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# Legal Analogy in the Cases of Overcoming a Contract's Verbal and Numerical Ambiguity

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**Abstract:** The relevance of the research stems from the wider spread of contract conflicts and legal disputes caused by verbal and numerical ambiguity of certain contract terms, given the absence of a special legislative rule to overcome such ambiguities. The work aims to identify and evaluate the most effective law enforcement methods of overcoming the discrepancy of the notations of quantitative values in a contract that is expressed with words and numbers. Research methods included a special technical–legal toolkit, including methods of analogy and legal modeling, civil doctrine means of analysis and synthesis, induction, and deduction, as well as comparison and generalization. As a result, the paper refutes the universal character of the analogy of law as a method of overcoming legal gaps in the area under study. At the same time, the active and positive role of analogy as a part of other methods of interpretation of ambiguous contractual provisions, such as literal interpretation, combination of textual and contextual interpretations, and its appeal to tradition, isshown. The significance of the work lies not only in its ability to orient lawyers and practitioners in a set of different options to overcome the verbal and numerical ambiguity of the contracts but also to indicate ways to solve common problems associated with the ambiguities and incompleteness that come with the contractual terms.

**Keywords:** legal analogy; contract; verbal ambiguity; numerical ambiguity



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## 1. Introduction

The most important issue for contract dispute resolution is the interpretation of the text of the contract, as in most cases, it is the text recorded in some tangible medium (including electronic form) that acts as a form of objectification of contractual terms (Bogdanov and Bogdanova 2018; Al Omran and Al-Qassaymeh 2021). In turn, in the legal interpretation of the text, the problem of ambiguity of the words and expressions used, becomes the key one (Poscher 2011); it requires resolving the complex contradiction between certainty or effectiveness, on the one hand, and precision or fairness, on the other hand (Spigelman 2011). Indeed, notwithstanding the distinctive striving for certainty in the law and legal texts, neither written legal rules and decisions per se nor dogmatic rules of interpretation invariably provide sufficient clarity to the legal result enshrined in the text (Blinova and Belov 2021).

The uncertainty, or ambiguity, of the text of a contract stems from many factors, including the widespread misprints, errors, and other technical defects committed when the contract was being prepared (Zardov 2018). At the same time, the most striking example of the uncertainty of contractual terms is the type of situation when the quantitative values used in the contract's text, duplicated in words and figures, are at odds with each other. If legal certainty is understood as the predictability of results in legal disputes (Mak 2013), this divergence is its direct opposite. Accordingly, the search for an effective and fair mechanism for establishing the content of disputed contractual terms complicated by a verbal–numerical discrepancy opens the way to defining general normative and doctrinal criteria of contract interpretation and working out analogous and other law enforcement techniques under conditions of legal uncertainty.

The problem of quantitative values' textual ambiguity in contracts is not unique to Russia. Therefore, the estimation of different judicial and doctrinal approaches for its solution in the Russian legal field can be useful for actors of the jurisdictions without common legislative norms of a priority either of verbal or numerical value.

## 2. Literature Review

Current Russian civil legislation does not contain a general requirement to duplicate in words the numerical designations of quantitative values indicated in the text of an agreement. Only when it agrees in notarial form does Article 45.1 of the Fundamentals of Russian Federation legislation on notaries (approved by the Supreme Soviet of the Russian Federation (RF) on 11 February 1993, No. 4462-1) indicate the need to indicate the amounts and terms relating to its content at least once in words. (However, strictly speaking, there is no requirement to spell out numbers since all numerical values in the text of a notarial agreement can be specified only in words without using numbers.)

At the same time, the tradition of spelling out numbers not only in the settlement, financial, and primary documents (certain relevant traditions are legalized in the bylaws, in particular: Annex 1 to Bank of Russia Regulation No. 762-P "On the rules of funds transfers" dated 29 June 2021; Paragraph 1.1. Regulations of the Bank of Russia from 3 July 2018, No. 645-P "On savings and deposit certificates of credit institutions"; Paragraphs 13–16 of Annex No. 2 to the Government of the Russian Federation from 1 October 2020, No. 1586 "On approval of the Rules of transportation of passengers and baggage by road and urban ground electric transport"), but also in contracts, historically established and widely used. For example, in the 19th century, the contractual legal structure of personal hiring was applied in Russia in the spelled-out form, and the wages were denoted by numbers and in words (Pechnikov and Pechnikova 2012).

