is a subject of research (DAVYDOVA; KOZLOVA, 2019). The question of using the instruments of legal design raises interest. It is necessary to study the question of whether the complexity or readability of a text impede its comprehension, what role the design of a text plays in its understanding. For this, the texts of rules of insurance published on the internet by Russian insurance companies have been analyzed, as well as the legal practice on cases where the plaintiffs referred to not

understanding a contract's content. Empirical method, as well as the methods of description and interpretation, and these theoretical of formal and dialectic logic are used in the article.

Results

The first group of conditions impeding comprehension of a contract from its text lies in the setting in which it is being concluded.

The setting may influence the subject and make them conclude a contract they would not have concluded in other conditions. The contractors are being manipulated, which leads to the fact that a client concludes contracts in contradiction with their own interests and often against one's better judgment. In phone conversations or personal meetings, managers of contractors soliciting goods and services use various methods of influence, including verbal, that lead to a contract's conclusion. For instance, these are pointing out the exclusivity of the good, its superior quality together with a low price for the moment of time, pointing out the short term of the proposal etc. However, such contracts are not always admitted invalid as concluded because of delusion, and there are not always sufficient circumstances to cancel them early.

Let us give some examples. At a certain period in the Russian Federation so-called "beauty salons" have been working, they used a tested scheme of distributing their goods – the Desheli cosmetics. An advertisement campaign with celebrities was being held, as well as free presentations. During them, the consumers were being convinced that they are being offered some elite cosmetics. The price was unreasonably high, and if some of the clients had no opportunity to buy the products, the managers convinced them to conclude not only a contract of sale but get a credit as well. There are many similar cases in judicial practice, where the plaintiffs (consumers that had bought the cosmetics and concluded a credit contract) demanded the contracts to be annulled. In "GAS Pravosydie" system there is data on 481 judicial acts, where a phrase "Desheli cosmetics" is met. Out of 45 randomly picked cases investigated in 2016, 25 suits were upheld (including partly) and 20 denied. In one of the conclusions, the court states: "the plaintiff signing the documents of sale without reading them should have foreseen the negative consequences of her actions, especially since there were many documents to sign and the signature was required on every page". The result of a case depends on all significant circumstances, but the text of the document with the consumer's signatures implies that they had learned all the signed materials.

Also, there were some organizations working that have been selling tours without being a touristic agent or a tour operator. Usually, a questionnaire for taking part in a lottery was distributed among the visitors of shopping centers, where it was required to indicate one's name and phone number (SARAFANOVA; SARAFANOV, 2021; LUBOZHEVA, 2021; GARCIA, 2021). After this, the participants were invited to a meeting, where the advantages of timeshare were described, and they were offered to conclude a contract on providing such vacation, emphasizing the fact that the purchase would be cheaper than usual only at that moment. As one of the plaintiffs of one of such cases states, "The atmosphere was heated, one could not miss the moment, there was no time to think about one's actions". A manager was reading the contract's text aloud at such pace that the clients could not comprehend it, and not all the paragraphs were read, apparently. After this, the manager quickly gave out the contract one page after another for them to be signed, and the client had no time to read them (SVERDLIK; ATAEVA, 2021). In fact, it was impossible for the client to learn the content and the appendixes independently (RUSSIA, 2019). After the purchase was completed and the contract concluded, it turned out that the terms were completely different from the ones the manager had described.

Judging from the court cases materials, signing a declaration upon concluding the contract was spread, where a client confirmed that the declaration and contract were signed without coercion in a qualified and polite environment and that they have received answers to all questions asked and are fully satisfied with the information received. According to one of the clauses, the clients confirmed by signing that they had read every clause and had understood all the terms of the contract and agree with them (KOROLEVA, 2018).

So, the atmosphere in which a contract is concluded can lead to one side joining it without planning to join a contractual relationship or it might have intended to conclude a contract on different terms. The actions of the soliciting side are not always considered to be a delinquency since the signed contract gives legitimacy to such actions.

The second group of conditions adding to a contract's unclarity for the joining side is executing the text in such a way, as to impede the comprehension.

For instance, using a small unreadable font size complicates the understanding of a text. Nevertheless, generally using a small font does not violate the legislation directly, and the text executed in such a way cannot be viewed as a reason to conclude that the person who signed the contract did so without understanding its text.

