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THE ESSENCE OF SECURITIES AS AN OBJECT OF CIVIL LAW RELATIONS

SAUTBAYEVA S.B. 

Sautbayeva Saltanat Bakytzhanovna — Master of Law, Senior Lecturer, Aktobe Regional University named after K. Zhubanov, Aktobe, Kazakhstan.

E-mail: Salt_1979@mail.ru; <https://orcid.org/0000-0003-0726-5477>;

Abstract: The civil law of the Republic of Kazakhstan establishes tangible and intangible benefits among the objects of economic activity. The range of these benefits is diverse. These include: things, money, securities, other property, including property rights, works and services, protected results of intellectual activity and equated means of individualization, intangible benefits. Securities constitute a special category of things in civil law. In a developed economy, not only things become the object of commodity turnover, but also property rights, including securities issued in special documents. The main feature of these documents is the close, inextricable connection of the rights expressed in them with the documentary form of their fixation. This role of a security is determined by the presence of a number of properties, which makes it distinctive from other legal documents, which also confirm the subjective civil rights of their holders, owners. The article examines the process of formation of the securities market in the Republic of Kazakhstan, the process of creating a legislative framework, a clear reflection in the legislation of the legal nature of the securities market, the specifics of the securities market, which are the sphere of formation of demand and supply of securities. The history of the emergence and formation of the securities market is touched upon. The characteristic legal features of securities are noted: properties, form, civil status.

Key words: securities, civil law, object of property rights, holder, property, income, document, transaction.

The development of market relations in Kazakhstan is associated with the development of the institution of securities, an increase in their turnover and legal support. They are used for crediting, making payments, mobilizing free funds and for the participation of broad segments of citizens in entrepreneurial activities. A security is an object of civil law relations, property that allows transactions to be made. Therefore, a security is an object of proprietary rights.

Article 129 of the Civil Code of the Republic of Kazakhstan defines securities: «A security is a set of certain records and other designations certifying property rights» [1]. This definition reflects the specific features of a security, calling it a document, such a definition prescribes the need for the materialization of a security, because the peculiarity of any document is that the information contained in it is expressed by signs: handwritten or printed letters, numbers, symbols. In the content of a security, the property right of its holder is fixed by symbols. At the same time, the property right must be expressed in the text of the document in such a way that the requirements of the law for the form of a security (i.e., the presence of a tangible, paper carrier of a certain right is necessary) and for its content are met, which means, firstly, the authority of the owner of the document must be expressed clearly, unconditionally, and unambiguously depending on depending on the type of security. The expression in its content of the mutual rights and obligations of the parties in a legal relationship certified by a security is unacceptable. Secondly, one of the specific features of a security is the formality of the document, when its content necessarily has the necessary conditions (details). This requirement is significant, so much so that in the absence of at least one of the mandatory requisites, the document has no force and legal value of the security. Moreover, Article 131 of the Civil Code of the Republic of Kazakhstan establishes the rule that the absence of mandatory details in the text of a security or its non-compliance with the form established for it entails its invalidity. As follows from the definition, a security expresses a property right in such a way that without presenting the original document, this right cannot be realized (i.e. transferred to another person or exercised). This dependence presupposes the procedure for transferring the right such that by transferring the paper, the person transfers the right expressed in it and, conversely, in order to transfer the property right, it is necessary to transfer the original of the document certifying it. In order to receive execution on a security, it is required to present it to the obligated person.

The property distinguishing a security (as a set of rights enshrined in it) from the usual legal

relations between creditors and debtors is the presence of property properties, i.e. its «turnover», including the ability to independently become an object of civil law relations. A security acts as a document expressing property and non-property rights related to it, can independently circulate on the market and be the object of purchase and sale, transactions, is a source of income. Historically, the «paper» documentary form inherent in a security gave it the external signs of a thing and thus resolved the «logical paradox» of the existence of a «right to a right» (for example, ownership of the right to vote at a shareholders' meeting in a joint-stock company).

