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Features of Obligations Pertaining to Legal Services Delivery in the Light of Ukrainian Law and Practice

The obligation regarding legal services provision is a contractual obligation of services delivery. However, it is necessary to clarify the issue of the characteristic features of such obligations which enable us to distinguish them from the other contractual obligations.

The contract law research used to describe repeatedly the issue of features of services. For instance, according to V.I. Zhukov and B.I. Yurovskyi, the features pertaining to each and every service are the following: 1) intangibility; 2) inseparability from the source; 3) variability of quality; 4) inability of preservation; 5) trust-based (confidential) nature of the process of services provision[1]. In addition to the above features, A.V. Tikhomirov pointed to its elusiveness and a high degree of uncertainty[2]. S.L. Spivak notes that services are characterized by uncertain target orientation and cannot exist beyond a specific individual contact with a client[3]. V.A. Vasylyeva points to the irrevocability of service as its attributive property[4].

The above features can be considered as elements of civil legal services that may enable the latter to be distinguished from other objects of civil legal relations.

Contractual obligation concerning the delivery of legal services invested with features of civil legal obligation of service provision, has certain aspects that distinguish it from the other obligations of services provision.

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1 V.I. Zhukov, B.I. Yurovskyi, *Legal nature of "service"*, "Express Analysis" 1999, Vol. 15, p. 20.

2 A.V. Tikhomirov, *Medical law. Practical guide*, Statut, Moscow 1998, p. 112; idem, *Medical services. Legal aspects*, Information and publishing house "FYLYN", Moscow 1996, p. 98.

3 L.S. Spivak, *Formation of the market for services in transformational economy: Thesis for the degree of Candidate of Juridical Sciences: 08.01.01*, Kiev 2002, p. 26.

4 V.A. Vasylyeva, *Civil legal regulation of the provision of intermediary services. Monograph*, Vasyl Stefanyk Precarpathian National University Publishing House, Ivano-Frankivsk 2006, p. 92.

In particular, the legal service is the ***object*** of such an obligation that nevertheless has its own individual traits even if invested with common features of civil service. There exists a point of view that the legal service is activity of a legal nature serving the protection of the rights and interests of citizens and organizations[5].

Characteristic of legal service as activity is a positive aspect of this definition. In order to disclose the concept of service in the Article 901 of the Civil Code of Ukraine[6] the legislator uses such phrases as "doing a certain action" or "carrying out certain activity." This method is caused by the need to explain the part of the text which is not clear enough, where following the name of the contract is repeatedly used the phrase "to provide the service". Under "doing a certain action" they understand the physical movement of objects of the material world through mechanical movements, and the term "carrying out certain activities" means the form of influence on the surrounding world, including the purpose, means and result of the process[7]. Strictly speaking, the activity aimed at achieving a certain useful result that can satisfy the interests of the obligee is the object of this obligation and the limit of exercise of the obligee's rights and the obligor's actions. However, the latter carries out the specified activity through actions that are the subject matter of the obligation. Therefore, from a legal point of view, for describing the category "legal service" it is more appropriate to use the phrase "carrying out certain activity".

In the definition of legal services offered by O.M. Schukovskaya, the category of "defence" is distinguished from such categories as "protection". Such separation is justifiable as in legal science these two terms are seen as connected but not identical. Thus, according to V. Polyukhovich, the concept of "protection" has a broader meaning and engrosses the concept of "defence" because with the direct defence of human rights, i.e. active actions, the concept of "protection" includes all legal means that execute the function of prevention and safety[8]. According to O. Skakun, the protection of each right is permanent and aims to secure the action of the right. Protection anticipates prevention, i.e. prevention of illegal activities, and the need to address defence appears only when there is a barrier to its implementation or violation or the threat of violation[9].

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5 A.M. Schukovskaya, *Legal regulation of legal services provision: Thesis for the degree of Candidate of Juridical Sciences: 12.00.03*,St. Petersburg 2001, p. 23.

6 Civil Code of Ukraine dated 16.01.2003, № 435-IV, "Official Bulletin of Ukraine" 2003, No. 11, Art. 461.

7 V. Vasylyeva, *Civil law regulation…*, p. 25.

8 B. Polyuhovych, *Administrative and legal defense of an individual in relationships with public authorities*, "Ukrainian Law" 2003, No. 5, pp. 41–42.

