THE ESSENTIAL TERMS OF SECURITY CONTRACTS, THEIR LEGAL FORM, AND THE PROCEDURE FOR FORMULATING THEIR KEY ELEMENTS.

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Abstract: Based on an analysis of scholarly literature, this article elucidates the essential terms, legal form, and key elements of a security contract, as well as their specific characteristics. It also offers observations and insights regarding its formation.

Keywords: essential terms of a security contract, subject of a security contract, term of a security contract, contracts for property protection, contracts for personal protection, contracts for maintaining public order.

In the legal characterization of a civil law contract, a thorough analysis of its terms is of great importance. The terms define the content of the contract and clarify its legal nature and substance. The presence of all essential terms required for a specific type of contract ensures the creation of contractual obligations. Conversely, the absence of even one of the mandatory terms may lead to the contract being deemed not concluded.

Unlike other legal facts that serve as a basis for the emergence, modification, or termination of legal relations, a contract also determines the content of these relations. It not only serves as a basis for applying a specific legal norm but also facilitates the creation, modification, or termination of a legal relationship. Furthermore, the contract directly regulates the conduct of the parties and establishes their rights and obligations.

Many researchers have noted this characteristic of a contract. For example, M.Sh. Choriev states that "while other legal facts, as a general rule, culminate in the creation, modification, or termination of a legal relationship, a contract, unlike these legal facts, in addition to establishing, modifying, or terminating a legal relationship, also regulates the conduct of the parties to the legal relationship within the framework established by legal norms, and defines the rights and duties of the participants in the legal relationship"[1], comments.

B.I. Puginsky defines a civil law contract as a non-normative-legal instrument regulating human behavior[2]. L.V. Shennikova notes that the essence of the contract construction lies in the fact that "it serves as the cause of the obligation, a means of regulating and organizing relations between the parties, and serves to achieve a certain legal result"[3] considers. Therefore, it defines the contract as a "freely regulating, organizing relations with equivalent payment and

[1] Фуқаролик ва оила ҳуқуқи: Дарслик / О.Оқюлов, Э.Эгамбердиев, М.Х.Баратов, О.А.Камалов, А.А.Мухаммадиев, М.Ш.Чориев, Н.А.Кулдашев, У.К.Нуруллаев, О.Ж.Холмуминов, Х.М.Қиличев. – Т.: Ўзбекистон Республи-каси ИИВ Акаде¬мияси, ЎзФА Давлат ва ҳуқуқ институти, 2021. 181-бет.
[2] Пугинский Б. И. Частный договор в научной картине права // Ученые- юристы МГУ о современном праве. М.: ОАО «Издательский дом “Городец”», 2005. С.
[3] Щенникова Л.В. О договорном праве, его перспективах и конструкции гражданско- правового договора // Законодательство. 2003. № 5. С. 19.

coordinator"[4]), which aims to achieve a certain legal result and includes the possibilities of applying state-organizational influence.

We agree with this definition of the contract and believe that its regulatory possibilities are embodied precisely in the terms of the contract, since it is in these terms that the parties determine their rights and obligations, the actions that each party must take to fulfill the contract. B.I. Puginsky notes in this regard: "The legal regulation of the interconnected actions of counterparties on the basis of a contract and is ensured by forming the terms of the contract in the form of mutual rights and obligations[5].

In this regard, the issue of a complete and accurate statement of the terms of the contract is relevant. As F.I. Gavze rightly noted, "for the contract to truly play a role in the proper fulfillment of the obligations stipulated in it, it is necessary that the relations between the parties be clearly and distinctly defined, their obligations and rights are fully and clearly expressed"[6].

The question of the concept, types, and significance of specific terms of a contract for its implementation has been a hot topic of discussion in the doctrine of civil law[7]. Therefore, to understand the general construction of a civil law contract, we will leave aside this scientific discussion, which is undoubtedly important, and turn to the provisions of the current legislation regarding the terms of the contract.

