

Distinctive Features of Remotely Concluded Contracts

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Abstract. *This article analyzes the unique characteristics of remotely concluded contracts, which are rapidly developing today, and highlights their role in the contract system.*

Key words: *contract, contract form, oral and written contract, remotely concluded contract, distance contract, entrepreneur, individual, risk of uncertainty.*

The term "distance contract" is not defined in regulatory legal documents or scientific literature. Therefore, to study the characteristics of distance contracts, it is necessary first to examine the concept of a contract, its role in civil law, and to consider certain issues related to regulating the forms and methods of concluding contracts.

A contract is one of the ways in which individuals and legal entities exercise their rights, and it is a widely used and effective mechanism that allows legal subjects to maximize the satisfaction of their needs.

The role of contracts is extremely important both for entrepreneurs, who are professional participants in civil transactions, and for ordinary citizens. This is because a contract is a method of recording the promises made between participants in civil transactions, thereby protecting the interests of the parties and reducing the risks that arise in relationships between subjects of civil law. If we simplify the definition of a contract, it can be understood as nothing more than mutual promises between parties to perform certain actions or refrain from such actions in relation to each other or third parties. However, the difference between a contract and a simple promise is that the contract has legal force and, if necessary, can be enforced at the request of one of the parties to the contract.

It should be noted that the method of concluding a contract is of great importance here. In particular, using the correct method of concluding a transaction allows for ensuring its compulsory execution.

In addition to protecting against unjustified risk, the contract performs another important function - it confirms the transfer of certain material assets between subjects of civil law¹. Parties entering into a contract independently decide with whom, how much, and when to conclude the contract, as well as the timeframes, means of transport, and forms of payment for the money, goods, and items to be delivered under it.

For this reason, the culture of contract formalization is much more developed among entrepreneurs than among individuals. It should be noted that we are talking here not about concluding a contract, but about the culture of its formalization. Many transactions occur between individuals, but not all of them pay attention to form.

¹ Бодиловский А.В. Гражданско-правовое регулирование отношений, вытекающих из договоров, заключенных дистанционно. Диссертация на соискание степени кандидата юридических наук. Москва, 2021 г. –С. 18.

Individuals rarely adhere to the standard document form in their mutual contracts. A proposal to conclude a contract (especially between close acquaintances or relatives) is sometimes even perceived as distrust and causes personal offense. Even if the transaction amount exceeds the legal limit for a verbal agreement, it does not prevent individuals from concluding a contract without observing the form established by law.

Of course, not every contract should become a document signed by the parties, sealed, and notarized. The simpler the method of concluding a contract, the simpler the civil turnover. However, the risk of such turnover participants is equally high. For the participants of the transaction, choosing the method of its conclusion is a choice between proving the existence of civil law relations, the possibility of protecting their rights under the transaction, and the speed and convenience of its execution.

Therefore, in the matter of regulating the methods of concluding a contract and its form, it should be borne in mind that, taking into account the excessive dependence of civil transactions on formality, it is necessary to ensure a balance between simplicity, flexibility, and risk in order to avoid unreasonable risks.

Summarizing the above, it can be said that the choice of the method of concluding a contract determines the degree of risk that the subject of civil law assumes by entering into legal relations. The more reliable the method of concluding a contract, the more reliably the rights and interests are protected. The main purpose of legislation regulation is to ensure the possibility of simple and at the same time reliable conclusion of transactions.

Referring to the legal definition of a contract in Article 353 of the Civil Code of the Republic of Uzbekistan (hereinafter - the Civil Code of the Republic of Uzbekistan), the agreement of two or more persons on the establishment, modification, or termination of civil rights and obligations is called a contract². Based on this definition, two components of the contract can be distinguished: its content (rights and obligations) and the procedure for expressing and consolidating the will of the parties to the contract (agreement).

This definition does not provide for a specific method and form of concluding a contract. Therefore, it can be concluded that the conclusion of contracts in a certain way or in a certain form does not change the essence of the relations arising in connection with its conclusion. Indeed, if the use of different methods of contract formation changes the essence of the contract, then contracts concluded through postal, telegraph, and electronic communication should be distinguished separately. As correctly noted, it is advisable to consider modern methods of concluding contracts as "means of interaction between participants in civil transactions"³.

This is another confirmation of the influence of the method and form of the transaction on the entry into legal relations and does not have a decisive influence on the content of these legal relations. At the same time, different methods of concluding a contract may not affect the specifics of concluding a contract aimed at the emergence of a specific legal result.

