UDC 347.511(574)

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Formation and development of legal provisions on non-property benefits

Abstract. The article is dedicated to the questions of moral relations like the part of the subject of civil regulation, which are not related to the property. Under the non-property rights and benefits authors understand not have economic substance and are not separable from the personality of their wealth and media freedoms as the current legislation. Summing up the above, authors can say that the civil law at this stage of the legal regulation of personal relations only sets general provisions, which require further development and transformation into an independent branch of law which should be comprehensive integrative, nature, as it affects the relations of private-public character.
***Keywords**:* moral rights of non-property benefits, moral benefits and moral rights, public law, administrative law, methods of legal regulation.

Civil Law of the Republic of Kazakhstan has a central place in the system of law, which at this stage is updating. Adopted on December 27, 1994 the new Civil Code of the Republic of Kazakhstan, which came into effect on 1March 1, 1995, is codified law system-which serves the legal framework regulating the mass of property and of personal relations, developing in a market economy.

For the first time civil law and the Civil Code of the Republic of Kazakhstan includes a special section devoted to the regulation of the moral rights of non-property benefits. The need for an independent review of these rights is determined by several factors. Among them should be pointed out that for the first time the Civil Code RK, reflecting the content of the Universal Declaration of Human and Civil Rights, the International Covenants on Human Rights and the Constitution of the Republic of Kazakhstan, 1995., significantly increased the number of intangible benefits that are granted civil legal protection. Considering the fact that civil law in Chapter 3 of the Civil Code of the Republic of Kazakhstan does not provide an exhaustive list of moral benefits and moral rights, section 3 provides only general guidelines for their protection, regardless of their individual types, and articles 143-146 of the Civil Code of the Republic of Kazakhstan determine ways to protect only some of the most important types of moral rights. We should also mention that some of the types of personal rights, such as the right to name, to free movement and the residence election shall be regulated, in other articles of the Civil Code.

Moral rights arise in respect of non-property benefits and they are protected, mostly in ways that do not have to restore the disturbed areas of property of the victim. According to Article 9 of the Civil Code of the Republic of Kazakhstan in such ways are: the recognition of rights, restoration of the situation that existed before the violation of law, suppression of acts that violate the law or threatening to infringe. In addition, they are protected by the means provided in the legislation of paragraph 3 of the Civil Code of the Republic of Kazakhstan, in particular, by refuting information defaming honor, dignity or reputation of the person or entity. Since moral rights are protected by well-defined ways, certain rules of civil procedural law are used to apply standards.

Moral relations are part of the subject of civil regulation, which are not related to the property. Article .115 CC RK contains only a sample list of important intangible benefits that belong to the citizen: the

life and health, dignity, personal integrity, honor and good name, reputation, privacy, personal and family secrets. In addition the citizens have the right to freedom of movement, choice of place of residence, the right to a name, other personal property rights, which in connection with other intangible benefits.

Considering the problem of moral benefits, M.K. Suleimenov include them in the classification of objects of civil rights on the objects (own and others' benefits) in the group of absolute rights,: «With regard to moral rights, I referred them to the absolute rights because they are directly linked to the rightful entity they are inalienable and absolute. It is always own benefit, she right to the benefit of someone else is principally impossible. In Section 3, Article. 115 CC RK it is said that about moral benefits and rights, and in articles 141, 142 CC RC – about moral rights. In this case, it does not matter, the concept of «good» and «right» practically coincide, so you are right to call it either «benefit» or «right» in any case, it would be a benefit.» And further: «Moral benefits are indivisible they are always own benefits» (1, p.27).

Under the non-property rights and benefits we understand not have economic substance and not separable from the personality of their bearer and freedoms as the current legislation. At the same time non-benefit can be divided into: a) Moral (intangible) benefits purchased by individuals and legal entities by virtue of birth (a) and b) non-property (intangible) benefits purchased under the law. As a non-property rights (nonmaterial) we should be understand the benefits of their owners.

