IRSTI 10.87.01 https://doi.org/10.26577/JAPJ.2020.v93.i1.21

Zh.T. Karasheva[1], V.N. Lisitsa[2]

[1]al-Farabi Kazakh national University,
Kazakhstan, Almaty, e-mail: zari-82@mail.ru
[2]Novosibirsk State University,
Russia, Novosibirsk, e-mail: lissitsa@mail.ru

FEATURES THE FORMATION OF FOREIGN PAID SERVICES

The topicality of the topic of the study. Basically, many scientists believe that the service in reimbursable obligations is immaterial and may represent an intangible result, which is expressed in the actions of the service provider and the contractor, as well as in the non-property effect of these actions. In obligations on the provision of services, the result of the activities of the service provider does not have a tangible form, it is intangible. This difference is reflected in civil law. It should be recognized that some services are aimed at the intangible result, while others – at the tangible. It seems to us, however, that the legislator distinguishes materialized services, since they are objects of contractual obligations, and intangible services are objects of obligations to provide services. In other words, the service provider cannot attract a third party to carry out the actions (activities) specified in the contract, which the service provider must perform if the parties have not established this in the contract. This rule applies to all contracts under the terms of which paid services are provided.

Method of research. The methodological basis of scientific research is a set of methods of scientific knowledge, among which the leading place is occupied by the dialectical method. This scientific article uses General scientific methods of cognition, which, first of all, should include formal logical methods (analysis, synthesis, induction, deduction, analogy), as well as special legal methods (formal legal, the method of comparative law and system analysis).

Key words : services, paid services, obligation, contractor, customer, contract.

Ж.Т. Қарашева[1], В.Н. Лисица[2]

[1]Әл-Фараби атындағы Қазақ ұлттық университеті,
Қазақстан, Алматы қ., e-mail: zari-82@mail.ru
[2]Новосибирск мемлекеттік университеті,
Ресей, Новосибирск қ., e-mail: lissitsa@mail.ru

Шетелдерде өтелмелі қызметтің қалыптасу ерекшеліктері

Зерттеу тақырыбының өзектілігі. Негізінен, көптеген ғалымдар өтелмелі міндеттемелердегі қызметі маңызды емес тек қызмет көрсетуші мен мердігердің іс-әрекеттерінде, сондай-ақ осы әрекеттердің мүліктік емес әсерінде көрінетін материалдық емес нәтиже болуы мүмкін деп санайды. Қызметтерді ұсыну бойынша міндеттемелерде көрсетілетін қызмет берушінің қызметінің нәтижесі маңызды емес, материалдық емес болып табылады. Бұл айырмашылық азаматтық заңнамада көрсетілген. Кейбір қызметтер материалдық емес нәтижеге бағытталғандығын мойындау керек, ал кейбірлері – материалдық тұрғыдан байланысты. Алайда, бізге заң шығарушы материалдық қызметтерді ажыратады, өйткені олар шарттық міндеттемелердің объектілері болып табылады, ал материалдық емес қызметтер қызметтерді ұсыну міндеттемелерінің объектілері болып табылады. Басқаша айтқанда, қызмет жеткізуші келісімшартта көрсетілген әрекеттерді (іс-әрекеттерді) орындауға үшінші тарапты тарта алмайды, егер тараптар шартта оны орнатпаған болса, қызмет жеткізушісі орындауы керек. Бұл ереже ақылы қызмет ұсынылатын барлық келісімшарттарға қолданылады.

Зерттеу әдістері. Ғылыми зерттеудің әдіснамалық негізін ғылыми таным әдістерінің жиынтығы құрайды, оның ішінде жетекші орынды диалектикалық әдіс алады. Осы ғылыми мақалада танымның жалпы ғылыми әдістері пайдаланылды, оларға ең алдымен формальды-логикалық әдістерді (талдау, синтез, индукция, дедукция, аналогия), сондай-ақ арнайы заңдық әдістерді (формальды-заңдық, салыстырмалы құқықтану және жүйелік талдау әдісі) жатқызуға болады.

