



Legal Regulation Of Telecommunication Services Under The Legislation Of Uzbekistan

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ABSTRACT

To date, the introduction of new methods in the telecommunication service and the quality changes in this area of the service require such improvements in the legal order. These aspects are also reflected in the legal regulation of the telecommunication service.

The provision of telecommunication involves a complex set of actions of the participants of this legal relationship, such as the acquisition of technical means, the use of technical means and in this connection the installation of this or that material, their maintenance, repair of these devices in case of necessity.

In this sense, the relations of telecommunication services include the impersonation of certain signs of the energy supply contract. First of all, in the power supply contract, the power supply organization also supplies energy to the subscriber through the connected network. The telecommunication service also requires the presence of an adjoining network.

Therefore, subscriber is connected directly with the service provider through telephone wires and on the basis of the specified number, a telephone connection service is provided to him. Meanwhile, a contract is concluded with a person who has certain equipment in the energy supply contract.

This is exactly the case in the contract for the provision of telecommunication services.

KEYWORDS

Telephone, legal regulation, contract, consumer, subscriber, service, liability.

INTRODUCTION

When determining the position of the telephone service in the system of types of services in civil law, it is necessary to determine the peculiarities of this type of activity and the legal description of the actions carried out in this activity.

The distinction between the categories of work and service in civil law systems are derived from the ancient Roman law. The fact that the result of the actions carried out by the customer in determining the border between work and service is in the form of an object is the main criterion in determining the difference of these two types of objects in modern civil law.

Consequently, today the differentiation of work and service on the basis of this criterion is the only indisputable fact in the doctrine of national civilization, which is stipulated in the current Civil Code.

In today's doctrine of civil law, it is believed that the result of work is always the result of a materialized material form.

The person who has done the work will deliver the result based on his feature (Article 631 Part 1 of Civil Code). Provided that the result is not achieved, the work is considered unfulfilled and the customer should not interfere with the work of the contractor. Only he can check the progress of the work without interfering with the contractor's activities. In other words, the customer is only interested in a quality result.

Service, unlike work, does not produce a result in a particular material form, and it is manifested in the performance of a particular

type of action or the performance of a particular activity.

This is clearly reflected in the definition of a contract for paid services in Part 1 of Article 703 of the Civil Code: under a fee-for-service contract, the executor undertakes to perform a non-material service (perform certain actions or perform a specific activity) on behalf of the customer, and the customer undertakes to pay for this service.

Surely, a service produces a specific result like other types of activities, but this result has a non-tangible character, not in the form of an item that is created or processed.

The effectiveness of a service is reflected not only in the process of rendering it or when it is completed, but also in the legal consequences that arise during the provision of the service.

In this case, when talking about the effectiveness of the service, it is possible to observe it in individual cases, but it cannot be taken as an item.

The legal status of mobile operators currently operating in the country as business entities should be determined through the adoption of the relevant legislation.

As these companies enter all sectors of the economy through their activities, they not only establish complex economic relations with other types of legal entities and citizens, but also pay more attention to their interests due to the low level of technical literacy of the majority of subscribers.

This is also evident in the issues of equality of the parties and legal liability for breach of contractual obligations.

For example, due to the fact that the connection is interrupted for a certain period of time, there is no possibility to use this service, for the provision of a certain electronic service that was not ordered by subscribers in the provision of a relevant type of service, it is unreasonable to keep a certain amount of money from his account.

This amount may not have a material value for one subscriber, but the mobile operator may harm the interests of all subscribers at once.

Relations providing telephone service in the Republic of Uzbekistan are regulated by the Civil Code of the Republic of Uzbekistan (1995, 1996),

“On Communication”(1992), “On Telecommunications”(1999), “On Guarantees of Obtaining Information” (1997), “On Principles and Guarantees of Freedom of Information” (2002).

The legal regulation of telephone services in the European Union is regulated by a number of directives. These include the 2009 Directive 2009/140 / EU [5], the Directive 2009/136 / EU [4] and the Regulation № 1211/2009 (EU).

Under the DSM (Digital Single Market - DSM) in 2015 was given a complete description of electronic communications. In its 2016 Status Report [5], the Commission proposed a package of telecommunications networks, enhancing the role of BEREC and merging the four existing directives (Framework, Authorization, Access and Universal Service Directives) into a new European Code [4].

