установок по обращению с отработанным ядерным топливом, их проектированию, сооружению и эксплуатации. Они берут на себя обязанность выполнить оценку всех факторов, которые могут повлиять на безопасность установки, используемых технологий, подтвержденных актами освидетельствования, расчетами и аналитическими прогнозами. Государства создают соответствующие условия для гарантированного проведения оценки безопасности и риска на весь срок эксплуатации, экологической экспертизы, оценки воздействия на окружающую среду и экологического страхования.

Государства гарантируют создание условий для предупреждения случайных и неконтролируемых выбросов радиоактивных материалов в окружающую среду, а в случае таких выбросов обязуются создать соответствующие дополнительные условия с целью контроля за выбросами и уменьшением их последствий. В соответствии со ст. 25 Конвенции обязательным требованием, предъявляемым к установкам по обращению с отработанным ядерным топливом и радиоактивными отходами, также является разработка плана аварийных ситуаций, могущих иметь место, как на установке, так и за ее пределами. На наш взгляд, эти положения еще раз подчеркивают, что деятельность по обращению с отработанным ядерным топливом и радиоактивными отходами связана как с предупреждением аварийных ситуаций, так и с разработкой и созданием условий максимального предупреждения негативных последствий и причин их возникновения.

Таким образом, в понятие ядерной безопасности в международном праве вкладывается широкий смысл, и здесь, по-существу, пересекаются институты международного экологического и международного атомного права. Без сомнения, ядерная безопасность является частью экологической безопасности, поскольку сутью этого понятия является охрана человеческого сообщества и природы от возможного вреда. Кроме того, доказательством единой природы этих понятий может служить единство принципов. Так принцип регулярного обмена информацией об экологической ситуации закреплен в основных международно-правовых документах, касающихся ядерной безопасности. Важное место тут отводится МАГАТЭ как основной международной организации-субъекту международного атомного права. Принцип контроля за обеспечением обязательств по поддержанию экологической безопасности воплощается в жизнь через систему встреч, которые могут периодически проводиться между государствами, на которых они предоставляют свои отчеты о состоянии ядерных установок, об уровне технического оснащения, уровне обеспеченности средствами безопасности, финансовой обеспеченности, результатах экологических экспертиз. Эти требования закреплены в Конвенции О помощи в случае ядерной аварии или радиационной аварийной ситуации, Конвенции Об оперативном оповещении о ядерной аварии, Конвенции по обеспечению обращения с отработанным ядерным топливом и радиоактивными отходами и других документах.

Принцип сотрудничества в чрезвычайных ситуациях является характерным не только для международного атомного права и международного экологического права в вопросе ядерной безопасности, но и для международного морского и космического права. Особое значение он приобрел после Чернобыльской техногенной катастрофы, которая нанесла масштабный трансграничный вред жизни и здоровью людей и окружающей природной среде. Значение принципа научно-технического сотрудничества в сфере ядерной безопасности вытекает из глобального характера ядерной безопасности, необходимости объединения научного и технического потенциалов всех членов международного сообщества для ее гарантирования. В целом, обобщая сказанное о понятии международной ядерной безопасности и ее принципов можно сделать следующий вывод: международная ядерная безопасность является неотъемлемой частью международной экологической безопасности, и поддержание экологического равновесия является задачей каждого государства.

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In the presented article the author discovers the international nuclear safety as a component of the international ecological safety.

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Ұсынылып отырған мақалада халықаралық ядролық қауіпсіздігі халықаралық экологиялық қауіпсіздігінің құрайтыны ретінде қарастырылған.

J. Puutio

INTERPRETATION, SUPPLEMENTING AND THE OBLIGATION TO BE LOYAL IN A CONTRACTUAL RELATION

This article is based on a chapter in my master thesis concerning the validity of a contract and changing of a contract. With a focus on a paragraph arguing about interpretation and supplementing of a contract published in Finnish in spring 2010 in the University of Lapland, Rovaniemi, Finland. I approach this theme from the Finnish point of view.