Түйін сөздер: қызмет, ақылы қызмет көрсету, міндеттеме, орындаушы, тапсырысшы, келісімшарт.

© 2020 Al-Farabi Kazakh National University

Ж.Т. Карашева[1], В.Н. Лисица[2]
[1]Казахский национальный университет имени аль-Фараби,
Казахстан, г. Алматы, e-mail: zari-82@mail.ru
[2]Новосибирский государственный университет,
Россия, г. Новосибирск, e-mail: lissitsa@mail.ru

Особенности формирования зарубежных возмездных услуг

Актуальность темы исследования. По мнению многих ученых, услуга в возмездных обязательствах невещественна и может представлять собой нематериальный результат, который выражается в действиях лица, оказывающего услугу и исполнителя, а также в неимущественном эффекте этих действий. В обязательствах об оказании услуг результат деятельности услугодателя не имеет вещественной формы, он нематериален. Это различие отражено в гражданском законодательстве. Следует признать, что одни услуги направлены на результат нематериальный, в то время как другие – на материальный. Нам представляется, однако, что законодатель различает овеществленные услуги, поскольку они являются объектами обязательств подрядного типа, и нематериальные услуги – объекты обязательств об оказании услуг. Другими словами, услугодатель не может привлечь третье лицо к совершению указанных в договоре действий (деятельности), которые должен исполнить сам услугодатель, если стороны не установили это в договоре. Данное правило распространяется на все договоры, по условиям которых осуществляется оказание возмездных услуг.

Методы исследования. Методологическую основу научного исследования составляет совокупность методов научного познания, среди которых ведущее место занимает диалектический метод. В настоящей научной статье использованы общенаучные методы познания, к которым, прежде всего, следует отнести формально-логические методы (анализ, синтез, индукция, дедукция, аналогия), а также специальные юридические методы (формально-юридический, метод сравнительного правоведения и системного анализа).

Ключевые слова: услуги, возмездное оказание услуги, обязательство, исполнитель, заказчик, договор.

The main part

The current phase is characterized by the renewed scientific interest in the specifics of legal regulation of service contracts. In a number of studies it is possible to note the following: M.I.Braginsky's monograph, including the Compensation Services Agreement (first edition, 1999, second edition – 2002); N.A. Barinova «Services (socio-legal aspect)», 2001 Contributed to the development of separate theoretical issues of civil law regulation of dissertations and paid services: S.N.Belozerova, for civil regulation of medical services (2000); «Legal regulation of the provision of Internet services» (2002) and others A. Sholimova ,Sh. Moldabekova. The work of Kazakhstan lawyers, such as General Law Regulation of Law, is devoted to problematic issues related to the provision of services. A.G.Didenko, M.K.Suleimenov, G. Abdikadyrov, S.K.Idrysheva, G.A. Zhailin. Also, this issue has been explored in the works of foreign scientists: Godeme E., Dernburg G., Satier R., Zimmerman R. With the development of the economy there is a need for certain activities. In this regard, audit, evaluation and consulting firms that operate as paid services have been successfully operating. In addition, legal, medical and software services have become essential market segments. Speaking of the current realities of regulating contractual relations in the field of paid services, it should be noted that with the advent of norms for the provision of services, problems in this area have not been resolved. Summarizing the modern reality of field alignment in the field of occult events, we ask that you bring your knowledge of the field into alignment with the norms.

Multiple image views and high precision are governed by a double marker, which has subordinate rules that reduce the total number of individual viewers. Changes in the health care industry for marketplace rights, technological advancements and new employer-related rights. Today, the provision of services requires the specialization of lawyers who know the specifics of work. As their work relates to evaluating the work of specialists, this is not possible without special knowledge in the field. The application of special laws to contracts for the provision of services does not matter to other contracts. Because , the specific rights and obligations of the parties largely depend on the area of service in which the paid services are provided. Currently, the obligations under civil law represent a legal connection (vincum iuris) in which one or more parties are obliged to provide or provide any service. As E.D.Chechenin points out, the activities

affect not only the area of meeting one's social, domestic, and spiritual needs, but also the global macroeconomic sphere (E.D. Chechenin 1989: 372) Aa A.B.Saveliev said, there are a lot of "white spots" in the legal regulation of relations with regard to the provision of services. This is evidenced by the lack of a legal definition of the activity in civil law. For example, in accordance with 683-section of the Civil Code of the Republic of Kazakhstan, under a paid service agreement, the contractor undertakes to provide services on behalf of the customer (to perform certain actions or to perform certain actions), and the customer is obliged to pay for those services (Civil Code of the Republic of Kazakhstan). This article describes services as an object of civil law, without any indication.