It should be noted that the activity carried out by the customer of the service itself is important, and he has the right to interfere in the activities of the performer at any time.

This position is inconspicuous in the performance of work.

Even in the relationship of telecommunication service, the subscriber has the right to demand the quality of the service provided to him in the person (telephone company) providing the telephone communication, to monitor the implementation of this process, to investigate, if necessary, to express his or her views [15].

Regarding to H.R.Rakhmonkulov, services as an object of civil law may not be aimed at creating material benefits by their nature. For example, no new items are created as a result of transportation.

At the same time, the activities of the freight forwarder or the service provider in other areas cannot be considered as a result. Any service, its character, depending on what it is aimed at and related to, although it does not consist of a material form, is necessarily associated with achieving a certain result[13], I.B.Zakirov draws attention to the fact that the service is called, if it enters into a relationship with the aim of creating an intangible result[8].

In our opinion, the result of the executor's activity, the efficiency of the service, is also important for the customer, but the customer's right to achieve or not to achieve the result of this obligation is not related to improper performance of the obligation.

Consequently, failure to achieve the outcome envisaged in many fee-for-service contracts does not affect contract performance. For example, mediation, assignment, fee-for-service, education, medical care.

The parties to this obligation only want to achieve a certain effect, but in most cases to

achieve or not to achieve such a result, they will not depend on their will [14].

This approach stems from the general rules of fee-for-service and is common to many types of services. Because in paid service, the main focus is not on the result, but on the service process and activities.

This is because the legislation also stipulates that the obligation of the executor includes the provision of services, not the achievement and delivery of a particular result.

According to A.V.Egorov, service differs from work in that the achievement of a certain result in the work is under the control of the person (contractor) and, conversely, the result of the service is under the control of the customer [7].

N.S.Narmatov analyzes the difference between work and services, adding that the concept of work includes action and its material result, the concept of services includes only action, adding that these two concepts are used side by side in the legislation today, however, from a deep philosophical point of view, it is possible to observe that both concepts reflect in themselves the types of philosophical activity.

At the moment, N.S.Narmatov said that in legislative practice it is permissible to emphasize that the definition of concepts related to the phrases "works" and "services" is carried out through the sentences "activity" and "action" [11].

Pursuant to K.K.Nizamatdinov, the main difference between the service and the work is that the service has no material results. Therefore, in our civil law, it is necessary to consider the issue of work as a tangible service or to abandon the use of the term

“work” and replace it with the term “tangible service”.

Because the term “work” is used not only in civil law, but also in the norms of labor and other legislation. Such homogeneity can, in a sense, lead to cases of general identification of the relevant norms and understanding that they are close to each other [12].

In our opinion, these views of K.K.Nizamatdinov are controversial since, as we have acknowledged above, in service, the result, the efficiency, is not important. Therefore, it is not appropriate to link the terms “service” and “result” and to define the concept of “service” as an activity aimed at achieving a result.

The service is represented as an action aimed at the implementation of a particular action between these parties and does not imply the formation of substantive form, and the subject of this legal relationship is not the formation of a single result, but the completeness of the service process and the set of its established criteria and actions. This is exactly the case in the telecommunication service. That is, the telephone exchange, as an executor, provides the subscriber with the process of talking to other subscribers. If there are certain interruptions in the network or if for some reason this process does not take place, it is not possible to hold the telephone exchange responsible for it and ask it to repeat this process again.

At the same time, in this connection, the performer (telephone station) receives a fee only on the basis of certain time periods for the service process provided by it. The telephone exchange is not responsible for the fact that the subscriber fully meets his needs by phone, or because the subscriber is happy with the provision of telephone services, or

because he received an unpleasant message through this telephone communication.

When analyzing the types of services and describing their system, it is necessary to distinguish between "non-material services" and other types of services, which are specific to the types of paid services provided for in Chapter 38 of the Civil Code. In a general sense and conditionally, these types of services are referred to in the literature as "pure" services [15].

According to Part 2 of Article 703 of the Civil Code, these types of services include: communication services, medical services, veterinary services, audit services, consulting services, information services, educational services, tourism services and other services.

At the same time, the Civil Code provides for a number of contracts related to the provision of services, starting with its Chapter 39. However, in the literature, it is not recognized that these service contracts enter into the sentence of service contracts for remuneration.

