UDK 347.72
DOI: 10.54649/2077-9860-2023-4-27-34

S.L.Dilmukhametov[1]
[1] Ph.D, associate professor,
Caspian Public University,
Republic of Kazakhstan, Almaty
e-mail: guver_90@mail.ru

THE APPLICATION OF CIVIL LEGISLATION NORMS TO NON-DEFINED CONTRACTS IN KAZAKHSTAN, LATVIA AND GERMANY

Annotation

An analysis of the general rules on obligations, transactions and contracts in Kazakhstan, Latvia and Germany showed that, along with general similarities, there are differences in the legal regulation of non-defined contracts. To a greater extent, this is due to a different approach in the legal assessment and differentiation of imperative and dispositive norms in the civil law of Kazakhstan, Latvia and Germany. In the civil law of Kazakhstan, the dominant approach is that a norm of civil law is recognized as imperative if the norm does not contain such a requisite as “unless otherwise provided by agreement of the parties”. Despite the fact that the Kazakh legislator singled out the concepts of dispositive and imperative norms in the general provisions on the contract, the formal methodology in their differentiation seems to be controversial.

The article discusses legislative tools to fill the gap in the terms of the non-defined contracts. The author comes to the conclusion that the use of the analogy of the law in order to fill the contractual gap in the non-defined contract is allowed in the civil law of Kazakhstan, Latvia and Germany. However, this institution can be used only in exceptional cases.

Key words: contract law, analogy of law, imperative norms, dispositive norms, legal regime of a contract, non-defined contract, freedom of contract.

С.Л.Дильмухаметов[1]
[1] PhD, қауымдастырылған профессор,
Каспий қоғамдық университеті,
Қазақстан Республикасы, Алматы қ.
e-mail: guver_90@mail.ru

ҚАЗАҚСТАНДА, ЛАТВИЯДА ЖӘНЕ ГЕРМАНИЯДА АТАЛМАҒАН ШАРТТАРҒА АЗАМАТТЫҚ ЗАҢНАМА НОРМАЛАРЫН ҚОЛДАНУ

Аңдатпа

Қазақстандағы, Латвиядағы және Германиядағы міндеттемелер, мәмілелер және шарт туралы жалпы нормаларды талдау жалпы ұқсастықтармен қатар аталмаған шарттарды құқықтық реттеудегі айырмашылықтар байқалатынын көрсетті. Бұл көбінесе Қазақстан, Латвия және Германияның азаматтық құқығындағы императивті және диспозитивті нормаларды құқықтық бағалау мен саралаудағы әртүрлі тәсілдермен байланысты. Қазақстанның Азаматтық құқығында, егер нормада "егер тараптардың келісімінде өзгеше көзделмесе"деген деректеме болмаса, азаматтық заңнама нормасы императивті деп танылады деген тәсіл басым болып табылады. Қазақстандық заң шығарушы шарт туралы Жалпы ережелерде диспозитивті және императивті нормалар ұғымдарын бөліп көрсеткеніне қарамастан, оларды ажыратудағы формальды әдіснама даулы болып көрінеді.

Мақалада аталмаған шарт талаптарындағы олқылықтың орнын толтыру бойынша заңнамалық құралдар қарастырылады. Автор аталмаған шарттағы шарттық олқылықтың орнын толтыру мақсатында Заң ұқсастығын қолдануға Қазақстан, Латвия және Германияның азаматтық құқығында жол беріледі деген қорытындыға келеді. Алайда, бұл институтты ерекше жағдайларда ғана пайдалануға болады.

Түйінді сөздер: Шарттық құқық, заң ұқсастығы, императивті нормалар, диспозитивті нормалар, шарттың құқықтық режимі, аталмаған шарт, Шарттың еркіндігі.

С.Л.Дильмухаметов[1]
[1] Ph.D, ассоциированный профессор,
Каспийский общественный университет,
Республика Казахстан, г. Алматы
e-mail: guver_90@mail.ru

ПРИМЕНЕНИЕ НОРМ ГРАЖДАНСКОГО ЗАКОНОДАТЕЛЬСТВА К НЕПОИМЕНОВАННЫМ ДОГОВОРАМ В КАЗАХСТАНЕ, ЛАТВИИ И ГЕРМАНИИ

Аннотация

Анализ общих норм об обязательствах, сделках и договоре в Казахстане, Латвии и Германии показал, что наряду с общими сходствами прослеживается различия в правовом регулировании непоименованных договоров. В большей степени это связано с различным подходом в юридической оценке и разграничении императивных и диспозитивных норм в гражданском праве Казахстане, Латвии и Германии. В гражданском праве Казахстана господствующим является подход о том, что норма гражданского законодательства признается императивной, если в норме отсутствует такой реквизит, как «если иное не предусмотрено соглашением сторон». Несмотря на то, что казахстанский законодатель выделил понятия диспозитивных и императивных норм в общих положениях о договоре, формальная методология в их разграничении представляется спорной.