The courts often note that the arguments on the fact that the small unreadable font of credit and insurance documents leads to unfavorable consequences for the participant of the

contract, are unconvincing without proving the fact that the font size in the documents could lead to misinterpretation of the information provided (RUSSIA, 2016).

Small font is often used in credit contracts. There is a case in judicial practice, when a borrower has altered the text of the application provided by the bank, adding the absence of interest rate for using credits and commissions of the bank and setting a fine for early discontinuance of the contract (RUSSIA, 2012). For this, the borrower created a website, where he published his own edition of the general terms of providing a credit and the tariffs, he then altered the application form, which he sent to the bank. Since the bank has issued and activated the card, the contract was concluded on the terms offered by the borrower. In view of delay in payment, the bank brought a demand to the court to collect the sum of the principal debt, as well as the sum of commissions. The court has partly *relieved the suit*, based on the fact that the contract had been concluded on terms of gratuitousness of providing the loan. This example does not only illustrate the high level of trust for the text provided in the ordinary way, which is assumed to be stereotyped and standard, but also the difficulty of checking the text printed in an unreadable font.

Evidently, the small font itself does not violate the law; it cannot be viewed as a circumstance that leads to a contract's annulment. However, it leads to a high probability that the addressee does not read the text, trusting the contractor who offered it.

The third group of conditions is the objective or subjective complexity of a text that impedes comprehension.

Apart from the small font, the objective or subjective complexity of a text can be viewed as an impediment to its comprehension. At the same time, the complexity lies not only in the sentence structure or specific terminology, but in a big volume of text as well.

The terms “complexity” and “readability” are evidently subjective. Indexes of readability have been developed – for English at first, and then they have been adapted to Russian.

The rules of insurance are traditionally considered to be hard to comprehend. They are used in the insurance practice, they contain a detailed description of all terms of insurance, for instance, the course of action of the assured in case of an insured event, the list of documents required to confirm the coming of such an event, as well as grounds for declining payments.

However, if one checks the texts of the insurance rules of different insurance companies using the readability formula (The Simple Measure of Gobbledygook formula defines the proportion of the number of sentences in the text and the amount of “difficult words”, depending

on their length), it turns out that most of the texts have a low complexity level.

For instance, a readability check was run on 165 insurance rules, published on the internet by “Ak Bars Strakhovanie”, “VTB Strakhovanie”, “Ingosstrakh”. The check was carried out automatically using the [rureadability³](http://ru.readability.io/) website. The range of readability lies between 7.16 (level of middle-school students, 12-14 years old) and 19.04 (level of people with the second higher education degree or those who have or are receiving a scientific degree), mostly being around 10-15.

The most complex language is used in the rules of obligatory insurance instated by the Governmental Regulation of the Russian Federation, i.e., are based on a legislative act – the range is between 16.03 and 22.99.

However, it is worth noting that the volume of the text of the rules is significant – from 28,390 (ca. 15 A4 pages of printed text) to 856,615 symbols (The rules of common voluntary medical insurance of VTB, ca. 475 pages). In most cases – 50,000-100,000 symbols.

Research on licensing agreements has been carried out, according to which even for agreements where consumers are obliged to confirm that they have read the conditions and agree with them before buying a product, and these conditions are visible and available, the percentage of consumers actually reading them is in the range between 0.05% and 0.22% (BAKOS *et al.*, 2014). Clearly, the big volume of the texts can lead to the fact that they are not read by the insurer, even though they are clear to a non-specialist.

Discussion

What are the consequences of concluding a contract in case a contractor has not read or understood the terms? One cannot conclude that if a contractor had joined a contract without reading it or without understanding it, then this contract must be admitted invalid, not concluded or that it must be cancelled. It is expected that if a contractor has signed a contract, they have read it, understood it, and agree with all its terms, and wanted it to be concluded. In one of the cases, a plaintiff, demanding for a contract to be declared invalid, among other factors has argued that the terms were never explained, she never read the text, could not understand the terms on her own, signed the contract without comprehending its text. The court has not admitted it to be an argument of undoubted misleading the contract’s side, and the suit was

³ Available: <http://ru.readability.io/>. Access: 10 Dec. 2022.

denied (RUSSIA, 2013).