"Classification of services by type of activity of the Republic of Uzbekistan", developed by the State Statistics Committee of the Republic of Uzbekistan and approved by the Agency "Uzstandard" on May 12, 2006 No 05-15, also reflects the types of services in separate sections [17].

According to the UN Classification of Standards, more than 600 types of services differ from each other [10].

N.S.Narmatov, continuing the views of E.G.Shabalova on the division of services into services of a personal nature and services of a non-personal nature, divides the services of a

personal nature provided by business entities into the following types:

1. Telecommunications services;
2. Medical services;
3. Services in the field of physical education and health;
4. Cultural and educational services;
5. Tourism service;
6. Sanitary and health services;
7. Services related to passenger transportation;
8. Hotel services;
9. Communication services.

According to N.S.Narmatov, non-personal services include the following services provided by business entities:

- First, property security services;
- Second, veterinary services;
- Third, technical services;
- Fourth, services related to settlements;
- Fifth, bank deposit services;
- Sixth, religious services;
- Seventh, utilities [11].

Proceeding from this classification, it is necessary to consider the issue of what kind of service the telecommunication service belongs to. In our opinion, the telecommunication service in this place belongs to the telecommunications service and communication service at the same time.

Although there is no clear and significant difference between telecommunications and communication services, it is possible to support the fact that N.S.Narmatov provided telecommunication services and communication services separately, given that the inclusion of certain elements of postal services in telecommunication services is controversial.

However, the increasing technical level of modern electronic devices and services can lead to the fact that in the future communication services and telecommunication services will merge and this sphere of service will be referred to as “telecommunication and communication services”.

Consequently, methods of transmitting information, such as the telegraph, teletype, are rarely used in communication under the influence of such means as the Internet, e-mail, mobile communication. Although fax and teletype are being used in business dealings, modern telecommunications technologies can gradually squeeze these types of services out of circulation.

However, instead of postal parcels, banderoles, cases of sending gifts by mail, not Telecommunications means, but the introduction of a new direction of the transport service, thereby paves the way for the integration of the Postal Service with the Postal Service of the telecommunications service [1].

This situation arises from the fact that earlier telecommunication services belonged to the type of postal communication services, today this type of communication is recognized as a kind of telecommunication service. Therefore, such a change is evident from the practical point of view and from the point of view of the practice of the application of law, the rapid development of means of communication.

Telecommunication service is reflected in Section 32, Group 32.2 of the DL subsection of the Classifier (television and radio transmission equipment, telephone and telegraph communication equipment). A telephone service is also an activity aimed at

transmitting, receiving, and processing signals, symbols, texts, images, sounds, or other types of information over wired systems or by means of radio waves.

Therefore, it should be noted that the interpretation of telephone services in general terms as a telecommunications service and the provisions of the Law "On Telecommunications" play a key role in regulating this type of service.

Telephone service is provided directly through the available technical means. In this case, the telephone service is provided through telecommunications, which are a set of technical devices, equipment, structures and systems that allow the generation, transmission, reception, processing, switching and control of electromagnetic or optical signals.

At the same time, the provision of telephone services requires complex technical devices, structures and other technical means, which determines the specificity of this type of service.

For example, if the use of technical means by the usual consulting, educational, legal, medical, veterinary, tourism service providers is not a specific case for these types of services, the main element of the content and purpose of telephone services is the technical means and their proper use.

If, in many types of service delivery, it is possible to provide a service that is not in the form of an object, even without complex technical devices, and thereby achieve a certain result, meet the expected need from the provision of services, then it is impossible to provide services without special antennas, which are intended to receive from the telecommunication service.

The facilities required for the provision of telephone services include buildings, devices, telecommunication lines, devices, supports, masts and other structures that ensure the operation and use of telecommunications networks and facilities. Of course, the presence of these facilities is one of the necessary elements for the provision of telephone services, but this condition alone will not be sufficient for the provision of services.

Therefore, the same technical means should be available not only to service providers, but also to the subscriber. This is the uniqueness of the telephone service. According to Article 2 of the Law "On Telecommunications", the subscriber must have a telephone, facsimile, radio and television sets and other devices.

Consequently, these devices are in the sentence of technical means of users who cooperate with telecommunication networks and are intended to generate, modify, process signals transmitted or received through telecommunication networks.