In the relationship between the concepts of benefits and non-property rights in the literature the goods highlighted of the first and second levels. Under the first, we understand ones the of life, health, etc., under the second, the subjective right to these benefits, through which a person acts in a particular relationship, providing self defense (2, s.312-314).

The notion of moral benefits and moral rights are often equated. Such an approach we see in the legislation of the Russian Federation, where the «intangible benefit» is a collective, relating both to the «good» and to the moral rights. However, this approach raises a fair objection. In particular, M.N. Maleina finds incorrect association in one term of the rights and benefits, as private property rights, and its object, though closely related but not identical. She proposes to clarify this in section 1 of Art. 151 of the Civil Code list of intangible benefits by excluding moral rights (3,p.9).

Similar view is held by J.G. Basin. In his view, the text of paragraph 3 of Art. CC 115, listing the objects of moral benefits, without reason adds to the designation of the object the word «right» since the latter serves as a symbol of another element of this relationship. Right only then can be an object when it is not given to anyone else. Personal non-property benefit is obtained but can't be given to some-one, so is the right to it. Arguing further, he concludes: Right is, so the way to achieve a benefit (4,p.42).

M.K. Suleimenov considers division of intangible benefits in to non-property rights and benefits as not principal. He writes, the concept of «benefit» and «right» is almost the same, so those rights can be called benefit, or right, in any case it would be a benefit (1, p.30). M.K. Suleimenov notes that in the regulation of the civil law of personal relations, not related to property, there is a different approach in the legislation, and in the literature, and recognizes the wrong position, reflected in the Civil Code (as opposed to CC the other CIS countries), in particular the norm stated in Art. 2 of the Civil Code, that the civil law only protects the group relations, as well as in his opinion, it is impossible to refute the obvious evidence, not only of protection, but also the regulate the civil law of personal relations, regardless of whether or not they are associated with the property relations (5, p.5). In this case he refers to the views of Russian scientists, who underline the insufficiently developed regulatory mechanism of this relationship in civil law, for example, the opinion of scientist E.A. Sukhanov, who writes that this relationship is primarily protected by civil law and its means. The actual shape of these intangible benefits inalienable in most cases preclude their full civil and legal regulation, as they are purely factual in nature. Therefore, the current legislation is limited to protection from unlawful encroachment (Sec. 2 of Art. 2 and paragraph 2 of Art. 150 Civil Code). A system of meaningful «positive» rules establishing civil regime of these objects, has not yet been(5,p.5) created by domestic legislators.

Considering the problem of civil-legal regulation of personal relations, it is necessary to take into account the fact that these relations are governed by other branches of law. In the literature, there is even a concept that M.N. Maleina called radical, according to which relations with regard to benefits, inseparable from the individual form a separate subject of regulation, are governed not only by civil law,

and can form in the future, a new branch of law and a new branch of legislation (6, p.23-24).

By considering this issue, M.K. Suleimenov concludes that «economic and moral relations themselves cannot define the subject of civil law. Similar relationships exist in other areas of law. If we talk about the subject of law, you must apply a different criterion: the presence in the system of social relations regulated by law, public and private relations and the consequent inevitability of imminent division of the social relations in to public and private. The law governing public relations, as inevitably is divided into public law and private law. Accordingly, the main methods of legal regulation are a method of legal equality, which is applies to the regulation of private law, and the method of power and subordination, which applies to public law. These methods determine creating areas in the main structure of the law (law is divided into public and private, and division of each of these subareas into legal branches. As part of the private sector acts as the backbone of law in civil law, in a system of public law – administrative law. «Thus, summing up the above, we can say that the civil law at this stage of the legal regulation of personal relations only sets general provisions, which require further development and transformation into an independent branch of law which should be comprehensive, we can say it must even have integrative, nature, as it affects the relations of private-public character. The latter requires not only the practical realization of the right to establish and develop public relations within creating a legal state, but also to develop the theoretical foundations of non – property relations in the formation and development of new integrative research area with a separate object and research methods.