В статье рассматривается законодательный инструментарий по восполнению пробела в условиях непоименованного договора. Автор приходит к выводу, что применение аналогии закона в целях восполнения договорного пробела в непоименованном договоре допускается в гражданском праве Казахстана, Латвии и Германии. Однако данным институтом можно воспользоваться только в исключительных случаях.

Ключевые слова: договорное право, аналогия закона, императивные нормы, диспозитивные нормы, правовой режим договора, непоименованный договор, свобода договора.

Application of civil legislation norms to non-defined contracts plays a significant role in saving fair balance of autonomy of the parties, filling up contractual gaps and restricting the freedom of contract. Wrong legal regulation of the conditions of a non-defined contract often leads to unlawful and most unfavourable legal consequences for the subjects of civil circulation.

The position that general legal regime of contracts is applicable to non-defined contracts is generally accepted in European contract law. In other words, general rules of civil legislation are, first of all, applicable to a non-defined contract. Special norms governing certain defined contracts to non-defined contracts cannot be directly and automatically applied.

Surely, this logic is aimed at practical delineation of defined and non-defined contractual structures, at maintaining the autonomy of will of the parties and the freedom of contract at a proper level. However, lesser legislative regulation of non-defined contracts presupposes a greater degree of effectiveness of its terms, since in a controversial situation there are fewer legal instruments to fill the gap in a contract.

The analysis of general norms on obligations, transactions and contract in Kazakhstan, Latvia and Germany showed that along with common similarities, differences in the legal regulation of non-defined contracts are traced. To a greater extent this is due to the different approach in legal assessment and delimitation of mandatory and

discretionary norms in civil legislation in Kazakhstan, Latvia and Germany.

In the civil law of Kazakhstan, the prevailing approach is that the norm of civil legislation is recognized as mandatory if there is normally no such requisite as “unless otherwise provided by mutual agreement of the parties”.

Thus, according to Art. 383 of the CC of the RK, a contract shall comply with the mandatory rules binding the parties, established by the law (mandatory norms), as effective at the time of its conclusion. In accordance with Art. 382 of the CC of the RK, contract terms are determined at the discretion of the parties, except when the law prescribes the content of the relevant provision [1]. In cases where the contract condition is stipulated by the norm, which in accordance with the legislation is valid, unless the agreement of the parties establishes otherwise (discretionary norm), the parties may by their agreement exclude its application or establish a condition different from stipulated therein. In other words, the Kazakh legislator defines the discretionary norm in a formal manner.

Despite the fact that the Kazakh legislator highlighted the concepts of discretionary and mandatory norms in general provisions on a contract, the formal methodology in their delineation is controversial.

In the doctrinal comment to the CC of the RK, it is pointed out that the general principle of determining conditions of a contract follows from the freedom of contract. The parties have the right to determine any conditions of the contract, except those that are directly stipulated by the law. As an example, Art. 285 of the Civil Code of the Republic of Kazakhstan states: a debtor obliged to perform one of two or more actions has the right to choose unless the law or the terms on obligation implies otherwise. In the case where the content of the relevant provision is expressly prescribed by the law (mandatory rule), the parties may not change this condition. They may provide it in the contract or may not provide, nevertheless they are obliged to fulfil this condition in the form in which it is fixed in the legislation. There are few mandatory norms in the civil legislation. The overwhelming majority are discretionary norms [2, Pp.380-381].

However, M.K. Suleimenov, in a later work, indicates that it is necessary to strengthen the application of the principle of discretion in the Civil Code of the Republic of Kazakhstan. Revise all articles, reducing the number of peremptory norms [3, P.225]. The concept of the legal policy of the Republic of Kazakhstan until 2030 states that civil legislation contains a large number of imperative norms in terms of regulating contractual relations, which contradicts the principle of freedom of contract [4].

