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**THE INFLUENCE OF INFORMATIONAL AND COMMUNICATION
TECHNOLOGIES DEVELOPMENT ON THE FORM OF A CIVIL LAW TREATY**

**ВЛИЯНИЕ РАЗВИТИЯ ИНФОРМАЦИОННО-КОММУНИКАЦИОННЫХ
ТЕХНОЛОГИЙ НА ФОРМУ ГРАЖДАНСКО-ПРАВОВОГО ДОГОВОРА**

В статье рассматривается вопрос о влиянии информационно-коммуникационных технологий на процесс взаимодействия участников гражданского оборота при заключении договоров. Автор исследует законодательные нововведения, согласно которым договор в письменной форме может быть заключен путем составления документа

в электронном виде (электронного документа), рассматривает преимущества и недостатки осуществленного правового регулирования. На основе анализа действующего российского и белорусского законодательства автор приходит к выводу о том, что общее правило о возможности заключения договора в электронной форме не применимо к договорам купли-продажи недвижимого имущества.

The order of concluding a civil law treaty has remained unchanged since the time of Roman law: the procedure includes a proposal to conclude a treaty sent by one subject to the other one; and acceptance of this proposal.

In the "Lectures on the Dogma of Roman Law" D. D. Grimm points out: "It is essential for concluding a treaty to make a proposal on the one hand, to accept it on the other hand, or mutual giving a proposal and accepting it by both sides" [1, p. 20]. "In case of commitments from the will expression, a huge number of such ones does not arise at all due to the lack of consent of the opposing party. The exception is when the law itself gives force to the will expression already at the time of its emergence without any participation of the interested person, all other obligations from the will imply acceptance," - says S.A. Belitsky [2, p. 343].

The current Civil Code of the Russian Federation (hereinafter CC RF) [3], in chapter 28 establishes the general rules for concluding a contract, which includes the requirements for the form of the contract: it is determined either by law or by agreement of the parties, and the written form of the treaty is considered to be observed both in the case of one document prepared and in the case of the exchange of documents between the parties (items 1, 2 and 4, Art. 434).

At the same time, the development of informational and communication technologies brings to life the need for legal regulation of new forms of interaction between participants in civil turnover in order to provide them the possibility of remote conclusion of contracts. Federal Law dated March 18, 2019 No. 34-ФЗ [4] in item 2 of Art. 434 of the CC RF made an important addition – treaty in a written form can be concluded by drawing up one electronic document signed by the parties. Similar rules we can find in the Civil Code of the Belarus Republic (hereinafter CC RB): "The treaty in a written form can be signed by drawing up one text document, including the document in electronic form (including the electronic document), or by exchange of text documents, including documents in electronic form (including electronic documents) ..." (Item 2, Art. 404) [5].

We will try to figure out what this new phenomenon means for us - a single electronic document in the aspect of civil legislation. From the point of view of any person, a single document represents the will of the parties in the commitment set out on one medium. The Russian legislator refers to an electronic document as documented information submitted in electronic form, that is, in a form suitable for human perception using computers, as well as for transmission via information and telecommunication networks or processing in informational systems (item 1.1, art. 2 of the Federal Law "On Information, Informational Technologies and on Information Protection" [6]). In Belarusian legislation, we can find the following definition of an electronic document: "... it is an electronic document with requisites that make it possible to establish its integrity and authenticity, which are confirmed by using certified electronic digital signature means with using the opened keys of an organization or an individual when verifying an electronic digital signature of a person(s) who have signed this electronic document" (Art. 1 of the Law of the Republic of Belarus "On Electronic Document and Electronic Digital Signature") [7].

As we can see from the above-mentioned legal definitions, the Belarusian legislator consider the definition of an electronic document concept more detailed. In addition, the advantages of Belarusian legal regulation include a detailed description of the rules for the formation and circling of electronic documents; its structure is described as two integral parts - general (information constituting the content of the document) and special (electronic digital signature and other technical data) (Art. 17); and order of creating a copy of an electronic document is clarified (Art. 20). This state of affairs undoubtedly simplifies the perception of an

electronic document at the domestic level and, accordingly, facilitates electronic interaction when concluding a treaty, which in general should have a positive impact on economic turnover.

