

PROBLEMS OF CONTRACTUAL REGULATION OF RENDERING SERVICES IN THE SPHERE OF AGRICOTOURISM

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What this article deals with is the features of the legal regulation of services provided by the subjects of agricotourism. Certain problems of contractual regulation of relations in the sphere under consideration are revealed, and ways of their solution are proposed. The issue of the need to improve legislation regulating other types of tourism, including health tourism, is taking centre stage.

By the middle of the second decade of the XXI century tourism continues to be one of the leading directions of socio-economic and cultural activities of most countries of the world. One of the most promising segments of the tourist market in the Republic of Belarus is agricotourism. Acquisition of agricultural services is a great opportunity for residents of large cities and megacities of the world to get a proper rest in ecologically clean corners of Belarus. The development of agricotourism is facilitated by the fact that in recent decades there has been a tendency to increase the number of travelers and increase the demand for acquaintance with the country's natural potential and national cultural traditions.

In general, the sphere of services is undoubtedly a specific area, since the subjects providing them are invoked to satisfy most of the material and spiritual needs of citizens. Expansion of consumption of services in economically developed countries is called one of the most significant phenomena of the economic life of our time. The activity of providing agricotourism services extends not only to the sphere of satisfying social, domestic, spiritual human needs, but also affects the needs of each person for protecting health and for a favorable environment (Articles 45, 46 of the Constitution of the Republic of Belarus) [1].

The national strategy for sustainable social and economic development of the Republic of Belarus for the period until 2030, among the main tasks for tourism, determines the use of the country's natural potential and material resources through health- and *agricotourism*. The development of these types of tourism is carried out within the framework of the "General scheme for the allocation of zones and facilities for health improvement, tourism and recreation until 2030" [2].

Resolution No. 232 of the Council of Ministers of the Republic of Belarus of March 23, 2016 approved the State Program "Belarus is hospitable" for 2016-2020, which states that the most successful projects over the past few years have been health tourism and *agricotourism*. In 2014 there were 2037 subjects of agricotourism in the republic (in 2010 – 1247 subjects). The number of agricotourists from 2010 to 2014 increased by 2.3 times and amounted to more than 300 thousand people [3].

The importance of the type of tourism in question is characterized by the fact that in 2006 two Decrees of the President of the Republic of Belarus were adopted, the first of which establishes measures for the development of tourism in general [4], and the second is devoted to the direct regulation of agricotourism. This is the Decree No. 372 of the President of the Republic of Belarus of June 2, 2006 "On measures for the development of agricotourism in the Republic of Belarus" [5].

At present, the legislation regulating agricotourism is undergoing significant changes. At the end of 2017, the Decree No. 365 of the President of the Republic of Belarus of October 9, 2017 (hereinafter – the Decree on the Development of Agricotourism) came into force, which stipulates that agricotourism is an activity aimed at familiarizing agricotourists with the country's natural and cultural potential, national traditions in the process of rest, health improvement, temporary stay in agricohomesteads [6].

The relations in the field of agricotourism are complex social relations, in which agricotourists, owners of agricohomesteads, tourist firms, the state can take part in. In modern conditions, the coordination policy are aimed at creating the balance between the subjects of agricotourism relations is of particular importance. The main implement in this situation is the current civil law regulation of agricotourism activities.

In such situation, a special type of civil law contract has become important: the contract for the provision of agricotourism services.

As K.S. Sysoy notes, the development of tourism in the Republic of Belarus over the past decade has aggravated the problem of protecting the rights of agricotourists, as the mechanisms for ensuring their

interests, laid down in legislation with regard to contracts for the provision of agriecotourism services, have not been effective enough [7, p. 92].

According to paragraph 1 of Art. 402 of the Civil Code of the Republic of Belarus, the contract is considered concluded if an agreement has been reached between the parties in the form required in the cases to be made in respect of all the essential conditions of the contract. Among the essential conditions of the Civil Code of the Republic of Belarus there is, first of all, the condition of the subject matter of the contract [8].

Since the agreement on the provision of agriecotourism services is a variation of the contract on rendering paid services, there is a need to consider the meaning of the concept "service". This will help to consider more thoroughly the essence of agriecotourism services.

In Art. 733 of the Civil Code of the Republic of Belarus, it is established that under a contract for rendering paid services, one party undertakes, on the instructions of the other party, to render services (perform certain actions or carry out certain activities), and the customer undertakes to pay for these services.

