

GROUND S AND PROCEDURE FOR APPLYING NEUSTOYKA IN SPORT CONTRACTS

<https://doi.org/10.5281/zenodo.15580502>

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Annotation

In sport contracts, the mere fact that an obligation has not been performed – or has been performed improperly – is enough to trigger a neustoyka clause. The creditor is not required to prove either the breach itself or any specific amount of damage. For this reason, neustoyka can be regarded as a mechanism that spares the creditor from having to establish the debtor's fault. From the very moment the contractual terms are breached, the clause gives the creditor the right to demand the fixed monetary sum specified as neustoyka. In sport contracts, a neustoyka claim may arise not only from violations of contractual rights but also from breaches of professional standards.

Keywords

sport contracts, neustoyka, contract, property liability, remedial measure, penalty obligation, professional standards.

Scholars point out that a neustoyka may take the form of either money or goods, though in sport contracts it is almost always monetary. When the parties conclude any type of sport contract, they generally specify a fixed sum – or a percentage thereof – as a neustoyka to secure performance of the obligation. In practice, the amount is set according to the parties' estimate of the loss that would result if a clearly defined obligation is not fulfilled.

Up to the moment the contractual obligation is breached, neustoyka operates as a mechanism that guarantees performance. If either party fails to perform, the neustoyka clause is activated as a sanction. "The full non-fulfilment of a primary obligation gives rise, as property liability, to the secondary obligation of neustoyka provides grounds for enforcement." As stated above, a penalty (neustoyka) combines both a securing function and a liability measure. Its securing function forces one party of a sports contract to fulfill their obligations.

The penalty's liability measure means that a party's failure to fulfill obligations triggers the sanction specified in the contract or legislation. The penalty serves as a guarantee for the social nature of the relationships between the parties

in a sports contract. It motivates the party that fully fulfills their obligations and reminds them of the available means of protection. Meanwhile, it warns the defaulting party that punishment is inevitable.

The main purpose of applying a penalty in sports contracts is to reduce the risk of losing large sums of money. For example, if a football club signs a foreign player for a significant transfer fee and a 3-year contract, the club will also have to pay various bonuses and monthly salaries. If certain training sessions take place abroad, the club covers all travel expenses and other related costs. If, in this situation, the footballer not only fails to meet expectations on the field but also indicates a lack of intention to play for the team, the club suffers a significant financial loss.

By specifying the exact amount of the penalty in the employment contract, the club ensures that the player acts professionally and displays their full potential, while also encouraging the club to sign more talented players..”

A penalty (neustoyka) is a method that ensures the parties to a contract can act without fear. It is one of the means of preventing contractual violations. A penalty guarantees that all obligations performed by the creditor under a sports contract are compensated and that their rights are fully protected.

The penalty is aimed at ensuring that the parties to a sports contract properly fulfill their obligations. Therefore, as mentioned above, the penalty serves both as a guarantee that the debtor will not breach their obligations and as a punishment for the party who fails to perform.

The main difference between the penalty and other means of ensuring the fulfillment of obligations lies in the fact that the penalty is reflected in the contract clauses within reasonable and real demands.

A penalty (neustoyka) as a means of enforcing an obligation is a method that regulates the amount and the order of payment of monetary compensation if an obligation is not fulfilled. The primary driver of this mechanism is the breach of the contract by one of the parties. In such cases, the creditor pays special attention to activating this clause (the neustoyka clause).

According to Article 260 of the Civil Code of the Republic of Uzbekistan, a penalty is defined as the amount of money that the creditor is entitled to collect if the obligations specified in the contract concluded between the parties or established by law are violated.

Scholars emphasize that the penalty is one of the most widely used means of ensuring the performance of obligations. Indeed, the most important part of sports contracts is the neustoyka clause. The large flow of funds in recent years has made sports industry contracts some of the highest-risk contracts. Reducing these risks is

precisely achieved through the penalty mechanism. In the sports field, the neustoyka is not only a clause of a separate contract but is also often formalized by separate documents. This is primarily due to each party's pursuit of high income and the desire to establish their relationships in the most perfect way possible.