Russian and foreign lawyers and drafters of civil law documents actively propose to spell out numbers (Chuvashev 2012). Their goal is to avoid "possible disputes" and "falsifications" and note that these approaches increase "clarity and certainty" (Wiggers 2011) of the corresponding text and that, in general, "this has always been done" (Gentry 2016). The reason for this is the fact that it provides technical protection of the text of a contract from falsification (additional printing, correction of figures not agreed upon by all parties) or from damage (wear and tear) of the part of the paper carrier where a particular numerical designation is present.

The high degree of computerization and "templating" of modern contractual work often indicates that numerical and verbal notations of quantitative values in the text of a contract are at odds. It happens because of experts' banal carelessness (who take a ready-made contract with some (previous) amounts and terms and forget to change the verbal transcript of new numbers) or because of the carelessness of the party preparing the text of the contract for signing. In such situations, if the parties disagree about which designation (numeric or verbal) should take precedence, there is a question that has no unambiguous doctrinal and law enforcement answer: how to overcome the uncertainty of the relevant contract terms?

It is necessary, of course, to stipulate that the differences in substance and disagreements are not connected with the usual spelling errors of the contract's authors that present the difficulty. For example, the Arbitration Court of the Far Eastern District easily qualified the absence of verbal–letter discrepancy, pointing out the spelled-out sum "sixty-five thousand" with a spelling error did not indicate a mismatch to the numerical amount of 65,000 rubles (Decree of the Arbitration Court of the Far Eastern District from 26 May 2021, No. F03-1999/2021 in case No. A59-4940/2016).

Furthermore, it is important to emphasize that the analyzed contract's verbal and numerical ambiguity is exactly non-clarity but not a misrepresentation of the parties to the transaction or a vitiating factor that should be estimated through the doctrine of contractual mistake (Chen-Wishart 2015). In case of an obvious omission or misprint made by a party, Russian legislation implies the misrepresentation is significant if it allows the court to

acknowledge the deal invalid if that party, reasonably and objectively assessing the situation, would not make the deal, being aware of the actual situation (Article 178 of the Civil Code).

It is noted in foreign literature that despite many scientific studies on contracts and contract law, the interpretation of contracts quite often has an abstract nature (Posner 2004). That is in contrast to the issues related to the formation, protection, validity, and legal remedies applying to the particular analyzed problem. Therefore, common approaches for contract interpretation do not allow (without exceeding frames of contract validity) unified solving of the matter of priority between differing contract values expressed with words and numerals.

A similar conclusion can be drawn regarding the degree to which the ambiguity problems in the language of law and legal documents have been scientifically elaborated. The extent to which ambiguity and vagueness hinder a legal document is actively discussed (Blinova and Belov 2021). Relevant works are amply represented (Asgeirsson 2015; Jónsson 2009; Marmor 2013; Torbert 2014). However, being aimed primarily at exploring the linguistic ambiguities caused by lawyers' use of naturally vague language, these works do not provide a sufficiently clear idea of how the verbal–numerical contradictions of each specific contract term should be resolved. Accordingly, the specific applied problem of filling in contractual gaps and overcoming the ambiguity of terms about the values formulated in the text of a contract in a contradictory way lacks the special scientific key necessary for its solution.

Keeping in mind that if the legal system does not respond appropriately, harmful ambiguities in contractual texts may easily turn into fraud (Solan 2004), doctrinal elaboration of adequate means to counteract the ambiguity needs to be intensified.

Analogy (Kahn 2015), which is very characteristic of legal reasoning (Lamond 2016) and generally central to it (Hunter 2008), is a standard and effective method for overcoming legal gaps and ambiguities in private law. Therefore, it seems important to focus on theoretical and practical law enforcement in search of optimal solutions to the mentioned problem using the analogy. The latter is understood in this case not only as analogy *extra legem*, which fills legal gaps and attributes legal consequences to facts not clearly described in the applicable legal provision (the contract provision in this context), but also as analogy *intra legem*, which uses analogical arguments for interpretation of legal rules (Dajović 2020).