In accordance with part 2 of Article 364 of the Civil Code of the Republic of Uzbekistan, the essential terms of the contract can be divided into three groups. Firstly, this is the subject matter of the contract. Secondly, the conditions that are considered essential or necessary for this type of contract in a law or other legal act. Thirdly, all conditions that must be agreed upon upon upon the application of one of the parties. According to N.Juraev, "essential terms include, first of all, the terms on the subject of the contract. Contracts are distinguished from each other precisely by their subject matter"[8]. According to M.I.Braginsky, "in relation to models of contracts not provided for by the Civil Code and other legal acts, only the subject, the conditions necessary for this contract, and the conditions that must be harmonized at the request of one party should be recognized as significant"[9]. We believe that the perspectives noted here can also be applied to the security services contract. Although this type of contract is known in our national judicial practice, there are not enough regulatory norms to allow for the determination of its essential terms.

[4] Щенникова Л.В. О договорном праве, его перспективах и конструкции гражданско- правового договора // Законодательство. 2003. № 5. С. 19.

[5] Пугинский Б.И. Частный договор в научной картине права // Ученые- юристы МГУ о современном праве. М.: ОАО «Издательский дом “Городец”», 2005. С. 173.

[6] Гавзе Ф.И. Обязательственное право (общие положения). Минск, Изд-во БГУ, 1986. С. 25.

[7] Қаранг: Shartnoma huquqi. Darslik / R.J.Ro‘ziyev, M.Sh.Choriyev, A.A.Muxammadiyev va boshqalar. -Toshkent, O‘zbekiston Respublikasi Jamoat xavfsizligi universiteti, 2022. 10-16 bet.; Фуқаролик ва оила ҳуқуқи: Дарслик / О.Оқюлов, Э.Эгамбердиев, М.Х.Баратов, О.А.Камалов, А.А.Мухаммадиев, М.Ш.Чориев, Н.А.Кулдашев, У.К.Нуруллаев, О.Ж.Холмуминов, Х.М.Қиличев. – Т.: Ўзбекистон Республи-каси ИИВ Академияси, ЎзФА Давлат ва ҳуқуқ институти, 2021. 174-179 бет.; Андреева Л. Существенные условия, договора: Споры, продиктованные теорией и практикой // Хозяйство и право. 2000. № 12. С. 89-96; Брагинский М. И., Витрянский В. В. Договорное право: Общие положения. М.: «Статут», 1997. С. 238-273; Витрянский В. В. Существенные условия договора// Хозяйство и право. 1998. № 7. С. 3-12.

[8] Ўзбекистон Республикаси Фуқаролик кодексига шарҳ. 1-жилд (биринчи қисм) Адлия вазирлиги. – Т.: «Vektor-Press», 2010.– 816 б.–(Профессионал (малакали) шарҳлар).766-бет.

[9] Брагинский М. И., Витрянский В. В. Договорное право: Общие положения. М.: «Статут», 1997. С. 246.

A security services contract is a type of contract for the provision of services for a fee, the subject of which is the service itself. Therefore, when concluding a security services contract, agreeing on the subject of the contract entails defining the specifics of the security service. It should be noted that in academic literature, the concept of the subject of a contract and its relationship with the object of the contract are contentious issues. Without delving into the details of this debate, we adhere to the viewpoint that the subject of a contract for the provision of services for a fee is the service itself, i.e., certain actions or a specific activity.

Before proceeding to a direct analysis of security services, it is necessary to say a few words about services in general. It should be noted that the current legislation distinguishes services as an independent object of civil law (Article 81 of the Civil Code of the Republic of Uzbekistan).

N. Juraev notes that, "Under a contract for the provision of services for a fee, the contractor provides the customer with a service that is not in a tangible form. Consequently, the provision of services for a fee does not take any material form"[10]. A.Ye. Tolstova's definition is also of interest, which describes a service as "an activity of subjects of civil circulation that does not culminate in a specific result, but rather embodies a useful effect or has a result not expressed in a material form"[11], he emphasizes.

From the above definitions of the concept of services, a number of their important characteristics can be identified.