9 O.F. Skakun, *Theory of the State and Law: Textbook for Universities*, University Internal Affairs, Firma "Konsum", Kharkiv 2000, p. 202.

However, in our opinion, the claim that activity of a legal nature of legal services providers serves the defence of human rights and the protection of the interests of citizens and organizations is not precised, at least according to the national legislation. According to the effective legislation it is rather under the competence of the court (art. 55 of the Constitution of Ukraine), and other state law enforcement agencies[10]. A provider of legal services can only assist in defence and protection of the rights or interests of an individual. Such assistance is manifested in the totality of the professional actions of a legal services provider – a specialist in the field of law with whose help the procedural, material and legal status of subjects of civil rights and obligations is changed.

Apart from defence and protection of clients' rights and interests, the legal service is often directed to assist in the realization of such rights and interests. In particular, if a person has decided to create a company and ordered legal services for execution of paperwork, neither rights nor interests are violated, and protection of the mentioned is not the point of discussion. A person merely wishes to realise their right to exercise business activity. Jural relationships with legal services provider are intended for the latter to assist in realization of the right mentioned by consultations and other actions.

To sum up, one can state that the legal service is an activity to facilitate the implementation and protection of rights and interests of individuals.

There exists an opinion that legal services are services that ***require special classified knowledge in the field of law.*** To such criteria, depending on the task, may belong higher or specialized secondary legal education and work experience by profession, and for a legal entity – availability of appropriately qualified employees[11].

N.Y. Sokolov points out that a mandatory attribute of each legal profession is the existence of legal knowledge and skills acquired not through personal experience or due to some outstanding talent of the person, but primarily through the adequate educational institutions or practice at the accredited establishments. The performance of such activity is the main feature that allows us to attribute a particular person to the legal profession. As regards legal education, this is the feature subordinated to professional legal activity. Another matter is that with the historical development the role and

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[10] Constitution of Ukraine adopted at the fifth session of the Supreme Council of Ukraine on 28.06.1996, "Bulletin of the Supreme Council of Ukraine" 1996, No. 30, Art. 141; Law of Ukraine "On Public Prosecution" dated 14.10.2014, "Bulletin of the Supreme Council of Ukraine" 2015, No. 2–3 (16.01.2015), Art. 12.

[11] E. Berlyn, *Legal regulation of quality of legal services*, "Law and Economy" 2002, No. 5, p. 24.

importance of professional legal activity have grownand at present they have acquired the nature of an obligatory qualification requirement[12].

Despite the fact that the special knowledge or skills of legal services provider are not the only distinguishing features of contracts for legal services, they decidedly is an important characteristic of the relations studied.

The obligations under this research are also characterised by client's ***peculiar trust*** in a legal services provider. As it is noted in the legal literature, according to the character of legal trust civil relations may include ordinary and special, fiduciary trust. The content of ordinary trust consists in the trustee's understanding of accordance between the elements of jural relationship and real declaration of will and the resulting confidence concerning either voluntary execution of the duties by counterparty or enforcement in case of improper execution of thereof. Trust as a legal category is an element of human liberty all stages of the legal relation. Practically all contractual relations arise in the presence of trust between the contracting parties. However, not all relations have a special, fiduciary trust between the parties[13]. Concerning the obligations described, there is a position in the legal literature that the relations of legal services delivery qualitatively characterize deeply personal and private relations of trust; in this case it is presumed that there is a special level of mutual awareness and coordination of actions of the parties from which the fiduciary character of the obligation originates[14]. In our opinion, it is necessary to accept the fact that the obligations concerning legal services provision are fiduciary in nature, yet entering into such obligations, the client often has to enter into a special relationships of trust with the service provider. In particular, the client has to disclose private information to the provider or information that is a trade secret, and so on. The fiduciary character of the obligations elucidated consists of a set of rights and obligations that define the relationships between the parties. The share of fiduciary obligations in different legal relations concerning legal services provision may be different, but at the same time the presence of fiduciary obligations should be presumed, that is they exist in these legal relations even if such obligations are not stipulated in the contract or by law because of the character of relationships, and the nature of obligations. Violation of such obligations entails liability (liability for disclosure of confidential information, entry into rela-

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12 N.Ya. Sokolov, *Legal profession: the concept, essence and content*, "The State and Law" 2004, No. 9, p. 24.