It is possible to suggest that the absence of a common normative solution about the priority of either verbal or numerical contract values is, from the civil legislation point of view, a legal lacuna where the legal analogy is a universally applicable tool.

## 3. Results

The result of the work is scientific and practical confirmation of the fundamental importance of solving interpretation problems in the aspect of ambiguity of the contract terms.

The reasons for the inconsistency of doctrinal and law enforcement approaches to resolving disputes related to the discrepancy of quantitative contractual values expressed in figures and duplicated (deciphered) in verbal form have been shown.

The hypothesis about the ability of legal analogy to act as a universal tool for resolving the uncertainty of the contract when the verbal and numerical designation of quantitative indicators contradicts itself has not been fully confirmed. Applying the law by analogy to overcome this uncertainty can lead to a violation of the true will of the parties to the contract. However, it was shown that analogy, a common logical device and a habitual means of legal reasoning, takes place in each possible option for overcoming the uncertainty of contractual terms.

It has been argued that the most appropriate solution to overcome verbal and numerical ambiguity is a coherent combination of textual and contextual interpretation. Based on the analogy, it corresponds to the objective of protecting each party's interest in implementing the fair sense of the contract, contributes to the contract validity requirement, provides a direct effect of the good faith principle, and aligns the counterparties' negotiating power.

## 4. Materials and Methods

The present paper belongs to the category of doctrinal studies (Smits 2017) and is based on the analysis of existing regulations and constructions of Russian contract law and related court disputes, as well as the results of influential Russian and foreign theoretical legal and civil scientific research within the scope of the study.

The work required not only the use of formal legal tools (normative and dogmatic) of the legal sciences but also traditional logical techniques of analysis and synthesis, induction and deduction, and comparison and generalization. The analogy method played a notable role in this study's methodological basis, which acted as one of the means of achieving the scientific result and one of the study objects.

A special feature of the empirical base of the study was that judicial acts on specific disputes related to verbal and numerical ambiguity of the contract (decisions of Russian arbitration courts on specific disputes) were subjected to analysis and comparison between themselves and in relation to the explanations of higher courts. Examples are from Resolutions of the Russian Federation Supreme Court Plenum dated 23 June 2015, No. 25, "About application of some provisions of the Section 1 of part one of the Civil code of the Russian Federation by courts" and 25 December 2018, No. 49, "On some issues of application of general provisions of the Civil Code of the Russian Federation on the conclusion and interpretation of the contract".

## 5. Discussion

It seems possible to distinguish several options for overcoming the verbal–numerical ambiguity of contractual terms.

### *5.1. Option 1: Applying Legislation That Regulates Similar Relationships as an Analogy*

In the absence of a general prescription to interpret numerical values in the contract, the legislator still needs to provide a general rule on the consequences of a contradiction between quantitative values expressed numerically and verbally. Only concerning certain civil law documents (namely, savings and deposit certificates and promissory notes, which are documentary securities), a special rule is fixed about the priority of the value (amount) indicated in words (see: Paragraph 10 of the Letter of the Bank of Russia. See: Point 10 of the Letter of the Bank of Russia from 10 February 1992, No. 14-3-20 (rev. on 29 November 2000) "Regulations on the savings and deposit certificates of credit institutions"; point 6 of the Regulations on the bill of exchange and promissory notes, approved by the CEC and SNK USSR from 7 August 1937, No. 104/1341).

The legislator's silence on this issue could hardly be called intentional, qualifying this situation as a valid legal gap. Hence, some practicing lawyers see the possibility of applying a special rule to a broader range of relevant (similar) relations, relying on Paragraph 1, Article 6 of the Civil Code, i.e., by the law analogy (Petrosov 2017).

In various cases, the courts define disagreements on the priority of divergent numeric and alphabetic designations in the text of a promissory note and that of civil law contracts as similar, adhering to this approach in resolving disputes (Donskikh 2019).