The first characteristic is that the activity has no material result. It is this feature that is often recognized as the main criterion distinguishing services from works. For example, N. Juraev notes that "the absence of a tangible form distinguishes services from works carried out under a contract, the result of which has a tangible form"[12] believes. V. A. Kabatov also identifies "the absence of a material form in the result of the work performed" as a feature that distinguishes service relationships from contract relationships[13]shows.

In this regard, the position of A.V. Miroshnik is of interest. Speaking about the merging of the result of a service activity with the activity itself, he emphasizes that the result of services does not exist as a legal category

and on this basis, he proposes using the phrase "intangible result", which he considers more appropriate, instead of the term "result"[14]. It is difficult to agree with this proposal

and to acknowledge the applicability of the latter term. In our opinion, it is more appropriate to call the result of a service an "effect," because the word "effect" (samara), which in some cases denotes a visible and tangible outcome, accurately reflects the essence of obtaining a service result, whereas the phrase "intangible result" lacks a clear semantic load.

[10] Ўзбекистон Республикасининг фуқаролик кодексига шарҳ: Профессионал шарҳлар. Т 2./Ўзбекистон Республикаси Адлия вазирлиги. — Тошкент: Baktria press, 2013. 9616-бет.

[11] Толстова А.Е. Гражданско-правовое регулирование оказания туристских услуг в Российской Федерации: Автореф. дисс. ... к. ю. н. Краснодар, 2004. С. 11-12.

[12] Ўзбекистон Республикасининг фуқаролик кодексига шарҳ: Профессионал шарҳлар. Т 2./Ўзбекистон Республикаси Адлия вазирлиги. — Тошкент: Baktria press, 2013. 9616-бет.

[13] Кабатов В. А. Возмездное оказание услуг (глава 39) И Гражданский кодекс Российской Федерации. Часть вторая. Текст, комментарии, алфавитно-предметный ука¬затель. / Под ред. О. М. Козырь, А. Л. Маковского, С. А. Хохлова. М.: Международный центр финансово-экономического развития, 1996.С. 392.

[14] Мирошник А. В. Возмездное оказание услуг в граждан¬ском праве России: Автореф. дисс. ... к. ю. н. Саратов, 2003. С. 19).

A distinctive feature of a service is that its result is inseparable from the process of providing it; "some services may have a tangible result, but this result is inseparable from the act of service itself"[15]. Another distinguishing feature of services stems from this characteristic - they are consumed only at the time the service is rendered.

In literature, this feature of a service is referred to as the "proportionality of provision and reception"[16] ... is called. The acceptance (receipt) of a service by the customer and its provision by the performer occur simultaneously; only the "effect" of the service may persist for a certain period. As D. Stepanov noted, "it is difficult to imagine a situation where a service is rendered at one time and accepted at another. It is impossible to accept the service before the provision process begins. Likewise, it is not possible to accept the service after it has been rendered"[17].

Closely linked to the inseparability of its provision and reception, a service also possesses the characteristic of non-preservation. Describing this feature, V.A. Belov notes that "the cessation of the service provision process also terminates the existence of its result, which makes the results of a service a unique object of civil legal relations, as they exist for a very short time and cannot be preserved, transferred (in the traditional sense of the word), or measured by quantitative and qualitative indicators"[18] emphasizes.

T.A.Muminov expresses a somewhat different opinion and proposes to define quality as an important condition of the contract for the provision of paid services[19]. According to Sh.B. Norboev, "the most important indicator of service quality is safety. Global practices in quality management demonstrate that under normal conditions of use, or other circumstances that a service provider can reasonably foresee, the safety of services must be guaranteed and must not cause harm to human health"[20], he opines.

Continuing this line of thought, two other specific characteristics of a service can be highlighted: its non-transferability and the inability to measure its quantitative and qualitative indicators. In this regard, it should be noted that even specialized studies on the quality of goods, works, and services do not offer criteria that would allow for determining the quality of any given service, stating only that "quality requirements in different service contracts can differ significantly"[21] is limited to the following conclusion.