Considering the German experience on this issue, the literature indicates that the initial project of the GCC attempted to directly determine the mandatory or discretionary nature of all norms. But with further consideration of the draft law, this idea was rejected, which was fixed by the Commission for the revision of the preliminary draft of the GCC in 1896 [5, P.229].

In the classical textbook of the German law, it is noted that in the BGB the mandatory nature of the norms is expressed directly in many cases, but quite often, due to lack of direct instruction, it has to be deduced from the purpose of the prescriptions. Laws of the right of obligation are almost entirely mandatory, but here there are also separate mandatory norms, for example, § 248 of the GCC (prohibition to charge compound interest), § 276, para. 2 of the German Civil Code (responsibility for one’s own intent cannot be excluded in advance), § 617-619, 624 of the GCC (prescriptions protecting the interests of an obligator under a service contract, and in particular the mandatory form requirements for certain obligations) [6, P.173].

A.G. Karapetov points out that public order in most countries enables the courts to interpret each separate norm in order to determine its true nature. In fact, this approach means that in the absence of direct indication in the law itself to the mandatory or discretionary nature of the norm, the court determines its legal nature by interpretation. In Western law, this approach is absolutely dominant [7, P.119].

In the German civil law, the general presumption for determining legal nature of civil law norms governing obligations, transactions and contracts is discretionary. However, the court may reject this presumption if it is necessary to protect especially significant interests protected by law (the interests of a weak party to a contract, third parties, public interests, etc.). Such an approach allows us to consider all norms, without an explicit attribute of mandatory nature, as discretionary. For the re-qualification of such norms into mandatory ones, grounds for limiting contractual freedom are needed. It is required to determine which particularly significant and legally defenced interests are to be protected.

In Latvia, like in Germany, there is no legislative concept of discretionary and mandatory

norms, but the Civil Law of Latvia follows a common European logic. The principle of discretion is recognized as a priority in the civil law.

Free exercise of civil rights and the legal freedom of the subjects of civil circulation are linked by the principle of discretion in civil law.

A.M. Baikov points out that the discretionary norms of law, which are essentially auxiliary, but equally binding, allow the participants to choose a mutually acceptable variant of conduct by the participants of a corresponding civil legal relationship. Discretionary norms of law operate in cases where subjects of the relevant civil relationship have not independently settled the relations between themselves. Mandatory norms of law are universally binding; they cannot be changed by anyone unless a state institution or a higher state institution adopts them [8, P.68.].

In accordance with Section 4 of the Civil Law of Latvia, the rules of the law are interpreted primarily on the basis of their direct meaning; if necessary, they are also interpreted in accordance with the system, basis and purpose of the law and, finally, by analogy [9]. This article allows not only a literal interpretation, but also an objective and theological interpretation of civil law norms. It follows that in Latvia the interpretation of mandatory and discretionary norms on the merits and the purpose of legislative regulation is allowed.

It is worth noting that after the reforms of obligatory and contractual law in the French Civil Code in 2016, the French legislator embarked on a more flexible course of development in this matter. French reformers decided that it was necessary to deal with the relationship between contractual freedom and its legislative limitations more accurately. One of these significant expressions was the expansion of mandatory and discretionary norms of obligatory and contractual law, the legal nature of which is determined at the discretion of the court.

Having revised the norms in the sphere of obligation and contractual law, the French legislator refused from formal identification of the majority of norms as mandatory or discretionary, in particular, having excluded in many norms the right of the parties to agree otherwise in a contract. An exception is a small number of mandatory norms, in which the prohibition is clearly expressed.

The legal nature of such norms is considered to be not exactly defined in the law. French courts determine discretionary or mandatory character of a norm by interpretation of the target of a norm [10, P. 71.].

At the stage of discussion of the reform, the position not to specify textually, that the norm is discretionary or mandatory was not supported by all scholars. Thus, B. Fauvarque-Cosson notes that the draft reform of the French obligation and contractual law does not state which rules are mandatory and which ones are not. In the field of general contract law, contract rules are usually not mandatory. However, the new emphasis placed on contractual justice, coherence and good faith may lead judges to have a stricter approach and restrict freedom of contract [11, P. 71.].

Despite some criticism, the reform developers decided to follow the path of priority of contractual freedom, with the prospect of making the contractual law more flexible and effective. While preserving the presumption of discretion, the French legislator granted the courts the right to a more extensive judicial interpretation of the norms in the field of obligation and contract law.

