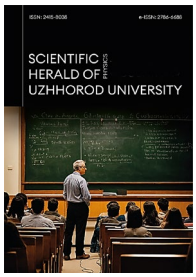
Scientific Herald of Uzhhorod University
Series "Physics"
Journal homepage: https://physics.uz.ua/en
Issue 55, 2805–2813
Received: 11.10.2023. Revised: 07.01.2024. Accepted: 16.03.2024



DOI: 10.54919/physics/55.2024.280wo5

Comparative analysis of the legal regulation of relations on the provision of fee-based services

Zhanar Karasheva*
Al-Farabi Kazakh National University
050040, 71 Al-Farabi Ave., Almaty, Republic of Kazakhstan

Aiman Omarova
Al-Farabi Kazakh National University
050040, 71 Al-Farabi Ave., Almaty, Republic of Kazakhstan

Gulmira Tlebayeva
Abai Kazakh National Pedagogical University
050010, 13 Dostyk Ave., Almaty, Republic of Kazakhstan

Serikkali Tynybekov
Al-Farabi Kazakh National University
050040, 71 Al-Farabi Ave., Almaty, Republic of Kazakhstan

Gulnura Khudaiberdina
Al-Farabi Kazakh National University
050040, 71 Al-Farabi Ave., Almaty, Republic of Kazakhstan

Abstract

Relevance. The relevance of the problem stated in the paper is conditioned upon the fact that relations for the provision of fee-based services are in great demand and occupy an important place in the global economic arena: starting with trade and ending with the satisfaction of specific needs of people.

Purpose. The purpose of the paper is a comparative legal analysis of legal structures regulating these specific legal relations and their comparison with foreign models.

Methodology. The leading method to study this problem is the method of comparison and analysis, which allows considering this problem as a purposeful and organised process in historical and legal retrospect, as well as the evolutionary path of a contract for the provision of fee-based services, a contract and an employment contract in various legal systems.

Results. The study was conducted in three stages: analysis of the categories "service" and "result" in theoretical and practical aspects, study of the model of the historical development of a particular legal institution, completion of comparative legal work, clarification of theoretical and practical conclusions, generalisation and systematisation of the results obtained.

Conclusions. The significance of the studied results is demonstrated by the following: the study of legal structures led to conclusions, namely, the need to clearly distinguish between contracts for the provision of fee-based services and a contract; secondly, to make a comparative analysis of the terms of an employment contract with models of legal relations

Suggested Citation:
Karasheva Z, Omarova A, Tlebayeva G, Tynybekov S, Khudaiberdina G. Comparative analysis of the legal regulation of relations on the provision of fee-based services. *Sci Herald Uzhhorod Univ Ser Phys.* 2024;(55):2805-2813. DOI: 10.54919/physics/55.2024.280wo5

*Corresponding author

for the provision of fee-based services; thirdly, to qualify legal structures of national legislation and legislation of foreign countries. This study helps to better understand the structure of relations for the provision of fee-based services not only in the Republic of Kazakhstan but also in such states as the Federal Republic of Germany, the USA, England.

Keywords: contract of work and labour; employment contract; civil code; economic sphere; legal constructions.

Introduction

Today, in civil legislation, services are one of the most common categories of legal regulation in the world community. A huge variety of services provided has led to legal consolidation in Chapter 32 of the Civil Code of the Republic of Kazakhstan [1]. In the Romano-German law system, a contract for the provision of fee-based services refers to a personal employment contract based on the historical prerequisites for the development of civil legislation in the Federal Republic of Germany (FRG) [2]. In these legal relations, distinctions must be made between the contract of work and labour and the employment contract. Certain criteria for the separation of these two legal constructions are given by German scientists [3; 4]. In the Anglo-Saxon legal model, publicists expressed the view that a deep employment crisis damages the social and economic structure of society and, without appropriate changes, can lead to poor-quality provision of services in the market [5]. Thus, it is necessary to change the principles of contract construction and include new models and constructions in their typology [6]. Legal contracts regulate economic and social relations, including those between workers and bosses, spouses, homeowners and tenants, as well as producers or sellers and consumers of goods. Thus, the contract defines services and compensation, distributes risks, helps each party to cope with changes, and provides a method of dispute resolution [7].