According to the economic classification criteria, the contract for the rendering paid services can be assigned to a group of civil law contracts providing the irrevocable economic exchange.

These contracts usually include: a) purchase and sale (barter) contracts; b) turnkey contracts; c) rendering paid service contracts.

Among the contracts of this group, the contract for rendering paid services can be allocated due to the availability of a special subject of the contract – service. However, the allocation of services as an independent object of civil rights (Article 128 of the Civil Code of the Republic of Belarus) is associated with a number of their legal qualification problems: the Civil Code of the Republic of Belarus does not contain a definition of "service" ("services").

Among other acts of legislation, a legal definition of the concept of "service" can be found in paragraph 2 of Art. 30 of the General Part of the Tax Code of the Republic of Belarus: "The service is recognized as an activity whose results do not have material expression, are realized and consumed in the process of carrying out this activity" [9].

Based on this definition, it is possible to distinguish three classification characteristics of the service: 1) firstly, it is an activity; 2) secondly, the end result of such activity does not have a materially substantiated form; 3) thirdly, the result of the activity is consumed in the process of its implementation.

In civil law sense, there are certain problems for the use of the indicated characteristics: in the Tax Code of the Republic of Belarus, the definition is set for tax purposes. The service in this context is the "activity" that brings income and is taxed accordingly. Legislator in this case is not interested in the result obtained by the customer, moreover – in the availability of the result in general.

It is no accident that the question of the characterization of the category "service" in the science of jurisprudence remains to this day controversial, first of all, in connection with the attitude towards the result of such activity.

To investigate this problem is partially possible through the transition from general to specific – to the analysis of the term "agriecotourism service".

In paragraph 5 of the Decree on the development of agriecotourism, the list of agriecological services rendered is indicated:

- provision of living rooms for accommodation of agriecotourists;
- provision of agriecotourists with food (usually using products of their own production);
- familiarization of agriecotourists with natural, agricultural and architectural objects, folk traditions of the corresponding locality, carrying out sports-mass, athletic, health and cultural events;
 - conducting presentations, anniversaries, banquets;
 - rendering services for baths, saunas and showers;
 - riding animals, except for wild animals, and cartage;
 - provision of equipment for sports and recreation;
 - transport services for agriecotourists.

Thus, the range of services rendered is determined normatively and is very extensive.

At the same time, it seems problematic that the list of agriecological services is closed. In this case the legislator does not allow the parties to independently determine the additional services provided. Accordingly, the parties may not specify additional services in the contract, which will lead to very serious problems in the presence of a dispute over their quality and the possibility of applying civil law liability to the guilty party.

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Since in the domestic legislation there is no legal definition of the concept "service", which would connect the result of the activity of the performer with the activity itself, and the list of agricultural services does not contain all types of services, there is a need to develop a legal definition of the term "agrietourism service". One of the important conditions that must consolidate this concept should be the focus on meeting the needs of the agrietourist. The very purposes of such a holiday (the needs of a tourist) are set in the Decree on the development of agrietourism.

Based on the above, the following definition is proposed to be included in paragraph 12 of the Decree on the development of agrietourism: *"agrietourism service is an activity, the results of which do not have a material expression, are sold and consumed in the process of its performance, aimed at meeting the needs of agrietourists for rest, recreation, acquaintance with the natural potential of the Republic, national cultural traditions"*.

According to Art. 402 of the Civil Code of the Republic of Belarus, the essential terms of the contract, except for the conditions on the subject, are the conditions that are stated in the legislation as essential, necessary or binding for contracts of this type, as well as all those terms concerning which an agreement, upon the request of one of the parties, must be reached. As E.L. Pisarevsky notes, in a number of cases the law itself states these or other conditions of the contract as essential [10, p. 65]. Thus, Art. 17 of the Law of the Republic of Belarus "On Tourism" contains the essential conditions established for the contract of rendering tourist services:

- cost of tourist services, terms and procedure for their payment;
- information about the contractor, his location (the place of residence of the individual entrepreneur) and bank details;
- information about the customer, as well as about third parties, if the contract for them provides for the rendering tourist services, in the amount necessary for the rendering tourist services;
- a program of tourist travel;
- rights, duties and responsibilities of the parties;
- conditions for changing and terminating the contract for the rendering tourist services, the procedure for settling disputes that have arisen and for recovering the losses (harm) caused;
- other conditions, concerning which an agreement must be reached at the request of one of the parties [11].