Modern trends towards the disappearance of «paper» securities from circulation and the dematerialization of many securities (i.e., the deprivation of their paper carrier) have raised this problem again. Thus, the whole history of the emergence and formation of the securities market is the history of the widespread transformation of relations between creditors and debtors into «negotiable» property. Recognition of what exactly should be understood by a security, by listing documents that are valuable under Kazakh law, can be considered as a violation of the norms of civil legislation.

Civil law stands on the positions of the free establishment of rights and obligations by its subjects for themselves. The principle: «Everything is allowed that is not prohibited by law». In accordance with this principle, subjects of civil law can perform any actions that are not prohibited by law, including releasing documents into circulation that can subsequently be considered as securities. Another confirmation of this principle is the fact that the norms of civil law on securities are fundamentally dispositive in nature [2;41]. The application of the rules of a dispositive nature depends entirely on the discretion of the participants in the investment activity. They can exclude the application of the dispositive norm to their relations; can change its content as a whole or any part of it, etc. Due to the fact that dispositive norms are the basis of civil legislation, subjects of civil law can exercise their legal capacity at their discretion, acquire or not acquire subjective rights, choose the method of acquiring them, regulate at their discretion the content of the legal relationship in which they are participants, dispose of subjective rights belonging to them, resort or not resort to measures to protect the violated right, etc.

The form of the security is determined by law and is expressed by means of the necessary details. The main purpose of securities is to certify the property and non-property rights of their holders. An important feature of a security is the possibility of their transfer to other persons. Documents applying for the status of securities must be recognized by the state as such, which should ensure their good regularity and trust in them.

The modern civil law of Kazakhstan establishes various kinds of tangible and intangible benefits among the objects of economic activity. The range of these benefits is wide and diverse. These include: things, including money and securities, other property, including property rights, works and services, protected results of intellectual activity and equated means of individualization (intellectual property), intangible benefits. As objects of civil rights, a separate place belongs to things, which is determined, firstly, by their prevalence, and secondly, by the emergence of property relations with respect to things.

Securities constitute a special category of things in civil law. This approach is mainly aimed at a practical solution to the issue of definition. The specificity of securities as a thing is characterized by the fact that, due to their form, they contribute to the reification of the property rights of the person who make up their content. By virtue of such a connection, the property right exists only in the form of paper, thus, the transfer of paper is the transfer of the right itself, and its loss is the termination of the right.

Thus, only the one who has the right to the security can exercise the right arising from the security. Securities perform intermediary functions, providing access to specific material values that directly serve to meet the needs of people and society in food, housing, transport, organization and introduction of production, etc.

In the Civil Code of the Republic of Kazakhstan, securities as objects of civil rights are considered as an independent institution, which is due to their special position within the framework of things as an object of civil rights.

When regulating relations related to the issue and circulation of securities, the norms of the law of obligations acquire a different, broader meaning. The peculiarity of these securities (blank, non-blank) is a strong legal connection between the document itself as an object of property law and the right expressed in it [4; 240]. Thus, the issues of legal regulation of relations on a security should be disclosed both by the rules of property and obligation law. This is a kind of indisputable dogma of law enforcement. The consumer value of things, which determines the legal interest of civil turnover participants in them, is determined by their natural properties - physical, chemical, biological, etc.

Securities from the point of view of their natural properties have only a relative value, determined by the amount of labor spent on their production. Their main consumer properties and value, which determine the legal interest in them, are determined by the content of the right expressed in them. Securities also differ from things in that with the physical death of a thing, its existence as an object of civil law ceases. This rule applies to both individually defined and generic items.

Securities as documents belong to the category of movable things. At the same time, it does not matter which civil law categories cover its action. In a developed economy, not only things become the object of commodity turnover, but also property rights, including securities formulated in special documents. The main feature of these documents is the close, indissoluble connection of the rights expressed in them with the documentary form of their fixation. This role of a security is determined by the presence of a number of properties, which makes it distinctive from other legal documents, which also confirm the subjective civil rights of their holders, owners (wills, IOUS).