The concept of a changing of a contract can be defined partly through the concepts close to the changing, such as interpretation and supplementing. According to Mika Hemmo the common function of the interpretation is to affirm the content of a contract on the grounds of the individual content of the contract, and the other circumstances relating to that transaction. Attention is paid especially to the expressions used in the contract, the negotiations between parties, marketing, other exchanges of information, and possibly to the actions after the termination of the contract. The object of the interpretation is the material created as a result of the initiative of the contract parties.

When approaching the unilateral changing of a contract from the point of view of contractual principles, the consideration comes to the next level. Contractual principles do actually guide the possible interpretation being made. As I consider contractual principles as one of the main issues in contractual discourse, I will examine the loyalty principles application to the interpretation of the contract.

The idea of this article is to evaluate the unilateral changing of a contract, first from the level of changing mechanisms like interpretation, but also from the point of view of how such mechanisms actually work. In order to observe the function of a changing mechanism the contractual loyalty must be examined.

Interpretation of a contract

Tuomas Lehtinen sees the interpretation of a business contract as an exploration of the content. The first significant division relating to the exploration of the content of a contract Lehtinen makes by pointing out the fact that the exploration can be made by the contract parties or by an external observer. By noting the mentioned division, Lehtinen separates the internal interpretation of the contract, which is made by the contract parties on their own. The external interpretation of a contract, so called classic interpretation, is made by an external interpreter. Lehtinen considers the external interpretation as a genuine interpretation situation. It is possible to agree, before the genuine or the internal interpretation of a contract, about the interpretation or rules of the interpretation between the contract parties. It is also to be noted, that the interpretation is actualized only after the content of a contract has been explored. When it comes to the unilateral changing of a contract it is mainly the internal interpretation at stake.

The questions formed in the interpretation situation Lehtinen sets on two levels. The first question is, what is the content of a contract, and the second question is how the defined content is to be interpret. The difference underlined by the questions appears when observing their targets. The first target is to clarify what has been agreed and how the contract parties interpret the contract. The second target consists of actions carried out by an external body interpreting the contract and the contractual actions. According to the division made by Lehtinen the interpretation can be internal or external, as well as both at the same time. Lehtinen does however emphasize that the interpretation situation is different when a contract party interprets the contract by his self. In an internal interpretation the parties can decide by interpreting what shall be done. In a genuine interpretation situation, the right of evaluating whether the actions of the contract parties are according to a contract, is given to an external party. According to Lehtinen a contract is a static tool but the co-operation of the contract parties may enable the changing of a contract.

According to Lehtinen in internal interpretation the question concerns the contract parties own interpretation, and the interpretation rules related to that. The internal interpretation is related to the contract's dynamic. Firstly the question is not about the contradiction between parties, nor the situation typical to "in dubio contra" –rule. The essential facet of the internal interpretation is the contract made together and both parties are right in it. The interpretation focuses on that what has been agreed to be done together. The general interpretation principles, which are more visible in external interpretation, may also lead to an internal interpretation. If a mutual understanding has not been found in an internal interpretation, it may be possible that the solution has to be found by using the classic interpretation.

The problem comes into existence due to parties trust in the fact that all material including the contract is also included in the contract documents. For example, the contract established according to the trust theory justifies a party to act as mentioned. The conclusive criteria establishing a binding obligation to a contract party is the expression's objectively distinguishable impression underlying the apprehension. According to the theory, the cautiously deliberative party does not need to be afraid of the possible failures relating to the validity of the contract for some unknown reason. The material used in the internal interpretation consist only of the contract itself. Using the internal interpretation it has been possible to correct the failure of concepts relating to the contract. According to Lehtinen the process is closely related to the supplementing of the contract.

