

CIVIL LAW AND LABOR CONTRACT: ECONOMIC AND LEGAL DIMENSION

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Abstract. The *subject* of the study is the conceptual, theoretical, methodological and applied legal and economic principles of the nature and significance of civil law and labour contracts in public life. *Methodology.* The research is based on general scientific and special legal methods. The analysis helped to determine the quantitative and qualitative parameters which characterise civil law and employment contract as socio-economic and legal phenomena in modern society. The synthesis provided for the formation of common and distinctive features inherent in civil law and employment contract in modern society. With the help of the comparative legal method it was possible to distinguish the characteristic features of the civil law and labour contract in the economic sphere and the legal consolidation of the above categories in modern international and national legislation on the basis of the quantitative and qualitative indicators of the corresponding origin. The formal-legal method created the conditions for the formulation of conclusions on the effectiveness of the normative consolidation of the principle of freedom of contract within the limits of civil and labour legislation and for the determination of relevant regulatory proposals. The *purpose* of the article is to define the essence and significance of civil law and employment contracts in the economic and legal sphere. The *results* of the study show that the state of legal regulation of temporal restrictions on the exercise of private rights in Ukraine on the way to economic integration creates preconditions for its modernisation in terms of both general and special legal provisions. *Conclusion.* Contractual relations are one of the most important driving forces of civil turnover, as they mediate the movement of a number of non-property and property goods within civil and economic turnover. Based on the study of statistical data, it has been established that the civil law contract, together with the labour contract, creates conditions for the development of economic processes in quantitative and qualitative components due to its involvement as a means of moving material and immaterial goods in civil and economic turnover. At the same time, a civil law contract, due to its wide variability and direct involvement in certain economic processes, creates more important prerequisites for progress in the economic space, which is manifested in new types and forms of contracts of this type. This is why, unlike civil law, labour law influences the economy of the country indirectly and with a much smaller specific weight. In the legal sphere, research into the legal nature and scope of contractual constructs in the civil and labour spheres testifies to the weight of the principle of freedom of contract, which, on the one hand, is established within the limits of civil legislation and, on the other, creates the conditions for the implementation of another, broader principle of freedom of work, which is based on the right of the individual to freedom of work as a natural and inalienable human right. The article points to the possibility of extending the principle of freedom of contract, along with civil law relations, to other related relations, primarily labour relations. Where the manifestation of the content of such a principle is the right holder's authorisation to behave in one of the following ways: 1) procedural (conclusion, amendment, termination of the contract); 2) selection of a counterparty; 3) determination of terms and conditions; 4) determination of the contract content.

Key words: civil law contract, employment contract, principle of freedom of contract, economic dimension, legal dimension.

JEL Classification: J22, J30, K12, K31

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1. Introduction

The contract as the main basis for regulation of certain social relations is reflected in a number of branches of private and public law, which is fully consistent with the nature of this legal category. Contractual structures are based on a significant achievement of mankind, which the famous journalist and writer Antoine de Saint-Exupéry once defined as the luxury of human communication. It is communication with the aim of achieving an appropriate compromise satisfaction of the interests of two or more persons in a particular sphere of social life that is a means of solving a number of social problems.

The processes of globalisation of socio-economic phenomena of the information society in the modern world contribute to the transformation of contractual structures in various spheres of its existence. The nature of a contract is mediated primarily through the mechanism of legal regulation of private relations, and it is from private law that the germ of the contractual structure, reproduced in the implementation of the principle of freedom of contract, grew. The latter, in its turn, determines the extent of behaviour of its participants, creates preconditions for choosing the form, type, content, method of conclusion, means of implementing the content of the contract, etc.

At the same time, the civil law contract within the framework of private law was actively implemented in the relevant structures of other branches of law, among which the most significant embodiment was the employment contract.

In the context of the close integration of social, economic and cultural phenomena in the modern world, the issue of protecting the human right to work regardless of where one is, providing appropriate tools for exercising this right, and creating the preconditions for shaping one's well-being on the basis of social work, comes to the fore.