Thus, in a case concerning a claim for debt collection under a loan agreement confirmed by a promissory note, the Primorsky District Court of St. Petersburg granted the claim and charged the defendant with a debt of 5,630,000 rubles, as was indicated in the promissory note in numerals. However, the Judicial Board for Civil Cases of the Third Court of Cassation of General Jurisdiction interpreted the evidence differently. Namely, the defendant received money from the plaintiff because the numbers in the loan indicated 5,630,000 rubles, while the amount in words indicated in the transcript was "five million six hundred and thirty" rubles. Therefore, the appellate court changed the decision of the original trial, applying Paragraph 6 of the Regulations on a Bill of Exchange and Promissory Note by the law analogy and considering: (1) parties had submitted no other additions or clarifications to the loan agreement; (2) the plaintiff's representative had failed to disclose in court the discrepancies between the way the amounts were written. The decision was

resolved in favor of the plaintiff recovering 5,000,630 rubles from the defendant because the amount was spelled that way verbally (Definition of the Third General Court of Cassation of 06. 21.2021 No. 88-9819/2021 in case No. 2-379/2020).

A similar case represents evaluating the lease agreement conditions regarding liability for late rent payment, which contained the wording, "for late payment of rent, the landlord has the right to charge the tenant a penalty in the form of a fine of 0.01% (zero point one percent) of the amount of non-payment for each day of delay". The Arbitration Court of St. Petersburg and Leningrad region granted the landlord's claim to recover the amount of the penalty accrued on overdue rent payments from the defaulting tenant based on the amount specified in writing in the agreement. In turn, the Court of Appeal upheld this decision, noting that the penalty amount specified verbally within the contract did not match the amount specified in numbers. Citing Paragraph 6 of the Regulations on the Bill of Exchange and Promissory Notes, the contradictions between these amounts should be resolved by recognizing the priority of the sum written in words. The Court of Appeal also referred to the principles set out in Art. 431 of the Civil Code, which requires, when interpreting the terms of a contract, considering the literal meaning of the words and phrases contained in it. Any ambiguity should be established by comparing clauses (separate conditions) within one agreement and examining the contract's meaning as a whole. That would reveal that an interest rate equal to 0.01% clearly would not be sufficient compensation for the losses incurred by the claimant for non-payment of the principal amount of debt for more than one year (Decision of the Thirteenth arbitration court of appeals of 01. 04.04.2019 No. 13AP-5389/2019 in case No. A56-114097/2018).

In another case, limiting the maximum amount of the parties' contract liability (no more than 5 (fifteen) percent) was questioned. The court, justifying the priority of the verbal formulation of the relevant value (fifteen), referred to a similar law and cited several judicial acts in similar cases (Decision of the Fourth Arbitration Court of Appeals of 31 October 2014, on case No. A19-5047/2013, Resolution of the Tenth Arbitration Court of Appeal of 19 January 2012, on case No. A41-23185/11, Resolution of the Sixteenth Arbitration Court of Appeal of 29 July 2011, on case No. A18-1528/10), in which other courts acted similarly (Resolution of the Ninth Arbitration Court of Appeal of 7 December 2016, No. 09AP-57558/2016, 09AP-59683/2016 on case No. A40-159569/16).

The mentioned court cases reveal a fairly widespread law enforcement position on the possibility of filling the uncertainty of contract terms when there is a discrepancy between the verbal and numerical notation of quantitative values through the law analogy. That confirms the positive doctrinal reputation of analogy as a common, convenient, and effective means of filling the incompleteness of law (Mikryukov 2020), helping in legal reasoning to bridge the gap between the fact and the rule (Weinreb 2005). In addition, the practice presented is very illustrative of the most typical cases in which the relevant verbal–numerical discrepancies may occur:

(a) forgetting, failing to spell out the verbal denotation of a numeric (thousands, millions, etc.);
(b) there is an error in recognition and capitalization of the decimal place after the decimal point (tenth, hundredth, etc.);
(c) one of the digits of a multi-digit number is missing (5 instead of 15, 5 instead of 50, etc.).

### *5.2. Option 2: Custom Use*

The doctrine presents an approach that is identical to the conclusion (the priority in interpreting the relevant contractual condition should be given to the verbal one) but justified by the fact that it is about the custom (Article 5 of the Civil Code). The custom is the long-established rule of conduct (Orobinsky 2013) and, in general, is widely used in document management (Panarina 2018). Some sources have cited the rule "words prevail over numbers or symbols" among other generally accepted rules of contract interpretation not enshrined in law, such as "the express mention of one thing excludes all others", "the

specific prevails over the general", "handwritten provisions are favored over typed, and typed provisions are favored over pre-printed provisions" (Orsinger 2007).

