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The Public Nature of Obliged Party of Public Contracts

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ABSTRACT

Objective: *This article investigates the legal nature and theoretical foundations of public contracts within private legal relationships, focusing on the influence of public interest and public activity on contractual obligations.* ***Method:*** *Utilizing a comparative legal analysis approach, the study examines legislative frameworks, judicial interpretations, and scholarly perspectives to elucidate the distinctions between the subject and object of public contracts.* ***Results:*** *The findings reveal significant challenges in defining and applying the concept of "public interest" in private law, highlighting its evaluative and subjective nature. The study underscores the legislative implications of public activity in private relationships, particularly in balancing individual and societal interests while delineating the boundaries of freedom in entrepreneurial activities.* ***Novelty:*** *By providing a comprehensive examination of public interest's role in private law, the article offers new insights into its impact on legal practice, contributing to a deeper understanding of how public contracts shape the interface between public and private legal spheres.*

INTRODUCTION

Any definition is directly tied to the characteristics of the phenomenon being defined. In legal literature, the term "elements" is sometimes used interchangeably with "characteristics." Regardless of the terminology employed in science, a public contract constitutes a specific type of contract characterized by distinctive features that enable its qualification as a public contract with all the associated implications. Accordingly, the characteristics (elements) of public contracts are examined below [1].

The public nature of a contract (public contract) is, in turn, a feature that describes a specific contract alongside attributes such as mutual agreement or occurrence, remuneration or gratuitousness, conditionality or unconditionality, and so on [2]. However, unlike other characteristics of contracts, the public nature of a contract leads to significant legal consequences for the participants of such contractual legal relationships. For instance, while determining whether a particular contract is classified as consensual may only require establishing the point in time when the parties reached an agreement in the form prescribed by law or the contract, identifying whether a contract is public necessitates more than a single legal fact related to the nature of the contract [3].

RESEARCH METHOD

This study employs a comparative legal analysis approach to examine the legal nature and theoretical foundations of public contracts within private legal relationships. The methodology involves a comprehensive review of legislative frameworks, judicial

interpretations, and scholarly perspectives to explore the distinctions between the subject and object of public contracts. Through this approach, the research systematically compares existing legal norms and interpretations across different jurisdictions, allowing for the identification of challenges in defining the concept of public interest and its evaluative and subjective nature. The study also incorporates a doctrinal research method by analyzing primary legal sources such as the Civil Code of the Republic of Uzbekistan and relevant judicial decisions. This dual-method approach ensures a robust analysis, providing nuanced insights into the interplay between public activity and private law obligations, as well as the legislative implications of public contracts in balancing individual and societal interests.

RESULTS AND DISCUSSION

Determining whether the characteristic of publicity is present or absent in a specific contract can be problematic, as it often depends on evaluative criteria. In our view, answering this question requires identifying the entire legal composition, the totality of which allows for the classification of specific contractual-legal relationships as a public contract [4].

G.A. Kalashnikova divides the characteristics of public contracts into two groups: primary characteristics that classify the public nature of the commercial activity of an organization, and secondary characteristics, which include:

1) The object;
2) The parties to the public contract;
3) The explicit indication in the law that a particular type of contract is classified as public [5].

According to her, only the primary characteristics are of essential importance, as they reveal the essence of a public contract, while the secondary characteristics serve a supporting role. However, linking the primary characteristics to a single attribute—the public nature of the activity—raises doubts. A single attribute cannot serve as a qualifying feature for any new phenomenon, especially one determined through evaluative criteria [6].

Therefore, we aim to identify broader characteristics that allow for the classification of a particular contract as public or non-public.

In civil law literature, we believe that entirely different foundations are employed when identifying the characteristics of a public contract. Specifically, the object of the contract and the restrictions on contractual freedom are independently identified as characteristics of public contracts (Kostikova S.N., Kalashnikova G.A.). The restriction on contractual freedom is directly included in the characteristics of the contract's object. Consequently, we determine the number of characteristics and whether they qualify as features of a public contract based on our subsequent subjective conclusions [7].