In both international and national legislation, the employment contract as a means of achieving these goals is adequately reflected in the relevant regulatory and legal provisions. This is evidenced by even a cursory analysis of international documents of a general legal nature, not to mention special regulatory and legal provisions that are directly designed to ensure the protection of human labour rights, in particular within the framework of the International Labour Organization (ILO) and relevant conventions. For example, the Universal Declaration of Human Rights (UDHR, 1948) in Article 23 grants everyone the right to work as a type of objective and natural right, which consists in the choice of a number of behavioural options at the individual's own discretion regarding the form, place, content

and other criteria that characterise the exercise of this right. In other words, it is the individual who determines and chooses the qualitative and quantitative components of this right, and the most rational and popular instrument in such circumstances may be nothing more than the construction of a private law contract implemented from civil law and transformed accordingly with due regard to the specifics of labour relations. This is due to a comparative study of the nature of civil law and employment contracts at different stages of their social existence.

Undoubtedly, this issue has been the subject of study by a number of researchers in the field of both international and national legislation. Thus, the problems of the nature of a civil contract have recently been the subject of research by a number of scholars, who have addressed the following issues: the nature of the contract as a source of civil contract law (Panchenko, 2019), the essential and conceptual characteristics of a civil contract (Bele, 2012), the place of the contract in the mechanisms of regulation of civil legal relations (Kuznetsova, 2012), the nature and significance of contractual constructions in the regulation of housing legal relations (Avramova, 2021), the significance of the contract in the regulation of consumer relations (Yanovytska, 2018), a comparison of liability for breach of contract in Argentine and Peruvian civil law (Mostajo, 2018). At the same time, scholars have studied the employment contract in terms of its private law nature from the standpoint of: correlation of the nature of a civil law contract for the provision of services and an employment contract (Makoviy et al., 2021), reclassification of a civil law contract into an employment contract for the purpose of public performance of a legal obligation (Dimitriu, 2018), distinction between the legal nature of labour and civil law contracts in the context of a person's legal status (Hetmantseva and Protskiv, 2020), and characterisation of contracts governing hired labour (Kabanin, 2019).

The above considerations and the study carried out update the knowledge of civil law and employment contract with regard to their nature in the economic and legal dimension, taking into account the recent transformations and events which have left their mark on both the economic and legal life of the Ukrainian community.

2. Social and Economic Prerequisites for the Development of Contractual Regulation of Private Relations

Contractual relations are one of the important driving forces of civil turnover, as they mediate the movement of a number of non-property and property

benefits in civil and economic turnover. This is clearly evident in the statistical data of various international and national institutions, depending on the scope of use of the relevant civil law contract.

For example, in the field of intellectual property, the legal construction of a contract has proven itself quite well in terms of implementing the concept of commercialisation, the essence of which is the possibility of maximising profits from the use of the results of creative and intellectual activity within the framework of civil and economic turnover (Medvedenko et al., 2022). According to the State Enterprise "Ukrainian Intellectual Property Institute" (UIPI), in 2021, a total of 2,134 agreements on the disposal of industrial property rights to objects were concluded and registered, compared to 1,987 agreements in 2020, which is actually almost 7.5% more. At the same time, 495 contracts were registered for copyright objects in 2021, which is more than 6.2% more than in 2020 (447 registrations) (UKRPATENT annual report for 2021).

The sphere of property relations is more traditional for the use of contracts, where these legal instruments provide an opportunity to ensure the transfer of the relevant property. Given the specifics of the legal regime of real estate and the imperative basis for legitimising the procedure for changing its owner on the basis of a contract of alienation, notarial statistics provides quantitative support for this process. Thus, in 2021, 546085 agreements on the alienation of real estate other than land plots were concluded in Ukraine, which is 17.2% more than in 2020 (465763 agreements). At the same time, among the various agreements in this group, the largest share is occupied by agreements on the alienation of apartments and residential buildings through the sale and purchase or donation (512038 in 2021 and 435959 agreements in 2020). Accordingly, 379437 agreements were concluded in 2021 and 277101 agreements in 2020, i.e., 36.9% more, in relation to land plots for various purposes, including land shares (units). In the structure of types of concluded agreements, sale and purchase and gift agreements also occupy a prominent place (376323 in 2021 and 273787 in 2020).

Among the agreements on the transfer of property for temporary use that were subject to notarisation, lease agreements prevailed in the period under review, with 37204 of them concluded in 2021 and 37940 in 2020. At the same time, 3087 agreements were concluded in this category of loan agreements in 2021, and 2822 in 2020. Vehicle agreements account for a significant share of agreements for the transfer of property for temporary use (hire and loan) (33643 in 2021 and 34694 in 2020).

