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### THE CONCEPTS OF "GOODS", "WORKS" AND "SERVICES" IN CIVIL LAW AND PUBLIC PROCUREMENT LEGISLATION OF UKRAINE

**Abstract.** In Ukraine, the legal and economic principles of procurement of goods, works and services to meet the needs of the state, territorial communities and united territorial communities have been regulated at the level of a special legislative act. At the same time, achieving the goal of ensuring effective and transparent procurement, creating a competitive environment in the field of public procurement, preventing corruption in this area, and developing fair competition are the keys to a sustainable European development vector of our state. In turn, the concepts and terms used in the Law of Ukraine "On Public Procurement" and designations of "goods", "works" and "services" are somewhat different in essence and meaning from those that are usually used in the national civil legislation. In view of the above, it is important to study the problems of the relationship between the concepts of "goods", "works" and "services" in civil law and according to the legislation on public procurement of Ukraine.

It has been legislatively determined which relationships are not covered by the Law of Ukraine "On Public Procurement" under any conditions (for example, if the subject of the procurement is: goods, works and services, the procurement of



which constitutes a state secret; financial services provided in connection with the emission, purchase, sale or transfer of securities or other financial instruments; purchase, lease of land, buildings, other real estate or property rights to land, etc.).

The concepts of "goods", "works" and "services" in civil law and in the legislation of Ukraine on public procurement are different in meaning. In particular, the meaning of the terms used in the Law of Ukraine "On Public Procurement" has been determined exclusively by the purpose of this law and should not be subject to extended interpretation by extending it to other spheres of social relations regulation.

**Keywords:** goods, works, services, property, things, limited turnover objects, "atypical" objects of civil rights (energy, anatomical materials, etc.), requisition, public procurement, civil legislation.

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## ПОНЯТТЯ «ТОВАРІВ», «РОБІТ» ТА «ПОСЛУГ» У ЦИВІЛЬНОМУ ПРАВІ ТА ЗА ЗАКОНОДАВСТВОМ УКРАЇНИ ПРО ПУБЛІЧНІ ЗАКУПІВЛІ

**Анотація.** В Україні правові та економічні засади здійснення закупівель товарів, робіт і послуг для забезпечення потреб держави, територіальних громад та об'єднаних територіальних громад урегульовано на рівні спеціального законодавчого акту. При цьому, досягнення мети забезпечення ефективного та прозорого здійснення закупівель, створення конкурентного середовища у сфері публічних закупівель, запобігання проявам корупції у цій сфері, розвиток добросовісної конкуренції – є запорукою сталого європейського вектора розвитку нашої держави. Своєю чергою, поняття та терміни, які вжиті у Законі України «Про публічні закупівлі», та позначення «товару», «роботи» та «послуги» є дещо відмінними за суттю та значенням від тих, які зазвичай використовують у національному цивільному законодавстві. З огляду на зазначене, дослідження проблематики співвідношення понять «товари», «роботи» та «послуги» у цивільному праві та за законодавством про публічні закупівлі України є важливим.



Законодавчо визначено на які відносини не поширюється сфера дії Закону України «Про публічні закупівлі» за жодних умов (наприклад, якщо предметом закупівлі є: товари, роботи і послуги, закупівля яких становить державну таємницю; фінансові послуги, що надаються у зв'язку з емісією, купівлею, продажем або передачею цінних паперів чи інших фінансових інструментів; придбання, оренда землі, будівель, іншого нерухомого майна або майнових прав на землю і т.д.).

Поняття «товари», «роботи» та «послуги» у цивільному праві та у законодавстві України про публічні закупівлі є відмінними за змістом. Зокрема, значення термінів, які вжиті у Законі України «Про публічні закупівлі» обумовлене винятково метою цього закону і такі не повинні підлягати розширеному тлумаченню шляхом його розповсюдження на інші сфери регулювання суспільних відносин.

**Ключові слова:** товари, роботи, послуги, майно, речі, обмежено оборотоздатні об'єкти, «нетипові» об'єкти цивільних прав (енергія, анатомічні матеріали тощо), реквізиція, публічні закупівлі, цивільне законодавство.