Many individual contracts contain clauses similar to standard contracts but they do not coincide with the rights and obligations of the parties [8]. The purpose of this paper is a systematic analysis of contracts for the regulation of relations for the provision of fee-based services, their compilation into national legislation, and the evolution of these models in historical retrospect. In this study, the following tasks were solved: firstly, the study of the definition of "services" and various models of legal regulation of fee-based services; secondly, the definition of the essential features of contracts of work and labour, services, employment contracts; thirdly, the comparative characteristics of national institutions and structures of foreign systems. The object of the study was civil law relations for the provision of fee-based services and labour relations. The subject of the study included such categories as the essence of the definition of "service" and "result", the historical development of the institution of fee-based services, distinctive features of the legal regulation of these law relations under the legislation of the Republic of Kazakhstan. The relevance of the subject of this paper is conditioned upon the widespread trends towards an increase in the legal relations under consideration within the framework of civil and labour contracts. This circumstance is possible for the following reasons. Firstly, today such constructions as contracts for medical, tourist, educational services are all things that a person constantly encounters. Secondly, the contract for the provision of fee-based services was introduced not so long ago into the civil legislation of the Republic of Kazakhstan, which in turn leads to legal conflicts in court disputes. The originality of the study is presented by the analysis of sources of both national and foreign legislation. A clear system of contracts has been built, indicating specific features, similar and different features. A clear view has been formed on a single model of legal relations for the provision of fee-based services.

Materials and Methods

In the course of the research, the following were used: theoretical methods (analysis; synthesis; concretisation; generalisation; method of analogies; modelling); empirical (study of the experience of foreign countries on the example of England, the USA, Germany, the regulatory database of states). The main method in the study under consideration was the method of comparative research. This method allowed analysing the legislative base of three legal institutions. The experimental basis of the study was the civil legislation of the Republic of Kazakhstan, namely Chapters 32, 33 of the Civil Code of the Republic of Kazakhstan [1], as well as the norms of the German Civil Code [9]. The study was conducted in three stages:

1. The first stage investigated the problem of understanding the categories of "service" and "result" in theoretical and practical aspects. The analysis of methods and approaches to understanding the legal structures of the "service contract", "contract of work and labour", "employment contract" was consistently carried out. The works of a similar subject orientation available in the legal scientific literature were analysed. As a result, problems were identified, purposes were set, and research methods were used. The subject of this research is the regulatory framework of civil legislation and special norms of law, monographs of scientists, dissertations, scientific publications of national and foreign publicists, materials of judicial practice. The object of the research is the study of legal relations for the provision of fee-based services in comparison with contract and labour relations in national and foreign legislation. The purpose of this paper is to develop a uniform understanding of the category "service". The study of the legal relations under consideration, their features and place in civil legislation. The scientific originality consists in the fact that a comprehensive study of the theoretical and practical aspects of the legal regulation of the contract for the provision of fee-based services has been conducted, according to the results of which the concept of services has been formulated, ways to improve the legal regulation of the contract for the provision of fee-based services have been identified. Based on the purposes, the objectives of this work are:

1. Comparative legal analysis of the definition of "service" in the Civil Code of the Republic of Kazakhstan [1].

2. Study of the specific features of the construction of a contract for the provision of fee-based services, a contract of work and labour, and an employment contract.

3. The study of legal models regulating relations for the provision of fee-based services in Romano-Germanic and Anglo-Saxon law systems.

2. At the second stage, the model of the historical development of a particular legal institution was investigated; the complex of development of these legal models was identified and justified; comparative work was carried out with the legislation of foreign countries, the conclusions obtained during the work were analysed, verified, and clarified. The following regulatory legal acts were studied: (Civil Code of the Republic of Kazakhstan, 1994 [1]), (German Civil Code, 1909 [9]), (The French Commercial Code, 1807 [10]), (The Civil Code of the Russian Federation, 1994 [11]). The following criteria were used in the comparative analysis:

1) subject of legal regulation;
2) the purpose of legal regulation;
3) essential terms of the contract;
4) signs of the contract;
5) the parties to the contract.

3. At the third stage, comparative legal work was completed, theoretical and practical conclusions were clarified, the results obtained were generalised and systematised. In the legal literature, there is practically no comparison between the construction of a service contract and an employment contract, although they regulate relations for the provision of fee-based services. Let us highlight the following criteria for comparison: firstly, the purpose of entering into labour relations. In accordance with the current Labour Code of the Republic of Kazakhstan [12] under an employment contract, an employee performs work (labour function) according to appropriate qualifications for remuneration and observes the labour regulations, and the employer ensures working conditions, pays wages to the employee fully in a timely manner, and makes other payments provided for by the labour legislation of the Republic of Kazakhstan [12], labour, collective agreements, agreement of the parties.

Results

The history of legal regulation of relations for the provision of fee-based services belongs to the oldest institutions of private Roman law but no legal definition has been developed in Roman jurisprudence. In legal journalism, relations on the provision of fee-based services are conventionally attributed to the institution of employment. Although there was no named contract for the provision of services in Roman law, it is the contract of personal employment that is the closest construction to modern realities. In Roman law, a contract of employment contained three named types of contract: hiring; hiring services; hiring work or labour [13; 14]. However, none of these constructions were common in Roman law since the main performers of services were slaves who fulfilled their obligations without counter-provision by the debtor. Therefore, these relations did not require legal consolidation, as they were more formal. Later, these unnamed contracts began to have their own specific features, namely, that the contract for the provision of services, previously fixed as a contract for hiring not only things and property but also related activities.