Considering the possibility of concluding a civil law treaty in the electronic form in Russia, it should be noted that this is directly provided by Art. 4 of the Federal Law "On Participation in the Shared Construction of Apartment Buildings and Other Real Estate and on Amendments to Some Legislative Acts of the Russian Federation"[8].. Besides, the Federal Law "On the Contract System in the Sphere of Purchasing Goods, Works, Services to Meet State and Municipal Needs"[9] regulates the procedure of concluding contracts, including those based on the result of Electronic Trading Service – i.e., the contract is concluded on an Electronic Trading Platform, exists in the form of an electronic file and is signed by the parties to the contract with an enhanced electronic signature.

Thus, this Federal Law provides an opportunity for the contract parties to make a transaction within the framework of the functioning of a special virtual space - an Electronic Trading Platform (ETP) - if the parties have an accreditation agreement on this platform and an enhanced electronic signature. Therefore, to conclude a contract in electronic form, it is enough to have an electronic digital signature, as well as electronic means of using and checking it with the contract counterparties.

However, it should be noted that besides general requirements for the form of a treaty, the civil legislation of both Russia and Belarus makes special requirements for certain types of contracts – i.e., the conclusion of a contract in a written form only by drawing up one document signed by the parties. And we can find such a case in Art. 550 of the Civil Code of the Russian Federation and Art. 521 of the Civil Code of the Republic of Belarus, containing a requirement for the contract form for the sale of real estate - by virtue of the law, it should be concluded precisely in the form of a single document signed by the parties. At the same time, Art. 550 of the Civil Code of the Russian Federation contains a reference to item 2 of Art. 434 of this Code which has been unchanged since 1996, as we can say, it is archaic in nature. Accordingly, the reference to item 2 of Art. 434 turned us to the old version of the Code, when this item did not provide the possibility of concluding a contract by exchanging electronic documents. At the modern stage, such a reference loses its meaning, since when reforming civil law back in 2015, Art. 434 of the Civil Code of the Russian Federation has undergone changes - item 2 was supplemented by provisions on the possibility of concluding an agreement by exchanging electronic documents, and also item 4 appeared, according to which in cases, provided by law or agreement of the parties, a contract in a written form can be concluded only by drawing up one document signed by the contract parties. There is no reference to the electronic form of the document in this item. It also did not appear in this paragraph in 2019, when such an innovation was introduced in item 2 of this article.

Thus, at present, it is precisely the item 4 of Art. 434 of the Civil Code of the Russian Federation, which does not contain rules on the possibility of concluding an agreement in single electronic document form, when interpreting the substantive law norms is consistent with Art. 550 of this Code.

Of course, as indicated in the scientific literature "... it is not worth putting an equal mark between the document in writing and the document on paper... the second is only one type of objectification of the first... " [10, p. 321]. At the same time, the author admits that "there are transactions for contract concluding where it is necessary to draw up a single document on paper," giving as an example just the contract for the sale of real estate, and concludes, with reference to the Concept for the Development of Civil Law of the Russian Federation [11], that such requirements are not proposed to be refused [3, *ibid.*].

Besides the imperfection of legal regulation, it is necessary to note another drawback that does not allow to take advantage of computerization and informatization innovations in legal space – the absence of a public legal resource in the framework of which the contract parties of real estate sale could conclude transactions by signing a single electronic document, as well as control over the legality of such transactions and their state registration could be exercised. The author believes that such an electronic resource could optimally function within the framework

of a state institution, which has the public function of registering the transfer of ownership of immovable property.

As can be seen from the above, when conducting transactions with real estate, there are a number of unresolved issues related to the law requirements concerning the form of a contract for the sale of real estate. Modern life poses requirements for the prompt conclusion of contracts, and when parties are in conditions of distance from each other, and moreover rapidly developing information and communication technologies provide opportunities for this, therefore, it is necessary to improve the legal mechanisms provided by law. Ideally, it is necessary to create a Single Electronic Platform for concluding contracts in electronic form as a single document, and this, apparently, will have to be done by our legislators in the future.

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