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PROBLEMS OF THE IMPLEMENTATION OF ALTERNATIVE LIABILITY

According to Art. 526 of the Civil Code of Ukraine, the obligation must be fulfilled properly in accordance with the terms of the agreement and the requirements of this Code, other acts of civil law and in the absence of such conditions and requirements due to the customs of business turnover or other requirements which usually apply.

An alternative commitment has the complexity of the subject and the implementation mechanism (due to the presence of a special component - choice), so it is necessary to consider the conditions associated with these features, ensuring its proper execution.

There is a question about the possible implementation of an alternative commitment by a third party. Thus, according to Part 1 of Art. 527 of the Civil Code of Ukraine, the debtor must fulfill his duty and the creditor will accept the performance personally unless otherwise specified by contract or by law does not follow from the essence of the obligations or practices of business turnover.

At the same time, in accordance with the provisions of Art. 528 of the Civil Code of Ukraine, fulfillment of the obligation by the debtor may be transferred to another person if, from the terms of the contract, the requirements of this Code, other acts of civil law or the substance of the obligation do not arise from the obligation of the debtor to fulfill the obligation personally. In this case, the creditor is required to accept the

performance offered for the debtor by another person. In case of non-fulfillment or improper fulfillment of the debtor's duty by another person, the debtor must fulfill this duty by himself.

Another person may satisfy a creditor's claim without the consent of the debtor in case of danger of losing the right to the debtor's property (right of lease, right of pledge, etc.) as a result of the creditor's request for recovery of this property. In this case, the rights of the creditor are transferred to another person and the provisions of Articles 512 - 519 of this Code are applicable.

Consequently, the obligation may be fulfilled by a third party, but the law limits the possibility of fulfilling an obligation by a third party for at least two legally significant circumstances:

1) in connection with the creditor's interest in obligations where the personal performance of the debtor is relevant to the creditor who may refuse to accept the performance proposed by a third party.

2) in connection with the very nature of duty, which can be performed only by the holder of this duty.

In the Civil Code of Ukraine there are no rules governing the relations that arise as a result of the death of one or more items of an alternative obligation. It should be noted that the legal consequences in such cases should vary, depending on who owns the right to choose - the debtor or the lender. If performance of one of several items is impossible and the right of choice belongs to the debtor, the obligation remains valid, but with those objects (subject matter) of the remaining ones. In the event that there is only one thing left, then the alternative commitment becomes simple.

If the right of choice in an alternative obligation belongs to the creditor, then the right of choice of the creditor is maintained even when one or more alternative actions can not be performed. Moreover, the right to choose a creditor is retained if it is impossible to carry out all actions, since the objects in such an obligation may be uneven.

Therefore, in the event of the death of one or more items of obligation, the lender may choose a preserved item or waive the obligation, reimbursing damages - if the death of the object was due to the debtor's fault.

But the view was expressed that the stability of civilian turnover will be facilitated by the rule that the creditor is obliged to accept the remaining

item from the debtor in the event that the death of the subject of execution is not the fault of the debtor.

We consider this provision inappropriate and inadequately grounded, in particular, it is not considered possible and sufficient to refer to a rather abstract "stability of civilian turnover".

In this case, the creditor's interest, which should not be deprived of the opportunity, is more important.

It is necessary to analyze the cases when the impossibility of performing one of the objects of an alternative obligation came from the fault of the debtor or creditor. So, if the impossibility of executing one of the two items comes from the creditor's fault, the obligation is considered to be repaid.

If the impossibility of execution was due to the debtor, then there are two options for solving this situation:

1) the right of choice belongs to the debtor - then the obligation becomes a simple one that the debtor has to fulfill;

2) the choice of choice belongs to the creditor - the obligation remains an alternative, and the creditor chooses either the reimbursement of the value of the item for which it was impossible to execute or the fulfillment of the remaining obligation.

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GROUNDS FOR LIMITING THE RIGHT TO LIBERTY AND SECURITY OF PERSON IN DECISIONS OF THE EUROPEAN COURT OF HUMAN RIGHTS

Human rights are "the basic rights and freedoms to which all humans are entitled. Human rights are of a natural nature and are inseparable from the individual, they are extra-territorial and extra-national, exist regardless of their attachment to legislative acts of the state, are subject to international