In 2021, 57547 pledge agreements were concluded and 42429 agreements were concluded in 2020 to

secure civil law obligations with respect to movable and immovable property. Other agreements in the structure of notarised contracts amounted to 185729 in 2021 and 166109 in 2020 (Ministry of Justice of Ukraine, 2022).

The above figures state the number of different contracts that have been notarised. Given the fact that Ukrainian legislation only requires notarisation for a part of contracts, the above data only partially indicates the global coverage of civil law contracts in the area of satisfaction of private interests by means of this legal construct.

Undoubtedly, the above-mentioned types of agreements facilitated civil and commercial turnover through the movement of relevant property, which has a certain value, and therefore contribute to the development of the country's economy. In addition, the notarisation of any of the above agreements generated funds in the form of state duties, taxes, pension fund contributions, and notary fees, which also correlates with certain economic indicators.

Given the subject matter of this study, it is necessary to pay attention to the relevant indicators of the spread of employment contracts in the area of the human right to work. As noted, international law, for example, the Universal Declaration of Human Rights, clearly defines the priority of the contractual form of exercising such a right in the context of its content components, which is also evident in the provisions of conventions concluded under the auspices of the ILO, for example, the Seafarers' Labour Contracts Convention, No. 22 (MLC, 2006). The latter regulatory act regulates in detail the procedure for concluding an employment contract, its significance for the relations between the employee and the employer and the shipowner, as well as a number of other provisions that are among the necessary conditions of this type of contract. In accordance with the national legislation of Ukraine, Article 21 of the Labour Code of Ukraine, an employment contract is defined as the main form of exercising an employee's right to work, which is regulated in more detail in other provisions of this regulatory act (The Labor Code of Ukraine as amended on July 14, 2023, No. 322-VIII).

According to the State Statistics Service of Ukraine, the country recorded the following figures for employees working under labour contracts: in 2020, their total number was 7,254,386, while in 2017 there were 6,575,898, which indicates an increase of 10.3% (The State Statistics Service of Ukraine, 2020).

At the same time, existing research confirms the importance of contracts establishing labour relations for the economy of a particular country of today, due to various socio-economic and legal structures. Thus, the existence of the respective national economy has a significant impact on the taxes and fees levied

on the employer and employee under the labour contractual relationship. Using the example of peculiarities of social contributions collection in some post-socialist countries, the author studies the impact of labour relations on economic indicators of a particular country and peculiarities of distribution of the obligation to pay them to each party to an employment contract, and as a result concludes that the quantity and quality of such contracts have a significant impact on the existence of the country's economy and implementation of the social component of its content (Ivanchuk, 2012). The above position is indeed valid with the addition of the part concerning the appropriate level of culture of the parties to the employment contract and the relevant regulatory and legal support for the existence of such relations and the implementation of the said obligation depending on the country of its application.

Comparing the socio-economic indicators of the existence of contractual relations in the civil sphere and in the sphere of the realisation of the right to work, it is necessary to note the following. The civil-law contract, together with the labour contract, creates conditions for the development of economic processes in quantitative and qualitative components due to its involvement as a means of moving material and immaterial goods in civil and economic turnover. Simultaneously, the civil law contract, due to its great variability and direct involvement in certain economic processes, creates more important prerequisites for progress in the economic space, which is manifested in new types and forms of contracts of this type. From the point of view of the considered position, the labour contract in its component aims, first of all, to ensure the social component in the implementation of the content of the right to work by guaranteeing certain social standards, including in the economic sense. Therefore, the latter affects the country's economy indirectly and in a much smaller proportion, unlike civil law.

3. Labour and Civil Law Contracts in Modern Law

A civil contract is a defining legal construct in any national law of a modern country, as evidenced by both qualitative and quantitative indicators of the relevant regulatory material. This is evidenced by even a cursory analysis of the civil law provisions of modern countries. The Civil Code of Ukraine in Book 5, "Law of Obligations", devotes Articles 509-1143 to the regulation of contractual relations, the Civil Code of the Republic of Azerbaijan – Articles 385-986, the Civil Code of Germany – Articles 241-782, the Civil Code of Poland – Articles 353-921. However, the list of the

above provisions is not exhaustive, since each of the above codified regulations in the field of private law contains a number of other provisions that directly or indirectly affect the regulation of contractual relations. In particular, within Book 1 of the Civil Code of Ukraine, the issues of legal regulation of contractual relations are reflected in clause 3 of part 1 of Article 3, where the principle of freedom of contract is defined as one of the basic principles of civil legislation (The Civil Code of Ukraine as amended on January 1, 2023, No. 435-IV).