Manifestations of such an approach can also be observed in judicial practice. For example, there was a case regarding the contractual penalty recovery for the late payment of supplied goods based on the contracted phrase: "The supplier has the right to demand payment of a penalty in the amount of 0.05% (zero point one percent) of the overdue payment for each day of delay". Arbitration Court of the Republic of Karelia and the 13th Arbitration Court of Appeal proceeded from the fact that the plaintiff and the defendant did not agree upon the penalty amount because this contract wording precludes the possibility of ascertaining the real will of the parties. Accordingly, the courts ruled that the priority of letter expression over symbolic–numeric expression from the meaning of Article 431 of the Civil Code did not apply and dismissed the claim. However, the Arbitration Court of the North-Western District considered the dismissal of the claim on the above grounds unlawful, pointing out that the will to establish civil liability in contracts in the form of a forfeit is obvious. Furthermore, the court recognized that the priority of the amounts and numbers specified in the contract in writing over the same values specified in numbers is a well-known and widely used custom (Decree of the Arbitration Court of the North-Western District of 10 October 2021, No. F07-9723/2021 in the case of No. 26-10554/2020).

In a similar case, the issue was the penalties fixed in the contract figures as "0.01%" and the words as "one percent" of the contract amount. The Ninth Arbitration Court of Appeal agreed with the conclusion of the first instance court that a verbal reflection of the number of penalties is consistent with reality and must be applied because it corresponds to usual business practice (Paragraph 1 of Article 5 of the Civil Code). It also explained in detail what this custom is and why it should be followed:

(a) in this case, a rule of conduct has been developed (i.e., it is sufficiently definite in its content) and is widely applied when establishing and exercising civil rights and performing civil obligations. By Article 5 of the Civil Code of the Russian Federation, the court may apply it when resolving a civil law dispute, regardless of whether it is recorded in a document or exists, irrespective of such recording. (This explanation corresponds to Clause 2 of the Resolution of the Russian Federation Supreme Court Plenum dated 23 June 2015, "About application of some provisions of Section 1 of part one of the Civil code of the Russian Federation by courts");

(b) the precedence of amounts and numbers specified in writing in a contract over the same values specified in figures is a well-known and widely applied custom, which under the rules of Paragraph 1 of Article 69 of the Arbitration Procedure Code of the Russian Federation acts as a circumstance recognized as common knowledge and does not need to be proved;

(c) the custom of indicating in documents the amount in capital letters developed from known historical preconditions in the spread of Arabic numerals in the 10th–15th centuries. This practice appeared more than 700 years ago due to the need to reduce the possibility of error/deception/fakes using Arabic numerals and is universally rooted in all areas related to document management (Decision of the Ninth Arbitration Court of Appeal of 30 October 2019, No. 09AP-59126/2019 in case No. A40-95283/2019).

Following the usual "general rule" that "words prevail over numbers" is also found in foreign judicial practice. For example, in Fetch Interactive Television, LLC v. Touchstream Technologies, Inc. (Delaware Court of Chancery Decisions 2019), the court had to interpret a contractual deadline provision in an agreement that included a written word denoting a number followed by the wrong number in parentheses as follows: "fifteen (30)". The court found it obvious that the written and numerical terms contradicted each other to the extent that the text was "devoid of evidence to resolve this ambiguity". So, the court reasoned that it was less likely that the drafting error would have occurred in the written expression rather than the numerical expression, recognizing the priority of the former (Pileggi 2019).

Such law enforcers agree with the need to consider the common-sense priority of letters over numerals in contracts and other legally significant documents. They resolve

disputes considering that all parties are aware (Decision of the Arbitration Court of the Ural District of 16 November 2017, No. F09-7023/17 in case No. A47-45/2017; Decision of the Federal Arbitration Court (FAC) of the West Siberian District from 22 March 2004, No. F04/1406-195/A70-2004 in case No. A70-8184/18-2003; para. 5.4. Decision of the State Corporation "Fund to Assist Housing Reform" of 5 October 2010, Report No. 194 (rev. dated 22 September 2011) "On approval of methodological recommendations to attract contractors to carry out work on major repairs of apartment buildings with the funds provided following Federal Law of 21 July 2007, No. 185-FZ "On the Fund to assist the reform of the housing and communal services").

