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## **THE LEGAL COVERAGE OF BUSINESS RELATIONS IN THE MARKET OF HOUSING AND COMMUNAL SERVICES**

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**Abstract.** *The article is devoted to the legal coverage of business relations in the market for housing and communal services, which are characterized simultaneously by their complex and socially significant nature. It is proposed to define business relations in the market for housing and communal services as regulated by the norms of the law as complex property and organizational relations that develop in relation to the supply of housing and communal resources and the provision of housing and communal services. Business relations in the market for housing and communal services should be qualified as relatives. The objective criterion of cost estimation for housing and communal services allows us to talk about the property character of business relations in the market. It seems that the division of relations into basic and derivative is applicable to the sphere of housing and communal services. The peculiarity of a communal resource in entrepreneurial relations is the possibility of consumption. Business activity in the market of housing and communal services assumes the reimbursable character of the majority of relations, but at the same time, based on the objectives of the activities of individual subjects, the gratuitous character is also possible.*

**Keywords:** *business activity, housing and communal services market, legal provision, mechanism of legal regulation, business relations.*

Business relations are the most important category and element of the mechanism of legal regulation of business activities in the market for housing and communal services. In science, the problem of these relations in the sphere of housing and communal services was studied from the position of maintenance of

residential premises and protection of citizens' rights, without taking into account the specifics of business activity in this area. The question of the legal character of such relations was considered exclusively in correlation with housing relations. Despite the multidimensional study of certain types of resource supply relations (water supply, gas supply, electricity supply, etc.), these relations have not been considered by anyone as complex phenomena.

The need to study the specifics of business relations in the market of housing and communal services is due to the need for a comprehensive approach to the considered sphere in the context of a significant complication of interrelations between the subjects of business activities in the market of housing and communal services.

Business relations in the market for housing and communal services are proposed to be defined and regulated by the norms of the law as complex property and organizational relations arising from the supply of housing and communal resources and the provision of housing and communal services.

One of the features of this group of business relationships that should be emphasized is the multiplicity of their objects. When analyzing business relations in the market for housing and communal services, we inevitably face the problem of their species diversity, especially since the proposed definition contains an indication of their complex character.

Proprietary legal relations are realized through the right of ownership and other proprietary rights to the objects of the housing and communal infrastructure systems, as well as the communal resource itself, which has specific properties as an object of civil law. The obligatory-legal relations in the market for housing and communal services include civil contracts and various types of legal liability provided by the legislation.

One of the most widespread in literature is the division of relations into absolute and relative. In absolute relations, only one person is known — the bearer of subjective right. All other subjects are compulsory. In relative relations, all participants are precisely defined: both persons authorized and persons obliged. Business relations in the market for housing and communal services should be qualified as relatives.

The division of relations into property and non-property ones is of certain interest within the context of this article. Property relations are of particular interest because, in our opinion, they mediate, to a large extent, social relations arising in the sphere of housing and communal services. Although the legal literature expressed quite the opposite opinion. Thus, E. V. Passek qualified the obligations to provide services as “non-property relations”<sup>1</sup>. In law, for the

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<sup>1</sup> *Passek E. V. Neimushchestvennyy interes v obyazatelstve* [Non-proprietary interest in the obligation]. — Yuryev. — 1893. — Pp. 24–25.

differentiation of property and non-property relations, it is proposed to use an objective criterion, the category of “interest.” This position seems to be true only partially. Indeed, the category of “interest” acts as an objective criterion for distinguishing relations, but the assessment of the positive result of housing and communal services is based on subjective criteria. Each person’s perception of heat and cold is different: for one person, the offered heating is perceived as “hot”, for another, “cool”. Taking this into account, we could talk about the non-property character of relationships in the market for housing and communal services. In view of the legal character of housing and communal services as obligatory objects, such a criterion is not quite acceptable. Subjective assessment of the subject of business relations in the market for housing and communal services or the end consumer of the positive effect is not determinative. To overcome the differences in interests, the subjects have to refer to an objective criterion, the cost assessment of housing and communal services, which in turn allows us to talk about the property character of business relations in the market for housing and communal services. In addition, the qualitative characteristics are established not on the basis of the individualized needs or interests of persons served at their request but on the basis of objective criteria: average indicators, requirements of regulations, and legislation. The Rules<sup>1</sup> for the supply of communal services to owners and users of premises in apartment buildings and residential buildings define the norm of consumption of a communal service as a quantitative indicator of the volume of consumption of a communal resource, approved in accordance with the established procedure by the state authorities of the constituent entities of the Russian Federation, and used to calculate the amount of payment for a communal service in the absence of metering devices and in other cases.