It is impossible to imagine modern sports contracts without a penalty clause because the penalty is aimed at executing the amount to be paid in cases where the debtor fails to properly fulfill their obligations or delays the performance of obligations altogether. The main reason for the widespread use of this mechanism in sports contracts is the creditor's interest in ensuring that the contract obligations are fulfilled or when obligations are not properly fulfilled, it serves as a basis for compensating the damage that may be incurred. In sports contracts, the neustoyka established in such cases has the following characteristics:

Firstly, it is determined by the parties at the time of signing the contract as liability for the possible failure to perform or the inadequate performance of future obligations.

Secondly, in cases where it is impossible to precisely calculate the damage arising from the failure or inadequate performance of future contractual obligations at the time of contract conclusion, the parties include a fixed amount of neustoyka in the contract.

Thirdly, it is expressed in the fact that the parties, at their discretion, establish the terms of mutual liability in the event that obligations are not fulfilled, thus reflecting the possibility of incurring damages as a result of the default.

For collecting a penalty (neustoyka) in sports contracts, as a general rule:

Firstly, the obligation must be breached by one of the parties;

Secondly, the breach of the obligation must be due to the debtor's culpable actions (not due to force majeure); and most importantly, depending on the type of contract, it is not necessary to prove that damage occurred as a result of the breach (such as in athlete or coach contracts, etc.), but there must be a causal link between the fault and the damage (for example, in sports advertising and sponsorship contracts).

In sports contracts, some confusion may arise in determining the precise boundary between compensation for damages and a penalty (neustoyka). The difference between these two measures can be identified based on the essential elements of liability. If an obligation is not performed or not performed properly, this alone is sufficient to demand a penalty.

If the debtor is not liable for their failure to perform or properly perform their obligations (if it was not caused by their fault), then the creditor does not have the right to demand the penalty.

In sports contracts, the recovery of penalties and late payment interest, which are both components of neustoyka, differs in their methods of collection. A fine is based on a fixed amount, whereas a penya primarily considers the delay period in fulfilling the obligation. In any case, neustoyka is always a monetary amount calculated as a percentage and demanded from the debtor. However, there is not a significant difference between a penya and a fine. The main difference lies in the specific calculation procedure.

As mentioned above, a penya is a debtor's obligation that increases in a fixed percentage for each day of delay. Its growing amount compels the debtor to fulfill their obligations in a timely manner. Based on this feature, neustoyka, in its narrow sense, serves as a means of ensuring the fulfillment of obligations in cases where they have not been properly performed, have not been performed at all, or have been delayed.

In sports contracts, the penalty (neustoyka) is recovered in a specific amount for any breach of the contractual obligation, regardless of how long the obligation has been delayed, and the specific amount is recorded in the contract.

Unlike the legislation of the Republic of Uzbekistan, sports law contains some differences in the grounds for establishing the neustoyka. In addition to being specified in the contract, the neustoyka can also be stipulated in the regulations, charters, or separately adopted circular documents of the relevant sports federations and associations.

If the neustoyka is not specified in the contract, in case of a dispute, the consideration of claims related to the neustoyka by sports dispute resolution bodies still often involves contentious cases. This is due to the many gaps in contracts between athletes and organizations or clubs and the fact that the overall structure of these contracts does not always meet the necessary requirements.

In accordance with the Civil Code of the Republic of Uzbekistan, the statutory neustoyka is often applied in disputes arising from sports contracts. However, the lack of specific exemplary neustoyka standards for sports contracts further complicates the matter.

In general, the statutory neustoyka specifies the amount to be recovered, how it will be calculated, and the conditions related to it. The statutory neustoyka differs from the contractual neustoyka in that In such cases, the creditor is entitled to receive the statutory neustoyka amount in any situation.

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