All the judicial acts noted in this version of the studied problem are based on applying a custom. Accordingly, based on the norm of Paragraph 1 of Article 6 of the Civil Code of the Russian Federation, the finding of the court regulating disputed relations custom formally excludes the application of civil law by analogy. Russian legislation does not include analogous regulation in some legal sources but fixates on the absence of norm and custom as a necessary condition for applying analogous legislative norms. However, the general method of legal analogy is clearly in line with this option of overcoming the ambiguity of a contract term. We discuss the application of the rule accumulated due to a repeated resolution of similar controversial situations. The courts make decisions by analogy with how it is customary.

### *5.3. Option 3: Literal Interpretation of the Text of the Contract*

The approach is fundamentally different from the two described above, according to which, in a contract, if there is a discrepancy between the text and the numeric designation of any quantitative value, the relevant contract term should be considered "not agreed" by the parties. Accordingly, if such a term by the nature of the contract is essential, the contract should be recognized as "not concluded". Thus, when it comes to price, some authors believe that in the vast majority of cases, law enforcement practice proceeds from the materiality of such a misprint (i.e., a discrepancy between the price indicated in numbers and words) and recognizes such indication of the price as uncertain due to the inability to establish the actual will of the parties (Bychkov 2011; Yesipenok 2014). Accepting literal interpretation of contractual elements, differently expressed with words and digits, means the focus is shifted towards non-conclusion or invalidity of the contract. Indeed, it is possible to give examples of judicial acts based on this approach in Clause 1 of Article 431 of the Civil Code of the Russian Federation. In particular, consider the case concerning the claim for recovery of contractual penalty from the customer by the contractor relating to delayed payment for work performed. After the analysis of the disputed contract's relevant paragraph describing the customer's obligation to pay the penalty for late payment "in the amount of 0.01% (zero point one percent) of the amount of work not paid on time for each day of delay", the courts indicated that the parties had not defined the amount of penalty because the digital value does not match the verbal transcription written in parentheses. The courts came to a similar conclusion when resolving a dispute over the registration of ownership transfer under a contract of sale of real estate. The property's price in the contract was written as "2,820,000 rubles" and "two million two hundred eighty thousand rubles". The courts stipulated that the contract was not concluded since it did not contain an essential condition—the price (Resolution of the FAC of the Far Eastern District of 18 January 2005, No. F03-A73/04-1/3852). The latter example demonstrates another typical alphanumeric discrepancy involving so-called "reversed" pairs of numbers such as 12–21, 696–969, and 2255–2525.

In the context of the issue under consideration regarding the interpretation of textually divergent contractual values, the above examples confirm the general observation that Russian courts, following the rules of Article 431 of the Civil Code, quite often give priority to the doctrine of literalism (textualism), limiting the interpretation of a contract to "the four corners of the document pages" (Bogdanov and Bogdanova 2018). Moreover, courts taking this approach rely on the idea that "contracts should be made by the parties, not the

courts" and consider the textual–numerical inconsistency of a contractual term to be an ambiguity of a level that renders the agreement legally unenforceable (Ben-Shahar 2004).

Historically, the formalist approach to interpretation is based on the presumed ability of language to perfectly express the intentions of the parties as determined from the perspective of an objective third party and the idea that strict formalism leads to consistency and predictability desired in contract law. However, its application can lead to ignoring the parties' actual intent (Dubroff 2006). Indeed, in this interpretation of the disputed terms of the contract, the mismatch between the literal meaning of the verbal and numerical entries of quantitative values is not perceived as the respective terms' unclearness. On the contrary, in representing each of the disputing parties, they appear clear; only one indicates the agreement of the numerical designation, and the other is the verbal one. The mismatch is perceived as the absence of a legally significant product of the parties' non-content. This option to overcome the alphanumeric ambiguity turns out to be destructive, leading to the negation of the agreement of will and the critical attitude of the court to the text of the relevant documents (Decision of the Sixteenth Arbitration Court of Appeal of 28 October 2021, No. 16AP-1767/2020 in case No. A63-21011/2019).