In our opinion, it is impossible to define quality as an essential condition of a contract for the provision of services for a fee. Because the types of services are so numerous and diverse that it is impossible to establish a quality criterion for them. However, one can agree with the opinion of Sh.B. Norboev. That is, the most important indicator of the quality of any service should be safety.

[15] Гражданское право России. Общая часть: Курс лекций / Отв. ред. О.Н.Садиков. М.: Юристь, 2001. С. 263.
[16] Қаранг: Волчанская Л.М. Договор возмездного оказания образовательных услуг: правовое регулирование, понятие и содержание // Правоведение. 2002. № 3. С. 268; Васильева Е. Е. Договор возмездного оказания-медицинских услуг по законодательству Российской Федерации: Автореф. дисс. ... к. ю. н. Томск, 2004. С. Г5.
[17] Степанов Д. Услуги как объект гражданских прав // Российская юстиция. 2002. № 2. С. 17.
[18] Белов В. А. Гражданское право: Общая и* Особенная части: Учебник. М.: АО «Центр ЮрИнфоР», 2003. С. 788.
[19] Қаранг: Мўминов Т.А. Ҳақ эвазига хизмат кўрсатишнинг фуқаролик-ҳуқуқий муаммолари: юрид. фан. номз. дис. ... – Тошкент, 2006. 31-32 бетлар.
[20] Norboyev SH.B. Autsorsing munosabatlarini shartnomaviy huquqiy tartibga solishni takomillashtirish: Y.f.b.f.d. (PhD) dis. – Toshkent, 2022. 127-bet.
[21] Гридин А. В. Гражданско-правовые способы обеспечения качества товаров работ и услуг: Автореф. дисс.... к. ю. н. Краснодар, 2006. С. 8, 16.

Based on the foregoing, it can be noted that, firstly, the result of the service is not in material form, secondly, the effectiveness of the service is inseparable from the process of its provision, thirdly, the proportionality of the provision and receipt of the service, and fourthly, its result is not preserved. These features are common to all services, including security services.

The subject of the security agreement, that is, the agreement on the security service, presupposes the need to clarify the specifics of security activities. Based on this, the contract should directly specify the protected object, specific methods of protection, and the time for carrying out security activities.

Any human activity is always directed towards an object, and this object individualizes this activity to a certain degree. In this regard, the specifics of security activities should be agreed upon in the process of concluding a security agreement.

Objects protected under a protection agreement may include an individual or group of individuals, property (movable and immovable property), or public order. Each of these objects has its own characteristics of reflection in the contract.

For example, in relation to a protected object, such as real estate, the contract should establish a list of protected buildings and structures, as well as determine the territory where the corresponding regime will be established.

And the protection of public order in places where mass events are held involves determining the territory where this event will be held. When concluding a security agreement for a group of individuals, it is necessary to identify the data individualizing each of them or the object where they will be (office building, bus, etc.). If movable property is protected during its movement, it is necessary to agree on the route of transportation.

It is impossible to imagine the agreement on the subject of the security agreement without determining the method of protection. Because, like any other activity, security activity has certain methods, techniques

and technologies. Certainly, each security object requires the application of appropriate security methods and techniques. For example, the protection of public order in places where mass events are held can be carried out by patrolling the area where the event is held, ensuring registration procedures, and other methods. However, personal security usually only involves escorting the protected person by a guard. The security of a large industrial enterprise may require various security methods: organizing guard posts, patrolling (ensuring order inside the facility), establishing registration procedures, and others. At the same time, the security of the apartment is ensured only by equipping it with security alarms connected to a centralized observation panel.

In the contract, it is important to specify the exact parameters of the specific security method. For example, it is advisable to clearly define the number of guards at a particular post or checkpoint, their equipment with special means and weapons, the availability of service dogs, and other aspects[22].

In the literature, different types of protection are distinguished depending on the means used. For example, technical security (protection by connecting to a centralized monitoring panel or installing an independent alarm), physical security (protection by organizing

[22] Қаранг: Косицин И.А. Правовые и организационные основы охраны особо важных объектов подразделениями вневедомственной охраны при органах внутренних дел: Дисс... к. ю. н. Омск, 2001. С. 108

personnel, paramilitary, or guard posts), and mixed security, including elements of the first and second types, are distinguished[23].