In this context, the approach according to which the said principle as a fundamental principle of civil law undergoes a certain transformation in international and national law, as well as the corresponding restriction in this regard, is quite reasonable. Firstly, it is noted that the Draft Common Frame of Reference (DCFR) is based on the rejection of direct regulation of civil law relations, in particular, freedom of contract, which denies the need for codification of both civil law in general and contract law in particular (Kharitonov, Kharytonova, 2015). Secondly, the DCFRs are based on such restrictions on the freedom of contract as: exclusion in most cases of provisions defining the rights of third parties from the contractual content; exclusion of provisions contrary to public policy or the interests of others; inadmissibility of contracts with defects of will; prohibition of discrimination by contractual provisions; full transparency regarding the content and legal consequences of the conclusion and performance of the contract, and so forth (Mendzhul, 2022). Thirdly, the restriction of freedom of contract in the content of the mechanism of legal regulation of civil law relations is manifested through various private law constructions designed to protect public interests, in particular, public order, and is also manifested in certain forms of implementation of the imperative method of legal regulation (Vladyshavska and Davydova, 2023). Fourthly, the manifestation of the principle of freedom of contract in civil law is mediated by the formula of the most effective ratio of the number of mechanisms of legal regulation of contractual relations and the corresponding maximum legal result thereof (Davydova, Tokareva et al., 2021).

These considerations fully reproduce the legislative mechanism for limiting the effect of the principle of freedom of contract in the context of interpreting the content of Articles 6 and 13 of the Civil Code of Ukraine. The first of them determines the relationship between acts of civil legislation and contracts as defining sources of civil law, which are respectively forms of civil legislation, where, among the following rules: 1) the conclusion of any contract which, although not provided for by acts of civil legislation, corresponds to their general principles;

2) the settlement of relations not regulated by them by means of a contract provided for by acts of civil legislation; 3) the deviation from the provisions of acts of civil legislation, unless expressly provided otherwise in them and not affecting the content and essence of the relations between the parties. According to the second article, a participant in civil legal relations, exercising its legal capacity as a legal entity, including by entering into contracts, is authorised to perform any actions that, however, do not contradict the interests of other persons, are in the public interest (in relation to environmental protection, cultural heritage, unlawful restriction of competition, abuse of monopoly position in the market, unfair competition), prevent abuse of law in other forms, and also ensure compliance with the moral foundations of society.

The principle of freedom of contract is also enshrined in international and national labour legislation. For example, the Employment Relations Termination Convention (ILO No. 158, 1982) in its Article 2 allows the parties to the employment relationship to deviate from the provisions of the Convention, provided that such provisions are correctly provided for in the employment contract. However, such a concession should be indirectly reflected in certain guarantees of protection of employees' rights. Given the analysis of the regulatory material of the Labour Code of Ukraine, it should be noted that the principle of freedom of contract is not directly reflected in its provisions, but the relevant rules are indirectly traced in many provisions of the said legal act. In particular, Article 2 of this Code, directly addressing the constitutional right of citizens to work, defines their subjective right to exercise this opportunity by concluding an employment contract of the appropriate type, content and form. At the same time, Article 22, when formulating the essence of mobbing (harassment), mediates the possibility of the employer's powers to establish the scope and content of employment duties, change of place of work, employee's position or remuneration in the content of the employment contract, even if the above goes beyond the norms of labour law. Article 7 extends the effect of an employment contract to special or extraordinary working conditions when the normative material of labour law regulations is insufficient to regulate such social relations. Similar provisions are contained in Art. 91, which justifies the possibility of regulating labour and social security conditions not provided for by the current labour legislation through the terms of an electronic employment contract. Ultimately, within Chapter 1 of the Labour Code of Ukraine "General Provisions", Article 9 reproduces certain rules limiting the application of the principle of freedom of contract in labour law by formulating

the following provisions: 1) contractual terms that worsen the position of employees compared to the provisions of labour legislation are invalid; 2) prohibition of pressure on the employee's will to enter into an employment contract by coercion if there are conscious objections to any provisions of the contract.

