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Research Article

SPECIFIC CHARACTERISTICS OF LEGAL RESPONSIBILITY OF SUBSCRIBERS IN THE PROVISION OF MOBILE COMMUNICATION SERVICES

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ABSTRACT

In this article, the unique features of the legal responsibility of subscribers in the provision of mobile communication services and according to the relevant provisions of the civil legislation of the Republic of Uzbekistan, the operator in the obligations arising from the contract for the provision of mobile communication services in the manner and within the period specified in the contract information is provided about the obligation to provide mobile communication services, and the subscriber to pay for them.

KEYWORDS

Subscriber, Mobile communication, Telecommunication services, network, radiotelephone, contract.

INTRODUCTION

The main violation of the contract committed by the subscriber is the non-fulfillment of the obligations for the payment of fees for the services provided, that is, the monetary obligation. The contracts concluded by the leading mobile communication operators stipulate such a rule that if the subscriber misses the payment period specified in the calculation, the operator will pay the missed payment amount (the amount that should be paid). has the right to calculate by adding a certain percentage of penalty for each day of the term.

According to the "Telecommunications Service Provision Rules" applicable to the relations of mobile

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communication service provision, settlements with subscribers and payment of mobile communication services are carried out on the basis of tariffs for mobile communication services. Tariffs for mobile communication services are determined independently by operators based on the contract.

The duration of the connection on the mobile communication network used to determine the amount of payment is calculated from the second that the called subscriber or the equipment with the response signal equalized as the subscriber answered, until the time when the conversation of the calling or called subscriber or this equipment ends.

Mobile communication services can be paid for in cash or by money transfer, as well as in the form of an advance or credit report. The subscriber can make the calculations for the payment of the specified services at the office of the communication operator or send the letter from the services of the postal service or through the post office for an additional fee.

It is worth noting that the practice of concluding contracts for the provision of mobile communication services, such as radiotelephone, which is considered its main form, in some contracts, in particular, the provision of mobile communication services, in which a mobile communication company as a provider of the relevant service and a legal entity as a client participates in the contract, the execution of the contract on the basis of non-cash settlement indicates that many disputes arise between the parties to a certain extent. In our opinion, one of the main reasons for this is that the terms of the settlement for the execution of the contract are not clearly defined in the content of the relevant contract.

For example, let's take the case heard on February 21, 2022 at the Tashkent City Economic Court. It is known from the case materials that the plaintiff COSCOM OJSC applied to the Tashkent inter-district court on January 24, 2022 and demanded from the private entrepreneur "Shirinov S.D." the principal debt of 1551350 soums, 31027 soums, state duty and 5000 soums m postal expenses, total 1587377 soums requested to be recovered. While studying the circumstances of the case, the court issued a ruling on partial satisfaction of the claim, taking into account the terms of the contract for the provision of mobile mobile communication services for a fee and the content of the applications of this contract between the plaintiff and the defendant. Because, according to the contract concluded between them, the form of payment for the relevant service is not clearly defined in the contract1.

It is necessary to be able to distinguish the measures of civil liability of the subscriber for the provision of services for a fee from other consequences of breach of obligations under the contract. As V.P.Gribanov noted, legal responsibility shows a huge form of coercive influence of the state on the violator of legal norms.

Along with this form, other forms and methods of influencing people's behavior are also unique. For example, there are preventive and regulatory measures, mandatory state measures, and these measures cannot be considered the same as legal responsibility, because these measures do not meet the criteria of legal responsibility2.

When we say quick action measures, it is necessary to understand the legal means of law enforcement, which are used directly by the person exercising the right without turning to the competent state body as a party to the civil-legal relations for the protection of the right to the person who violates civil rights and obligations. Such measures also include: unilateral refusal of the

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breached contract by the subscriber; suspension of services due to non-payment; including changing the subscriber's payment from credit to advance payment.