Thus, the specific type of protection, the characteristics (position, location, size, value) of the object by the customer and the contractor

and rational combination of the principles of reliability and economic efficiency.

The peculiarity of security activity as a subject of the contract is that the essential condition is incomplete if the time for carrying out this activity is not clearly indicated. In this case, the time of carrying out security activities should be understood as the term for fulfilling the obligation under the security agreement, but this is not the term of the agreement. Considering that security, like any other activity, implies a certain duration in time, it can be concluded that security time should always be determined by a certain period.

Depending on the object and method of protection, the time for carrying out security activities can be determined differently. For example, in relation to a contract for the protection of real estate (for example, a shop), specific days and hours may be established at which the protection must be carried out. In apartment security agreements (i.e., in apartments connected to a centralized observation panel and equipped with security alarms), it is usually stipulated that security is carried out from the moment the apartment is accepted for security until its removal from security, i.e., there is a waiting period.

In some literature, it is proposed to divide services into one-time and subscription services. For example, D.I. Stepanov notes that "depending on the frequency of the service, they can be implemented as one-time (for example, one-time power of attorney services) or subscription services"[24]. Here the author explains that subscription services are provided over a long period of time or with the repetition of a certain group of actions over a certain period of time. In our opinion, security services can be one-time (for example, one-time security during the transportation of property) or subscription services (for example, security of an apartment equipped with security alarms). Based on this, the contract may stipulate a security schedule (for example, overtime security of the enterprise) or a one-time period during which security must be provided (for example, the time of a public event). In addition, security can be carried out for a full 24 hours. At the same time, there are options such as involving security service personnel during working hours (for example, monitoring entry and exit during an event in the sales area), and providing security alarms outside of working hours. The security time must be clearly defined in the contract, as this directly affects the issue of the performer's liability for non-performance or improper performance of security duties (in particular, in the case of theft or other illegal actions against the protected object).

Thus, agreeing on the condition on the subject of the security agreement involves resolving a number of issues related to the various characteristics of the security service.

The significance of agreeing on these issues lies not only in the fact that the contract must be recognized as not concluded, but also in the fact that the further implementation of the security agreement largely depends on the completeness and accuracy of this agreement.

In addition to the subject, among the essential conditions of the security agreement, as noted above, it is necessary to include the conditions necessary for this type of agreement. One

[23] Қаранг: Горин Е. В. Организация деятельности вневедомственной охраны в регионе (на материалах Московской области): Дисс. ... к. ю. н. М., 2001’. С. 95-96.

[24] Степанов Д. И. Услуги как объект гражданских прав. М.: «Статут», 2005. С. 223.

such condition is often recognized as the price condition. However, such a conclusion is incorrect, since the fact that the parties did not agree on the price condition does not lead to the recognition of the contract as not concluded. This condition belongs to the category of provable conditions.

Such a classification of this condition of the security agreement is primarily due to the fact that, according to paragraph 1 of Article 636 of the Civil Code of the Republic of Uzbekistan (in this case, it can be applied in accordance with Article 708), if the contract does not specify the price or methods for its determination, then the price is determined in accordance with part 4 of Article 356 of the Civil Code of the Republic of Uzbekistan. It is for this reason that, if a price clause is not stipulated in the security agreement, the performance of the contract must be paid at the price that is usually charged for similar services under similar circumstances.

Nevertheless, in practice, security contracts usually include provisions on the price of the contract and the procedure for payment for security services. As a rule, payment for security services is made monthly through banking institutions receiving the corresponding payments, and the price is determined based on the price list proposed by the security organization, based on the assessed amount of protected property.

At the same time, the price under the security contract may depend on other indicators, such as the minimum wage or the level of the contractor's expenses for staff maintenance.