The active development of these legal structures took place in the 60s. New views were based on the differentiation of contracts for the provision of services and contracts for the performance of work [15]. During the Soviet period, new legal models were added to these legal relations. At the present stage of legal relations on the fee-based provision of service in the Republic of Kazakhstan are fixed by regulation in the Civil Code of the Republic of Kazakhstan in Articles 683-687 [1], as well as special norms that include provisions on work and labour contract. Legal relations for the provision of fee-based services are divided into types and have their own consolidation in the Civil Code of the Republic of Kazakhstan. These are the following types of contracts:

1) contracts for the provision of communication services;
2) contracts for the provision of medical services;
3) contracts for the provision of veterinary services;
4) contracts for the provision of audit, consulting, information services, etc.

Thus, these legal relations in their development have gone a long way from unnamed contracts to entire structures enshrined in the private law of states that have adopted Romano-Germanic law. Nevertheless, these legal relations are still in their development and indicate the need to study this phenomenon. The relations of fee-based services have a complex and diverse character, respectively, there are many legal structures and models that allow regulating contractual relations within the legal field [16-18]. In the theory of civil law, the most common constructions regulating the procedure for the provision of services are: firstly, the contract for the provision of services, the provisions of which are fixed (Chapter 33 of the Civil Code of the Republic of Kazakhstan) and, secondly, the contract of work and labour (Chapter 32 of the Civil Code of the Republic of Kazakhstan). The differentiation of these agreements has not only theoretical but also practical importance. Let us explain this thesis with an example. The "contract for the provision of paid medical services" is particularly specific, it is located in the category of contracts for the provision of fee-based services, and the result of this service does not affect the process of execution of this contract in any way [19; 20]. However, classifying this contract into the category of contracts of work and labour, then all patients according to the results of this contract should have been healthy, otherwise the work would have been recognised as improperly performed. To prevent these situations in the legal literature, comparison criteria are used to differentiate the above legal models.

Let us highlight the criteria of comparative legal analysis of these two constructions: firstly, one of the most controversial issues in this topic is the representation of business entities about the subject of these contracts, namely "services". According to the Article 683 of the Civil Code of the Republic of Kazakhstan, "service" is understood as the commission of a certain action or a certain activity that should not be associated with the creation or improvement of a thing that exists without a materialised form, which is the main sign of the result of the work in the contract. Thus, such a phenomenon as a "service" is inseparable from its performer and cannot exist independently without using the performer. The subject of the contract includes the focus on the performance of work to achieve a certain economic result, as well as the sign of

separability of the result from the work. Based on the first criterion of comparison, the authors will analyse that the subject of the contract is not only the performance of work but also the achievement of results. This result should be separable from the work and can be submitted, transferred. This circumstance distinguishes "work" from "service" since the latter does not lead to the creation of a tangible result [21]. The similarity of the subject of legal regulation of these two structures is expressed in the fact that the rules on the contract are applied to the relations on the provision of fee-based services in the part in which it does not contradict the rules on the contract of mutual provision of fee-based services and the specific features of its subject. The second criterion for comparing these two structures is the paid character of the services/works provided. It follows from the Civil Code of the Republic of Kazakhstan that a common feature of both the contract of work and labour and the contract for the provision of services is compensatory nature.

In both cases, the legislator explicitly indicated the obligation of the customer to pay for the actions of the contractor. The third criterion of comparison is the moment of conclusion of the contract. This issue also reflects the similarity of these models since both designs are consensual contracts, and as a result are recognised as concluded from the moment the essential conditions are agreed by the parties. The fourth criterion of comparison also demonstrates the common feature of these two treaties since they are both bilaterally binding. The similarity of the features of these contracts is conditioned upon the fact that the division between the contract and the services lies in the plane of two important qualifications. Firstly, to qualify contracts correctly, the subject must designate the obligations of the contractor, according to any of the above constructions. Secondly, the subject must determine the material result, if there is one, then the subject qualifies the model as a contract, if there is no such result, then as the provision of services. Based on the comparative legal analysis of the two legal constructions, the following conclusions follow:

1. Firstly, according to the contract, the subject must come to the creation of a result that is separable from the work itself. Under the contract for the provision of fee-based services, the contractor must perform only certain actions specified in the contract, and the customer is obliged to pay for them.

2. Secondly, both contracts have similar features and are compensatory, consensual, and bilaterally binding.

3. Thirdly, the achievement of the purpose of certain legal relations directly depends on the qualification of the contract.