13 R.A. Maydanyk, *The problems of regulation of trust relationships in civil law: Thesis for the degree of Doctor of Juridical Sciences: 12.00.03*, Kiev 2003, p. 40.

14 J. Leubsdorf, *Legal Malpractice and Professional Responsibility*, "Rutgers Law Review", Fall 1995, Vol. 48, No. 1, p. 116.

tions with the third parties that violate the interests of the consumer of legal services, and so on).

It is believed that only in relations with individuals can the obligations be fiduciary[15]. However, in our opinion, the fiduciary nature is inherent to legal relations of legal services delivery regardless of the subjects. Legal entities as subjects of property and personal non-property rights need reliable defence of thereof by appropriate legal means including entering into obligations that provide for legal services provision. The confidentiality essential to communication between the parties, special order of establishing communication and its suspension and the particular manner of execution make the obligation of legal services fiduciary. The features named are inherent to obligations concerning legal services delivery to both individuals and legal entities and, at the same time, they are principles and guarantees to which both individuals and other entities are entitled, and any subject of rights and responsibilities must not be excluded or given a preference.

Since the concept of service is determined by the activity, the peculiarity of this activity and the specific actions of the person aimed at implementation of thereof should be reflected in the nature of services provided. This, in turn, determines the nature of created beneficial effect that eventually makes it possible to include a particular service obligation to certain types of services: juridical, factual or mixed.

In a broad sense, juridical actions are actions of persons concerning personification of rights as the rule of law is only a general rule of conduct; at the expense of such "right realization" actions the impersonal regulatory guidelines refract into specific subjective rights and legal obligations. Nonetheless, it is necessary to perform a particular set of such actions in order to implement a legal norm: to carry out organizational and various other legally neutral actions and actions that directly lead to a change in the legal status of the subject. Actual actions are the first of the named, they are able to create the preconditions for realisation of the second, specifically juridical actions (or legal in the narrow sense of the word) by which certain rights and obligations are acquired, created or terminated. In this sense, "any action may have legal significance and the so-called juridical actions consist of actual actions"[16].

A number of obligations concerning services delivery such as storage or transportation with a reasonable standards of care can be referred to as actual

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[15] *Civil Law. Textbook*, ed. A.P Sergeev., Y.K. Tolstoy, Third edition, revised and expanded, "PBOYuL Rozhnykov L.V.", Moscow 2001, Vol. 2, p. 550; N.V. Fedorchenko, *Contract of agency: Thesis for the degree of Candidate of Juridical Sciences: 12.00.03*, Kiev 2004, p. 98.

[16] I.V. Shereshevskyy, *Representation. Agency and power of attorney. Practical commentary on the Civil Code of RSFSR*, Publishing House "Law and Life", Moscow 1925, p. 7.

ones. Activity regarding provision of these services is not intended to create a legal result such as giving the client juridical rights and obligations, while the latter is the subject matter of contracts of agency, commission and trust property management. The specificity of actions in the context of such obligations is manifested by the fact that the activity itself (through actions) is directly aimed at regulating the legal status of the subjects, thus creating a beneficial effect of juridical but not actual nature which lies in realization by the subjects of their rights and obligations. Simultaneously, the obligations of services provision, the content of which is to execute juridical actions, may be also accompanied by the implementation of actual actions. The technological cycle of such services can be different, and if actual actions in their legal sense remain "subordinated" and only help to achieve the legal result, they are absolutely not less important in terms of economic or personal interest of the consumer of these services.

At the same time, with the provision of actual services, juridical actions may be provided as well. However, the nature of service would surely change if the main goal would be absent – that is to carry out the most actual actions.

Services also may acquire a mixed nature either according to the law or under the contract. This occurs when the performance of such services is put in direct dependence on the actions of both juridical and factual nature.

The above analysis leads us to conclude that there is a distinction between juridical and actual actions (activities), and the subject of juridical and actual services discloses through the nature of thereof. As far as the content of any legal relation lies in its focus, the main goal should determine its nature and not related elements. Therefore, it is important to specify what kind of actions, juridical or actual – are the subject matter of a specific jural relationship, describe them. Failure to realize them makes impossible the proper fulfilment of obligation of service, and exactly this determines the actual, juridical or mixed type of service where both elements are closely intertwined. Therefore, depending on the conditions of the specific obligation, the nature of the debtor is determined.