At the same time, of course, this corresponds to the content of all-European act of unification of law DCFR. Thus, in accordance with Art. II.-1: 102: “The autonomy of the parties” DCFR, subject to applicable mandatory norms, the parties are free to enter into a contract or to perform another legal act and to determine its content. The parties have the right to exclude, in whole or in part, the application of any of the subsequent rules relating to contracts or other legal acts, or the rights and duties arising out of them, and, unless otherwise provided, to exclude or amend their effect [12, P.183.]. In fact, DCFR reflects the presumption of discretion of norms. Also, the provisions of the DCFR regulating transactions, contracts and obligations do not allow determining the legal nature of the rule accurately.

We believe that the Kazakh legislator should also adopt such a generally accepted European approach. Despite the specification of the concepts of mandatory and discretionary norms in the Civil Code of the Republic of Kazakhstan, we consider the current legislative delimitation, only under the textual designation, to be insufficiently fair. In fact, the Kazakh legislator uses the mandatory doctrine with respect to those civil law norms, the legal nature of which cannot be determined textually.

To disclose the full potential of the autonomy of the parties, we consider it necessary to introduce the principle of discretion in the provisions of the CC of the RK on obligations, transactions and contracts [1]. Taking into account the principle of literal interpretation of these norms, we

also need to move on to the principle of objective interpretation for establishing their discretionary or mandatory legal nature.

In particular, this should positively affect the freedom of modelling of non-defined contracts, because introduction of the principle of discretion will expand the limits of its freedom due to greater discretion of legal regimes of defined contracts, which, due to the principle of mandatory norms, the legal nature of which cannot be determined in a textual way. Often in the Kazakh judicial practice, modelling of atypical contractual constructions is unfairly blocked.

Taking into account the fact that the Kazakh civil legislation, unlike the Latvian, the German and the French, proceeds from the legislative discretion of notions of discretionary and mandatory norms, we consider it necessary to reflect in them the principle of discretion, which is reflected in the law of developed European states through established doctrine and judicial law making.

To establish the legislative principle of discretion, it is necessary to exclude from the articles 382 and 383 of the Civil Code of the RK the concept of a discretionary and mandatory norm. It is necessary to introduce new concepts of mandatory and discretionary norms, proceeding not only from their literal interpretation, but also from their purpose.

In this regard, we propose to include in P.1 of Art. 382 of the CC of the RK the following text: *"The norm is considered to be mandatory if it contains an express prohibition on the establishment of the other by the agreement of the parties or in the absence of such a prohibition, it proceeds from its substance and the purpose of legislative regulation to defend particularly significant interests protected by law or to prevent gross violation of the balance of interests of the parties.*

The norm is considered to be discretionary unless otherwise follows from the nature of the relevant norm or there is no express prohibition on the establishment of the other by the agreement of the parties in this Code and other normative legal acts".

To clarify, it should be noted that under the explicit prohibition it is necessary to understand the mandatory norm, which textually contains a distinct prohibition to subjects of civil legal relations to perform other actions than those stipulated in the relevant norm of law under the threat of adverse legal consequences. Such textual prohibitions include, for example, such phrases as prohibited, not allowed, inappropriately, the agreement is invalid, is recognized as illegal, etc.

In view of the doctrine of "halbzwingende normen", according to some mandatory norms, a restrictive derogation from their regulation is possible, but only to improve those particularly important legal interests that the ban is intended to protect.

Defence of particularly significant interests protected by law includes the defence of the interests of the weak party to the contract, consumers, third parties, public (state) interests, etc.

The court, proceeding from its essence and the purpose of legislative regulation, carries out the final interpretation of the legal nature of the norm.

Turning to application of civil law norms to a non-defined contract, two fundamental objectives of the legislative regulation of contracts may be highlighted: 1) restriction of the freedom of contract; 2) replenishment of a contractual condition that was not taken into account by the parties to the agreement. Limitations of the freedom of contract in respect of a non-defined contract were noted in the previous section.

Civil-law norms aimed at filling the contractual gap may be divided into general and special ones. General norms apply to all types of contracts. Special norms directly regulate and fill the gap in the terms of the defined contract, to which, from the point of view of the normative content they refer to.