It should be noted that the contract is a bilateral or multilateral agreement. The characteristics and features inherent in ordinary transactions also apply to transactions concluded remotely. Therefore, distant contracts are considered bilateral or multilateral agreements. However, they differ in one feature. The essence of this feature is that the conclusion of such a contract is carried out through the exchange of information by means that exclude direct (visual) interaction of the parties. Therefore, the main characteristic necessary for recognizing a contract as concluded remotely is the absence of direct communication between the parties to the contract, i.e., the exchange of information remotely⁴.

When it comes to remote contracts, the first impression arises in connection with the methods of concluding contracts. And this is a real imagination. Because the peculiarity of such contracts is

² <https://lex.uz/docs/111189#155451>

³ Паперно Е.Л. Правовое регулирование электронной торговли в России, Германии и США. Диссертация на соискание ученой степени кандидата юридических наук. Российский университет дружбы народов (РУДН). – Москва, 2006. –С. 67.

⁴ Бодиловский А.В. Гражданско-правовое регулирование отношений, вытекающих из договоров, заключенных дистанционно. Диссертация на соискание степени кандидата юридических наук. Москва, 2021 г. –С. 20.

indeed manifested in their conclusion. It should be noted that there are many ways to conclude a contract remotely, starting from sending documents by mail and ending with the exchange of information via the "Internet" using biometric data and electronic keys. The multiplicity of methods for concluding contracts concluded remotely indicates the need to separate the types of remote methods. Thus, a contract concluded remotely is a contract concluded remotely, without direct interaction, using one of the common methods.

The main distinguishing feature of remote contracts is that there is no physical (visual) contact between the parties, and the parties do not see each other. This creates certain difficulties from the point of view of verifying the identity of the other party entering into the contract, in particular, it becomes difficult to be sure that the subject entering into the contract is the same counterparty. That is, counterparties concluding a contract remotely cannot obtain a partner's passport and compare it with the data of the person who is supposed to sign the contract.

Thus, when exchanging information remotely (by mail, fax, internet, couriers, and other similar means), alternative legal solutions are necessary, allowing to sufficiently ensure and prove that the transaction was concluded with a specific person. This indicates the existence of a problem in legal regulation, which is inextricably linked with the need to ensure the stability of civil circulation.

In the theory and practice of civil law, contracts are classified according to various criteria: subject, whether they are concluded for a fee or free of charge, the number of parties participating in the transaction, the time of occurrence of obligations for the persons in whose favor the contract was concluded, the time of fulfillment of contractual obligations, etc. When considering the issue of regulating relations arising from contracts concluded remotely, it is necessary to study the question of which relations or types of contracts can be concluded remotely and whether there are contractual relations that, for one reason or another, cannot be classified as such.

First of all, let's consider the classification of contracts by the composition of their subjects. A contract concluded remotely, regardless of the method of its conclusion, must comply with the requirements of the law on the form of the transaction, i.e., the oral or written form of the transaction. There are various methods of concluding a contract remotely, some of which are concluded in accordance with the written form of the transaction, and others are concluded in oral form. Thus, if relations under remote contracts arise between entrepreneurs or between an individual and an entrepreneur, as well as if the amount of remote contracts between individuals exceeds ten times the basic calculated value, it is necessary to use the methods of remote contracts corresponding to the written form of the transaction. If a distance contract is concluded between individuals for an amount not exceeding ten times the basic calculated value, the method of its conclusion is not significant.

In addition, contracts can be divided into types depending on the subjects participating in them. Today, the development of information technologies has an impact on the widespread use of remote contracts. Distance agreements are often widely used in relations between entrepreneurs and individuals. In this case, entrepreneurs offer their services, works, or goods to an unlimited number of individuals. Contractual practice shows that business entities are increasingly resorting to concluding contracts remotely. In particular, "As of January 1, 2025, more than 275 thousand business entities were registered in the electronic public procurement systems, which is 19% more than in the same period last year, that is, by 44 thousand"⁵.

As E.S. Kanyazov noted, electronic document management has recently become widespread when concluding contracts. Special laws "On Electronic Digital Signature," "On Electronic Document Management," and "On Electronic Commerce" have been adopted. Mandatory requisites of an electronic document are: electronic digital signature; name, first name, patronymic, last name of the legal entity sending the electronic document; postal and electronic address of the sender of the

⁵ https://uza.uz/uz/posts/davlat-xaridlari-2024-yilda-2486-trillion-somlik-shartnomalar-imzolandi_689929

electronic document; date of drawing up the document. An electronic document is equivalent to a paper document and has equal legal force⁶.