There are certain opinions in the literature on the reflection of the principle of freedom of contract in labour law and labour legislation. Thus, according to some researchers, the absence of regulatory consolidation of the content of freedom of contract in labour legislation, in particular as a principle of labour law, negatively affects the formation of a mechanism for legal regulation of the proportion of labour relations, given the importance of the employment contract as an important regulator of them (Herman, 2015). According to another approach, the principle of freedom of contract in labour law is perceived as an all-encompassing legal instrument that combines both private law and public law elements in the structure of the mechanism of legal regulation of social relations that are the subject of labour law. In addition, the principle of freedom of labour contract is closely intertwined with the principle of freedom of labour and the original essence of the right to work (Lavriv, 2009). The above requires legislative consolidation, which is proposed by the cited researchers. Herman defines freedom of contract as a principle established by labour law which consists in the possibility of a participant to labour relations to independently determine his/her behaviour with regard to the implementation of the content of his/her legal personality when concluding, amending and terminating an employment contract. At the same time, Lavriv draws attention to the manifestation of freedom of contract in the context of the possibility of variable exercise of the right to work. The study of the Draft Labour Code of Ukraine dated November 8, 2019, No. 2410 indicates an attempt to incorporate into labour legislation the opinions of labour law experts on this issue (The Draft Labour Code of Ukraine dated November 8, 2019, No. 2410). Thus, the drafters of this draft law propose, first of all, to allocate a separate Article 2, which will be called "Basic Principles of Legal Regulation of Labour Relations". Among the latter, the first is the principle of freedom of labour, which Lavriv defines as the main one among other principles of labour law. This approach is fully consistent with the content of the right to work, which is reflected in Article 43 of the Constitution of Ukraine, which provides that this means, among other things, the right to choose the form, type and content of work to which one freely agrees, without any hints of defects in such

an expression of will (The Constitution of Ukraine, 1996). The Draft Labour Code of Ukraine actually reproduces these provisions of the constitutional human right, defining the content of the principle of freedom of work as the right of a person to freely choose or freely agree to the conditions for exercising the right to work, taking into account one's own preferences. These conclusions are tested in the context of consideration of the right to freedom of labour as a natural and inalienable human right, which also includes the content of the principle of freedom of employment contract, and explains the retrospective development of this category in the law of modern countries, including Ukraine. (Shpitalenko, Baranovska et al., 2021).

In other words, when it comes to the content of the principle of freedom of contract in labour law, it is actually about the exercise of the ability to enter into, amend and terminate an employment contract as a component of labour legal personality, which is a kind of analogue to legal capacity as a component of civil legal personality, as mentioned earlier. In particular, the same position is reflected in the argumentation of Andrushko, which shows the mutuality of the manifestation of the freedom of contract of both parties to the agreement, both the employer and the employee, and in the field of choosing the type, form and content of the termination of employment relations, on the example of the employer's application of Clause 1 of Art. 40 of the Labour Code of Ukraine, choosing the expediency of applying the given norm as a legal basis for terminating employment relations, taking into account the determining criteria for evaluating the efficiency of the enterprise, organisation or institution (Andrushko, 2022). At the same time, under these circumstances, the employee is expected to exercise his/her discretion in choosing another job in the relevant specialty and qualification at the enterprise, taking into account the qualification requirements for the position, level of qualification and productivity, taking into account the preemptive right to remain in the job, the right to re-employment, etc.

In view of the above, the content of Article 627 of the Civil Code of Ukraine, where the principle of freedom of contract is reproduced in one of the possible options for the authorised person's behaviour, including: 1) entering into a contract; 2) choosing a counterparty; 3) determining the terms or content of the contract. In addition to the above, such variability must comply with the requirements of civil law, business practices, and the requirements of reasonableness and fairness. Such a position of perception of the content of the principle of freedom of contract in civil law is somewhat narrowed, since, in addition to the above options, the authorised

person must choose a line of conduct in other cases related to the procedure for concluding a contract, including: 1) amendment of the contract; 2) termination of the contract. With regard to the latter, in particular, a similar situation regarding the termination of an employment contract was analysed on the example of the choice of behaviour by the employee and the employer.