Therefore, the main legislative instruments to fill the gap in the conditions of a non-defined contract are general discretionary norms on obligations, transactions and contracts. However, it is permissible to apply special discretionary norms governing a similar defined contract, however not directly, but by analogy of law. At the same time, the same analogy of law should be used when the general legal regime of a non-defined contract does not contain appropriate regulation, and using a special discretionary norm regulating a similar defined contract can make a more adequate and reasonable elimination of a gap.

Unlike the countries of the Anglo-Saxon legal family, in which the analogy method, especially applied to precedents, is considered one of the most fundamental and principal in law [13, P.149.], in the countries of the Roman-German system of law, the analogy method seems to be a more of a rare phenomenon, a kind of an exception, rather than a regular and systemic legal instrument.

The German legal system does not contain any clear provisions on how to apply the analogy and

fill in the gaps in the law. The answer to this question remains in the legal methodology.

The Latvian legal system also allows the application of the analogy of law. In the literature, it is noted that the analogy of the law is understood as the expansion to cases that are not directly regulated in the law, but having legal significance of legal norms that suppose similar situations in their constitutional parameters. The preservation of the institution of analogy in Latvian civil law is explained by the fact that the relations of civil and legal circulation that are a display of the initiative of the participants, and in this connection being in the process of constant movement and self-development of the relationships of civil and legal circulation, cannot be limited to the conservative frames of the law. A certain inconsistency is constantly renewed and preserved between them and the law, within the boundaries of which there are qualitatively transformed relations that need legal regulation. Therefore, it is impossible to do without the institution of analogy in the civil law [8, P.105-106].

Unlike the German civil legislation, reference to the institution of analogy can be found in the Civil Law of Latvia in the context of the interpretation of norms. In accordance with Section 4 of the Civil Law of Latvia, the rules of the law are interpreted primarily on the basis of their direct meaning; if necessary, they are also interpreted in accordance with the system, basis and purpose of the law and, finally, by analogy [9].

Following the tradition of new civil codes, Kazakh legislator included a separate rule on the application of civil legislation by analogy in the CC of the RK. In accordance with Clause 1 of Art. 5 of the CC of the RK, in cases when the relations provided by Clauses 1 and 2 of Article 1 of this Code are not directly regulated by the legislation or agreement of the parties and there are no customs applicable to them, to such relations, since this does not contradict their essence, civil law norms regulating similar relations (analogy to the law) shall be applied [1].

With regard to this issue A.G. Didenko believes that the legal regulation of relations, which are the subject of the civil law, does not always keep up with the dynamics of these relations. That is why the CC of the RK contains such standards as the possibility of occurrence of civil rights and obligations from the grounds, although not legally provided, but not contradicting it, the legitimacy of the existence of transactions not regulated by law, etc. Such legal instrument as analogy, that is, the application of similar norms of civil legislation, general principles and principles of civil legislation in cases where public relations are not directly regulated by legislation or agreement of the parties facilitates in solving the task of filling the existing gaps in the legislation in the process of law enforcement. The analogy is divided into the analogy of law and the analogy of right. The analogy of law is the use of separate norms of legislation regulating similar relations. The analogy of right is the use of the common principles and meaning of civil law and the requirements of good faith, reasonableness and fairness in cases of lack of norms governing similar relations [14, P.52].

Commenting on this article of the CC of the RK, M.K. Suleimenov and Yu.G. Bassin note the use of analogy is allowed only as an extreme measure of filling the gaps in the law, if such a gap cannot be filled either by interpretation of the law or by customs. With the analogy of law, filling of its gap is achieved by applying a specific legislative norm that directly regulates other similar relations [15, Pp.107-108].

The analogy of law in order to fill the contractual gap is allowed in the civil law of Kazakhstan, Latvia and Germany. However, this institution can be used when the general legal regime of a non-defined contract does not contain any regulation or when the corresponding general rules less accurately and adequately fill the gap than some special discretionary norms governing a defined contract. In other words, the special discretionary norms governing the contracts provided for in the law may be applied at the discretion of the court.

As it was established earlier, in Germany and Latvia, in respect of a non-defined contract, the application of certain special mandatory norms governing the contract provided for by law is allowed in order to protect particularly important interests protected by the law. It is also permissible to apply a set of special rules governing a defined contract to a non-defined contract, as a legal consequence for violation of the principle of good faith.