In our opinion, the obligation concerning legal services provision should be attributed to the mixed type, because the ***subject matter*** of legal service may include both consulting, drafting projects of various documents which are actual actions and representation of the client in the court, other state agencies and so on which are the actions of juridical character. Often enough in practice they conclude contracts for creation of required documents (statement of claim, the articles of association of legal entity and so on) and submission thereof to the appropriate institutions, further representation of the client's interests by the provider of legal services in this case.

With the development of the economy, legislation and society, the overall range of actions that may be the subject matter of contracts for legal services is, as a rule constantly expanding. Nevertheless, the object of obligations regarding legal services provision, that is activity of the provider concerning promoting protection, defence or implementation of the rights and interests of the client, remains relatively unchanged. In our opinion, the subject matter of obligations studied is one of their most important features.

Summarizing the above, it should be noted that some of the listed features of obligations for the delivery of legal services are often manifested in other legal relations. However, their totality allows distinguishing contracts for legal services from other similar obligations.

Characteristic of the contracts allows distinguishing contractual obligations concerning legal services provision from employment relations, especially when the provider is a private person (private practicing lawyer). For example, the subject matter of both employment and civil relations has a physical form of work. However, the subject matter of the labour law relations is not the result of service, but the very process of provision thereof, while civil law relations cover just the result of the activity of the legal services provider[17]. Dependence of employees work is also considered as the criterial feature of labour law relations, in contrast to the obligations studied[18]. To distinguish labour and civil law relations it is necessary to take into account the nature of relationships – whether they are lasting or immediate. If a lawyer is invited to provide services for a specified period of time (week, month, year), moreover, the performance of a particular work function (legal counsel in the company) is specified, and so this is the field of labour law relations. If we are dealing with a particular task (providing advice, etc.), civil law relations are involved.

However, one should distinguish civil law obligations of a lasting nature from an employment relationship. The particularity of such a relationship is manifested in the fact that between a lawyer, on the one hand, and the person using the services, on the other hand, there is agreement in principle that if so required the needed services will be provided by the lawyer. If such an agreement has been made, then the parties conclude an employment contract and the payment is made not for a specific service rendered, but for the period of time during which the parties are bound by the contractual obligations[19].

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17 *Civil Law. Textbook*…, p. 544.

18 S. Vyshnevetska, *Labour relations as an object of labour law research*, "Business, Economy and Law" 2004, No. 1, p. 60.

19 M.I. Fetyukhin, Yu.M. Fetyukhin, A.N. Habarov, *Agreement of fee-based services: Textbook*, Publishing house of BPO MSU, Volgograd 2001, p. 11, 12.

However, as a rule, the person applies for legal services only when this is necessary and correspondingly pays for delivery of a particular order. At any other time the parties are not bound by civil law relations. The object of contractual obligations concerning legal services provision is similar to the same of labour relations between the legal counsel and the employer. However, in contrast to the legal work carried out in the organization by the other structural sub-divisions and officials, the work of legal counsel (legal department) is specific and exclusive; it is the essence of all the activities, the sphere of direct application of work in the field of law combined with implementation of an integrating function of the organizer of the law enforcement activity. The functions of legal counsel end where powerful decision-making is needed and where it is necessa ry to impose sanctions against people unsubordinated to the legal counsel.

Foreign legal practice is also represented by legal counsels which, particularly in the USA, constitute up to ten percent of all lawyers[20] and are called "in-house/corporate counsels", which points to their official affiliation to the employer[21]. Basically the competence of legal departments of US companies covers the cases concerning labour, contractual relations and real estate, and if they reach the litigation phase, the companies most often use the services of independent law firms[22]. This practice has already existed among successful Ukrainian companies when being in permanent labour relations with one or even a significant number of legal counsels, the company enters into civil law relations concerning the provision of legal services with law companies or private legal practitioners. Often this is caused by the need to perform certain tasks by more competent professionals because of the complexity of the problem or its high value for the client.

It is necessary to distinguish legal services obligations from works relations. The difference between work and services was recorded in Roman private law. Much has been written on the distinction criteria between these obligations. However, some civil law scholars in their papers admit the categorization of certain kinds of work as services[23]. Some scientists consider work as a kind of service[24]. Conversely, even in modern academic research, one can find iden-

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[20] *Private practice in the United States (Interview with V.A. Vlasikhin, a consultant at Moscow ABA representation)*, "Legal Consultant" 1997, No. 8, pp. 76–79.