It should be noted that the issues regarding the procedure for payment for security services under the contract are inextricably linked with the nature of the contract, more precisely, with the frequency of the corresponding services within the framework of the contract. The fact is that a number of security contracts, as a rule, are concluded for a long term, and therefore these contracts are subscription-based. In this regard, the issue of payment for the time when the relevant security services were not provided arises. Here, the opinion of D.I. Stepanov is relevant, according to which "payment under subscription service agreements should be made regardless of whether the services were actually provided in a certain period of time"[25]. For example, a household under guard (connected to a central security control panel) is obligated to pay a monthly fee regardless of whether they use the service or not.

When considering the terms of the security agreement, it is necessary to dwell on the term of the agreement. In our opinion, it is necessary to distinguish between the term of the contract and the term of fulfillment of the obligation. The latter is always important in the security contract, as it determines the specifics of the security service. As for the term of the contract, since security contracts are usually long-term and subscription-type, specifying the term is of great importance in them. Thus, in relation to subscription protection agreements, the term requirement appears as a necessary element in these types of agreements. The importance of determining the start and end times of such contracts lies in the fact that it is during this period that the customer is obliged to make the payment. In one-time security agreements, however, the term of validity is not so important. In practice, security contracts are often concluded for a period of one year. At the same time, as a rule, a clause is provided for the extension of its term, provided that the parties comply with the conditions specified in the contract (for example, if one of the parties does not demand its termination one month before the expiration of the term).

[25] Степанов Д.И. Услуги как объект гражданских прав. М.: «Статут», 2005. С. 223-224.

As for other essential terms of the security agreement, such terms are all those that must be agreed upon upon at the request of one party. In the literature, such conditions are sometimes called "initiative conditions." The composition and number of such conditions in a specific security agreement depend on the activity of the parties, the characteristics of the protected object, and the methods of protection and methods and other circumstances.

The most common initiative condition in the contract can be the customer's obligation to implement measures to improve the technical equipment level of the protected facility. If the customer fails to fulfill this obligation, the security organization may subsequently be released from liability. For example, if the security organization correctly fulfilled its obligations, but the customer did not fulfill the terms of the contract for ensuring the proper technical strength of the building (for example, there were no metal bars on the windows, the apartment was not equipped with alarm systems), the security organization may be released from liability in the event of theft in the building.

Thus, the essential conditions of the security agreement are the subject, as well as the term of the agreement for certain types of security. In the event that the parties do not reach an agreement on these issues, the security agreement is recognized as not concluded.

For the stability of the contract, the formalization of the agreement reached by the parties in the appropriate form is also of great importance. Based on this, let's consider the form of the security agreement. The norms of the Civil Code of the Republic of Uzbekistan on a contract for the provision of paid services do not contain any provisions on the form of this contract, therefore, when determining the form of the security contract, it is necessary to be guided by the general rules on the form of transactions and contracts (Articles 105-111, 366 of the Civil Code of the Republic of Uzbekistan).

Considering that the executor of the security agreement can only be a legal entity, that is, only private or state security organizations can engage in security activities, it can be concluded that the security agreement is always concluded in writing. It should be noted that in most cases, the security agreement is concluded in the form of a single document. It contains applications, which contain a list and plan (scheme) of protected objects, locations equipped with security alarm systems or the location of security posts, as well as locations where the customer refuses to install security alarm systems or organize posts, telephone numbers of the centralized security point.

and other information depending on the type of protection and the characteristics of the protected object.

Thus, the following conclusions can be drawn regarding the terms and form of the security agreement.

Important conditions of the security agreement are the subject matter, as well as the term of the agreement for certain types. The subject of the security agreement is the security service (security activity). As a type of service as an object of civil law, security services are characterized by the following features: the absence of a tangible result, the inseparability of the service result from the process of its provision, the consumption of the service at the time of its provision (proportionality between the provision and receipt of the service), and the non-preservation of the service. Agreement on the subject of the security agreement provides for the determination of the characteristics of the security service (security activity): the protected object, specific methods and techniques of security, as well as the time for carrying out security

activities. The condition on the term of the contract is important for subscription contracts. The security agreement is concluded in writing.

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