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Ф.А. Исаева

Заттық құқықтың сипаттамасы, дамуы, түсінігі, жетілуі

Ғылыми мақалада азаматтық-құқықтық реттеудің пәні ретінде жеке мүліктік емес қатынастардың қалыптасуы мен дамуының құқықтық және теориялық аспектілері, мүліктік емес құқықтар мен мүліктік емес игіліктердің мазмұнын анықтаудың сұрақтары, олардың жеке тұлғалармен арақатынасы мен байланысы, жеке мүліктік емес қатынастардың құқықтық реттелуінің әдістері қарастырылады, жеке мүліктік емес қатынастар кешенді сипатқа ие құқықтың жеке саласымен реттелуі керек деген қорытынды дәйектеледі, себебі ол жеке-жария сипаттық қатынастарды қозғайды.

Түйін сөздер: жеке мүліктік емес қатынас, мүліктік емес құқық, мүліктік емес игілік, жария және жеке қоғамдық қатынастар, құқықтық реттеудің әдістері.

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Правовая характеристика вещных прав: становление, понятие, развитие

В научной статье рассмотрены правовые и теоретические аспекты становления и развития личных неимущественных отношений как предмета гражданско-правового регулирования, вопросы определения содержания неимущественных прав и неимущественных благ, их соотношения и связи с личностью, методы правового регулирования личных неимущественных отношений, обосновывается вывод о том, что личные неимущественные отношения должны регулироваться самостоятельной отраслью права, носящей комплексный (интегративный) характер, так как затрагивает отношения частно-публичного характера.

Ключевые слова: личные неимущественные отношения, неимущественные права, неимущественные блага, публичные и частные общественные отношения, методы правового регулирования.

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Особенности рассмотрения гражданских дел по вопросам государственного закупа

Аннотация. В настоящей статье рассматриваются вопросы, связанные с рассмотрением трудовых споров и гражданских дел по применению норм законодательства о государственных закупках.
Ключевые слова: процедура принятия актов работодателя, уведомление, согласительная комиссия, годовой план государственного закупа, план развития.

К одним из категории гражданских дел рассматриваемых специализированными межрайонными экономическими судами относятся дела, связанные с применением норм законодательства о государственных закупках. С учетом того, что в системе государственного закупа содержатся противоречия, связанные с освоением бюджетных средств и, соответственно, признания недействительными договоров, заключенных без применения норм законодательства о государственных закупках, не всегда оправдываются, перед законодателем ставятся вопросы совершенствования практики правоприменения. Особого внимания заслуживают правовые ситуации возникающие в ходе утверждения пятилетнего Плана развития государственных организаций и утверждения годового Плана государственных закупок. В соответствии с п.3 ст.5 Закона РК от 21 июля 2007 года № 303-III ЗРК «О государственных закупках», годовой План государственных закупок разрабатывается и утверждается с учетом экономических потребностей на основе бюджета организации, который составляется с обязательным участием главного бухгалтера, работников планово-экономической службы и специалиста, менеджера по государственным закупкам. Участия указанных выше работников в подготовке проекта пятилетнего Плана развития государственных организаций и утверждения годового Плана государственных закупок входят в их должностные обязанности. К примеру, в отношении работников сферы образовательной деятельности должностные обязанности бухгалтера и экономиста определяются Квалификационным справочником должностей руководителей, специалистов и других служащих, утвержденным Приказом Министра труда и социальной защиты населения РК от 25 ноября 2010 года № 385-п.

Кроме того, Правилами осуществления государственных закупок, утвержденными Постановлением Правительства РК от 27 декабря 2007 года № 1301 определено, что заявка по процедуре государственного закупа должна содержать обоснование предлагаемой цены поставки товаров, работ и услуг, в составлении которых, а также в подготовке иных финансовых документов, в обязательном порядке должен принимать участие и бухгалтер, и экономист. Частью второй п. 7-1 указанных выше Правил, годовой План государственных закупок должен быть утвержден в течений 10 рабочих дней со дня утверждения соответствующего бюджета – Плана развития предприятий и учреждений.

Отсутствие пятилетнего Плана развития и не утверждение в течений 10 рабочих дней го-