

Theses

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I. Different concerns about definitions and types of organizational contracts remain debatable in modern Russian contract theory. Concern relatively qualification of some contracts as organizational type solves non-uniquely in modern Civil law of Russian Federation.

II. If we consider one of the first definition of organizational contract in Contract law, we can see that this type of contract is defined as mutual agreement of more than one party for organization, regulating and creation of necessary conditions to enter these parties in other contractual relations¹.

Also we can see that organizational contract is a special type of contracts for organization specific legal relations between its parties².

Commitment to organize legal relations between parties is brought to notice in some other scientific definitions of organizational contract³.

Besides, quite a few law scholars consider that organizational contract is focused on management activity between parties of this special contract⁴.

¹ Vaseva N. V. Pecuniary And Organizational Contracts // Civil Contract And It's Functions: Interuniversity Collected Works / publishing editor Krasavchikov O. A.– Sverdlovsk, 1980. P. 69. Vaseva N. V. Imuschestvennye i organizacionnye dogovory // Grazhdansko-pravovoy do-govor i ego funkcii: Mezhdvuzovskiy sbornik nauchnyh trudov / otv. red. Krasavchikov O. A.– Sverdlovsk, 1980. S. 69.

² Soviet Civil Law: Text-book. V I. / under the editorship of Krasavchikov O. A.– M., 1985. P. 445. Sovetskoe grazhdanskoe pravo: Uchebnik. T I. / pod red. Krasavchikova O. A.– M., 1985. S. 445.

³ Puginskiy B. I. Commercial Law Of Russia. – M., 2005. P. 277. Puginskiy B. I. Kommercheskoe pravo Rossii. – M., 2005. S. 277. Civil Law. Text-book / under the editorship of Suhanov E. A. – M., 2006. P. 182. Grazhdanskoe pravo. Uchebnik. T. III / pod red. Suhanova E. A. – M., 2006. S. 182; Danilova L. Ya. Organizational Civil Contracts // Russian Laws: experience, analyze, practice. P. 13-14. Danilova L. Ya. Organizacionnye grazhdansko-pravovye dogovory // Zakony Rossii: opyt, analiz, praktika. 2009. № 1. S. 13–14.

⁴ Haritonova Yu. S. // Legal Regulation Of Social-Economical Relations During Period Of Reform / under the editorship of Fatkudinova Z. M., Ahmetianovoy Z. A. – Kazan', 2004. P. 217. Haritonova Yu. S. // Pravovoe regulirovanie social'no-ekonomicheskikh otnosheniy v usloviyah reform / pod nauch. red. Fatkudinova Z. M., Ahmetianovoy Z. A. – Kazan', 2004. S. 217.

You can see another opinion in some scientific works. For example, organizational contract is binding its parties to perform joint actions for accrue of special civil obligation between parties of the contract or between somebody else⁵.

Organizational contract is also named as framework contract⁶, framework contract is qualified as the type of organizational contract in another conception⁷.

III. As I think, organizational contract legally binds parties to settle a basic contract (or several basic contracts), and some conditions of basic contract is contained in organizational contract. Also parties are legally bound to perform some acts promoting to settle one or several basic contracts⁸.

In my opinion preliminary contract, framework contract, agreement to organize negotiations are the types of organizational contract⁹. Preliminary agreements are often not qualified as contracts that can be enforced in the court in English doctrine of Contract law, because some of them can not pass the consideration test.

Consideration is based upon the idea of “reciprocity”; that a promisee should not be able to enforce a promise unless the promisor has obtained (or been promised) something in return. Consideration must be sufficient but it need not be adequate¹⁰.

According to Russian civil legislation the absence of consideration doesn't make a contract not be enforced in the court. Organizational contract is royalty-free but it can be enforced in the court.

It is important to note that an agreement with open terms is not identic to the framework contract in Russian civil law and science.

⁵ Morozov S. Yu. The System Of Transport Organizational Contracts: dissertation PhD. – M., 2011. P. 132. Morozov S. Yu. Sistema transportnyh organizacionnyh dogovorov: dissertaciya... dokt. jurid. nauk. – M., 2011. S. 132.

⁶ Efimova L. G. Framework Contracts. – M., 2006. P. 3. Efimova L. G. Ramochnye (organizacionnye) dogovory. – M., 2006. S. 3.

⁷ Morozov S. Yu. Op. cit. P. 242, 250. Poduzova E. B. Organizational Contracts In Civil Law. – M.: Prospekt, 2014. P. 24. Poduzova E. B. Organizacionnye dogovory v grazhdanskom prave. – M.: Prospekt, 2014. S. 24.

⁸ Ref.: Poduzova E. B. Op. cit.

⁹ Ref.: Maleina M.N. Agreement To Organize Negotiations // Russian Laws: experience, analyze, practice. P. 22–24. Maleina M.N. Soglasenie o procedure peregovorov (peregovornyh procedurah) // Zakony Rossii: opyt, analiz, praktika. 2011. № 5. S. 22–24.

¹⁰ O'Sullivan J. & Hilliard J. The Law of Contract. – New York, 2008. P. 94–98; McKendrick Ewan. Contract law – New York: PALGRAVE MACMILLAN, 2013. P. 68–70.

IV. The question about legal nature of option contract is still controversial¹¹. This contract is used in financial sector. Option contract contains organizing and pecuniary elements. It doesn't have several main features of organizational contract. So option contract can not be qualified as organizational contract.

V. Consequently, in spite of different approaches to definition of organizational contract, the concept that this contract is focused on management activity between its parties remains undebatable.

But on my behalf this main feature needs to be verified: organizational contract is directed to organize contract links (relations). Other concept of organizational contract leads us to division of united construction of organizational contract. So this division will lead to several practical difficulties.

These circumstances should be taken into account during creation of legal rules regulating organizational relations.

¹¹ Ref.: Regulations Of Derivative Contracts. 4-th of March 2010. № 10-13/pz-n. Polozhenie o vidah proizvodnyh finansovyh instrumentov. Utverzhdeno prikazom Federal'noy sluzhby po finansovym rynkam ot 04 marta 2010 g. № 10-13/pz-n // SPS Konsul'tant Plus: Zakonodatel'stvo.