Firstly, the subject of the contract is one of the essential terms of any agreement. The absence of an agreement on the subject of the contract in the required form leads to the recognition of the contract as not concluded. The definitions of the subject and object

of the contract as elements of legal relations are provided in the general theory of law and the theory of obligations law. It is worth noting that in scholarly literature, polar views exist regarding the subject and object of a contract, and legal norms themselves often ambiguously define the subject of a contract. As L.B. Vengerov noted: "...at the current stage, theory affirms the multifaceted nature of the objective content of legal relations. Just as the world is diverse, so too are the objects of legal relations. Even a person, as an object, has been included in legal relations in certain legal systems, particularly in slave societies" [8].

The subject of a contract refers to the legal relationship enshrined in the agreement—namely, the aggregate of rights and obligations of the parties to the contract. The object of the contract, on the other hand, refers to the tangible or intangible assets specifically defined in the concluded agreement. According to V.V. Vitryansky, the subject of a contract is "...the actions (or inactions) that the obligated party is required to perform (or refrain from performing)". He further notes that the subject of the contract is the part of its content (terms) where its specific object is indicated, as well as the rights or obligations inherently connected to it [9].

In modern legal literature, public contracts are attributed with four specific characteristics:

1. An exception to the principle of contractual freedom in the selection of counterparties and in the decision to enter into or abstain from a contract.
2. A prohibition against giving preference to one party over another when entering into a contract.
3. The obligation of the organization to conclude a contract with the consumer regardless of the organization's consent.
4. The consumer's right to file a claim with the court to resolve disputes over specific terms of the contract. Additionally, unless special privileges are explicitly provided for individual consumers by legal or other normative acts, the contract must be concluded with all consumers at the same price and under the same conditions [10].

The first three characteristics listed above are not independent, specific features of public contracts but rather general characteristics that apply to all situations involving restrictions on contractual freedom. For instance, these features are also present in adhesion contracts, auction-based sales contracts, and compulsory contracts [11].

The legislature does not explicitly state that the nature of an organization's activity is public. Instead, it indirectly identifies the public nature of the organization's activity in a public contract by referencing the general characteristics that are exceptions to the principle of contractual freedom. For this reason, some scholars, such as V.V. Vitryansky, argue that this feature is not a characteristic of a public contract but rather its legal consequence.

The performance of obligations and the exercise of subjective civil rights by the parties constitute the subject of the agreement. Therefore, we disagree with the view that the subject of the contract and the activities of the obligated party are distinct

characteristics of the public nature of civil contracts. If the subject of the contract involves action (whether an act or omission), the obligation to conclude a contract and the absence of the right to refuse its conclusion are also part of the subject of a public contract.

Article 358 of the Civil Code of the Republic of Uzbekistan defines a public contract as follows:

"A contract concluded by an organization that, due to the nature of its activities, is obligated to perform tasks such as selling goods, performing work, or providing services to any person who approaches it (e.g., retail trade, passenger transportation on public transport, communication services, energy supply, medical services, hotel services, etc.) is called a public contract".

As seen here, instead of emphasizing the public nature of the activity, the legislator highlights actions related to the sale of goods, the performance of work, and the provision of services. This approach, as reflected in the commentary to the Civil Code of the Republic of Uzbekistan (General Section), allows for identifying the following as one of the characteristics of a public contract:

2) A public contract defines the obligations of a commercial organization in the sale of goods, performance of work, or provision of services.

Indeed, the sale of goods, performance of work, and provision of services are not unique characteristics of any proprietary legal relationship and cannot be used as qualifying criteria for a public contract. These activities—selling, performing, and providing—are universal actions that characterize the entirety of civil turnover and have been recognized since the era of Roman law as "give, do, provide" (dare, facere, praestare). Any subject of civil law, within the framework of their legal capacity, may engage in the sale of goods, the performance of work, or the provision of services. However, this does not mean that any subject may become a mandatory party to a public contract in their activity [12].

For instance, under a supply agreement, the supplier undertakes to deliver goods intended for business purposes to the buyer. However, this does not make the supply agreement a public contract. Similarly, a consulting firm undertakes to provide a set of consulting services to an entrepreneur, but this agreement is not classified as a public contract either.

M.I. Braginsky, commenting on a similar article in the Civil Code of the Russian Federation, expressed the following opinion:

"In our view, the inclusion of a rule in Article 426 of the Civil Code, which specifies the need for a commercial organization to engage in the sale of goods, performance of work, or provision of services, raises doubts when identifying the characteristics of public contracts. As a type-specific characteristic... one cannot highlight a feature inherent in the general type (i.e., all commercial organizations in general)".