In contrast to property liability, the main task of quick action measures is not to restore the violated property right of the operator due to the violation of the obligation, but to encourage the proper fulfillment of the obligations by the subscriber. Therefore, the harmful consequences for the obliged person, which led to the application of prompt measures in the elimination of committed violations, usually disappear. Immediate action measures are used by the operator at the time of the violation of the right, when the violation of the obligation is still recovered and he does not yet feel the need to take measures of property liability or for some reason does not want to turn to the judicial authority for the protection of the right as a last resort.

In the conditions of the mass of the provided services, the operator cannot afford to consider disputes materially, for example, in court proceedings on the payment of bills. Thus, V.P.Gribanov's quick action measures are law enforcement measures (applied in the event that the obliged party commits a violation of the right), which creates a unilateral feature (authorized person applying the right for its realization no need to apply to the authority)3 I can agree with his opinion. This measure can be applied only in cases directly specified by the law or the agreement of the parties. Their application does not deprive the debtor party of the opportunity to challenge the correctness of the application of these measures in the court and economic court. The unhelpful consequences of the use of quick action measures in the elimination of committed violations are usually eliminated or significantly reduced.

It should be noted that the fault of the subscriber is not taken into account during the application of quick action measures, but this sign appears as one of the main conditions during the application of property liability measures to the subscriber-natural person (a private entrepreneur carrying out business activities or and the legal entity is held responsible based on the principles of risk, i.e. innocence4. However, there are other views in the legal literature. For example, V.M. Ogrizkov believes that property liability and quick action measures have a single meaning, and their difference is only in the unilateral implementation of quick action measures. B. I. Puginsky recognizes the measures of rapid impact as civil-legal sanctions, because they do not create an additional legal relationship for the parties to the violator, and do not require the state to force them to be used.

With the inclusion of norms on alternative performance of obligations in the content of FC (Article 250), the role of operational management measures in the regulation of property transactions has increased. Alternative performance of an obligation is such performance that one of the parties must fulfill the obligation assigned to him only after the other party has fulfilled his obligation. Such interdependence should be directly specified in the contract. The rights of the parties performing alternative obligations are ensured in connection with the actions of the other party in connection with the performance of its obligations.

Alternative execution is complete for various situations that arise during the non-fulfillment or improper fulfillment of various types of contractual obligations, including in the absence of conditions necessary for the description of relevant legal relations as alternative execution under the provisions of Article 250 of the FC is implementing the norms in a sufficiently wide manner. V. V. Vitryansky describes other consequences

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of breach of contractual obligations (besides property liability) several times in a different way:

1) to apply measures to the creditor, including giving the court the right to make appropriate demands aimed at the fulfillment of the obligation in kind by the debtor or at his expense;

2) circumstances in which, as a result of a breach of obligation, the creditor has the right to amend or cancel the contract and demand compensation for the resulting damages;

3) the occurrence of additional rights of demand, which are not specified by the obligation, which can be implemented by the creditor by presenting the relevant claims in the court procedure;

4) as a result of breach of the contractual obligation by the debtor, the creditor has the right to demand the fulfillment of the relevant obligation before the due date;

5) in the case of breach of the obligation by the debtor, various measures of immediate effect (unilateral action of the creditor on changing or canceling the obligation) indicated with the FC - the creditor:

a) to unilaterally refuse to fulfill the obligation;

b) to unilaterally suspend the performance of the obligation;

v) to refuse to accept the goods, works, services delivered by the debtor;

g) to retain the property of the debtor until he actually fulfills the obligation specified by the contract;

d) to take possession of the debtor's property;

e) the right to apply other quick action measures specified with the FC in accordance with certain types of the contract;

6) other consequences of breach of contract that are not against the law5.

From the presented description, a clear conclusion follows in an adequate way that the consequences of a violation of the contractual obligation do not lead to the application of property liability measures, in addition, other consequences can force the debtor (in relation to property liability measures) to fulfill the obligation as necessary and protect the rights of the creditor in a more effective way. At the same time, it is noteworthy to consider in a special way the liability of minor persons using the mobile service. Because, they also have the right to conclude a contract in case of consent from one of their parents. In this case, the consent of the parent expressed in writing should be assessed as his guarantor under the contract for the provision of mobile services.