The analogy method in the presented variant of the solution of the investigated problem turns out to be, for objective reasons, unclaimed. Therefore, it can be connected to the solution of a disputed situation only in cases where the recognized non-agreed contractual condition is not essential for a particular type of contract and can be compensated by dispositive norms of law. For example, suppose we discuss the uncertainty of the price of a compensated contract, according to Paragraph 3, Art. 424 of the Civil Code. In that case, it is equal to the price which, in comparable circumstances, is charged for similar goods, works, or services. Accordingly, the court is confronted with the question of the criteria for comparing similar circumstances and similar objects of execution.

### *5.4. Option 4: To Establish the Meaning of a Disputed Contract Term by Comparing It with Other Terms and the Meaning of the Contract as a Whole and to Clarify the Actual Common Will of the Parties, Taking into Account the Purpose of the Contract and the Surrounding Circumstances*

An isolated literal interpretation of a contractual condition that incorporates indistinguishable numerical and verbal designations having the same quantitative value does not truly reveal the essence of the agreement reached by the parties. However, the rule of Paragraph 1 of Art. 431 of the Civil Code states that the literal meaning of contract terms in case of ambiguity can be established by comparing them with other conditions and the meaning of the contract as a whole. In contrast, the norm of Article 1132 of the Civil Code of the RF does not provide an opportunity to interpret the intended will of the testator to establish it, using external evidence (individual characteristics of the testator's life, written documents, and statements). It also does not oblige the interpreter "to recognize the testator and see through his eyes" (Petrov 2017) to interpret the contract. Article 431 of the Civil Code establishes that if the correlation of a disputed condition with other conditions and its general meaning does not provide clarity, it is necessary to clarify the actual common will of the parties, considering the purpose of the contract and all relevant circumstances. Those include prior contractual negotiations and correspondence, the practice established in the parties' mutual relations, and the parties'customs and subsequent behavior.

In other words, this rule of the Civil Code confirms the view that the academic dispute over which is better—the textual approach (plain meaning and four corners of the document approach) or the contextual approach (using external evidence)—is a false dichotomy (White 2020). Therefore, these two options are to be used at different interpretation stages.

This "meta-interpretive" (Bayern 2016) approach does not involve finding out which of the divergent meanings (verbal or numerical) should be given priority in principle because the real common will (preferences) of the parties may, depending on the circumstances of the particular case, reject either of them. For example, suppose there is a discrepancy in the designation of the principal amount of the contract. In that case, it is possible to establish the true will of the parties rather reliably from the amount of VAT allocated in the contract's text. Doubts about the number of penalties denoted differently in words and

numbers can be eliminated through a comparison with the number of penalties assumed to accrue to the other party of the contract because, in most cases, such a measure of contractual responsibility is symmetrical (Kirpichyov and Kondratyev 2019). For example, there was a case of a dispute over the sold share amount in the LLC's authorized capital, marked in figures as 20% and duplicated in words as "ten percent". It was resolved on the basis that, besides the percentage value, the parties fixed the nominal share value of 2000 rubles, knowing the LLC's registered charter capital amount (20,000 rubles). The court easily determined the correct value of the condition on the percentage of shares sold and dismissed a claim to recognize the contract as inconclusive (Regulation of the FAC of the Ural District of 25 March 2009, No. F09-1483/09-S4 in case No. A50-12404/2007-G13).

Overcoming the uncertainty of a contractual condition on a quantitative value by clarifying the actual common will of the parties, although not involving similar law enforcement, includes using the analogy method by the court. In particular, when faced with the impossibility of identifying the common intention of the parties, the court may refer to the meaning that reasonable persons similar to the parties would give to a contractual condition in comparable circumstances (Clause 4.1. Principles of International Commercial Contracts (Unidroit Principles), 1994). Accordingly, the court's proper mastery of the analogy method (as one of the formal logic methods) will facilitate the proper determination of the suitable analogy between the parties to the contractual relationship and comparable circumstances.

### *5.5. The Best Option*

Due to several circumstances, a combination, or rather a sequential combination, of textual and contextual interpretation is the appropriate option for solving the given law enforcement problem.