The purpose of the contract for the provision of fee-based services is the provision of a certain service or, in the case of a contract, the performance of a certain result, within a specified period and for a certain fee. From the analysis of the first criterion, it can be seen that in labour relations, the goal is not the process of providing services or performing work but the work itself as a well-established process. The second criterion is the subject composition of these legal relations. Under the contract for the provision of fee-based services, the subject is the contractor, who remains independent within the framework of the contract since his task is to perform a certain service on time. According to the employment contract, the employee is included in the staff of the employer, and he is obliged to follow the internal labour regulations, comply with job descriptions, and follow the instructions of the employer. The third criterion for comparison is the burden of responsibility. The contractor is responsible for the poor-quality work/service rendered. Within the framework of the employment contract, the employer is responsible for the employee. The fourth criterion for comparison is the payment for the service rendered. According to the employment contract, it consists of a fixed salary paid at certain periods of time or upon the fact of work. According to the service agreement, remuneration is paid, which depends on the individual terms of the agreement. Based on a comparative analysis of these legal models, it can be stated that these legal constructions may at first glance be similar, but different legal instruments act as a way of regulating them.

Discussion

To date, the debatable issue is the problem of the essence of the relationship for the provision of fee-based services, and the place occupied in the civil doctrine but this issue has not yet been resolved. For example, the legislation of the Republic of Kazakhstan lacks both a legal and a single doctrinal concept of "services". Before the adoption of the Civil Code, the civilistic views of scientists on the issue of the legal nature of "services" did not have the same standpoint. The main issue in the scientific debate remained the question of the correlation of the categories of "service" and "result" since it was from this understanding that the approaches to the study and application of various legal structures differed. The service was most widely defined by Yu.Kh. Kalmykov and E.N. Romanova [13], who referred to the obligations for the provision of services as any contracts by their legal nature that are made on preferential terms, or to create amenities for an authorised person: household and rental contracts, retail purchase and sale on credit, etc. Evidently, with such an approach, the concept of "service obligations" covers too wide range of relationships of a diverse spectrum, which itself blurs this definition. The most common opinion on the definition of "service" as an activity that does not have a materialised result was proposed by O.S. Ioffe [14], who stated that in a service contract an obligation should not have a materialised result. This thesis clarified that the problem of the ratio of works and services began to acquire an independent meaning in the discourse.

Prior to the adoption of the Civil Code in the Republic of Kazakhstan, there were no criteria for dividing legal structures into models for the performance of works and for the provision of services, therefore, legal scholars considered "services" within the category of "works". In the current Civil Code, the final effect of the result is expressed through a materialised expression, which is the criterion for dividing "services" and "works" as objects of taxation under the Tax Code of the Republic of Kazakhstan [15]. According to the tax legislation "works" are defined as activities the results of which have material expression and can be implemented to meet the needs of legal entities and (or) individuals, and services are activities the results of which do not have material expression, are realised and consumed in the course of this activity [15; 22]. Proceeding

from the above thesis, the authors state that there is a problem of uniform understanding of the category "service" in the legislation, which in turn leads to multiple interpretations not only of this definition but also, as a result, creates legal conflicts in practice. This is a problem for modern civil law not only in Kazakhstan but also in foreign countries, where the right of interpretation is granted to individual subjects, namely in the USA, England, etc. The complexity of creating and consolidating the category of "service" is as follows: firstly, there is no single approach to the interpretation of services from the standpoint of a combination of economic and legal phenomena; secondly, from the standpoint of economic scientists, "service" is considered both as a "type of activity" and as a "type of economic good"[23-25].

Therefore, within the framework of modern globalisation of society, it is impossible to create a unified approach to understanding the concept of services. The authors suggest turning to foreign experience to solve this problem. Thus, the concept and essence of services is explored through the category of "product", which also has a historical development. One of the early models of services is considered to be the model of J. Rathmell [16], who identified the problem of studying the needs of consumers and monitoring the process of consumption of services. Thus, T. Hill [17], defining a service as "a particular result of an economically useful activity that manifests itself either in the form of a commodity or directly in the form of an activity" tried to characterise the service with a general concept of "activity". A well-known marketing specialist P. Kotler [18] defined a "service" as any event or benefit that one party can offer to the other and which is mostly intangible and does not lead to the acquisition of anything. Regulation of legal relations for the provision of fee-based services in different legal families are of a specific character. Let us consider the legal models of these relations in the Romano-Germanic law system. In German law, "services" are regulated by such most popular constructions as: a personal employment contract, an employment contract, which is a type of service agreement, a work and labour contract [26; 27].