When raising the issue of the nature of labour and civil law contracts in law, it is necessary to pay attention to the universal approach of private law regulation of contractual relations, which is reflected in the civil legislation of Ukraine. The latter opinion is fully recognised in the scientific literature, where a civil law contract is perceived as a universal form of implementation of commodity-money and other property relations (Bele, 2012).

Since an employment contract performs a similar function in labour relations, it is possible to speak of a corresponding construction of the mechanism of legal regulation of social relations by a civil law contract and the labour sphere. This point of view resonates with a similar argumentation on the application of the provisions of the civil law contract, as well as the corresponding principle of freedom of contract to the regulation of land relations (Shevchenko, 2013). At the same time, it is rightly noted that the introduction of freedom of contract in land law is in fact an embodiment of the private law element in the mechanism of legal regulation of land relations.

Similar considerations may well be made with regard to the extension of the provisions of a civil law contract to the sphere of exercising a person's right to work, which has also received a corresponding legal basis. In particular, Article 9 of the Civil Code of Ukraine expressly extends legal regulation by civil law to a number of related social relations, including relations with respect to natural resources, primarily land, as well as labour, which is also subject to regulation by an employment contract. Thus, everything stated above regarding the manifestation of freedom of contract as a defining principle of civil law and a significant legal category in the field of contract law as an institution of the said branch has the potential to be projected to the legal field of labour relations.

The foregoing has made it possible to consider the correlation between the legal categories of civil law and employment contract from the perspective of implementation of the principle of freedom of contract as a determinant among other principles of private law within the relevant subject matter of legal regulation.

4. Conclusions

To summarise the considerations set out in this article regarding the study of civil law and labour

contracts in the economic and legal dimension, the following should be noted.

Obviously, the processes of globalisation of socio-economic phenomena of the information society in the modern world contribute to the transformation of contractual structures in various spheres of its existence. Private law has provided all branches of law with the construction of a civil law contract, which has developed, including in the area of exercising the right to work as an inalienable human capacity.

Contractual relations are one of the important driving forces of civil turnover, as they mediate the movement of a number of non-property and property benefits in civil and economic turnover. This is clearly evident in the statistical data of various international and national institutions, depending on the scope of use of the relevant civil law contract.

Based on the study of statistical data, it is established that a civil law contract, together with an employment contract, creates conditions for the development of economic processes in quantitative and qualitative components by using it as a means of moving tangible and intangible goods in civil and economic circulation. At the same time, a civil law contract, due to its wide variability and direct involvement in certain economic processes, creates more important prerequisites for progress in the economic space, which is manifested in new types and forms of contracts of this type. The labour contract in its component aims, first of all, from the position considered, to ensure the social component in the implementation of the content of the right to work by guaranteeing certain social, including economic, standards. Thus, the latter affects the country's economy indirectly and in a somewhat smaller proportion, unlike civil law.

In the legal sphere, the study of the legal nature and scope of contractual structures in the civil and labour spheres demonstrates the importance of the principle of freedom of contract, which, on the one hand, is based on civil law, and on the other hand, creates the preconditions for the implementation of another, broader principle – freedom of labour, which is based on the right of a person to freedom of labour as a natural and inalienable human right.

The article points to the possibility of extending the principle of freedom of contract, along with civil law relations, to other related relations, primarily labour relations. Where the manifestation of the content of such a principle is the authorisation of the holder of the right to behave, which includes one of the following options: 1) procedural (conclusion, amendment, termination of the contract); 2) selection of the counterparty; 3) determination of the terms and conditions; 4) determination of the content of the contract.

The paper proposes the possibility of legislative regulation of the principle of freedom of contract at the level of labour legislation, in particular, in the form of reflecting the relevant provisions in the draft Labour Code of Ukraine. Suggestions are made to consider the content of freedom of contract in terms of implementation of legal capacity as a component of civil and labour legal personality.

Undoubtedly, the above considerations encourage further research into the nature and significance of civil law and employment contracts in the economic law sphere, in particular, taking into account the specifics of the classification of the above categories and scope of application.

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Received on: 09th of September, 2023

Accepted on: 27th of October, 2023

Published on: 17th of November, 2023