In this connection, the analogy of the law to the conditions of a non-defined contract can be applied in two cases: to fill a contractual gap or restrict the freedom of contract. To fill a contractual gap, special discretionary norms governing a defined contract are applied. In turn, the restriction of the freedom of a non-defined contract by application of special mandatory norms is allowed in exceptional cases, when particularly significant

interests, protected by the law "outweigh" the freedom of contract and the autonomy of the will of the parties.

Summarizing the aforesaid, we consider it necessary to reflect in the legislation of Kazakhstan a list of exceptions, when and in which cases special norms governing defined contracts with respect to non-defined contracts are subject to application.

We propose to supplement P. 2 of Art. 380 of the CC of the RK as follows: *"The rules on certain types of contracts provided for in this Code or other normative legal acts are not applied to a contract that is not stipulated by law. This provision does not exclude the possibility of applying to the contract that is not stipulated by law: 1) certain discretionary norms regulating a similar contract provided for in this Code or other normative legal acts by analogy of the law; 2) certain mandatory norms regulating the contract provided for in this Code or other normative legal acts by analogy of the law with a view to defend especially significant interests protected by law or to prevent gross violations of the balance of interests of the parties; 3) the whole set of norms regulating the contract provided for in this Code or other normative legal acts, if the party to the contract has committed an unfair circumvention of the mandatory norms regulating this contract".*

Consequently, such a legislative approach will allow, first, to distinguish the legal structures of defined and non-defined contracts more accurately, second, to specify the legal regime of a non-defined contract; third, to establish exceptional cases when special provisions are applied to the terms of a non-defined contract regulating defined contracts; four, to clarify the mechanism for applying the analogy of the law to non-defined contracts depending on the purpose, to fill the contractual gap or to restrict the freedom of contract, fifthly, to introduce legal certainty with regard to special mechanisms for restricting the freedom of a non-defined contract in the event of occurrence of relevant valid legal grounds.

Bibliography:

1. Гражданский кодекс Республики Казахстан (Общая часть) от 27 декабря 1994 года / URL: http://online.zakon.kz/Document/?doc_id=1006061#pos=1;-307
2. Гражданский кодекс Республики Казахстан (Общая часть). Комментарий (постатейный): В 2-х кн. – 3-е изд., испр. и доп., с использованием судебной практики / Отв. ред. М.К. Сулейменов. – Алматы, 2007. – Кн. 2. – 432 с.
3. Сулейменов М.К. Гражданское право Республики Казахстан: опыт теоретического исследования. В 2-х томах. – Алматы: Курсив, 2016. – Т. 1 в 2-х частях. – Ч. 1: Историческая. – 400 с.
4. Указ Президента Республики Казахстан от 15 октября 2021 года № 674. «Об утверждении Концепции правовой политики Республики Казахстан до 2030 года» / URL: https://adilet.zan.kz/rus/docs/U2100000674
5. Шапп Я. Основы гражданского права Германии: Учебник / Я. Шапп; Пер. с нем. и предисловие К. Арсланова. – М.: БЕК, 1996. – 283 с.
6. Курс германского гражданского права. В 2-х томах / Л. Эннекцерус, Т. Кипп, М. Вольф; пер. с 13-го нем. изд. К.А. Граве [и др.]; под ред., с предисл. и вводными замечаниями Д.М. Генкина и И.Б. Новицкого. – М.: Издательство иностранной литературы, 1949. – Т. 1. Полутом 1: Введение и общая часть. – 432 с.
7. Карапетов А.Г. Свободная трибуна // Вестник ВАС РФ. – 2009. – № 11 – С. 100-133.
8. Байков А.М. Общая часть гражданского права. – Рига: SIA "HOLDA", 2006. – 392 с.
9. Latvijas Republikas Civillikums 1937.gada 28. janvārī / URL: https://likumi.lv/ta/id/72415-par-latvijas-republikas-1937-gada-civillikumu.
10. The Code Napoléon Rewritten: French Contract Law after the 2016 Reforms / Ed. by J. Cartwright and S. Whittaker. – Oxford: Bloomsbury Publishing Plc, 2017. – 507 p.
11. Fauvarque-Cosson, B. The French Contract Law Reform in a European Context // Elte Law Journal. – 2014. – No. 1. – P. 59-71.
12. Principles, Definitions and Model Rules of European Private Law: Draft Common Frame of Reference (DCFR). Full Edition / Edited by Christian von Bar, Eric Clive, Hans Schulte-Nölke. – Munich: Sellier European Law Publishers, 2009. – 1604 p.