**Formulation of the problem.** In Ukraine, the legal and economic principles of procurement of goods, works and services to meet the needs of the state, territorial communities and united territorial communities have been regulated at the level of a special legislative act. At the same time, achieving the goal of ensuring effective and transparent procurement, creating a competitive environment in the field of public procurement, preventing corruption in this area, and developing fair competition are the keys to a sustainable European development vector of our state. In turn, the concepts and terms used in the Law of Ukraine "On Public Procurement" and designations of "goods", "works" and "services" are somewhat different in essence and meaning from those that are usually used in national civil legislation. In view of the above, it is important to study the problems of the relationship between the concepts of "goods", "works" and "services" in civil law and according to the legislation on public procurement of Ukraine.

**Analysis of recent researches and publications.** Many scientists have devoted their works to the study of the problems of the legal regime of "goods", "works" and "services" under the legislation of Ukraine, including: N. M. Kvit, R. V. Krupnyk, R. A. Maydanyk, Z. V. Romovska, V. L. Skrypnyk, I. D. Chaplyk and many others. Despite this, the expediency of studying the outlined issues in the context of comparison with the prescriptions of the legislation on public procurement still remains relevant.

**The purpose** of this article is to carry out a theoretical analysis of the concepts of "goods", "works" and "services" in civil law and public procurement legislation and to develop an author's position on this issue.



**Presenting main material.** The terms "goods", "works" and "services" are widely used in the Civil code of Ukraine. In particular, in accordance with Art. 656 of the Civil code of Ukraine, the subject of a sales contract can be property (goods) that the seller has at the time of concluding the contract or will be created (acquired, acquired) by the seller in the future. It is worth noting that in the Civil code of Ukraine, unlike the Civil code of 1963 p., an independent chapter "Things. Property", in which the concepts of "things" and "property" were legally formulated for the first time and the classification of these objects was carried out. If in the Civil code of 1963 the division of things into component parts of the thing, into the main thing and its accessories, into fruits and incomes, into divisible and indivisible, then in the Civil code of Ukraine the classification division of things and property was made much wider, taking into account the achievements of legal science and practices [1, p. 127].

In particular, in the Civil code of Ukraine, objects of civil rights were classified according to two criteria: 1) depending on the nature of goods: a) things, including money and securities, other property, property rights; b) results of works and services; c) information; d) results of intellectual and creative activity; e) tangible and intangible goods (such a list is not exhaustive, because it includes only the main objects of civil rights); 2) depending on the turnover capacity of objects of civil rights, which determines the possibility of carrying out transactions and other legal actions aimed at their transfer within the limits of civil-law relations with respect to objects of civil rights [2].

In the current conditions, the issues of effective regulation of the circulation of restricted items, requisition, forced seizure of property, etc., are also becoming important. For example, R. V. Krupnyk has pointed out that unlike the provisions of Art. 346 of the Civil code of Ukraine, which include forced alienation of land plots and other immovable property for reasons of public necessity, as well as requisition, according to the provisions of Art. 140 of the Land code of Ukraine does not provide for such a reason for terminating the ownership of a land plot as requisition, and the above may give rise to the opinion that it is impossible to requisition land plots [3, p. 161-162]. However, as I. D. Chaplyk convincingly pointed out, requisition is a way of terminating ownership of property (including land plots) in the event of a natural disaster, accident, epidemic, epizootic, in conditions of war or state of emergency, and in other extraordinary circumstances with the purpose of social necessity and is at the same time a way of exclusively state property rights [4, p. 138].

In Art. 177 of the Civil code of Ukraine it has been defined that objects of civil rights are things, including money and securities, other property, property rights, results of works, services, results of intellectual and creative activities, information, as well as the other tangible and intangible goods. According to



Z. V. Romovska, this article, unfortunately, was not corrected in connection with the change in Art. 1 of the Civil code of Ukraine, therefore, intangible goods remained at the end of this list [5, p. 179]. On the other hand, according to R. A. Maydanyk, according to its content, the extension of the legal regime of property to property intangible objects that are part of a person's property (dematerialized types of energy – gas, electricity, etc., cryptocurrency and other virtual assets, property rights, valuable papers, non-cash money and other intangible property), mainly provides for the emergence, termination and turnover of such intangible property objects in accordance with the provisions of the Civil code of Ukraine on things, with certain exceptions specified in the law [6, p. 73].