A security is a formal document certifying property rights, the exercise or transfer of which is possible only upon presentation of this document. To recognize a document as a security, it must comply with certain special features (properties) arising from the requirements of the law. But not all securities market researchers hold this opinion. As a general rule, securities are written documents drawn up on special forms that have a certain degree of protection against forgery. Along with them, non-documentary securities can also be used. In the case of documentary form of securities, the owner is established on the basis of presentation of a duly executed security certificate. A security certificate is a document issued by the issuer or a person authorized by it, certifying the rights constituting the security, as well as being the basis for demanding the fulfillment of the issuer's obligation to exercise these rights by the owner, subject to the latter's compliance with the procedures established by law for exercising these rights [3;231]. A security, being a document confirming property rights, must meet certain requirements necessary to give it legal force. These requirements are determined by law or in accordance with the procedure established by it.

A security, despite the ways of fixing it, is a formal document, which has certain requisites. The props of a security is its face, which allows you to further determine its values in economic turnover. The property right expressed in a security cannot be exercised by a person who does not possess this document, which indicates the interdependence between the right to the security and the right from the security.

A distinctive feature of a security is its turnover - participation in civil turnover. With the transfer of a security, all rights certified by it are transferred. The security has an autonomous character, i.e. the person who legally acquired the security acquires the right of claim for it, independent of the rights to this paper of the previous owner.

The circulation of rights certified by securities must be regulated by the law. In the case when electronic equipment is used, much depends on its technical perfection. The question is not what rights and how they can be verified by an entry in the registry. For not only nominal and order securities, but also bearer securities can be dematerialized. The first two types of securities in the process of dematerialization turn into one that is more correctly called order, because the name of the acquirer of property rights is recorded in the issuer's register, and these rights can be transferred only by order («an order») of the person who is actually an authorized entity at the moment. If it is a bearer security, then the name of the authorized entity is not entered in the debtor's register, but only its number, series, code, etc. And any person possessing this code can at any time receive satisfaction for this obligation. If the rights are fixed in the usual register of financial (accounting) books, then the entries can be both nominal and anonymous (but it is unlikely that the procedure for transferring

rights under such registers is more mobile than the procedure for transferring rights under securities).

In the case of the use of electronic technology, property rights really become more marketable. But here the question mainly rests, firstly, on the need to create a reliable computer network that guarantees the exercise and unhindered movement of property rights. Secondly, in the creation of a legal system for confirming the existence of these rights for investors (electronic signatures, cards, etc.) and the transfer of these rights. Electronic cards, when they are issued, will be subject to the procedure for transferring rights to bearer securities. I.e. when transferring these rights, they must be transferred by simply handing over the cards themselves, electronic codes, passwords, etc.

Thus, the issue of forming a legal institution of dematerialized («undocumented») securities requires careful development using the latest and most advanced achievements of science and technology. The system of norms regulating this legal phenomenon should also include rules regulating the activities of such elements of the securities market infrastructure as a depository, independent registrars, clearing organizations. The securities market, like other markets, is a complex organizational and economic system with a high level of integrity and completeness of technological cycles. On it, securities are the subject of purchase and sale using a set of prices, which also differs from ordinary goods. They have a nominal, issue and market price.

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СУЩНОСТЬ ЦЕННЫХ БУМАГ КАК ОБЪЕКТА ГРАЖДАНСКО-ПРАВОВЫХ ОТНОШЕНИЙ

САУТБАЕВА С.Б. 

Саутбаева Салтанат Бакытжановна — магистр юридических наук, старший преподаватель, Актюбинский

региональный университет им. К. Жубанова, г. Актөбе, Казахстан.