Also, the term «servicing» in this article means performing specific actions or performing specific actions. The general terms of the contract and home agreement further aggravate the situation, which describes the essence of the reimbursement contract. Based on the opinion of A.B.Savelev, we can draw two mutually exclusive conclusions. First, the current law has a sufficient number of rules that can be used to provide contracts and services at once, which is why they are used universally. The second conclusion is, firstly, the logical conclusion that the legislation, including the Civil Code of the Republic of Kazakhstan, does not show a clear distinction between services and contract work as an object of contractual relations. The definitions of services are also provided as they are understood. Most commonly used service: «Activities designed to provide a comfortable setting or benefits for the counterparty in the context of mandatory legal relationships». (Y.H. Kalmykov 1998: 34).So, it relates service obligations to any legal nature of contracts concluded on preferential terms, or entered into for the convenience of the authorized person: household and lease agreements, credit retail, etc.

In this sense, the concept of a «commitment to provide services» encompasses a broad range of commitments that violate this concept. In general, sharing this position, E.N.Romanova obligations on the results of services are attributed to the obligations on the provision of services that have the following characteristics: b) are consumed in the process of providing them as services «(E.N.Romanova 2000: 311). One of the major drawbacks of this approach is that it use categories that don't have any formal features to describe the benefits: time, money, and more. Common opinion about results of activity. So, S. Alekseev noted that these services were «a certain result, not an activity» (Alekseev S. 1960: 297). Indyukov N.P. at the same time, he asserted that «only the outcome of labor (service) can be good» (Indyukov 1978: 33). But he also saw the specificity of the outcome, which was in the form of a positive result that was almost inseparable from the action. In their opinion, the activity can be the object of civil and labor law relations. The object of labor relations is activity as a process of service, and civil is the result of labor. However, he defined the service as «the activity of an individual or organization whose product is in the process of consuming, and whose organization has no expression.» From the foregoing definitions we can see that it is ineffective to consider the results of activities separate from the types of activities, since all these authors have identified the types of activities by service. The biggest support in the literature has been to identify services as materially unsuccessful. O.S.Ioffe refers to the service contract as «activities of non-materialized, or even more materialized, non-cultivated species» (O.S.Ioffe).

E.D. Chechenin identified the following features of the service: «a) the activities of the person (legal entity or natural person) providing the service; b) maintenance does not produce significant results; c) the beneficial effect of the service (action) is expended in the process of service and the value in use of the service is lost "(E.D.Chechenin 1989: 372).

A key feature of the activity was the lack of materialized results to disengage them. In this regard, the relationship between services and services, and, consequently, the relationship between the contract and the contract for service, has become independent in the discussion of the concept of services. In the civil literature, opposites about work as a form of activity are utterly opposite. In the civil literature, opposites about work as a form of activity are utterly opposite. N.A.Barinov combining services and services with meaningful work and services, demonstrating that "some services are included in the values of things." As a result of the service , other services (value in use) are not included in the goods but are in the form of the services of the provider. " (N.A.Barinov 1973: 14) Yu.K. Kalmykov also believes that a number of services are different. Justifying the need to legislate the provision of services, E.D.Chechenin emphasized the need to differentiate between work and service.

Recognizing the unity of the economic value of services, he emphasized the division of services by the results of activities that were created in some way or were separate from the performers. Accordingly, in his view, "services of the first type are the

subject of contractual obligations, and services of the second type are the subject of contracts, which creates obligations for the provision of services" (E.D.Chechenin 1989: 372).