Supplementing of the contract

According to Mika Hemmo the supplementing of a contract does not aim to seek the individual material belonging to the contract in question, or to seek the material made after the contract party's actions, as the interpretation does. The essential focus of the supplementing of a contract is the type of the contract. When the precise contract type can not be defined, it is the group of the contract which may lead to the consolidation of the missing content of the contract. In the Finnish contractual system legislative norms support supplementation. From a Finnish point of view the questions concerning supplementing are normative problems. The supplementing can be seen as filling a contractual gap, the area which is not necessarily covered by the contract. The existence of a gap can be a result of several things, for example the contract party's concentration on defining the main obligations during the negotiation phase, different types of secondary obligations may be left without their necessary consideration. When a certain question of law cannot been solved according to the contract, a law based solution must be searched for. The key issue is the affirmation of the content of the supplementing norms so the questions are purely juridical. In the supplementing process the contract related facts do not matter.

The contract can also be supplemented by separate material which is approved by the contract parties. As such a framework agreement can be seen as special contractual material, where the needed norms for the supplementing

process could be found. According to Matti Aho the framework agreement's conditions can supplement the contract, but in addition the general terms can supplement the agreement. By using the abstraction of general terms Aho may refer to some kind of standard conditions. To the general terms there is an attached allegation that you must refer to them in the actual agreement or to some components of it. For that reference there are no minimum requirements.

The discourse about supplementing a contract according to "the spirit of a contract" refers to the situation where the contractual clause does not give an adequate base to the interpretation, and by using the supplementation it is possible to aim for a result in which the whole contract system and the specific characteristics of it can be taken into consideration.

According to Hemmo the supplementation can be done when the contract terms between parties have been ignored partly due to unfairness or partial incompetence, or if contract parties have not agreed in a contract about some specific question which is now under evaluation. The type of the contract may determine the norms which are to be applied. The applied norms may also cover a larger area of contract types than the currently evaluated contract type. If there can be found mandatory norms to supplement the contract, the mandatory norms naturally override the contractual material. In Finnish legislation there are not many norms to regulate business contracts. When operating under the Finnish legal system the guidelines may be found from the lower level sources of law like the travaux preparatoires or the precedents of the Supreme Court of Finland.

When the material for the supplementation is sought from the written law or some other sources of law, attention is not paid to the content of the contract in other ways than possibly in determining the contract type. The finding of the norms may be difficult and in this case it is possible to turn to the individual supplementing of a contract. The individual supplementing of a contract refers to a situation where the norm directed supplementing process is not possible and the supplementation is made by reference to the individual circumstances. The act can be located somewhere between interpreting and supplementing a contract. According to Aho the contractual gaps can be supplemented by the help of certain indications, which the interpreter finds by searching the arrangement between the parties as a whole, searching the purposes of the arrangement, and in addition by trying to find out the contract parties "silent" or "hypothetical" will. Aho names the above mentioned procedure as a supplementing interpretation.

Loyalty

The unilateral changing of a contract can be observed from the point of view of loyalty. When there are arguments stating to be loyal to your contracting party, we are one step away from the situation, where the contracting parties are only satisfied with the conditions mentioned in a contract and the performance according to the contract. Another way to discuss loyalty is the contractual principle of loyalty, which can be understood as a less important factor connected to the contractual relation than the discourse concerning the obligation to be loyal.

According to Tuula Ämmälä the obligation to be loyal can be a general term for different obligations which contractual parties have towards each other. The obligation can appear in different situations and different contract types in a relevant way. The contractual parties may have notification, information, contribution, faithfulness or some other equivalent obligations towards each other.

The contractual obligation to be loyal exists in its most concise form as a prohibition of chicanery. A party cannot use his rights such that his only aim is to cause damage to the other party. As a broader phenomenon the loyalty can mean the obligation to take into account, unprompted, the interests of the other contractual party. This understanding was aligned by the Finnish Supreme Court in its verdict 1993:130. In this case there was a contractual condition defining an obligation to inform the other party about changed circumstances, and in addition the defaulting party was the specialist in this contractual relation. The notable point in the case was the statement of the Supreme Court of the application of the loyalty principle so that the information obligation was to be adhered to already when the making of the contract was in process. In this particular case contractual freedom did not , so that equal parties could take the risk they were willing to take. Also the economically stressed factors may favor the opposite solution. The one who has the information or can access the information more easily is obligated to inform his contractual party.