[21] N.J. Moore, *Conflict of Interest for In-House Counsel: Issues Emerging from the Expanding Role of the Attorney Employee*, "South Texas Law Review", March 1998, No. 2, p. 499.

[22] Price Waterhouse LLP' 1997 Law Department Spending Survey. October 22,1997 (online version).

[23] M.I. Fetyukhin, Yu.M. Fetyukhin, A.N. Habarov, *Agreement*…, p. 7, 8.

[24] S.S. Shevchuk, *The legal regulation of fee-based medical services: realias and prospects*, North-Caucasian STU, Stavropol 2001, p. 31, 32.

tification of the terms "service" and "work"[25]. In practice, based on old habit, quite often the legal services providers determine relationships with clients as contracting relations.

The main difference between these obligations is in the particularities of the economic relations generated by them. The subject matter of the obligation regarding legal services is result of the provider, which is inseparable from the activity and has no material expression. In the obligations concerning works the object of the legal relations is the materially embodied result of the provider's activity. It can lie in the creation of new things, the change of existing things, or be a product of intellectual creativity etc. The result may be different, but its "material character" serves as an established feature of obligations concerning execution of work[26]. Separation of the concepts of work and services by emphasizing the concrete result to be provided for the client is the main and probably the only undoubted criterion of distinction between these two types of relations in civil law doctrine[27].

However, the academic literature points to other differences between the afore-cited legal relations. In particular, it is noted that as the very operation (the process of service provision – the author) is important for the client, they can interfere in the activity of the provider which is not characteristic of relations concerning the performance of work[28].

N.V. Fedorchenko indicates that the activity of the services provider is not related to the use of materials intended for transformation into the materialized result[29]. M.V. Krotov notes that the distinguishing feature of service can be used for differentiation between the obligation of services provision and obligation of work performance rather as an additional feature, because absence of materials for processing and the obligation to provide them is caused by the peculiarities of service as a special form of final result which has no materialized shape[30]. One can agree with this opinion, but it is necessary to say that acceptable is the situation when in the obligations of legal services delivery are materials used, equipment (computers, copying paper, and so on), but, in contrast to work, they are not used to be converted into a certain new materialized value, but play a very different role – they serve as

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25 E.V. Sukmanova, *Commercial contract for consulting services: Thesis for the degree of Candidate of Juridical Sciences: 12.00.04*, Donetsk 2005, p. 120.

26 M.I. Fetyukhin, Yu.M. Fetyukhin, A.N. Habarov, *Agreement*…, p. 11.

27 D. Stepanov, *Who will pay and who will not be paid. To the matter of development of legal services payment procedure*, p. III, "Economy and Law" 2002, No. 2, pp. 59–60.

28 *Ibid.*, p. 60.

29 N.V. Fedorchenko, *Contract of agency*…, p. 188.

30 M.V. Krotov, *Commitment on provision of services in the Soviet Civil Law: Textbook*, Leningrad 1990, p. 91.

technical means of performing an activity, a material form of expression, etc., but this not what the performance of means. In this connection, it is incorrect to refer to the jural relationship of services provision as only actions and activities that do not have any material medium. For instance, some scholars consider consultancy in oral form as service whereas in written form – as work performance[31].

Based on the nature of work, the latter, unlike services, must necessarily lead to the creation of results which to the extent of their material character will be considered as independent objects of civil law relations. The service has also a material element – its material medium is the subject acting in the materially perceptible form[32]. The presence of material items in service and provision thereof for the client is quite natural and absolutely not contrary to the idea of service, including legal service. Such substantive realities as a handwritten or typewritten (on a floppy disk or other media) text of explanations, opinions on legal questions, prepared text of the draft of a contract, complaints, and claims, become in the legal sense service only because of the afore-cited inconstant material element, that very external form that embodies the activity of legal services provision because of a certain obligation. Besides, this is a circumstance that does not change the nature of legal service as in the examples given the orientation of obligation in any event lies in activity regarding the provision of advice, explanations, procedural and documentary processing of declarations of intent of the client, in implementing other actions.

It is necessary to state that the role of activity in works performance obligations is important primarily for the purpose of separating work performance obligations from the obligations regarding sales of property, since in work, in other words, importance is of course attached to the unity of production of works and conveyance of their results and not just transfer of property.