The standard form of the contract on the rendering agrietourism services was approved by the Decision No. 818 of the Council of Ministers of the Republic of Belarus of June 29, 2006 "On approval of the Standard Contract on the rendering services in the field of agrietourism" (hereinafter - the Standard Contract) [12]. Conditions that do not relate to agritourism are not included in this Standard Contract.

A party in a future contract may declare its intention to include in its content a condition that is not necessary or binding for the agreement. Therefore, despite the existence of the Standard Contract in the agrietourism, the customer has the right to insist on including in the contract for rendering tourist services of conditions that, in his opinion, are significant. Only in this case the contract is considered to be concluded (Part 2, Article 402 of the Civil Code of the Republic of Belarus). If there is no agreement on it, there will not be a coincidence of the will of the parties and the fact of the conclusion of the contract or the validity of the said transaction can be contested.

It follows from this that the parties' disagreements on any of its terms entails converting it into the essential one, and the contract itself, in the presence of disagreements, is considered not concluded.

As a rule, such conditions detail the interrelations of the parties, which corresponds to the stated in Art. 4 of the Law "On Protection of Consumer Rights" the right of the consumer to receive information about services, as well as performers [13]. In particular, the agrietourist has the right to include in the contract the conditions for the location of rooms, the proximity of the water, forest and much more. Refusal to include in the contract the conditions on which the customer insists, suggests that the performer is not sure of the proper performance of his obligations or does not intend to perform them properly.

In paragraph 11 of the Resolution No. 4 of the Plenum of the Supreme Court of the Republic of Belarus of June 24, 2010, "On the practice of courts applying legislation in the consideration of cases on the protection of consumers' rights", the norms of the Law "On Protection of Consumer Rights" are cited and it is noted that when considering the requirements of the consumer, the court must proceed from the assumption that the consumer has no special knowledge of the properties and characteristics of the service [14]. This is a direct indication that the above mentioned Law obliges the performer to provide the consumer in a timely manner with necessary and reliable information about the service.

The corresponding rights are also available to the other party under the contract – the owner of the agriecohomestead. However, the inclusion of certain conditions, which he deems necessary, occurs with the consent of the customer (consumer) and should not violate his rights.

At the same time, paragraph 6 of the Decree on measures for the development of agriecotourism establishes that contracts for rendering services in the field of agriecotourism between agriecotourism subjects and agriecotourists are concluded by the agriecotourist adopting the conditions stipulated by the agriecotourism subject in the contract (accession agreements) – concluded in a prescribed form.

The solution to this problem is the addition of paragraph 5 of the Decree on the development of agriecotourism with the following proposal: "*other services that the parties stipulate when concluding a contract*".

The Law "On Tourism" and the said Standard Contract operate with the term "cost", which is specified as one of the essential conditions of the contract. According to Ozhegov, cost is a concept that is part of political economy and means the amount of socially necessary labor spent on the production of goods and materialized in this commodity. The use of the concept of "cost" in the sense of "price" is allowed, but only in the second, indirect sense: price is a monetary expression of the value of a thing [15, p. 715]. According to Dahl: "Price is the value, cost, fee, in that they put a thing or work, something that is worth, what is valued in sale or purchase" [16, p. 615].

The Civil Code of the Republic of Belarus does not contain the notion of "cost" as a characteristic relating to the payment of an obligation, a contract. At the same time, Art. 394 of the said code states "Price" and establishes that the parties' settlements during the performance of the contract are carried out at the price established by the agreement of the parties with observance of the norms of legislation. In the cases provided for by law, prices (tariffs, rates, etc.) that are established or regulated by authorized state bodies are applied. With regard to provision of paid services, art. 735 of the Civil Code of the Republic of Belarus expressly provides for the duty of the customer to pay for the performer's services, and the article itself is called the "Price of Services" [8].

In our opinion, the term "price" should be used instead of the term "cost" in relation to the monetary valuation of the provided tourist services.

In Art. 3 of the Law of the Republic of Belarus "On Tourism" it is established that the specific features of the organization of certain types of tourism (agriecotourism, amateur, social, environmental and other types) are regulated by law. Obviously, there is a need not only to adjust certain norms of legislation on agriecotourism, but also to develop normative legal acts regulating other types of tourism.

In particular, by analogy with the type of tourism under consideration, it is possible to adopt a standard contract on rendering services in the field of health improving tourism, since recreation in sanatorium and health resorts may lead to various controversial situations when a party of the contract whose rights are violated uses jurisdictional and non-jurisdictional ways to protect civil rights.

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