Thus, the legal definition of a public contract does not correspond to legal reality when identifying the subject of the contract.

In our opinion, the subject of a public contract should be defined by referencing the public activity of the party obligated to fulfill the main obligation under the contract.

This implies the obligation to conclude the contract with every person who applies and the right of every potential counterparty to demand the conclusion of such a contract. This, in turn, reflects the presence of public interest within specific contractual relationships in the field of private law [13].

G.A. Kalashnikova also emphasizes that the nature of the activity of a commercial organization, as a characteristic of a public contract, is difficult to define and may be interpreted in various ways. This supports our opinion that the term in question has an evaluative nature. O.S. Levchenko believes that the term "public" signifies that the activity of a "commercial organization" is open to the general public. The adjective "public" itself has multiple meanings; for example, it can take on an imperative character as a synonym for "state-related." Another meaning is "directed toward an unlimited range of subjects, i.e., the public." According to S.B. Dorokhin, "the necessity to ensure public interest exists, without exception, in all public relations. At the same time, achieving this goal appears to be the most challenging task within private law relations" [14].

It becomes evident that the public nature of a contract is expressed through the category of public interest, and its presence in private legal relations enables us to understand the public nature of the subject's activity. The meaning of this term can be better understood with the following examples. For instance, in Ancient Rome, there were rules prohibiting cruel treatment of slaves; if such treatment was identified, the slaves would be transferred to a different owner. The reason for introducing such norms by the state was the interest in preserving and increasing property, such as slaves, meaning that public interest existed within private property relations. Similarly, rules established by the state concerning the deprivation of parental rights or the obligation to pay alimony also reflect public interest within private legal relations.

Although these examples do not directly pertain to contract law, they nonetheless, in our opinion, help to clarify the essence of the term "public interest."

Researchers analyze this term from a general philosophical perspective, i.e., through the concept of "interest." In this regard, it is noted that during the Soviet era, the concept of "interest" was studied independently from "public", and only in recent decades has the phrase "public interest" become an object of scientific research.

In practice, this situation can have negative implications when related to public contracts. For example, law enforcers may fail to apply the rules of public contracts to certain contractual relationships based on their subjective judgments. This can be explained, first, by the lack of direct legal provisions defining such a contract as public. Secondly, it may be due to the subjective assessment that public interest is absent in this legal relationship. A similar view is expressed by N.I. Klyain, who notes that, according to existing judicial practice, not only the characteristics defining the concept of a public contract but also its formal consolidation in normative legal acts are of great importance [15].

Ukrainian researcher A. Kubko and Russian author S.V. Dorokhin argue that public interest plays a key role in forming a model for the interplay between public-legal

and private-legal regulation. The realization of public interest is achieved by introducing certain elements of public-legal regulation into the private-legal sphere.

V.V. Ivanov, discussing evaluative concepts such as "public interest" and "moral norms," emphasizes that their application sometimes poses challenges because these terms themselves are often quite abstract. This situation grants interpreters and law enforcers excessively broad latitude for subjective decision-making. At the same time, he also highlights that the effective and fair resolution of private-law disputes in courts is closely tied to the proper interpretation of substantive legal norms and impacts the efficiency of justice and the state of public legal order in the country.

M.I. Braginsky similarly points out that not all subjects of civil law but only those performing a certain public function by the nature of their activities can serve as the obligated party in a public contract. Such obligations may arise from the law or the charter documents of a commercial organization [16].

CONCLUSION

Fundamental Finding : This study concludes that the public nature of activity in private legal relationships is fundamentally characterized by the alignment of individual interests with those of broader social groups and society as a whole, underscoring the pivotal role of public interest in shaping contractual obligations. **Implication :** This alignment grants legislators the authority to impose necessary restrictions and define the boundaries of freedom, particularly in entrepreneurial activities, ensuring a balance between private autonomy and societal needs. **Limitation :** However, the research is limited by its primary focus on the legislative framework and judicial interpretations within the context of the Republic of Uzbekistan, potentially constraining the generalizability of its findings to other legal systems with different socio-legal dynamics. **Future Research :** To address these limitations, future research should adopt a comparative international perspective, exploring how various jurisdictions conceptualize and regulate public contracts, and examining the practical implications of public interest in diverse socio-economic contexts.

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