Thus, when dividing contracts into types depending on the form of the transaction, it should be borne in mind that a contract concluded remotely is always subject to the norms of civil law regulating relations arising from contracts concluded in written or oral form. In addition, if it is necessary to notarize or state register a transaction, it is necessary to study in advance the possibility of a notary or a state body working with remote contracts. Even if such a possibility exists, it is necessary to familiarize yourself with the requirements established for the method of concluding this transaction.

The division of remote contracts into consensual and real is of particular importance. When describing a contract concluded remotely, we primarily considered consensual contracts, i.e., contracts where the conclusion of the contract coincides with the moment of reaching an agreement between the parties. A real contract is considered concluded from the moment of transfer of property, for the conclusion of which the transfer of property is necessary (part 2 of Article 365 of the Civil Code of the Republic of Uzbekistan). That is, such transactions can be made remotely not only if the terms are agreed upon remotely, but also if the transfer of property does not involve the physical participation of the parties. In particular, one can cite the example of concluding a consumer loan agreement remotely and transferring funds to the borrower as a loan amount in non-cash form.

Today, remote contracts are widely used in formalizing relations for the provision of services and the performance of work. We can see that the practice of concluding a contract remotely is especially widespread in the sphere of relations between entrepreneurs and consumers, as well as in the sphere of remote service or performance of work, or when the service is provided directly on the Internet.

Thus, having analyzed the system of civil law contracts, we came to the conclusion that, subject to certain requirements, it is possible to widely apply remote contracts in civil law relations. Relations arising from such contracts may in the future occupy a firm place in the current system of contract law.

In addition, it should be borne in mind that to ensure the stability of civil turnover and to ensure the trust of subjects of civil law in remote contracts, it is necessary to determine the characteristics by which it is possible to determine whether a remote contract relates to the written or oral form of a transaction. This is directly related to the possibility of widespread use and popularization of these agreements. Because participants in civil legal relations must be sure that the contract is concluded in the appropriate form and serves as a reliable basis for the creation, amendment, or termination of legal relations. It should be noted that, in accordance with Article 7 of the Law of the Republic of Uzbekistan "On Electronic Document Management," an electronic document is equivalent to a paper document and has the same legal force as it⁷.

In addition, the widespread use and popularization of remote contracts depend on the parties' ability to confirm and prove the existence of the transaction and its terms. In general, the legislation does not prohibit, but permits the use of electronic data as evidence. In particular, in accordance with Article 892 of the Civil Procedure Code of the Republic of Uzbekistan and

According to Article 76², digital evidence is electronic data containing information about circumstances relevant to the case, including electronic files, audio and video recordings, information stored on the World Wide Web, as well as other electronic data⁸.

Based on the above analysis, it can be said that the distinctive features of remotely concluded contracts are manifested in the following:

Firstly, a contract concluded remotely is formed without the physical presence of two or more persons.

⁶ Ўзбекистон Республикаси Фуқаролик кодексига шарҳ. 1-жилд (биринчи қисм) Адлия вазирлиги. – Т.: «Vektor-Press», 2010. (Профессионал (малакали) шарҳлар). 771-бет.

⁷ <https://lex.uz/docs/165079>

⁸ <https://lex.uz/docs/3517337#7239490>; <https://lex.uz/docs/3523891#7238677>

Secondly, the conclusion of remote contracts encompasses numerous methods of contract formation that exclude the mutual physical presence of the parties. Therefore, in their civil law regulation, it is inappropriate to distinguish a separate method for concluding a remote contract.

Thirdly, the risk arising for participants in civil transactions when concluding a remote contract and thereby entering into legal relations is very high. The degree of risk is directly proportional to the simplicity of the method used to conclude the contract.

In conclusion, remote contracts are entering the current system of contract law without disrupting it. However, the application of new methods for concluding transactions still seems unusual and risky. Therefore, to ensure the widespread use of remote contracts in civil transactions, it is necessary to develop criteria that determine their compliance with the oral or written form of the transaction. Furthermore, remote contracts can become more popular and develop only if civil legislation recognizes them as no less reliable than contracts concluded by traditional means, develops and enshrines criteria for linking remote contracts with traditional forms of contracts, and fully acknowledges the facts necessary to prove the existence of a remote transaction and its terms.

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