E-mail: Salt_1979@mail.ru; <https://orcid.org/0000-0003-0726-5477>;

Аннотация. Гражданское право Республики Казахстан в числе объектов хозяйственной деятельности устанавливает материальные, нематериальные блага. Круг этих благ многообразен. К их числу можно отнести: вещи, деньги, ценные бумаги, иное имущество, в том числе имущественные права, работы и услуги, охраняемые результаты интеллектуальной деятельности и приравненные к ним средства индивидуализации, нематериальные блага. Особую категорию вещей в гражданском праве составляют ценные бумаги. В развитой экономике объектом товарного оборота становятся не только вещи, но и имущественные права, в том числе оформленные в специальные документы - ценные бумаги. Основную особенность этих документов составляет близкая, неразрывная связь выраженных в них прав с документальной формой их фиксации. Данная роль ценной бумаги определена наличием ряда свойств, делает ее отличительной от иных юридических документов, которыми также подтверждаются субъективные гражданские права их держателей, владельцев. В статье изучен процесс становления рынка ценных бумаг в Республике Казахстан, процесс создания законодательной базы, четкое отражение в законодательстве правовой природы рынка ценных бумаг, особенности рынка ценных бумаг, являющиеся сферой формирования спроса и предложения ценных бумаг. Затронута история появления и становления рынка ценных бумаг. Отмечены характерные правовые черты ценных бумаг: свойства, форма, гражданско-правовой статус.

Ключевые слова: ценные бумаги, гражданское право, объект вещных прав, держатель, имущество, доход, документ, сделка.

АЗАМАТТЫҚ-ҚҰҚЫҚТЫҚ ҚАТЫНАСТАРДЫҢ ОБЪЕКТІСІ РЕТІНДЕГІ БАҒАЛЫ ҚАҒАЗДАРДЫҢ МӘНІ

САУТБАЕВА С.Б. 

Саутбаева Салтанат Бакытжановна — заң ғылымдарының магистрі, аға оқытушы, Қ. Жұбанов атындағы Ақтөбе өңірлік университеті, Ақтөбе қ., Қазақстан.

E-mail: Salt_1979@mail.ru; <https://orcid.org/0000-0003-0726-5477>;

Аңдатпа. Қазақстан Республикасының Азаматтық құқығы шаруашылық қызмет объектілерінің қатарында материалдық, материалдық емес игіліктерді белгілейді. Бұл артықшылықтардың шеңбері әртүрлі. Оларға мыналар жатады: заттар, ақша, бағалы қағаздар, басқа мүлік, оның ішінде мүліктік құқықтар, жұмыстар мен қызметтер, зияткерлік қызметтің қорғалатын нәтижелері және оларға тенестірілген даралау құралдары, материалдық емес тауарлар. Азаматтық құқықтағы заттардың ерекше санаты-бағалы қағаздар. Дамыған экономикада тауар айналымының объектісі тек заттар ғана емес, сонымен қатар мүліктік құқықтар, соның ішінде арнайы құжаттарға ресімделген бағалы қағаздар болып табылады. Бұл құжаттардың басты ерекшелігі - оларда көрсетілген құқықтардың оларды бекітудің құжаттық формасымен тығыз, ажырамас байланысы. Бағалы қағаздың бұл рөлі бірқатар қасиеттердің болуымен анықталады, оны басқа заңды құжаттардан ерекшелендіреді, олар сонымен қатар олардың иелерінің, иелерінің субъективті азаматтық құқықтарын растайды. Мақалада Қазақстан Республикасында Бағалы қағаздар нарығының қалыптасу процесі, заңнамалық базаны құру процесі, заңнамада бағалы қағаздар нарығының құқықтық сипатының нақты көрінісі, бағалы қағаздарға сұраныс пен ұсынысты қалыптастыру саласы болып табылатын бағалы қағаздар нарығының ерекшеліктері зерттелген. Бағалы қағаздар нарығының пайда болуы мен қалыптасу тарихы қозғалды. Бағалы қағаздардың тән құқықтық белгілері атап өтілді: қасиеттері, нысаны, азаматтық-құқықтық мәртебесі.

Түйін сөздер: Бағалы қағаздар, азаматтық құқық, заттай құқықтар объектісі, ұстаушы, мүлік, табыс, құжат, мәміле.