However, the activity in work performance does not have the same meaning as it acquires in services. For example, in work performance relations the process of work, i.e.the activity, is important insofar as it is a prerequisite for achieving the final, material result, at the same time in services the activity is not only a prerequisite but its implementation means fulfilment of obligations regarding services provision.

Legal literature, considering the contract for legal services, also notes that there is such a legal model, where the provider undertakes the responsibility to carry out an action and if the action leads to what is called "the effect of

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31 *Civil Law. Textbook*…, p. 549.

32 M.V. Krotov, *Commitment on provision*…, p. 5.

service", the provider will be paid another, higher amount[33]. In particular, the contract may have as its object the achievement of certain result. Such result may be a court decision in favour the client's claim, or on the contrary, denying a claim against the client; absolutory sentence concerning the client or other person in whose success the client who signed the contract for legal services is interested. Besides, a positive decision of other entities concerning the client's rights and interests can also be such a result. It should be noted that this issue has very important practical significance.

In this context the position of High Specialized Court of Ukraine for Civil and Criminal Cases specified in the court determination dated 16 April, 2014, case No. 6-6621sv14[34], seems to be quite clear. This court case deals with the judicial conflict of debt collection in favour of a services provider under the contract for consulting, legal, and other services provision concerning insurance compensation. In particular, the claimant (services provider) explained that according to the contract, the defendant, after receiving insurance compensation, had to pay to the provider the agreed remuneration in full but the client failed to do so. The courts of first and appeal instances satisfied the claim of the services provider completely. Nonetheless, the High Specialized Court of Ukraine for Civil and Criminal Cases in its determination in this case, reversing the judgements of previous instances, pointed out that "resolving the judicial conflict the court did not duly clarify exactly what actions the plaintiff had done in pursuance of the contract, when and how it was expressed and what it was proved by, and whether these actions have resulted in the final result that is receiving insurance compensation".

It is necessary to agree with this position of the High Specialized Court of Ukraine for Civil and Criminal Cases, since under the provisions of the Civil Code of Ukraine, the parties may determine the conditions of the contract at their discretion, the responsibilities of the provider may include not only the realization of specific actions (activity), but also providing the client with the result of actions (written advice, explanation on legal issues, draft contracts, complaints and other legal documents). However, existence of the clause concerning the provider's right to remuneration that depends on the decision of the court or other public authority, insurance company and so on, in the future, is not, in our opinion, the realization of freedom of the contract. From our point of view, the essence of legal relations between the client of legal services and the provider implies that the latter should always

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[33] O. Smotrov, *Contract of paid medical services: Thesis for the degree of Candidate of Juridical Sciences: 12.00.03*, Kharkiv 2003, p. 52.

[34] The determination of High Specialized Court of Ukraine for Civil and Criminal Cases dated 16 April, 2014, case № 6-6621sv14.

do everything in their power (of course within the law) for the defence of the rights and interests of the client. If the parties follow this principle, the scheme of dependency of services payment on the decision of the third party is not required as the provider, regardless of the outcome in the future, exerts maximum efforts and, correspondingly, these efforts are paid by the client. From the fact that insurance is paid or not, or the case is "won" or "lost", the efforts of the provider in this case have neither diminished nor increased. Therefore, there are no reasons for a change in price of services.

Obligations concerning legal services provision in their economic nature are close to the creative relationships. Some authors call services provision a "creative process"[35]. However, one should understand that creative work is a purposeful human intellectual activity, which results in something qualitatively new, that differs by uniqueness and originality. An important feature of creative work is the novelty of the topic, which can be manifested either in the content of the work, or its form. The activity of an actor or the member of dance ensemble, on the one hand, and a lawyer or representative in the court, on the other hand, have a single economic essence – it is an activity concerning services delivery. They are distinguished on the basis of the presence or absence of a creative character in the activity of the provider that is manifested by the presence of the author's and artist's contractual obligations[36].