Hannu Tolonen argues that loyalty as a principle is typically a question about informational equality. Links can be seen here to the freedom of a contract and equality in general. Tolonen lists as identification marks of the contractual loyalty common purpose, trust , and common activity. In addition the contract party has a more justified reason to expect the other party's loyal behavior the longer the common activity has been going on.

Tuomas Lehtinen evaluates the focus of the obligation to be loyal and states that the focus is actually the contract and not the contract party. Lehtinen justifies his argument by referring to the Finnish Sale of goods act section 50's formulation: "The buyer must: 1) cooperate in the seller's performance by doing all the acts which can reasonably be expected of him in order to enable the seller to make delivery…" This states that the focus of the required collaboration is the transaction or the contract.

According to Lehtinen, when observing the corporate market there can be seen limits set to the freedom of the contract, and those limits are setting the loyalty principle. According to the definition of loyalty, the other contract party must be taken into account in one's own contractual performance and actions. In loyal actions the party of the contract must evaluate his opportunities to fulfill perfectly the advantages given by the freedom of the contract. Therefore loyalty may limit the freedom of the contract. According to Lehtinen, when observing the effects of loyalty, it can be vindicated that loyalty is more limiting to the contract party's right to refer fully to the contract conditions validity, when the conditions have been made according to the freedom of contract. Because there is always some kind of loyalty obligation between the parties operating in the corporate market, Lehtinen's conclusion is that the loyalty is a guarantee of the corporative market.

One more point of view regarding loyalty can be found in association to the discretionary legislation. For example, the Finnish Sale of goods act's applicability to the contract can be excluded by the contract. Nonetheless the principle of loyalty makes exceptions to this discretion. The Finnish Sale of goods act's section 17.2 defines an obligation to the seller to give information of the good's usability and application. It would be possible to reach the same conclusion by referring solely to the principle of loyalty.

In summary it can be pointed out, that the scope of the loyalty principle may include, depending on the context of different obligations such as to give information, to serve with notice of defects, to collaborate or fulfil duties to be loyal.

Conclusion

Now the preceding observations have been made from the point of view of the validity of a contract. Interpretation and supplementing have been considered as changing mechanisms of a contract. The mentioned mechanisms can also be seen as mechanisms of the unilateral changing of a contract as they are used unilaterally by one party. In conclusion, the aspect of unilateral acts has not been in such a central role, as the planned and main issues argued here can be also done bilaterally. On the other hand, it is notable that these mentioned juridical mechanisms can also be used in unilateral actions. Normally, and particularly in contractual relations, unilateral actions are exceptional. If aggravating, you could also see the interpretation and the supplementing as categories of the unilateral changing of a contract.

Loyalty usually limits the possibility to change a contract unilaterally. If loyalty is considered as a question of informational equality, which was seen as one aspect of the definition of loyalty, it may effectively tie the hands of the party who is changing the contract unilaterally. As a result of superiority over access to information, loyalty may prevent the possible changing of a contract.

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В представленной статье речь идет об особенностях интерпретации и лояльности к изменениям в контрактах по действующему контрактному праву Финляндии.

Н.С. Туякбаева

ПОРЯДОК РАБОТЫ И ХАРАКТЕРИСТИКА ПОЛНОМОЧИЙ СЕВЕРОАТЛАНТИЧЕСКОГО СОВЕТА КАК ВЫСШЕГО ОРГАНА НАТО

Организация Североатлантического Договора обладает структурой, создающей возможности для достижения целей Североатлантического альянса. Являясь межправительственной организацией, в рамках которой государства-члены сохраняют полный суверенитет и независимость, НАТО в то же время представляет собой форум, на котором они проводят совместные консультации по любым выбранным ими темам и принимают решения по политическим и военным вопросам, затрагивающим их безопасность. Альянс обеспечивает деятельность необходимых структур, способствующих проведению консультаций и налаживанию сотрудничества между государствами-членами НАТО в политической, военной, экономической, а также в научной и других сферах.

Основными политическими и руководящими структурами НАТО, обеспечивающими основу сотрудничества по всему спектру деятельности Североатлантического союза являются:

- Североатлантический совет;
- Комитет военного планирования;