The contract for the provision of services in German law is aimed at providing "independent" services. Such a category as "service" can be physical or intellectual, regardless of the availability of professional knowledge and skills. Such a service is provided using the construction of a personal employment contract, which is an analogue of a contract for the provision of fee-based services in the legislation of the Republic of Kazakhstan. The main criterion for distinguishing a personal employment contract from an assignment contract is remuneration, and with a work and labour contract (Werkvertrag) – independence from the result [2; 28]. In the German Civil Code (GCC) [9], the section "Certain types of obligations" was fixed, along with the contract of work and labour, labour law norms were included there, as well as specific types of service contracts. Therewith, the chapter "Contract" included, along with the manufacture or modification of a thing, another result achieved by "performing work or rendering a service". Subsequently, the chapter was divided into two parts: "Work and labour contracts" and "Tourist services". Accordingly, it was deemed appropriate to change the former title of the chapter to "Contract of work and labour and similar contracts" ("Werkvertag und anliche Vertrage"). Thus, there were categories of contracts that were different from the contract of work and labour, the subject of which was a certain service. In the legal literature, it is noted that such specific features of the legal regulation of labour relations are conditioned upon the historical features of the development of German law [29-31]. At the time of the adoption of the GCC (1896-1900), industrial production was developing sufficiently, and legislators decided that they needed to create a tool for more detailed regulation of the labour of hired workers. In this regard, it would be possible to make appropriate additions to the GCC or adopt a special law, as was done in relation to some other professions in the German Commercial Code [19; 32]. To differentiate the regulation of relations for the provision of fee-based services between a civil contract and an employment contract, the following criteria are identified in legal journalism:

1. Firstly, the degree of personal dependence, this feature is fixed in paragraph 2 of paragraph 1 of §84 GCC. According to this norm, a sales representative is an "independent" person if he sufficiently defines his activities, including working hours. If the time, duration, and order of work is determined not by the contractor but by other party in the contract, an employment relationship takes place.

2. Secondly, the degree of the performer's "involvement" in the employer's production process. If the contractor carries out his activities together with other employees performing similar functions, obeys any plans in force at the enterprise, and his work is largely organised and controlled, he is an employee. Therewith, there may be a situation of execution of a contract for the provision of services in cooperation with employees of the customer's enterprise, when the contractor's services are independent but closely related to the customer's production process.

3. Thirdly, the nature of the activity. Two aspects can be distinguished here: the personal character of the work performed and the specific features of the activity. For an employment contract, the rule on personal performance of work (§613 GCC) is much more important than for a service contract. The workplace, position cannot be ceded to another person or inherited (succession is excluded). The possibility of involvement of third parties in the performance of the contract speaks in favour of its civil law character.

The specific feature of the regulation of legal relations in Germany is that in the German doctrine, when distinguishing between labour and civil contracts, it is customary to use the terms "labour relations" and "relations with independent persons" [33; 34]. Thus, the distinction between the contract of hiring the services of an "independent" person and an employment contract in German law, as in Kazakhstan, is a problematic issue. From the standpoint of classifications developed in Roman law, a personal employment contract refers to consensual contracts, reimbursable and bilaterally binding [35]. To summarise, the legal structures regulating relations for the provision of fee-based services in Germany represent a special model since they represent a symbiosis of labour and civil law relations. The above specific features

characteristic of an employment contract and in the legislation of Kazakhstan are referred to as a separate branch of law, to not distinguish in specific personal relationships. The similarity of these constructions is determined by the fact that, like the Republic of Kazakhstan, the Federal Republic of Germany is part of the group of the Romano-German law family, which determines the historical development of legislation and norms in the civil codes of these states, namely the names of legal constructions "personal employment contract", signs (consensual, compensatory, binding character) [36-38].

In the Anglo-Saxon legal system, there are no independent legal norms regulating relations for the provision of fee-based services, such as in the legislation of the countries of the Romano-German law system [39]. As a consequence, a contract becomes a legal structure in the form of a basic model regulating relations between subjects. The legal formalisation of a personal service contract involves the use of a standard contract (contract of work and labour) and its adaptation to individual needs. Standard contracts in the Anglo-Saxon law system can be formed by informal bodies, for example, in England, standard forms of work and labour contracts are offered by the Joint Contract Tribunal [20]. The parties are free to determine their rights and obligations. Therefore, if the parties in their agreement or model contract have fixed that their relations associated with the performance of work are subject to the norms of work and labour contract, then the court, in the dispute under consideration, is obliged to apply these norms, although in the actual relations between the subjects the contract of employment is clearly traced. On the other hand, the court can use a differentiated approach to the situation. In accordance with it, the court considers and qualifies not the whole contract but individual norms, rights, and obligations. As a result, in practice, there is the following situation: to the same contract, the court can apply different systems of norms, both the contract of work and labour and the contract of employment, depending on which obligation is in question.