13. Farrar, J.H. Reasoning by Analogy in the Law // Bond Law Review. – 1997. – Vol. 9. – P. 149-176.
14. Гражданское право. Общая часть. Курс лекций / Под ред. А.Г. Диденко. – Алматы: Нурпресс, 2006. – 722 с.
15. Гражданский кодекс Республики Казахстан (Общая часть). Комментарий (постатейный): В 2-х кн. – 3-е изд., испр. и доп., с использованием судебной практики / Отв. ред. М.К. Сулейменов. – Алматы, 2007. – Кн. 1. – 584 с.

References:

1. Grazhdansky kodeks Respubliki Kazakhstan (Obshchaya chast) ot 27 dekabrya 1994 goda / URL: http://online.zakon.kz/Document/?doc_id=1006061#pos=1;-307
2. Grazhdansky kodeks Respubliki Kazakhstan (Obshchaya chast). Kommentary (postateyny): V 2-kh kn. – 3-e izd., ispr. i dop., s ispolzovaniyem sudebnoy praktiki / Otv. red. M.K. Suleymenov. – Almaty, 2007. – Kn. 2. – 432 s.
3. Suleymenov M.K. Grazhdanskoye pravo Respubliki Kazakhstan: opyt teoreticheskogo issledovaniya. V 2-kh tomakh. – Almaty: Kursiv, 2016. – T. 1 v 2-kh chastyakh. – Ch. 1: Istoricheskaya. – 400 s.
4. Ukaz Prezidenta Respubliki Kazakhstan ot 15 oktyabrya 2021 goda № 674. «Ob utverzhdenii Kontseptsii pravovoy politiki Respubliki Kazakhstan do 2030 goda» / URL: https://adilet.zan.kz/rus/docs/U2100000674
5. Shapp Ya. Osnovy grazhdanskogo prava Germanii: Uchebnik / Ya. Shapp; Per. s nem. i predisloviye K. Arslanova. – M.: BEK, 1996. – 283 s.
6. Kurs germanskogo grazhdanskogo prava. V 2-kh tomakh / L. Ennektserus, T. Kipp, M. Volf; per. s 13-go nem. izd. K.A. Grave [i dr.]; pod red., s predisl. i vvodnymi zamechaniyami D.M. Genkina i I.B. Novitskogo. – M.: Izdatelstvo inostrannoy literatury, 1949. – T. 1. Polutom 1: Vvedeniye i obshchaya chast. – 432 s.
7. Karapetov A.G. Svobodnaya tribuna // Vestnik VAS RF. – 2009. – № 11 – S. 100-133.
8. Baykov A.M. Obshchaya chast grazhdanskogo prava. – Riga: SIA “HOLDA”, 2006. – 392 s.
9. Latvijas Republikas Civillikums 1937.gada 28. janvārī / URL: https://likumi.lv/ta/id/72415-par-latvijas-republikas-1937-gada-civillikumu.
10. The Code Napoléon Rewritten: French Contract Law after the 2016 Reforms / Ed. by J. Cartwright and S. Whittaker. – Oxford: Bloomsbury Publishing Plc, 2017. – 507 p.
11. Fauvarque-Cosson, B. The French Contract Law Reform in a European Context // Elte Law Journal. – 2014. – No. 1. – P. 59-71.
12. Principles, Definitions and Model Rules of European Private Law: Draft Common Frame of Reference (DCFR). Full Edition / Edited by Christian von Bar, Eric Clive, Hans Schulte-Nölke. – Munich: Sellier European Law Publishers, 2009. – 1604 p.
13. Farrar, J.H. Reasoning by Analogy in the Law // Bond Law Review. – 1997. – Vol. 9. – P. 149-176.
14. Grazhdanskoye pravo. Obshchaya chast. Kurs lektsy / Pod red. A.G. Didenko. – Almaty: Nurpress, 2006. – 722 s.
15. Grazhdansky kodeks Respubliki Kazakhstan (Obshchaya chast). Kommentary (postateyny): V 2-kh kn. – 3-e izd., ispr. i dop., s ispolzovaniyem sudebnoy praktiki / Otv. red. M.K. Suleymenov. – Almaty, 2007. – Kn. 1. – 584 s.