In judicial practice, cases related to the determination of liability for timely non-payment of service fees provided by subscribers are many. In particular,in the case of Tashkent inter-district Economic Court No. 4-1001-2201/22369 of July 14, 2022, the plaintiff “Unitel” LLC asked the defendant “DXB United” LLC to charge 21,255,700, 60 rupees of principal debt and 468,741, 40 rupees.

From the available evidence in the case, it appears that a communication service agreement was concluded between the parties on August 4, 2021 No. 180385600, according to which the plaintiff was obliged to provide radiotelephone (cellular) services to the defendant, and the defendant to pay the services provided on time.

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An additional agreement was also made to this agreement, under which the defendant was given the right to use "7 lucky numbers"for 12 months, provided that he did not terminate the contract and pay monthly fees. In the event of violation of these conditions, it is established that the plaintiff has the right to collect the full value of the "golden number"selected by the defendant under Paragraph 6 of the additional agreement. However, the terms of the contract were broken by the defendant, and no payments were made for cellular services provided between August 2021 and November' 2021. As a result,the defendant had a debt of 21,255,700.60 before the plaintiff.

Based on these circumstances, the court satisfied the claim. However, in this case, the aspect that should be paid attention to is the conditions specified in the contract. That is, a certain number is given to the subscriber "on the condition of not canceling the contract for 12 months and paying monthly payments." The inclusion of such conditions in the contract shows that, while giving advantage to one party, it clearly complicates the other party.

In addition, the fact that the subscriber does not have the right to demand the cancellation of the contract is also contrary to the second part of Article 360 of the FC, if it follows from the fact that this contract is essentially a merger contract. Because this norm stipulates that "if the contracting party is deprived of certain rights, if the other party has the opportunity to participate in determining the terms of the contract, the conditions are written down that he does not accept in his interests" he has the right to demand the cancellation of the contract . It is clear from this that the defendant "DXB United" LLC has the right to demand the cancellation of this contract, and in this case, the conditions specified in the contract by the plaintiff "Unitel" LLC are contrary to the provisions of the second part of Article 360 of the FC.

If we pay attention to another example of judicial practice, we can see that the operator's claim regarding the provision of mobile communication services was rejected. For example, in the case No. 4-1001-2229/22680 of the Tashkent city court on economic affairs dated August 26, 2021, the plaintiff "COSCOM" LLC received 1,269,879.11 so from the defendant "Kos Mekanik ve Elektrik A.S." A claim for debt recovery has been considered. On March 29, 2019, a subscriber agreement No. TAS61-2019030387931 was concluded between the plaintiff and the defendant on the provision of cellular radiotelephone services. Pursuant to paragraph 2.1.3 of the contract, the plaintiff paid the subscriber a total of 301.63 US dollars, i.e. 1269879.11 soums at the rate of the national currency set by the Central Bank, where the claim was submitted to the court, and fulfilled his contractual obligations. performed correctly and properly. However, the respondent did not properly fulfill the obligation assigned to him and did not pay the fee for the provided service.

The claimant informed about the initiation of a lawsuit against the defendant in case of non-payment of this debt. But the defendant left the application unanswered, and because of this, this dispute arose. The court considers that the claimant's demand for the collection of the principal debt has been confirmed by the case documents, but it refused to satisfy the claim, taking into account that the principal debt was paid by the defendant on August 14, 2022 with payment order No. 1 . In the contract for the provision of mobile communication services, the responsibility of the subscriber mainly arises in cases of non-payment of the fee for the provided service. In this case, the cases of holding the subscriber liable on other grounds arise from the general rules. For example, the subscriber may be liable to the operator for damage to the equipment provided by the operator, damage to installed cables or lines, and other similar cases.

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