Firstly, despite the well-known propensity of civil thinking to analogy, we must recognize that the spread of special rules on the priority of the value (amount) indicated in writing in securities is not a universal and correct solution, by the analogy of law, to the verbal–numerical ambiguity of a contract. Such a special rule is established for the indeterminate text of specific securities, whose legality and increased negotiability are based on strict formalism (Malkawi 2018), while the mechanical application of such formalism to contracts would contradict the legal nature of the latter (Gnes 2019). In other words, in some cases, applying the analogy of law may lead to an interpretation that is inconsistent with the true, agreed will of the contracting parties.

Second, the meta-interpretation of verbal–numerical contract terms is fully consistent with the historical evolution of gap-filling rules noted in scholarship. They are characterized by a shift in emphasis from strict literalism and protection of each party's personal will to the realization of a fair meaning of the contract that justifies the reasonable expectations of both parties (Dubroff 2006; Lu 2000).

Thirdly, this approach facilitates the operation of the so-called principle of validity (*favor validitatis*), which implies the need to give priority to an interpretation of a contractual condition that leads to the conclusion that it is valid (concluded, valid). Explaining the rules of Article 431 of the Civil Code on interpretation in the context of this principle, the Plenum of the Supreme Court of the Russian Federation in its Resolution of 25December 2018, No. 49 "On some issues of application of general provisions of the Civil Code of the Russian Federation on the conclusion and interpretation of the contract" (Paragraph 44) pointed out that if the contract condition allows several different interpretations, one of which leads to the invalidity of the contract or its recognition being unconcludedwhile another does not lead to such consequences, then as a general rule, the interpretation option in which the contract remains valid has priority.

Fourthly, this option of interpretation makes it possible to ensure the direct effect of the principle of good faith enshrined in Article 1 of the Civil Code of the Russian Federation. Such a principle becomes a condition and process element of finding out the actual common will of parties considering the contract's goal and following circumstances (Option 4). Good faith is considered here as a criterion of interpretation, which implies the need to be based

on the "real meaning" of the agreement rather than the text's literal meaning (Zaytseva 2020). Indeed, the development of modern contract gap-filling rules laws is associated with the good faith standard (the implied covenant of good faith) used to provide additional standards of fairness and community policy (Weiskopf 2008). The good faith criterion for evaluating contractual terms provides proper interpretative flexibility and prevents contract paralysis. It also infuses contracts with additional value in the sense that the legal negotiations of the parties must carry rights and obligations, but also human values (Ikonomi 2014). We also should mention the case when the court overcomes the record's verbal–numerical uncertainty on the penalty amount imposed on one party (a mismatch in indicating the penalty amount in numbers and words) and considers the penalty as a contractual responsibility which should be symmetrical to the other party, for which the verbal overlap corresponded (Decision of the Arbitration Court of the Moscow District of 7 July 2019, No. F05-9915/2019 on case No. A40-161960/2018).

Fifthly, the deviation from following an exclusively literal interpretation of the contract text allows the courts to use an additional (auxiliary) interpretation method, preventing unfair business practices and leveling counterparties' negotiating capacity following the principle contra proferentem. That includes interpreting uncertain (ambiguous, controversial) contract terms in favor of the counterparty that prepared the draft contract. Such an approach protects the weak party in the contract interaction (Kuzmina 2019).

## 6. Conclusions

The above confirms the well-known dictum that every coin has two sides. In seeking to ensure the clarity and security of contract terms containing quantitative values, the duplication of the relevant values in words and numbers may lead to the opposite result, i.e., uncertainty (ambiguity) of the term, which entails the danger of recognizing it as inconsistent. Therefore, the idea that ambiguity has no chance of breaking the contract when numbers are written only as words or numbers, not both simultaneously, while doubling text and numbers creates the possibility of an ambiguous typo (Schrack 2020) is gaining ground.

However, as long as the duplication of quantitative values in legal documents with words and figures is strong as a tradition and even prescribed in some cases normatively, it is important to use doctrinally sound, adequate techniques to overcome the likely discrepancies.

The proposed scientific hypothesis about legal analogy providing a universal tool for resolving the analyzed problem has yet to confirm fully. However, it was demonstrated that analogy as a logical method and instrument of legal reasoning applies to all proposed options for overcoming the discrepancies in contract terms.

The best way to overcome the verbal-numerical ambiguity of contract terms is a combination of textual and contextual interpretation that includes legal analogy. Considering this, the direct legislative fixation of the priority for either verbal or numeral expression of contract values is unnecessary.

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