

SLCMC 2021

International conference «State and law in the context of modern challenges

**CAR-SHARING: DIGITAL EVOLUTION OF LEGAL
REGULATION**

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Abstract

The qualification of the car-sharing agreement continues to cause controversy among the participants of the turnover, administrators of the law and representatives of the scientific community. The application of the provisions of different contracts leads to different legal consequences. Nevertheless, the courts apply to the car-sharing agreement either the rules on hire or the rules on the rental of vehicles without a crew. The recognition of a car-sharing agreement as a public agreement and an adhesion contract also significantly affects the legal regulation of relations arising in connection with its making. The legislator and law enforcement authorities are obliged to ensure the possibility of concluding the car-sharing agreement by each individual, having the right to drive vehicles, as well as the fairness of the contractual conditions, which guarantees the balance of interests of the parties to the car-sharing agreement. In addition, the car-sharing agreement is complicated by the use of a smart contract, which changes not only the form of the contract, but also the procedure and method of fulfilling the obligations of the parties of the car-sharing agreement. As a result of the study, the authors come to the conclusion that the car-sharing agreement is mixed, including elements of a lease agreement and a paid services agreement. The allocation of the rental contract element indicates the need for additional protection of the rights of the lessee who has joined the terms of the contract developed by the lessor, reflected through information technology.

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Keywords: Car-sharing, lease, mixed contract, rental

1. Introduction

The article is devoted to the analysis of services for short-term car rental – car-sharing, performed through the use of a smart contract. Car-sharing services have been gaining popularity in Russia since 2015 in large cities.

2. Problem Statement

Despite the fact that the car-sharing agreement is actively developing on the territory of the Russian Federation, it has not received legislative consolidation. Until now, the disputes over the legal nature of this agreement have not been resolved. Many car sharing companies, when concluding a contract, refer to the Article 421 of the Civil Code of the Russian Federation, indicating that the rules on the lease agreement do not apply to these relations. The practice of qualifying the contract by the courts is also contradictory.

3. Research Questions

The draft contracts and court practice offered on the websites of car-sharing companies demonstrate different approaches to its qualification. For this reason, the article examines the question of the qualification of a car-sharing contract. The question of the qualification of the contract allows determining the rules to be applied to the car-sharing contract. However, it is important to examine how fair it would be to regulate car-sharing relations on the basis of the rules on various contracts.

The monetary obligation arising from the car-sharing agreement is fulfilled through the use of a smart contract. The subject of the article also includes the study of the use of a smart contract for the execution of a car-sharing contract and the performance of obligations arising from it.

4. Purpose of the Study

The purpose of the article is to analyze the legal nature of the car-sharing contract and to establish the specifics of its making and execution.

5. Research Methods

During the research the following methods were used: general scientific methods, analysis of the features of a new type of civil contract.

6. Findings

In the age of advanced technologies, the consumer services sector is expanding, in the case of which the legislation does not always keep up with the changes that are taking place. The system of civil law contracts is developing and includes more and more new varieties. The car-sharing agreement is a

new agreement for the domestic economy, which provides the possibility of short-term use of the car, paid per minute, if the contract does not provide for the use of a different tariff.

Currently, a lot of research works are devoted to topical issues of the car-sharing agreement both abroad (Becker et al., 2017; Ferrero et al., 2018; Riccardo & Marco, 2018; Schaefer, 2013; Tai et al., 2008; Ying & Wang, 2019), and in the domestic literature (Boyarskaya, 2019), which note both the positive features of this agreement and its shortcomings.

The relevance of the topic under study is due to difficulties in understanding the essence and legal nature of this contract, since there is no normative regulation of relations arising from this type of contract (Filippov & Pereyarina, 2019). In practice, there are many problems connecting with how to protect a consumer (individual) from unfair contractual conditions imposed by car-sharing companies. In this regard, there is a need to define the rules governing the relations arising from the car-sharing agreement. At a minimum, the possibility of applying both general and special rules on the lease agreement is obvious.

Under the car-sharing agreement, the vehicle is provided for temporary possession and use, as well as in the case of a lease agreement. It seems that the features of the car-sharing agreement allow us to recognize it as corresponding to the structure of the lease agreement. The subject of the contract is the provision of a vehicle for temporary possession and use. The lessor is a rental organization or an individual entrepreneur, the lessee is an individual who intends to use the property for consumer purposes. Due to the public nature of the lease agreement, car-sharing companies refuse to recognize the car-sharing agreement as a rental, referring to its qualification as a vehicle lease agreement without a crew (Contract of Adhesion, 2021).

At the same time, the car-sharing agreement is not devoid of features. If the lease agreement is concluded in a simple written form (clause 2 of Article 626 of the Civil Code of the Russian Federation), then the car-sharing agreement is made in electronic form by using a mobile application. It should be noted that in accordance with paragraph 2, clause 1, Article 160 of the Civil Code of the Russian Federation, if a person makes a transaction using electronic or other technical means that make it possible to reproduce the content of the transaction on a tangible medium in an unchanged form, the written form of the transaction is considered to be observed. Thus, a digital document materialized in electronic form as a set of data (digital code) is considered as a kind of written (text) document on hard copies.