Instead, according to Art. 1 of the Law of Ukraine "On Public Procurement" No. 922-VIII dated 25.12.2015, goods are products, objects of any type and purpose, including raw materials, products, equipment, technologies, objects in solid, liquid and gaseous form condition, as well as services related to the supply of such goods, if the cost of such services does not exceed the cost of the goods themselves [7].

That is, as we can see, a commodity in civil legislation is property, however, based on the specifics of its application, it is movable property. Determining the legal nature of certain objects of civil relations (for example, human embryos) is extremely difficult from a legal, philosophical, and ethical point of view. Of course, in this aspect, it is necessary to take into account the best experience of the leading European states. Despite this, despite the fact that some German jurists support the property-legal model, believing that the separated parts of the human body can be attributed to things limited in civil circulation [8], we are impressed by the position of N. M. Kvit, according to which biological material, as an object of civil rights, has a special non-property nature and cannot be attributed to things [9, p. 166], and therefore cannot be considered "goods". Among the atypical objects of civil rights, in addition to donor organs, anatomical and biological materials, animals and energy are also distinguished [10].

Instead, "goods" in the legislation on public procurement for the purpose of its application to goods also includes services related to the supply of goods, if the value of such services does not exceed the value of the goods themselves. It is also clear that the concept of "goods" in the legislation on public procurement cannot cover limited turnover objects, although, on the other hand, it extends to atypical objects of civil rights, for example, those that are in a gaseous state.

With regard to "services" and "works", the civil legislation has defined the possibility of concluding contracts both for the provision of services (transportation, storage, transport forwarding, commission, etc.) and for the performance of works (construction contract, household contract, including performance of various types of repair work, contract for design and search works). A group of contracts on transfer of property for use (rent, loan, financial leasing), performance of scientific



research or research and development and technological works, etc. have been also highlighted separately.

Instead, the Law of Ukraine "On Public Procurement" has specified that:

1) services are any subject of procurement, except for goods and works, in particular transport services, development of technologies, scientific research, research and development, medical and household services, hiring (rental), leasing, as well as financial and consulting services, current repair, current repair with the development of project documentation;

2) works are the development of design documentation for construction sites, scientific and design documentation for the restoration of architectural monuments and urban planning, construction of new, expansion, reconstruction, overhaul and restoration of existing industrial and non-industrial facilities and structures, works for the construction of objects with the development of project documentation, standardization work in construction, geological survey works, technical re-equipment of existing enterprises and accompanying services, including geodetic works, drilling, seismic researches, aerial and satellite photography and other services included to the estimated cost of the works, if the cost of such services does not exceed the cost of the works themselves [7].

At the same time, it has been legally defined which relationships are not covered by the scope of the Law of Ukraine "On Public Procurement" under any conditions (for example, if the subject of the procurement is: goods, works and services, the procurement of which constitutes a state secret in accordance with the Law of Ukraine "On State Secrets", or which, according to the laws of Ukraine, require special security measures; goods, works and services, the purchase of which is carried out by foreign diplomatic institutions of Ukraine; financial services provided in connection with the issue, purchase, sale or transfer of securities or other financial instruments; acquisition, lease of land, buildings, other immovable property or property rights to land, buildings and other immovable property; services of international arbitration courts, international arbitrations for consideration and resolution of disputes involving the customer, etc.).

**Conclusions.** Summarizing the above, specifying some questions, we can conclude that the concepts of "goods", "works" and "services" in the civil law and legislation of Ukraine on public procurement are different in meaning. In particular, the meaning of the terms used in the Law of Ukraine "On Public Procurement" has been determined exclusively by the purpose of this law and should not be subject to extended interpretation by extending it to other spheres of social relations regulation.

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