The requirements for the quality of communal services are regulated by the Housing and Civil Codes of the Russian Federation, as well as special laws and other regulatory legal acts. In addition, public communal services are subject to the Law on Consumer Rights Protection. A significant role in the issue of quality and objective assessment of housing and communal services is assigned to the

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<sup>1</sup> Postanovlenie Pravitelstva RF ot 06.05.2011 No. 354 (red. ot 28.04.2022) “O predostavlenii kommunalnykh uslug sobstvennikam i polzovatelyam pomeshcheniy v mnogokvartirnykh domakh i zhilykh domov” (vmeste s “Pravilami predostavleniya kommunalnykh uslug sobstvennikam i polzovatelyam pomeshcheniy v mnogokvartirnykh domakh i zhilykh domov”) [Resolution of the Government of the Russian Federation of 06.05.2011 No. 354 (ed. of 28.04.2022) “On provision of communal services to owners and users of premises in apartment buildings and residential buildings” (together with “Rules of provision of communal services to owners and users of premises in apartment buildings and residential buildings”)] // Sobranie zakonodatelstva RF [Collection of Legislation of the Russian Federation]. — 2011. — No. 22. — st. 3168.

legislation on technical regulation<sup>1</sup>. The need to comply with the requirements of the legislation on technical regulation is confirmed by judicial and administrative practice. The Supreme Court of the Russian Federation, in its Decision No. 309-ES21-2605<sup>2</sup>, directly points out the necessity of taking all necessary measures by a business entity in the market of housing and communal services to provide consumers with communal services of proper quality in accordance with the requirements of the legislation.

Depending on the type of housing and communal resource, the transfer of which takes place, it is possible to distinguish another basis for the classification of relations in the market of housing and communal services. Thus, there are: relations on energy supply; relations on water supply and water disposal; relations on heat supply; relations on gas supply; relations on maintenance of common property and others. The expediency of the proposed division is due to the peculiarities of legal regulation of each type of relations, the specificity of housing and communal resource, the transfer of which is carried out within the framework of a particular type of resource supply or the specificity of the activity required for the provision of housing and communal services.

Classification of business relations in the market of housing and communal services and on other grounds is possible, which makes it possible to form a more complete idea of the legal character of these relations.

In civilities, the heterogeneity of civil-law relations in terms of their importance was pointed out by B. I. Puginskiy<sup>3</sup> when he singled out the so-called derivative obligations within the context of a composite one. It seems that the division of relations into basic and derivative ones is also applicable to the sphere of housing and communal services. The main relationships are those mediating the provision of housing and communal services and regulated by civil and housing legislation on business activities in housing and communal services. Derivative relations should include those that are of legal interest only if they cause the emergence

<sup>1</sup> Federalnyy zakon ot 30.12.2009 No. 384-FZ (s izm. i dop.) "Tekhnicheskiy reglament o bezopasnosti zdaniy i sooruzheniy" [Federal Law of 30.12.2009 No. 384-FZ (with amendments and additions) "Technical Regulations on the Safety of Buildings and Structures"] // *Sobranie zakonodatelstva RF* [Collection of Legislation of the Russian Federation]. — 2010. — No. 1. — st. 5.

<sup>2</sup> *Opredelenie Verkhovnogo Suda RF ot 01.04.2021 No. 309-ES21-2605 po delu № A60-7466/2020* [Decision of the Supreme Court of the Russian Federation of 01.04.2021 No. 309-ES21-2605 in case No. A60-7466/2020] // Dokument opublikovan ne byl (SPS "KonsultantPlyus") [The document was not published (reference legal system "ConsultantPlus")].

<sup>3</sup> *Puginskiy B. I. Teoriya i praktika dogovornogo regulirovaniya: monografiya* [Theory and practice of contractual regulation: monograph]. — M.: Zertsalo-M, 2017. — Pp. 162–163; *Puginskiy B. I. Sostavnye obyazatelstva v grazhdanskom prave* [Constituent obligations in Civil Law] // *Vestnik Moskovskogo universiteta* [Herald of the Moscow University]. — Ser. 11. — Pravo. — 2003. — No. 6. — Pp. 30–36.

or existence of the main relations. For example, derivative relations may arise between service organizations (Management Company, House of Association) and specialized organizations (e.g., contractor for current roofing repair). Such relations are conditioned by the necessity of the maintenance of the common property of an apartment building and the fulfillment of the obligation on maintenance and repair of such property to the end users and, as a consequence, are social in character.