Even if an entrepreneur's contractor is a consumer, they bear the risk of signing a contract – for instance, the contractor joining the contract must act reasonably cautiously, act in their own interest, check all the deal's terms available. Even though one is not expected to act as a professional. If a side does not display regular circumspection, i.e., is not acting bona fide, it cannot have its violated rights and interests protected (VALEEV *et al.*, 2014).

What means can be suggested to overcome the phenomenon of not understanding a contract's text?

One of the options implies simplifying the text as much as possible. From the one hand, it includes *language simplification* by using clearer expressions. From the other hands, it includes *simplification of content* by avoiding the use of unnecessary structures (i.e., repeating the disposition of the current legislation) (DAVYDOVA; KOZLOVA, 2019).

Composing a contract's text currently does not present a practical difficulty, keeping in mind all the facilities of different services – for instance, a contract builder. The instruments that can be used to automate a part of lawyers' job are called “legal tech” and are aimed at minimizing the time required to create legal documents and, consequently, to eliminate expenses, avoid typical mistakes and to consider possible risks. Contract builders are based on requirements of the current legislation and offer solutions according to the sides' requirements. There are various services – for instance, a contract builder SPS Consultant Plus, DocOne, Fresh Doc. There is an opportunity to use sample contracts. The possibility to build legal and individual acts of an organization using set legal tech rules and document circulation is an advantage.

It appears that an approach called legal design stands with using the functions of contract builders, samples, text simplification. Legal design allows to transform legal texts and descriptions of legal procedures into descriptions, diagrams, and drawings clear to a non-specialist. Legal design is based on design thinking – a creative instead of analytical approach to solving different tasks, based on the consumer's needs.

As stated in literature, legal design implies focusing on a person's needs, so that legal texts, services, and procedures were clearer and easier to use (HAGAN, 2014). The concept is based on the fact that composing legally significant documents should be aimed at being clear to the addressee.

For instance, a South African company Creative Contracts specializes in creating employment contracts in the form of comics (drawings). Initially an illustrated contract was

created for a South African fruit-selling company, hiring seasonal workers with no high level of literacy, and not fully knowing the language of the contract. Visualization of the agreement's terms helps conclude that they are clear to the workers signing them.

Creators of this project explain their approach on their website⁴ as follows. One needs to constantly sign contracts in the modern society: to find a job, get insurance or a credit etc. However, the contracts are written “by lawyers for lawyers”, they are difficult in content, incomprehensible even for educated people. Therefore, it is necessary to create contracts understandable for all sides, in order for their interaction to be more successful and for conflicts to be resolved easily. This can be achieved through using drawings. They reason that a human analyzes images 60,000 time faster than texts. Using “visual language” guarantees that no context can be lost. People that follow instructions with images and text do it 323% better than people that have only text to guide them.

Since the law allows verbal agreements as well as written ones, this way of expressing the will of the participants does not contradict the law. However, considering that there are compulsory requirements to one contract or another, it is necessary for the drawings only to complement the text.

Despite the apparent benefits of using this approach, researchers also note possible issues. It is necessary to consider cultural differences in perception of different visual symbols. Legal cultures differ, so a comics-contract should be localized in order to correspond with the legislation and judicial system of every country. An image could entail new risks and add legal uncertainty, if visual information implies different interpretations (PITKÄSALO; KALLIOMAA-PUHA, 2019).

It does not mean, however, that legal design means solely transferring difficult legal texts into images. Rather, it is about any possibilities to use approaches that make understanding of texts easier for a non-professional.

The idea of using legal design is that law services and procedures will be more effective in case if the form of how they are presented corresponds to the interests of a user and if they are understood. This approach could help avoid conflicts in realizing legal norms. Methods of design thinking should be implemented, it is based on three principles: empathy, visualization, and simplification (YANKOVSKIY, 2019; POGOSYAN, 2021).

Different methods of visualization can be used for difficult information: structured text,

⁴ Available at: <https://creative-contracts.com/>

bold headlines, inner summary, diagrams, and tables (BERGER-WALLISERET *et al.*, 2017). Existence of both difficult and simplified texts is possible as well.