The obligations concerning legal services are similar to obligations which arise from contracts of agency. In particular, the lawyers quite often enter into the contractual relations of agency in order to represent the interests of the client in the court or before the other public authorities. In our opinion, the use of the contract of agency in the sphere of legal services is inappropriate. The subject matter of the contract of agency may be actions of a juridical character – representation. However, as a rule, during effectuation of the representation it is required to provide factual services such as advising, preparing explanations concerning the case and so on that also are the subject of obligation. Such actions cannot be the subject matter of contract of agency. In contrast to the contract of agency, the subject matter of obligation regarding legal services delivery are mixed services, so the use of contracts for legal services is more effective in regulation of the relationships between the provider and the client.

In recent years, the contracts for consulting services have become common. In the subject literature it has been suggested that the contracts for consulting services include juridical services[37]. In our opinion, such conclu-

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[35] A. Myhaylov, *Services as a form of business (marketing of services)*, "Business, Economy and Law" 1999, No. 1, p. 51.

[36] *Civil Law. Textbook*…, p. 541.

[37] E.V. Sukmanova, *Commercial contract*…, p. 14, 17.

siveness is incorrect. One should agree that the subject matter of obligation in the context of consulting services provision can be consultations in the field of law, which, as it has already been stated by us, may also be the subject matter of the contract for legal services provision. However, between consulting obligations and the obligations concerning provision of legal services there are differences that do not allow identifying them or considering one as a part of the other. Firstly, the subject matter of the consulting obligation contract can only be consultations, that is actions of a factual character. The obligation of legal services may include actions both of factual and judicial nature. However, unlike the obligation of legal services, the subject matter of the consulting obligation may be consultations not only in the area of law but also economics, design and so on.

A significant number of new contractual obligations are mixed contracts. According to A.O. Sobchak, the essential feature that characterizes mixed contracts is a combination of the elements of various contracts and the emergence on this basis of a single integrated obligation of two or more obligations, each of which is under the rules of the relevant types of obligations[38]. This position has been criticized in the scientific literature, and it has been noted that the contract is the basis of the obligation if it contains all the conditions required and sufficient for its independent existence. In case due to the conclusion of a contract there arise two or more independent obligations instead of a single one, then we should not talk about a mixed contract, but rather the range of different independent obligations united by a common purpose, subject matter or certain activities. A mixed contract is a contract that combines the elements of various contracts and serves as the basis for origin of single obligation that combines the features of various kinds of contracts.

The obligations of legal services delivery are civil legal relations concerning services delivery. In practice quite often obligations arise between the lawyer and the client similar to obligations concerning work performance, creative obligations etc. However, this is not evidence of a mixed character of contracts, but only the similarity of legal relations regarding services provision to the obligations mentioned. Creation of a new legal structure is justified only when the known institutions are not cable of regulation relations that are actually occurring in practice and the latter has critical need of thereof[39]. The obligation of legal services provision "fits" into the general rules of services, and therefore, in our opinion, the contracts studied cannot be called mixed.

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[38] A.A. Sobchak, *Mixed and complex agreements in civil law*, "The Soviet State and Law" 1989, No. 11, p. 63.

[39] N. Slyusarevskyy, *Property trust management agreement: the processes of formation*, "Business, Economy and Law" 1997, No. 6, pp. 6–7.

Conclusion

The contractual obligation concerning provision of legal services, as civil obligation, possesses a number of specific features which distinguish it from similar obligations. Such features are: a particular object, subjective essence, subject matter and fiduciary nature of legal services provision. In addition, the legal relations of legal services provision, being similar to employer-employee contracts, work contracts, creative relations etc., correspond to the general rules of services, and therefore, there are no reasons to consider them as mixed obligations.

Abstrakt
Usługi prawne w świetle ukraińskiego prawa i praktyki

Celem artykułu jest analiza zobowiązań w usługach prawnych. Autor opisuje typowe cechy takich zobowiązań, wyróżniając je od innych zobowiązań, wynikających z innego rodzaju umów. Na podstawie obowiązującego ukraińskiego ustawodawstwa, procedury sądowej i prac naukowych z zakresu prawa zobowiązań, autor twierdzi, że szczególną cechą usług prawnych jest element zaufania. Jego zdaniem zobowiązania prawne usług prawnych są podobne do umów między pracodawcą i pracownikiem, umów o pracę, relacji w dziedzinach twórczych itd. Są zatem objęte ogólnymi zasadami dotyczącymi usług, więc nie ma powodu, aby uważać je za zobowiązania mieszane.

Słowa kluczowe: zobowiązania, usługi prawnicze, osoby objęte zobowiązaniem z umowy, relacje prawne