Telephone service can be recognized as a type of fee-for-service relationship. This is because in this type of service, the telephone exchange or operator organizes the exchange of information between subscribers through speech, written message or image and symbols, and ensures that this process takes place. It is through this aspect that the main focus of the telephone service is on the implementation of non-material services. Consequently, it satisfies the need for individuals to share information with each other [2]. As a result of this action or process, no particular material good or material form is created, or no materialized form is manifested in the action of the service provider.

However, in the provision of telecommunication services, certain situations can be overlooked, such as connecting the subscriber to the telephone network, providing him with a variety of services, eliminating existing problems in the network, ensuring the setting of telephone lines. This in turn implies that the legal regulation of the telecommunication service deviates from the scope of the fee-paying service relationship. For example, the telephone operator has the obligation to take measures to prevent illegal connection to the telecommunications network, to connect subscriber's devices to the telephone network. These circumstances reflect services in material form from his actions. It would be expedient to include the concept of communication and telecommunications services in Part 2 of Article 703 of the Civil Code. Therefore, this type of service includes telephone services and is a type of service that should be reflected in the FC and is distinguished by its importance and widespread use today.

Speaking about the contractual nature of the telephone service, it can be seen that the contractual regulation of this service is not sufficient today. In the first case, this is due to the non-disclosure of telephone service operators' secrets in the field of services, in the second case, the fact that this type of service is not material in the formation of the rights and obligations of the parties to the telephone service is difficult to express in the contract.

For this reason, in most cases, the provision of telephone services is seen as a legal regulation through the accession agreement. However, in all cases, it is clear that the contract for the provision of telephone services is also regulated by a contract for paid services, and the provision of telephone services is one of

the non-material services in the system of service relations.

Although the assessment of the position of this type of service in the system of Service relations as a mixed service relationship theoretically has certain grounds, then the description of the main situation and action means that it is an activity that is not in the form of an object and does not depend on the result.

In some places, the provision of telephone services may also be established through the conclusion of mixed contracts. For example, a contract between an operator and a legal entity may provide the operator with additional services such as repair of telephone networks, replacement and repair of equipment, installation of additional lines, selection and placement of telephone equipment. This is material in some places, and in accordance with the requirements of Article 8 of the Civil Code, a mixed contract is allowed. However, this does not in the slightest detract from the fact that the provision of telephone services belongs to the type of paid services.

To draw a conclusion, it should be noted that the provision of telecommunication services should be evaluated as a service for fee cancellation and theoretically this type of service should be characterized on the basis of the rules for the provision of services for fee cancellation. In Uzbekistan, the transition of telecommunication services to the new digital system and the improvement of communication and communication equipment necessitate the development of rules aimed at determining the legal nature of these situations and realities, identifying new aspects of the rights and obligations of telecommunication service subjects,

regulating contractual relations between the subjects.

In the legal regulation of the telecommunication service, it is carried out by improving the legislation, analyzing the compliance of the norms of the existing legislation with the new reality, as well as determining the mutual ratio of legislation and Under-Law documents in the regulation of this sphere. At the same time, it should be borne in mind that contractual regulation in the legal regulation of the telephone service also takes a special place. At the same time, the adaptation of telephone service contracts to digital services, strengthening consumer protection measures in contracts is one of the most pressing issues facing the science of civil law today.

It is known that the telephone service represents both civil and public law elements at the same time. If the relationship between consumers and the service provider requires civil regulation, the legal status of telephone service providers, the fee for the service provided, the rules of service reflect the elements of public law.

Proceeding from these cases, it is important to research the priority of civil-legal elements in the legal regulation of the sphere of telecommunication service from a scientific and theoretical point of view, to expand civil-legal means in the legal regulation of this type of service provision, as well as to improve contractual regulation.

Telecommunication service contracts as a collective agreement provide for the granting of benefits to certain categories of persons. Therefore, it is desirable to determine the circumstances in which the benefits in the contract of the telecommunication service differ from the benefits established in other

types of public contracts, to establish the benefits inherent only in the telecommunication service, to proceed from the provisions of the social protection function of the state.

In this regard, in improving the system of legal regulation of telephone communication, issues such as expanding the number of mobile operators, abolishing the monopoly approach in the field, expanding the scope of telecommunication services and covering the entire territory of the country should be in the spotlight.

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