Official regulatory legal acts in the form of a law, by-law, or judicial precedent are applied when the subjects of legal relations have not agreed otherwise [40]. Therewith, and this is one of the characteristic features of the modern contractual nature, including England and the USA, the volume and importance of imperative regulation is increasing. First of all, this concerns the system of norms aimed at protecting consumer rights [21; 41]. In comparison with Romano-Germanic law, the Anglo-Saxon legal system does not contain a rigid division, regulating relations into chapters but has a unified form by which it is possible to determine which tool the subject uses to achieve his goal. In addition, judicial practice helps in distinguishing between such types of contract as a personal employment contract or a work and labour contract [42]. However, the problem of understanding and fixing such a fundamental concept as "service", "result" by English publicists has not been identified.

Conclusions

As a result of comparative legal analysis, it has been established that the Civil Code of the Republic of Kazakhstan legislatively establishes 2 legal constructions of contracts regulating relations for the provision of fee-based services. These models are: a contract for the provision of fee-based services and a contract. These constructions have many similar features — they are consensual, compensatory, bilaterally binding. Their main difference is, firstly, the subject of legal regulation. For the contract relationship model, the subject is the relationship to perform certain works, provide services, and transfer the result to the customer, while the subject of the service provision model is paid actions or certain activities. Secondly, under work and labour contract, the contractor has the right to involve other persons without specifying otherwise in the law or contract. Thirdly, the deadlines for the fulfilment of obligations under the contract are an essential condition, and does not have a significant value for the provision of fee-based services. Fourthly, the terms of payment of the contract: for a contract for the provision of fee-based services, the terms are set by agreement, and for a contract, the obligation to pay arises after the delivery of the work in accordance with the act of transfer and acceptance. Fifthly, unilateral termination of the contract: a contract for the provision of fee-based services differs from a contract in that the contractor has the right to unilaterally refuse to perform the contract with full compensation for damages. For unilateral termination of the contract, the law particularly identifies cases of termination of the contract by one party of the agreement.

The study demonstrated that the relations on the provision of fee-based services can also be regulated by an employment contract, which has specific features by which it is shared with other civil law contracts. From the standpoint of the originality of the research material, the paper analysed the norms of the legislation of different states. Namely, the models of the Romano-Germanic and Anglo-Saxon law systems. As a result, it was concluded that in the Federal Republic of Germany, the relations under consideration are regulated by means of a personal employment contract, and labour relations are not excluded from this contract but have indications of certain specific features, due to which it is possible to conclude which contract is currently in force. In such states as the USA and England, there is a standard contract with individual conditions for each subject. The materials of this paper can be useful for specialists in the field of jurisprudence to compare and develop new unique structures regulating modern models of service provision. In the course of the research, new questions and problems arose that need to be solved. It is necessary to continue research on the development of a unified understanding of "services" for a more precise differentiation in related contractual structures.

Acknowledgements

None.

Conflict of Interest

None.

