

В персидском языке на базе √- ق ت (тагх-): ق ت ق ت (тагх-тагх) «стук, тук-тук» [по 8, с. 387]. Также گند (данг/дэнг)-: گند (данг/дэнг), реже گندگند (данг-данг/дэнг-дэнг) «звон, лязг, бряцание, резкий металлических звук, стук камней друг о друга, звон в ушах». Возможно отсюда соврем. перс. уст. گند (донг) «разменная монета, мелкие деньги», от ср.-перс. dāng, нов.-перс. dānag «монета», др.-перс. δανάκη (danJkh) [2]. В корейском языке на базе √-: 똑똑 тток-тток «тук-тук (стук о дерево), кап-кап (звук капель дождя)», 덩덩 тонг-тонг «бум-бум (звук барабана)», 땡땡 ттанг-ттанг «звук удара о металл». Возможно отсюда 돈 (тон) «деньги».

В данном докладе мы показали лишь некоторые факты, дополняющие теорию имитативов Г.Е. Корнилова. Учитывая огромный и малоизученный звукоподражательный пласт корейского и иранских языков, данное направление является весьма перспективным для дальнейших исследований. Г.Е. Корнилов указывал: «Разумеется, мы не считаем, что имитативика не оставляет камня на камне от теории В.М. Иллича-Свитыча, а только твердо убеждены: ностратика должна быть всесторонне согласована с имитативикой, но последнее невозможно, если допускать взгляд, согласно которому «ностратический праязык» мог и не быть отымитативным в своей основе или по своему происхождению» [1, с. 180]. Таким образом, мы считаем, что учитывая и согласовывая результаты, полученные двумя науками, можно выйти на качественно новый уровень в исследованиях, связанных с историей языка.

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LATE PAYMENT UNDER BELARUSIAN LAW AND THE LAW OF THE EUROPEAN UNION: ON THE ISSUE OF LEGAL REGULATION

А. С. Багдасарова

One of the most important factors for doing business, as well as for market development in general, is payment receipt on time and consequently the possibility to bring a debtor to responsibility for late payment. In Belarus such a possibility was legalized with the adoption of the Civil Code in 1998 (hereinafter – the CC). Under Art. 366 of the CC, a creditor is entitled to interest for his/her money usage in the following cases: a) illegal keeping of the creditor's money; b) debt recovery evasion; c) other forms of late payment, and d)

groundless receipt or saving for the creditor's account [8]. In accordance with Belarusian legislation interest has to be paid at the National Bank's reference rate, unless otherwise agreed in the contract. The identification of the legal nature of such interest plays the crucial role for practical application of Art. 366. Different doctrinal approaches towards the issue could be combined into four groups: a) interest as a forfeit (e.g. in Kazakhstan); b) interest as a special form of debt recovery; c) interest as an independent special form of civil liability (e.g. in Belarus); d) interest as a fee for somebody else's money usage. In our investigation, we find it necessary to recognize interest in Belarusian legislation as a forfeit. Such an approach allows eluding certain law-application problems.

Firstly, sometimes the mechanism of interest size calculation is not clear, since it has to be paid at a reference rate applied only to obligations in Belarusian roubles. Therefore, when the payment currency is any foreign currency and the parties have not agreed on the interest rate in the contract Art. 366 is not applicable [5; Para. 5]. However, our analyses of Belarusian law rests on the claim that as regards some special types of obligations interest could be charged in foreign currency – if obligations from contracts on international sales of goods are breached. When the Vienna Convention on International Sale of Goods is applied and Belarusian law is applicable to the contract the size of interest should be calculated under the rules of the Principles of International Commercial Contracts [6; Para. 30]. Secondly, the possibility to reduce contractually agreed size of interest by courts is not legally regulated. The right of the parties to agree on the rate leads to situations when courts in practice charge interest that 100-, 1000- or even 2000-times larger than the reference rate. But recent case study allows to state that sometimes courts reduce agreed size of interest [2], [3] by applying common principles of civil law [8; Art. 9]. Suggested approach to recognize interest under Art. 366 as forfeit is the most appropriate decision, since it allows to decide the problem by applying common norms on forfeit reduction by courts [8; Art. 314].