Traditionally, the actual contractual feature was considered the result of action and was simply not implemented. In Roman private law, according to Lebeo, the expression "locatio -ducio operis" means the "work" that the Greeks term "finished work" (labor result), not "work" (labor process), which gives any final result. work done. " However, the outcome of the work of Roman lawyers was not limited to its material form.

As a general sign of their activities, they say, "their subjects are generally appropriate actions and not their material consequences." In this regard, the attempts of E.G.Shablova to create a doctrine definition of services are of interest. He first defines the service as "a means of meeting the personal needs of a person, which is not linked to the creation (improvement) of an object or intellectual property, and which is achieved through a service authorized on a paid basis, in accordance with applicable law and procedure." This definition is further refined: "The service is a means of meeting the needs of the individual, which is permitted by applicable law and in connection with the intangible result of the contractor's activities".

However, the majority of contractual obligations can be attributed to service liabilities in this way. However, the transfer of an item to a temporary use is, of course, a way to meet the need, and the result of the lessor's actions is immaterial, because it is not related to the creation (improvement) of the item.

It should be noted that E.G. Shablova's concept can only be viewed as a reference to services as the subject of a service contract, because the severe nature of the contractor's business is unique to that contract. This definition is further refined: "The service is a means of meeting the needs of the individual, which is permitted by applicable law and in connection with the intangible result of the contractor's activities".

However, the majority of contractual obligations can be attributed to service liabilities in this way. However, the transfer of an item to a temporary use is, of course, a way to meet the need, and the result of the lessor's actions is immaterial, because it is not related to the creation (improvement) of the item.

It should be noted that E.G.Shablova's concept can only be viewed as a reference to services as the subject of a service contract, because the severe nature of the contractor's business is unique to that contract. For other contracts referred to in paragraph 2 below. The dominant doctrine of 683 of the Civil Code of the Republic of Kazakhstan is applicable to service contracts, in particular where the penalty is not a significant indication, in particular for a commission contract. Compulsory legal relations can be triggered by events, ie legal facts that do not depend on the will of the people. Mostly, the event generates certain rights and obligations of the parties, not just an obligation (Joff 1975: 45). Thus, the occurrence of such an insured event as a flood causes the insurer's property to pay the insured person an indemnity claim and the latter's right to require the insurer to pay such indemnity, however, the proposed measure is not universal because it is not applicable to all types of activities. Referring to services that are intended to identify the recipient of the service, even though this may have specific material implications (hairdressers, makeup artists, cosmetologists, etc.).

However, as a key feature of the services, the lack of materialized results is criticized in the legal literature, which is based on the analysis in paragraph 2, 683-of the Civil Code of the Republic of Kazakhstan Y.Kabalkin states that "a large number of letters, parcels and parcels have been signed for the provision of communications services." One of the tourist service agreements is often to provide certain vehicles (Y.Kabalkin 1986: 84). The number of such examples can be augmented by other relationships, such as the care of various prostheses "but also recognize that some services can have significant results. However, a well-defined notion of an activity as a service without materialized results is not fully in line with the current law, which places researchers in the need to look for new ways to identify service specifics as a subject of the paid service agreement.

It is suggested that the service be viewed as a combination of service and result: "the result is preceded by actions that are not material and constitutive. By the way, the result in the service is "not for sale", but actions that lead to it "(Alekseev). We also note that the "services that differentiate them from the contract is intended to achieve the inseparable result of the work performed under the service delivery contract". The indivisible result of the service cannot be considered as the main attribute of the services. While performing work on processing or processing the substance, the result is also not independent of the service itself, but these relationships are governed by a contract, based directly on the law. In addition, there are some ways that you can divide the result into a series of services.

For example, in providing audit services, the auditor may need to provide a report that may be performed in writing or in electronic form. According to him, the material or intangible object is created, destroyed or its contents are changed while the services are rendered, it moves or changes in space (in particular, during transportation) or in time (during storage), the form of the specified object without affecting its content.