References

[1] Civil Code of the Republic of Kazakhstan. 1994. https://online.zakon.kz/Document/?doc_id=1006061.
[2] Larenz K. *Textbook of the law of obligations*. Munich: Beck; 1986.
[3] Schubert C, Kurennoy AM. *Handbook for German and Russian labor law. Bochum legal studies on civil law*. Baden-Baden: Nomos publishing company; 2016.
[4] Waldhausen L. *Current problems of legal labor law: A consideration of current problems of employed lawyers at legal employers*. 2021. https://www.researchgate.net/publication/350516979_Gegenwartsprobleme_des_anwaltlichen_Arbeitsrechts_Eine_Betrachtung_aktueller_Probleme_angestellter_Rechtsanwalte_bei_anwaltlichen_Arbeitgebern.
[5] Roig M, Pewitt J. *A changing world of work: Implications for the social contract*. 2021. https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/publication/PB_94.pdf.
[6] Smith JM. *Contract law: A comparative introduction*. Cheltenham: Edward Elgar Publishing; 2017.
[7] Fleischer JL, Stein SGM, Fradin SR, Lujan J-P. *Contracts and Agreements*. Hoboken: John Wiley & Sons Inc; 2017.
[8] Hall SC. *Preparing construction claims*. Hoboken: Wiley-Blackwell; 2020.
[9] German Civil Code. 1909. http://www.gesetze-im-internet.de/bgb/.
[10] French Commercial Code. 2000. https://www.legifrance.gouv.fr/codes/id/LEGITEXT000005634379/.
[11] Civil Code of the Russian Federation. 1994. http://www.consultant.ru/document/cons_doc_LAW_5142/.
[12] Labor Code of the Republic of Kazakhstan. 2015. https://online.zakon.kz/Document/?doc_id=3891083236148637.
[13] Kalmykov YuKh, Romanova EN. *Towards the concept of an obligation to provide services in civil law*. Moscow: Statut; 2000.
[14] Ioffe OS. *Soviet civil law: Certain types of obligations*. Leningrad: Leningrad University Publishing House; 1961.
[15] Tax Code of the Republic of Kazakhstan. 2017. https://online.zakon.kz/Document/?doc_id=36148637.
[16] Rathmell J. *Marketing in the service sector*. Mass: Winthrop Publishers; 1974.
[17] Hill TP. On goods and services. *Rev Incom Wealth*. 1977;23:315-338.
[18] Kotler P. *Principles of Marketing*. Edinburgh: Pearson Education; 2005.
[19] German Commercial Code. 1909. http://www.gesetze-im-internet.de/hgb/index.html.
[20] Usenko AS, Rudenko EYu. On the question of the legal nature of a corporate agreement. In: *Bulletin of scientific and technical creativity of youth of the Kuban State Agrarian University*. Krasnodar: Kuban State Agrarian University; 2016.
[21] Baytin MI. *The essence of law. Modern normative legal thinking on the verge of two centuries*. Moscow: Pravo i gosudarstvo; 2005.
[22] Mihai S, Bondarev A, Negoiu M. Complexes of Pt(II) and Pd(II) with symmetrical bipodal N,N-bis-antipyrine-N'pyridinethioureas. *Rev Chim.* 2013;64(2):191–194.
[23] Bondarev A, Gheorghe C-G. Adsorptive removal of crystal violet dye from aqueous solutions using natural resource systems. *Desalin Water Treat.* 2022;264:215–223.
[24] Bondarev A, Popovici DR, Călin C, Mihai S, Sîrbu E-E, Doukeh R. Black Tea Waste as Green Adsorbent for Nitrate Removal from Aqueous Solutions. *Mater.* 2023;16(12):4285.
[25] Deryaev A. Drilling of horizontal wells in western Turkmenistan. *J Balkan Tribol Assoc.* 2023;29(6):1028–1046.
[26] Deryaev AR. Drilling of directional wells in the fields of Western Turkmenistan. *SOCAR Proceed.* 2023;2023:22–31.
[27] Aueshov AP, Arynov KT, Eskibaeva CZ, Zhilkibaev OT, Sataev MS, Beisbekova RD. Production of iron phosphide by reduction of polyphosphates with metallic iron. *Russ J Appl Chem*. 2014;87(6):684–688.
[28] Deryaev AR. Well trajectory management and monitoring station position borehole. *SOCAR Proceed.* 2023;1:1–6.
[29] Auyeshov AP, Arynov KT, Yeskibayeva CZ, Zhylkybayev OT, Beisbekova RD, Alzhanov KB. Effect of α- and β-polymethyle nenaphthalenesulfonate upon properties of cement grout and concrete. *Modern Appl Sci.* 2015;9(6):173–183. doi: 10.5539/mas.v9n6p173.
[30] Dikanbayeva AK, Auyeshov AP, Satayev MS, Arynov KT, Yeskibayeva CZ. Researching of sulfuric acid leaching of magnesium from serpentines. *News Nat Acad Sci Republ Kazakhstan, Ser Geol Techn Sci.* 2021;5(449):32–38.
[31] Tokhetova LA, Tautenov IA, Zelinski GL, Demesinova AA. Variability of main quantitative traits of the spring barley in different environmental conditions. *Ecol, Environ Conserv.* 2017;23(2):1092–1097.
[32] Dushayeva L, Kushaliev K, Mardan D, Kakishev M, Sabirzhanov A. Immune morphological changes in the body of kazakh white rock calves after vaccination with BCG vaccine and izoniazid drug application. *Glob Vet.* 2013;10(5):511–519. doi: 10.5829/idosi.gv.2013.10.5.21413.
[33] Abutalip A, Matikhan N, Kanatbayev S, Bazarbayev M, Vorobyov V. Analysis of efficiency of vaccines against brucellosis in cattle in the Republic of Kazakhstan. *Asian J Pharm Clin Res.* 2017;10(6):359–362.
[34] Umitzhanov M, Kushaliyev KZ, Amanzhol RA, Kanatbaev SG, Kutumbetov LB. Testing morphological composition of inactivated vaccine against avian pasteurellosis. *Life Sci J.* 2014;11(9 SPEC. ISSUE):363–368.
[35] Bayantassova S, Kushaliyev K, Zhubantayev I, Zhanabayev A, Kenzhegaliyev Z, Ussenbayev A, Paritova A, Baikadamova G, Bakishev T, Zukhra A, Terlikbayev A, Akhmetbekov N, Tokayeva M, Burambayeva N,

Bauzhanova L, Temirzhanova A, Rustem A, Aisin M, Tursunkulov S, Rametov N, Issimov A. Knowledge, attitude and practice (KAP) of smallholder farmers on foot-and-mouth disease in Cattle in West Kazakhstan. *Vet Med Sci.* 2023;9(3):1417–1425.

