Annotation
to the dissertation of Alimkulova Akmaral Saduakassovna on the topic "Features of the lease agreement for commercial premises: Theory and practice" for the degree of Doctor of Philosophy (PhD) in the specialty "6D030100-Jurisprudence"

Relevance of the research topic. Theoretical and practical study of the features of commercial premises lease agreements in Kazakhstan is currently an urgent scientific problem. This relevance is mainly due to three factors: first, the concept of "commercial premises" is not officially fixed in international and national legal acts; second, although there are articles in national legislation concerning commercial premises lease agreements, they are adopted on a general basis and do not have a separate chapter devoted to this issue; third, there are few subject, interdisciplinary and comprehensive studies on this topic in domestic and foreign scientific works. Thus, these factors determine the theoretical and practical relevance of the research topic.

The main relevance of this research work is due to legal gaps in the civil legislation of the Republic of Kazakhstan and industry legislation in relation to it. These legal gaps, in turn, are reflected by specific legal facts (events, actions or omissions).

Article 6 of the Constitution of the Republic of Kazakhstan states that the subjects and objects of ownership, the scope and limits of the exercise of their rights by owners, as well as guarantees for their protection are established by law. This provision provides a constitutional and legal guarantee of the rights to lease commercial premises. However, there are enough legal issues of civil and industry legislation related to this norm.

For example, article 115 of the Civil Code of the Republic of Kazakhstan (General Part) defines the rights and interests of property, but it does not clearly define such concepts as "commercial premises", "buildings", "non-residential premises", as well as the concept of "real estate" in the general sense. This legal gap is the primary legally relevant issue in solving theoretical and practical issues of commercial premises lease relations. Therefore, the words "other" in this norm should be supplemented with the words "immovable and movable". Then the content of the norm takes on full legal meaning.

In addition, although article 117 of the Civil Code of the Republic of Kazakhstan defines the concept of "immovable property", terms are used that are only indirectly or abstractly related to the concept of "commercial premises", but this conceptual combination is never used directly. This also confirms that there is a real legal problem within the norm. Therefore, before the term "objects" in the current norm, the words "non-commercial and commercial" should be included. Only then will the answer to the question "which objects exactly?" become clear.

Article 119 of the Civil Code of the Republic of Kazakhstan (the General Part) defines the concept of "enterprise" as a property complex: it includes all property intended for its activities, buildings, structures, equipment, tools, raw materials, products, rights to land, claims, debts, as well as individual marks such as corporate

identity names and trademarks, and other exclusive rights, unless otherwise provided by the contract. In relation to this article, the well-known Russian legal scholar A. G. Didenko made a personal proposal with two conditions: "The wording of this article should be retained, but it is necessary to clarify from the editorial point of view that the property complex includes property directly used for business activities. However, if the legislator considers it appropriate to include in his property complex all the property of the enterprise, regardless of its use for entrepreneurial activity, then in paragraph 1 of the article under consideration, the words "used for entrepreneurial activity" should be removed and it should be indicated that the property complex includes all the property of the enterprise. This question, in turn, indicates the practical and theoretical significance of the research topic.

The level of study of the topic. Theoretical and experimental study of the features of commercial premises lease agreements in the world and in the country was carried out in their scientific works by foreign researchers, domestic legal scientists, as well as scientists of the humanities.

The purpose of the research work. Development of scientific conclusions and proposals aimed at improving the legal regulation in this area based on a comprehensive analysis of legal relations arising from the lease of commercial premises, both from a theoretical and practical point of view.

Research objectives. The goal of the study is expected to be achieved by performing the following set of tasks:

1. differentiation of aspects of the creation and formation of a lease agreement for commercial premises;
2. study of the lease agreement for commercial premises in the system of jurisprudence of a scientific and theoretical nature;
3. determination of the subjects and legal status of the commercial premises lease agreement;
4. determination of the main and special elements of a commercial premises lease agreement in the civil law system;
5. development of optimal practical solutions for classifying commercial premises lease agreements into group types;
6. analysis of the specifics of the experience of States with international best practices in the lease of commercial premises;
7. comparative legal analysis of the lease agreement for commercial premises of the Republic of Kazakhstan with contracts abroad;
8. issues of improving the lease of commercial premises in the system of civil legislation of the Republic of Kazakhstan.

Methodological basis of the study. The methodological basis of the research is general and special methods of scientific knowledge. Each method was applied in stages according to the research objectives.

Empirical basis of research work. We used the results of a separate sociological study conducted among owners and tenants of commercial premises (in a number of cities: Astana, Almaty, Shymkent, Semey, etc.). As an empirical basis, a number of lease agreements related to various commercial premises were studied.

Scientific novelty of the study. Theoretical and practical aspects of the commercial premises lease agreement were identified as a result of a comprehensive study of the current international legal acts and national law enforcement practice.

The main scientific discoveries include:

1. Clarification of the legal nature of commercial premises lease agreements: definition of a contract as a bilateral civil law agreement that lawfully regulates the economic interests of the parties aimed at generating income by transferring real estate used for business purposes to temporary possession and use.