The basis for the classification of relations in the market for housing and communal services is the type of object to which the rights are transferred when the subjects carry out their activities. The objects of rights that form the basis of classification can be communal resources and housing services. In this regard, the relations can be divided into two groups: relations in the context of which there is a transfer of the right to a communal resource (supply of resource) and relations on the provision of housing and related services. The specified classification assumes value for research on the efficiency of the mechanism of legal regulation in the market for housing and communal services, and the specified types of business relations in practice are difficult to separate. Thus, for example, relations on maintenance of common property are impossible without relations on electricity or water supply (lighting of the entrance or cleaning of common property of an apartment building, respectively). At the same time, depending on the situation, the way of apartment building management, the list of rendered services, and the system of interrelations between the subjects may differ.

According to the subject structure and established links, relations in the market for housing and communal services can be divided into three groups:

1) relations arising between business entities and consumers, in cases of direct interaction (resource-supplying, managing, and contracting organizations and consumers);

2) relations arising within the context of communal resource supply (resource-supplying organization and managing organization);

3) relations arising between managing organizations and contracting organizations for the purpose of maintaining housing stock (managing organization and contracting organization).

The complex character of business relations in the market for housing and communal services is not a reason to exclude them from the system of civil relations. The Civil Code of the Russian Federation provides for a number of complex relationships. Moreover, the regulation of individual relations included in the structure of the complex is carried out mainly at the level of special laws or by-laws. Thus, relations on capital repair are regulated by the Civil Code of the Russian Federation, the Urban Development Code of the Russian Federation, the Housing Code of the Russian Federation, special Resolutions of the Government of

the Russian Federation, and Orders of the Ministry of Construction of the Russian Federation. This example emphasizes the complex character of business relations in the market for housing and communal services. Thus, relations in the market for housing and communal services in this part are not an exception. The study of scientific works, normative acts, and law enforcement practice gives us reason to assert that not only individuals (consumers), as it was traditionally considered in the theory of Soviet Civil Law, but also legal entities (Management Company in the interests of the consumer) act on behalf of the serviced person.

The content, i.e., the rights and obligations of its subjects, is singled out as one of the elements of a relationship. As Yu. K. Tolstoy mentions that, recognizing subjective rights and legal obligations as the content of relations, it is necessary to determine the content of the rights and obligations themselves<sup>1</sup>. Based on the meaning of Paragraph 1 of Article 539 of the Civil Code of the Russian Federation, which defines the subject of the obligation, the energy supplying organization, in particular, and any other supplying organization, undertake to supply energy (resource) to the consumer through the connected network. That is, the subject of the contract is not only the actual actions of the supplying organization, but also the result — uninterrupted supply (for example, at any time the lamp is turned on, the light comes on).

The complex character of the norms governing resource supply allows us to identify the following responsibilities of the resource-supplying organization: to provide objects with resources in the agreed volumes and of appropriate quality; to maintain the resource supply regime (head, volume, voltage, pressure, etc.); and other interrelated responsibilities.

It seems that the content of relations of resource supply, by virtue of the legal character of any communal resource, cannot be defined exclusively through the transfer of ownership (transfer of rights of possession, use, and disposal). The admissibility of the application of the category “property” to certain objects of civil rights was disputed by G. F. Shershenevich. He, in particular, wrote: “The procedure for the emergence, transfer, and termination of proprietary rights is designed precisely for their material content, and therefore the extension of these rules to a completely different area may create an undesirable confusion of concepts in theory and practice”<sup>2</sup>. When G. F. Shershenevich considers the issue of property rights, his conclusion is applicable to such an object of civil rights as communal resources, at least to those types that we have previously defined as other property.

<sup>1</sup> Tolstoy Yu. K. *K teorii otnosheniy* [Toward a theory of relations]. — M. — 1959. — P. 35.

<sup>2</sup> Shershenevich G. F. *Uchebnik russkogo grazhdanskogo prava* [Textbook of Russian Civil Law]. — M., 1995. — Pp. 254–255.

In business relations, communal resources are distinguished from traditional goods by the possibility of consumption. The communal resources supplied through the connected network can be measured in various absolute values (for example, the volume of water, the amount of heat energy, etc.). The absence of consumption on a systematic basis will entail a lack of interest on the part of business entities and the actual inexpediency of the relations themselves. Taking into account the social and end-consumer-oriented nature of the relationship, the systematic nature of the relationship should be understood as the supply of a communal resource for a certain settlement period, which is usually one calendar month. The lack of materially tangible form and substance does not allow us to talk about the real-law construction of possession and use of a communal resource.