[36] Oliynyk OV, Rorat M, Solyarik SO, Lukianchuk VA, Dubrov SO, Guryanov VH, Oliynyk YV, Yaroslavskaya SM, Szalast R, Barg W. Impact of Alteplase on Mortality in Critically Ill Patients with COVID-19 and Pulmonary Embolism. *Virus.* 2023;15(7):1513.

[37] Petruccelli U, Racina A. Feeder-trunk and direct-link schemes for public transit: a model to evaluate the produced accessibility. *Publ Transp.* 2021;13(2):301–323.

[38] Petruccelli U, Fabrizio D. Regulatory, technological and operational innovations in cableway transport. *Ingegn Ferrov.* 2023;78(2):113–144.

[39] Deryaev AR. Investigation of the properties of fine clays in the fields of Turkmenistan for the development of drilling fluids. *Neft Khoz - Oil Industry.* 2024;2024(3):46–50.

[40] Suchshikh V, Karimov A, Yussupov M, Aitzhanov B, Abutalip A, Mussayeva A, Yegorova N, Mamanova S, Kanatov B. Effectiveness of different means of disinfection against soil foci of anthrax (Bacillus anthracis) burials at a depth of up to 3.5 m: an experimental study. *Casp J Environ Sci.* 2023;21(4):893–902.

[41] Deryaev A. Integration of advanced technologies to improve the efficiency of gas condensate field developme. *Machinery Energetics.* 2024;15(1):33–42. doi: 10.31548/machinery/1.2024.33.

[42] Deryaev AR. Forecast of the future prospects of drilling ultra-deep wells in difficult mining and geological conditions of Western Turkmenistan. *SOCAR Proceed.* 2023;2023:13–21.

Порівняльний аналіз правового регулювання відносин з надання платних послуг

Жанар Карашева
Казахський національний університет імені аль-Фарабі
050040, проспект Аль-Фарабі, 71, м. Алмати, Республіка Казахстан

Айман Омарова
Казахський національний університет імені аль-Фарабі
050040, проспект Аль-Фарабі, 71, м. Алмати, Республіка Казахстан

Гульміра Тлебаєва
Казахський національний педагогічний університет імені Абая
050010, проспект Достик, 13, м. Алмати, Республіка Казахстан

Серіккалі Тинибеков
Казахський національний університет імені аль-Фарабі
050040, проспект Аль-Фарабі, 71, м. Алмати, Республіка Казахстан

Гульнура Худайбердіна
Казахський національний університет імені аль-Фарабі
050040, проспект Аль-Фарабі, 71, м. Алмати, Республіка Казахстан

Анотація

Актуальність. Актуальність проблеми, викладеної в статті, обумовлена тим, що відносини з надання платних послуг користуються великим попитом і займають важливе місце на світовій економічній арені: починаючи з торгівлі і закінчуючи задоволенням специфічних потреб людей.

Мета. Метою статті є порівняльно-правовий аналіз правових конструкцій, що регулюють ці специфічні правовідносини, та їх порівняння із зарубіжними моделями.

Методологія. Провідним методом дослідження цієї проблеми є метод порівняння та аналізу, який дозволяє розглянути цю проблему як цілеспрямований та організований процес в історико-правовій ретроспективі, а також еволюційний шлях договору про надання платних послуг, підряду та трудового договору в різних правових системах.

Результати. Дослідження проводилося у три етапи: аналіз категорій "послуга" та "результат" у теоретичному та практичному аспектах, дослідження моделі історичного розвитку окремого правового інституту, виконання порівняльно-правової роботи, уточнення теоретичних та практичних висновків, узагальнення та систематизація отриманих результатів.

Висновки. Значущість отриманих результатів дослідження полягає в тому, що: дослідження правових конструкцій дозволило зробити висновки, по-перше, про необхідність чіткого розмежування договорів про надання платних послуг та підряду; по-друге, провести порівняльний аналіз умов трудового договору з моделями правовідносин з надання платних послуг; по-третє, здійснити кваліфікацію правових конструкцій національного законодавства та законодавства зарубіжних країн. Це дослідження допомагає краще зрозуміти структуру відносин з надання платних послуг не тільки в Республіці Казахстан, але і в таких державах, як Федеративна Республіка Німеччина, США, Англія.

Ключові слова: договір підряду та праці; трудовий договір; цивільний кодекс; економічна сфера; юридичні конструкції.