2. Development of legal proposals based on the analysis of judicial practice and legislative gaps: the validity of the fact that when renting commercial premises, the registration of primary and final acts of delivery and acceptance is often not observed in practice and the need to introduce a norm that legitimately specifies it.

3. Drafting the original commercial premises lease agreement: clarifying the main legal elements of the agreement and creating a comprehensive legal model by systematically covering its 29 main elements.

4. Proposals for including commercial premises lease agreements in the legal system: improving the practical application of contract elements through legal systematization, defining the rights and obligations of the parties, optimizing the procedure for dispute resolution.

5. Proposals regarding the legislative framework: drafting author's proposals to clarify the objects of lease of commercial premises in the Civil Code of the Republic of Kazakhstan (Special Part) and to include features of the transfer of state property to commercial lease.

Thus, the features of lease agreements for modern commercial premises are studied theoretically and experimentally. The legal, technical and legal aspects of the relevant articles in international treaties and national legislation are studied, and some concepts and articles are discussed. As a result, relevant theoretical and practical recommendations were developed.

The main provisions of the dissertation submitted for defense.

1. A commercial premises lease agreement is a bilateral civil law agreement concluded on temporary ownership and use of commercial real estate used for carrying out business activities, for a certain period of time and on a paid basis, which legally regulates the economic interests of the parties aimed at generating income, and defines commercial risks and obligations.

2. The results of the analysis of judicial practice have shown that in commercial premises rental relations, the execution of initial and final acts of delivery and acceptance of property is often not observed in practice. One of the main reasons for this is the lack of specific legal norms concerning the execution of initial and final acts of delivery and acceptance of property, although Article 547 of Chapter 29 of the Special Part of the Civil Code of the Republic of Kazakhstan provides for the procedure for transferring property to the lessee, and article 561 — return of property to the lessor upon termination of the contract. In this regard, in order to eliminate this legal gap, it is justified to include in the civil legislation a special norm defining the procedure for executing acts of delivery and acceptance

of property. In this regard, it is proposed to supplement the Civil Code of the Republic of Kazakhstan with Article 547-1.

Article 547-1. Certificate of delivery and acceptance of the leased property.

1. The transfer of leased property to the lessee is carried out on the basis of a delivery and acceptance certificate signed by the parties. The act of delivery and acceptance indicates the actual condition of the property, technical characteristics, expiration date and other information relevant to the fulfillment of the terms of the contract.

2. In case of termination or cancellation of the lease agreement, the lessee is obliged to return the property to the lessor in the same condition in which it was received, taking into account natural wear and tear, in accordance with the act of delivery and acceptance.

3. The acceptance certificate is a document confirming the actual transfer and return of the leased property and has an evidentiary value in determining the rights and obligations of the parties.

4. In accordance with the table No. of the dissertation, the author's draft of the lease agreement for commercial premises is presented. A special feature of this project is that its content systematically contains 29 main legal elements of a commercial premises lease agreement. These elements make it possible to clearly define the subject matter of the contract, the rights and obligations of the parties, the payment procedure, the terms of use of property, liability and dispute resolution procedures. The presented author's project is justified as a scientific innovation aimed at forming a comprehensive model of legal structuring of a commercial premises lease agreement and systematization of the main elements of this agreement.

5. Draft revision of Paragraph 7 of the Civil Code of the Republic of Kazakhstan (Special part).

1. "Commercial premises rental objects (real estate)".

Objects of commercial lease (real estate) provided individually in accordance with commercial purposes:

administrative and office premises,

shopping places, restaurants and public catering establishments,

places of consumer services,

storage and production facilities,

hotels, holiday homes, parking lots,

enterprises and other types of commercial real estate act as property complexes.

2. Unless otherwise provided by the current legislation, land use rights, subsurface use rights and other property rights may be considered as objects of commercial lease.

3. Existing legislative acts may establish the types of objects (immovable property) that cannot be transferred for commercial lease or are subject to restrictions.

4. Legislative acts of the Republic of Kazakhstan may establish the specifics of providing non-residential premises, land plots, subsurface areas and other isolated natural objects for commercial lease.

5. The specifics of transferring state property for commercial lease are regulated by legislative acts of the Republic of Kazakhstan on State property.

Practical significance of the research work. The results actually obtained in the framework of the research work can be applied in the field of constitutional law, civil law, business law, administrative law, theory of state and law, law of contracts and other branches of law.

The practical basis of the study was based on the analysis of data from the Statistics Committee of the Ministry of National Economy of the Republic of Kazakhstan (www.stat.gov.kz) and other official statistical materials, as well as based on the results of a sociological survey conducted among owners of commercial premises and their tenants.

Analysis of research results.

Publishing the work.

The main content of the research work is published in 8 articles, 1 article in an international scientific journal including Scopus, 5 articles in a scientific publication recommended by the Committee for Supervision of Education and Science of the Ministry of Education and Science of the Republic of Kazakhstan, and 2 international abstracts.

Structure and scope of the dissertation.

The dissertation research work includes a table of abbreviations with notations, normative references and definitions, an introduction, 3 chapters, as well as a list of references totaling 100, tables and appendices.