The significant disadvantage of the proposed criteria is the separation of work and services. Defines a service as a general service as "a type of goods whose beneficial properties are the subjective interest of another entity and serve as a means of satisfying the actions (actions) of one entity and which it has the right to demand from it." Classifying services as a discount does not object, but raises questions as to whether they serve as a means of meeting their needs. In philosophy, good is understood as an "object or phenomenon that satisfies the needs of a particular person", so satisfying the need is the property of any good. From the above definition it can be concluded that the author regards the service as a service only, excluding its results (tangible or intangible). The Kazakh scientist S.K.Idrysheva, there are a number of services which are of interest to the lender and which are of little interest in the useful properties of the service. For example, a client is primarily interested in obtaining an audit opinion when performing audit services. As the content of any concept constitutes a set of important criteria, it is a very important task to identify the features of the services. D.I. Stepanov did the same, emphasizing the following features of the service: a set of actions that replace or complement each other constitutes a behavioral characteristic of the service; there is no apparent effect from the operation because the transaction has an intangible nature; difficulty of isolation and separation from the source; The service provided by a particular person or community will be personalized, to a certain extent specific, exclusive, but will depend on the particular activity; instant consumption of services, ie synchronization of service delivery and receipt; instability of services quality (D.I. Stepanov 2000). However, these features are inherent in the activity, first of all, as an economic category. They were originally designed by marketers.

The use of these labels as a category of civil service is only appropriate if they have certain legal consequences, which are specific to the service. At the same time, D.I. Stepanov based his definition on the following definition of services: "A service is an object of civil law relations expressed in the form of a specific legal transaction, that is, in the form of a series of purposeful actions of an executor or a service that is the subject of an obligation, an intangible effect, an unstable material result or other materialized result from source, fast consumption, formalization of quality, connected with contractual relations and characterized by properties, indivisibility." This concept of services is broad in content, but it doesn't with sufficient degree of certainty, permit it to distinguish services from other civil phenomena, in particular work. The recommended criterion for the division of works and services is that the irreversible characterization of materials (intangibles) is contrary to the generally accepted doctrine and is governed by the law as a production or processing (processing) service. The existence of a non-refundable characteristic is taken into account only during the creation of the item, and its processing, especially during processing, is not required. D.I. Stepanov participated only in the repair of buildings and premises, and the maintenance – in the repair of equipment, household appliances, tools, jewelry.

At the same time, the author gives the following rationale: "In fact, the production of such repairs has significant results, formally this work, but this result does not always coincide with the results of the description and cannot be compared, so we can talk very difficult about its processing or processing. At the same time, operations on the repair of home appliances and small household appliances often occur in economic circulation, which can be attributed to services. In this case, these operations may have two modes of legal regulation: one in the form of work and the other in the form of a service (D.I.Stepanov 2000). D.I. Stepanov's consistent application of this dimension makes him resort to other reservations. In particular, by separating semi-services or "so-called" services with unstable financial results, they will have to acknowledge that they have "no tendency to be inclined, and in some cases instant consumption", however, the latter function is universal.He recognizes the services of beauty salons and hairdressers as a casual feature and cashier.Difficulties in using this dimension in the division of work and services indicate its inefficiency.

Conclusion

However, it is not possible to determine any regularities in the order in which the service contracts are arranged. For example, in practice, there is an indefinite term (for example, housing

and communal services), and the terms of paid services (for example, a contract for paid medical care). Theoretical and methodological basis was the application of a systematic approach to the study of legal issues of regulation of public behavior of subjects in the service sector. Also logical, comparative-legal, formal-legal, real-social and statistical methods were used.

The key aspects of the recoverable service are contract terms, as in some cases, the hours or days in a day are required.

In our view, the term of the contract for the amortization should be significant as the terms of the commencement date and the expiration date are considered, as there is a dispute between the parties due to the improper use of these terms.

Литература

Алексеев С. С. Об объекте права и правоотношения // Вопросы общей теории советского права. – М., 1960. – С. 297.

Баринов Н. А. Права граждан по договору бытового заказа и их защита. – М., 1973. – С. 14.