It is important to note that in reality there is a fundamental difference between a simple written form and an electronic form. In the legal literature, it is rightly noted that a smart contract made in electronic form is not limited to reflecting the terms of the contract with the help of technical means. The fact is that the smart contract algorithm provides for the possibility of independently regulating the performance of contractual obligations when certain conditions occur (Gromova, 2018). A smart contract as an electronic contract is a computer program and is significantly different from the classical written electronic form, since as a result of its use, it is not only recorded, but also automated the ability to receive information, respond to requests from the parties and to any changing conditions, and then inform the parties about these new events or conditions. An electronic contract connects the parties to each other and to the third parties, as well as to various sources of information in ways that are difficult to imagine with the help of paper (Katsh, 1995). The difference from a written contract is that transactions are made

using electronic or technical means, but execution is carried out through the use of information technology.

Thus, the execution of the agreement as a program code contributes to the automated execution of obligations arising from it, that is, it is not only a form of agreement. In Part 2 of Article 309 of the Civil Code of the Russian Federation, the autonomy of execution is reflected by indicating that there is no need for a separately expressed additional will of the parties to the smart contract aimed at fulfilling the obligation. In addition, the automated nature of the execution is due to the inability to make changes to the program code. Guerlin (2017) also rightly contrasts the smart contract and the traditional contract. A smart contract is accumulated on a traditional civil contract. A smart contract is used to fulfil a monetary obligation from a car-sharing agreement, and therefore the form of its execution is transformed. The purpose of using information technology is not so much to express the will of the parties as to fulfil the obligations that have arisen.

According to the clause 1 of the Article 627 of the Civil Code of the Russian Federation, under a lease agreement, the vehicle is transferred to temporary possession and use for a certain period of time. Under a car-sharing contract, the time limit can be several minutes or hours and is often not determined at the time of its making. The customer pays only for the time of using the car. At the same time, cars are waiting for customers in different parts of the city, and not in special rental points, so you can take it, as well as leave it, where it is convenient and at any time of the day (Myreev et al., 2016).

Under the lease agreement, the car is provided in good condition, the lessor in the presence of the lessee is obliged to check its serviceability (clause 1 of Article 628 of the Civil Code of the Russian Federation). The car-sharing agreement does not imply the direct transfer of the car by the lessor to the lessee; the parties to the agreement do not interact in connection with the making and execution of the agreement. The lessee independently inspects the car (if there is damage, reports about it to the operator via the mobile application) and confirms acceptance of the lease.

It seems that the above features of the car-sharing agreement do not indicate the need to qualify it as a motor vehicle rental agreement. Qualifying a car-sharing agreement as a lease agreement allows to apply the rules on public contracts and mandatory rules on the distribution of rights and obligations (for major and current repairs, for the disposal of the object of use by the lessee), which ensures the fairness of the regulation of relations.

A feature of the car-sharing agreement is that lessors often provide in standard forms a significant list of grounds for holding the lessee liable (excessive fines for violations that the user does not suspect). Thus, in practice, fines for various dangerous maneuvers performed by the lessee are reflected as such. It seems that companies are abusing their rights, since the amount of fines is disproportionate to the harm caused. To protect his rights, the client has the right to use the opportunities provided to him by the Law of the Russian Federation of 07.02.1992 No. 2300-1 " About Consumer Rights Protection" and Article 428 of the Civil Code of the Russian Federation.

At the same time, many car-sharing companies indicate that the rules on the lease contract do not apply to car-sharing relations (Contract of Adhesion 2021). Often, a car-sharing agreement is also qualified by the courts as a vehicle lease agreement without a crew (Vehicle Lease Agreement without a Crew). Courts also often, qualifying a car-sharing agreement as a mixed contract that includes the

elements of vehicle lease agreements without a crew and paid services, refuse to apply the rental rules to such a contract (Appellate ruling of the Judicial Division for Civil Cases of the Moscow City Court). At the same time, the position on the qualification of a car-sharing contract as a lease contract is more common (Decision of the Moscow City Court, 2018).

7. Conclusion

Thus, in addition to the provision of property for use that corresponds to the characteristics of the lease agreement, in the case of car-sharing, various services are provided to the client (information services; services for booking a vehicle; obligations related to parking a vehicle; services for providing a child seat, etc.). In the relevant parts of the car-sharing agreement, it is necessary to apply the rules on the lease agreement and the contract for the provision of paid services (clause 3 of Article 421 of the Civil Code of the Russian Federation). At the same time, there are no grounds for qualifying a mixed car-sharing agreement as a non-defined contract (Akhmedov, 2014).

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