Legal design with visualization techniques would be acceptable in case if it were needed to learn user or license agreements while concluding contracts via the Internet. This problem was addressed in Case No. 99 of 2016 In the Competition Commission of India New Delhi, Appellants: Vinod Kumar Gupta Vs. Respondent: WhatsApp Inc.

It is alleged that the manner in which the so-called consent is taken by the OP from its users is highly deceptive. It is stated that almost the entire community of users of 'WhatsApp' in India are not equipped to even read, much less comprehend, the consequences of the terms and conditions on the basis of which 'WhatsApp' is pretending to obtain the consent of the users (INDIA, 2016).

The Russian legislator in some cases is guided by the need to clarify some provisions of the legislation – i.e., it is in fact admitted that there are some provisions or contract terms difficult to comprehend, and they need to be clarified. Clarification can be perceived as informing a broad circle of people about their rights and responsibilities. It can touch upon specific subjects as well, expressed in explaining the content of some *statements in the law* or contract terms, or in presenting important terms in a simplified view.

According to the article 16 of Fundamental Principles of Legislation of the Russian Federation on the Notary (RUSSIA, 1992a), “The notary is obliged to assist natural persons and legal entities to realize their rights and protect their legal interests, *expound their rights and responsibilities, warn about the consequences of the notary actions they make, so the legal ignorance could not be used to harm them*” (italics added by the authors). According to article 44 of the Fundamental Principles, the content of a notary-certified bargain, as well as applications and other documents *must be read aloud to participants*.

According to the article 3 of the Law of the Russian Federation from 07 February 1992 n. 2300-1 “Consumer protection act” (RUSSIA, 1992b), the right of the consumers on enlightenment in the field of consumer protection is provided by including corresponding demands into federal state educational standards and education programs, and also by *organizing an informational system for the consumers about their rights and required actions to protect them*.

What is more, according to clause 3 of article 3 of Law of the Russian Federation from 27 November 1992, n. 4015-1 “On the organization of the insurance business” (RUSSIA, 1992c), on demand of insurers, insured persons, insurance beneficiaries as well as persons

intending to conclude an insurance contract, insurers must expound the terms contained in the rules of insurance and insurance contracts.

We believe that the Russian legislator introduces legal design techniques into the work of credit companies – i.e., in fact, in some cases orders to base on presumption of a text's unclarity to the consumer and on necessity to bring the most important contract terms to the customer's attention in a more vivid way.

For instance, it is stated in clause 1 of article 6 of the Federal law from 21 December 2013, n. 353-ФЗ “On consumer credit (loan)”,

Full value of a consumer credit (loan) is placed in square margins in the top corner of the first page of a consumer credit (loan) contract before a table containing individual terms of the contract, and it is applied in black numbers and capital letters on white background with a clear, readable font of the maximum size among ones used on the page. Full value of consumer credit (loan) in monetary form is placed on the right of the full value defined in annual interest rate. The area of every square margin should total no less than 5 per cent of the area of the first page of the consumer credit (loan) contract (RUSSIA, 2013).

According to clause 6, part 2 of article 6.1 of the Federal law from 21 December 2013, n. 353-ФЗ “On consumer credit (loan)” (RUSSIA, 2013), a *table from* is set for credit contract terms, loan contract, concluded with a natural person with views not connected to their enterprise and liabilities of the borrower are provided by mortgage.

In Federal law from 21 December 2013, n. 353-ФЗ “On consumer credit (loan)” (RUSSIA, 2013) it is highlighted several times that some form of terms should be stated in *clear readable font*.

Conclusion

Thus, situations occur, when contractors joining a contract do not read its text or do not comprehend it. Three groups of conditions can be distinguished, of when such a situation is possible, they are: external environment, connected to the process of concluding a contract; conditions, connected to the text's design; conditions, connected to the contract's content and the complexity of its text. However, the joining side must act in their own interest, check the terms of the contract, and not trust the other contractor unconditionally. Traditional means offered by the legislation in order to avoid negative consequences for the joining contractor (admitting the contract to be not concluded, invalid, contract denunciation) cannot be used in all

cases. Using methods of legal design in preparing texts of contract appears to be a more effective and flexible approach. Legal design means using any means that let the contractors understand the meaning of a contract, including means of visualization such as using drawings, tables, diagrams, bold and colored fonts etc. Orders to use such methods can be found in the modern Russian legislation.

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