Индюков Н. П. Услуга как объект гражданского правоотношения. – Свердловск, 1978. – С. 33.

Иоффе О. С. Обязательственное право. – М., 1975. – 200 с.

Новицкий И.Б. Обязательства из договоров. Заключение договора. Дарение. Двусторонние договоры. Договоры в пользу третьего лица. Комментарий к ст. 130. 140 и 144-146 ГК. – М.: Право и жизнь, 1924. – 312 с.

Қазақстан Республикасының 1999 жылғы 1 шілдедегі Азаматтық кодексі (Ерекше бөлім): http://adilet.zan.kz

Калмыков Ю.Х. К понятию обязательства по оказанию услуг в гражданском праве // Избранное: Труды. Статьи. Выступления. – М., 1998. – С. 29-34.

Кабалкин А.Ю. Услуги в системе отношений, регулируемых гражданским правом. – М., 2003. – С. 84.

Комментарий к Гражданскому кодексу Российской Федерации, части второй / Под ред. проф. Т.Е. Абовой и А.Ю. Кабалкина. – М., 2002. – С. 452.

Романова Е.Н. Гражданско-правовое содержание услуг. – М., 2000. – 311 с.

Степанов Д. Услуги как объекты гражданских прав // Рос. юстиция. – 2000. – № 2.

Шаблова Е. Г. Гражданско-правовое регулирование отношений возмездного оказания услуг: Автореф. дис. д-ра юрид. наук. – Екатеринбург, 2002. – С. 13.

Шешенин Е. Д. Классификация гражданско-правовых обязательств по оказанию услуг // Антология уральской цивилистики. 1925-1989: Сб. ст. – М., 2001. – С. 356-372.

References

Alekseyev S. S. Ob ob"yekte prava i pravootnosheniya // Voprosy obshchey teorii sovetskogo prava. M., 1960. S. 297.

Novitskiy I.B. Obyazatel'stva iz dogovorov. Zaklyucheniye dogovora. Dareniye. Dvustoronniye dogovory. Dogovory v pol'zu tret'yego litsa. Kommentariy k st.. 130. 140 i 144-146 GK. M: Pravo i zhizn', 1924.312s.

Barinov N. A. (1973) Prava grazhdan po dogovoru bytovogo zakaza i ikh zashchita. M., S. 14.

Kommentariy k Grazhdanskomu kodeksu Rossiyskoy Federatsii, chasti vtoroy/Pod red. prof. T. Ye. Abovoy i A. YU. Kabalkina. M., 2002. S. 452.

Ioffe O. S. (1975) Obyazatelstvennoe pravo. M. 200s

Indyukov N. P. (1978) Usluga kak ob"yekt grazhdanskogo pravootnosheniya. Sverdlovsk, 1978. S. 33.

Kalmykov YU. KH. (1998) K ponyatiyu obyazatel'stva po okazaniyu uslug v grazhdanskom prave // Izbrannoye: Trudy. Stat'i. Vystupleniya. – M. S. 29-34.

Kabalkin A. YU. (2003) Uslugi v sisteme otnosheniy, reguliruyemykh grazhdanskim pravom. S. 84.

Qazaqstan Respublicasynyn Azamattyq Kodeks 27 zheltoksan1994 zh(Erekshe bolim) Almaty https: // adilet.zan.kz.

Romanova Ye. N. (2000) Grazhdansko-pravovoye soderzhaniye uslug. M. 311 s.

Shablova Ye. G. (2002) Grazhdansko-pravovoye regulirovaniye otnosheniy vozmezdnogo okazaniya uslug: Avtoref. dis.: d-ra yurid. nauk. Yekaterinburg. S. 13.

Sheshenin Ye. D. Klassifikatsiya grazhdanskopravovykh obyazatel'stv po okazaniyu uslug // Antologiya ural'skoy tsivilistiki. 1925-1989: Sb. st. M., 2001. S. 356-372

Stepanov D. Uslugi kak ob»yekty grazhdanskikh prav // Ros. yustitsiya. 2000. № 2.