Late payment is a considerable challenge facing millions of European businesses especially small and medium-sized enterprises (hereinafter – SMEs) which is becoming ever greater with the current economic crisis. The Commission estimates that nearly €1.9 trillion is paid late within the European Union (hereinafter – EU). Of that, a full €1.1 trillion is owed to SMEs [1]. Considering that the EU's combined GDP is around €11.3 trillion, this reflects the problem. New Directive «On combating late payment in commercial transactions» (hereinafter – Directive 2011/7/EC) [4] replacing the current Directive 2000/35/EC aims to ensure that bills are settled on time. Directive 2011/7/EC entered into force on the 15th of March 2011 [4; Art. 14]. Member-states shall implement Directive 2011/7/EC by the 16th of March 2012 [4; Art. 12].

Directive 2011/7/EC unlike the current one makes a clear distinction between contracts concluded among legal entities (private sector) and those, where public authority is a debtor (public sector). Under Directive 2011/7/EC the statutory payment deadline for both private and public sectors is 30 days, however, as regards private sector the term could be extended up to 60 days in the contract [4; Art. 3 Para. 3(b), Para. 5]. Moreover, the payment period in private sector may be extended beyond 60 days if «it is expressly agreed in the contract and provided it is not grossly unfair to the creditor» [4; Art. 3 Para. 5]. In public sector the term could be extended up to 60 days «only if it is expressly agreed in the contract and provided it is objectively justified in the light of the particular nature or features of the contract» [4; Art. 4 Para. 6]. Therefore, the payment period in public sector may not be extended beyond 60 days.

Under Directive 2011/7/EC creditors are entitled to interest for late payment concerning commercial contracts regardless of whether they are concluded in B2B or where a public authority is the client [4; Art. 1 Para. 1,2]. Similarly to Belarusian norms creditor could charge both statutory and contractual interest. However, when public authority acts as a debtor the creditor is entitled to charge only statutory interest [4; Art. 4 Para. 1]. Statutory interest for late payment shall be the sum of the reference rate and at least eight percentage points [4; Art. 2(6)]. Such a mechanism of interest size calculation better correspond for the aim of its recovery than Belarusian norms, since the reference rate is a special «interbank» rate which influences rates on commercial loans. Therefore, rates on commercial loans are always higher than the reference rate. Thus, it is more profitable for the borrower in Belarus to keep illegally the creditor's money than to borrow money from commercial banks.

Moreover, when interest for late payment becomes payable, the creditor is entitled to obtain from the debtor, as a minimum, a fixed sum of EUR 40 as compensation for the creditor's own internal recovery costs, such as the time spent by employees in cashing up late payment [4; Art. 6 Para. 1]. The creditor is entitled to obtain compensation for external expenses incurred because of the late payment, such as the cost of instructing a lawyer or employing a debt collector [4; Art. 6 Para. 3]. The main loophole of Directive 2011/7/EC concerns the verification and acceptance period. This period is 30 days [1; Art. 3 Para. 4, Art. 4 Para. 5]. However, these 30 days come in addition to the payment period and, thus, could be used by the contractual parties as a «hidden extension» of the payment period.

After analyzing legal regulation of late payment liability under Belarusian law and the law of the EU the following conclusion could be made: before the possibility of courts' reduction of contractual interest and the statutory mechanism of interest size calculation in foreign currency is legally settled the parties shall carefully proofread contracts concerning interest terms.

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MEDIATIONSENTWICKLUNG IN DER REPUBLIK BELARUS DURCH DIE UNTERSTÜTZUNG DER DEUTSCHEN STIFTUNG FÜR DIE INTERNATIONALE RECHTLICHE ZUSAMMENARBEIT

А. Батечко

«Mediationsentwicklung in der Republik Belarus durch die Unterstützung der Deutschen Stiftung für internationale rechtliche Zusammenarbeit» ist ein brisantes und aktuelles Thema. Die untragbare Belastung der Richter verursacht Mediationsentwicklung in Belarus. Heutzutage ist die Mediation ein effizientes Mittel zur Streitbeilegung. Die Mediationsentwicklung durch die Unterstützung der Deutschen Stiftung für internationale rechtliche Zusammenarbeit ist ein gutes Beispiel und Ergebnis der internationalen Kommunikation. Vielmehr möchte ich mich ihre Aufmerksamkeit darauf ziehen, dass man die unternationale Kommunikation ohne internationale Zusammenarbeit nicht vorstellen kann.