The consumption of housing and communal services is carried out taking into account public interests, which does not contradict the general principles of civil law. Consumers have the right to use resources at their discretion in the amount necessary for normal life activities. At the same time, it is allowed to restrict their rights based on the interests of the state and society, for example, by establishing consumption schedules. The need to combine interests in the use of communal resources and the provision of housing services is due to the character of the origin of resources and their limitations. In this aspect, attention should be paid to the principle of reasonableness. This principle is characterized by the presence in the legislation of norms that allow combining simultaneously both the rights of persons served (consumers) and the interests of business entities in the provision of housing and communal services. In addition, the principle of reasonableness, in addition to the social character of the housing and communal services themselves, also implies public interest — the minimization of damage to the environment. Taking into account the special legal character of housing and communal services, it is not allowed to use civil rights on the part of business entities in the market for housing and communal services in order to violate competition or abuse a dominant position. The law on energy saving and energy efficiency improvement is aimed at the rational and careful use of communal resources<sup>1</sup>. It seems that the consumption of communal resources and the provision of communal services, taking into account the requirements of reasonableness, are able to ensure an increase in the effectiveness of the mechanism of legal regulation in the market for housing and communal services and the economy as a whole.

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<sup>1</sup> Federalnyy zakon ot 23.11.2009 No. 261-FZ (red. ot 11.06.2021) "Ob energosberezhenii i o povyshenii energeticheskoy effektivnosti i o vnesenii izmeneniy v otdelnye zakonodatelnye akty Rossiyskoy Federatsii" [Federal Law of 23.11.2009 No. 261-FZ (ed. of 11.06.2021) "On energy saving and on increasing energy efficiency and on amending certain legislative acts of the Russian Federation"] // Sobranie zakonodatelstva RF [Collection of Legislation of the Russian Federation]. — 2009. — No. 48. — st. 5711.



The business activity in the market for housing and communal services assumes the reimbursable character of the majority of relationships. As K. M. Arslanov mentions, differentiation in the regulation of contractual relations is possible in the presence or absence of gratuitousness<sup>1</sup>. The overwhelming majority of relations between subjects in the market for housing and communal services are mediated by compensatory contracts. But at the same time, based on the objectives of the activities of individual subjects, gratuitousness is also possible. So, for example, the purpose of the Housing Association is to ensure favorable and safe living conditions for citizens through proper maintenance of the common property in the apartment building and the provision of communal services, the solution of issues of use of common property, and other issues defined by housing legislation. Ensuring the above goal allows for gratuitous relations within the Housing Association or between the Housing Association and its members.

Therefore, it is proposed to define business relations in the market for housing and communal services as regulated by the norms of law as complex property and organizational relations formed in relation to the supply of housing and communal resources and the provision of housing and communal services. One of the peculiarities of this group of business relationships should be emphasized: the multiplicity of their objects. Business relations in the market for housing and communal services should be qualified as relatives.

The objective criterion, the value assessment of housing and communal services, allows us to talk about the property nature of business relations in the market for housing and communal services.

Depending on the type of housing and communal resource, the transfer of which takes place, we can identify another basis for the classification of relations in the market of housing and communal services. It seems that the division of relations into basic and derivative is applicable to the sphere of housing and communal services. The peculiarity of a communal resource in business relations, unlike traditional goods, is the possibility of consumption. The absence of materially tangible form and substance does not allow us to talk about the real-legal structure of possession and use of a communal resource.

The business activity in the market for housing and communal services assumes a reimbursable nature for the majority of relations, but at the same time, based on the objectives of the activities of individual subjects, a gratuitous character is also possible.

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<sup>1</sup> *Arslanov K. M. Vliyanie momenta bezvozmezhnosti v grazhdanskom prave: k 100-letiyu so dnya zashchity doktorskoy dissertatsii A. A. Simolinym* [The Impact of the moment of gratuitousness in Civil Law: to the 100th anniversary of the defense of the doctoral dissertation by A. A. Simolin] // *Uchenye zapiski Kazanskogo universiteta. Seriya "Gumanitarnye nauki"* [Scientific Writings of Kazan University. Series "Humanitarian Sciences"]. — 2016. — Tom 158. — Kniga 2. — P. 314.



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