

**REPORTS OF THE NATIONAL ACADEMY OF SCIENCES
OF THE REPUBLIC OF KAZAKHSTAN**

ISSN 2224-5227

<https://doi.org/10.32014/2020.2518-1483.41>

Volume 2, Number 330 (2020), 131 – 138

UDC 004:347.71:378.245.2

M.A. Zhumadilova¹, Ye.Sh. Dussipov², B.Zh. Aitimov³

^{1,3}Zhetysu state University named after Ilyas Zhansugurov, Taldykorgan, Kazakhstan;
²Academy of Public Administration under the President of the Republic of Kazakhstan;
E-mail: Mira_19820509@mail.ru, d.e._64@mail.ru, bola_30081978@mail.ru

**THE CONCEPT OF LEGAL REGULATION
OF ELECTRONIC COMMERCE**

Abstract. The social relations taking place in electronic commerce and the category “electronic commerce” are studied, the qualifying features of this activity are identified, the correlation of the concepts “trade” and “electronic commerce” is made and the author’s definition of the concept and subject of legal regulation of public relations in the field of electronic commerce is developed.

Thus, electronic commerce is often considered as a special form of transactions, in which their conclusion and execution is carried out using electronic means of communication. At the same time, the legal characteristics of transactions remain unchanged, and they must be regulated by the rules of law that regulate relations of the appropriate type (purchase-sale, transportation, contract, rent, etc.). According to this position, electronic data exchange does not change the essence of the relationship between the parties and affects only the form in which these relations are built. Within this approach, several points of view have been formed. A number of specialists consider electronic commerce as the production, advertising, sale and distribution of goods using telecommunication networks. Others interpret it as electronic business.

In the world practice, the term “trade” has also been widely interpreted so that it covers issues arising from all relations of a commercial nature, both contractual and non-contractual. Trading relationship includes the transactions as follows: any trade transactions for the supply of goods or services or the exchange of goods or services; distribution agreements; commercial representation and agent relations, factoring; leasing; construction of industrial facilities; consulting services; engineering; purchase and sale of licenses; investment; financing; banking services; insurance; operating or concession agreements; joint ventures and other forms of industrial or business cooperation; transportation of goods and passengers by air, sea, train or car. One should recognize that such a broad understanding of trade does not contribute to a detailed study of this concept and it is not suitable in practice. Therefore, the economic meaning of the term “trade” is widely spread in modern science. In a broad sense, trade is considered as a branch of the national economy that ensures the circulation of goods, their movement from the sphere of production to the sphere of circulation.

In a narrower sense, trade is defined as economic intermediation between producers and consumers which is carried out by the purchase of goods from producers in order to sell them to consumers and their further sale to other consumers.

Electronic commerce is proposed to understand the implementation of actions provided for by law, other operations in the execution of transactions for the sale of goods, work and services based on electronic procedures by the parties of the transaction. At the same time, it is proposed to understand electronic procedures as a special procedure (rules, regulations) for electronic operations in a transaction, and electronic operation on a transaction as performing certain actions by the parties to the transaction to execute the transaction through remote interaction of the parties of the transaction, other entities and their information systems in electronic commerce.

Keywords: Electronic commerce, electronic trade, digital signature, product, agreement, Internet.

Being the ancient craft, in modern society the trade has not lost its main function - the circulation of means of production and personal belongings.

Being the sphere of goods circulation, it is an active and necessary intermediary between production and consumption. Trade activities have a significant impact on the producer and the consumer encouraging production to develop the output of necessary goods and services, and forming the demand for goods and services related to their consumption due to the research and forecasts.

In international relations, trade is often considered as of a balancer, determining state priorities and the potential of representatives of the political elite. First of all, being an economic relationship arising in economic and civil circulation, the activity in the field of trade affects the interests of various social groups. Based on the significance and impact of trade on various spheres of social life, this activity needs legal regulation.

As S.S. Alekseev notes, the subject of law is of great importance for understanding legal regulation, and from the other, broader point of view, it is the environment in which, and under the influence of its special features, the law affects social relations. The subject of legal regulation is a variety of social relations, which due to their nature may take objectively to the regulatory and organizational impact in these social and political conditions, they require such an impact which is made through the legal norms and other legal means that form the mechanism of legal regulation [1, p. 712].

The determination of the subject of legal regulation in the field of electronic commerce is perhaps the most important in the whole concept of legal regulation of these relations. Regarding the concept and role of methods of legal regulation of any social relations, S.S. Alekseev points out that all sorts of techniques with which legal influence on social relations is carried out, do not exist on their own, but "only in this specific regulatory material and are closely related to the corresponding group of public relations, i.e. the subject of legal regulation".

Therefore, without determining the subject of legal regulation of relations in the field of electronic commerce, it is impossible to determine other elements of the concept of legal regulation of these relations correctly: goals, principles, methods, ways and a system of their legal regulation. It may seem that in this case there is no problem, since the subject of legal regulation is all social relations that arise in the field of electronic commerce.

Things are not so simple, indeed. Firstly, from the whole range of public relations in the field of electronic commerce, it is necessary to isolate only those that are subject to legal regulation and for which legal impact is required. Many relations in the field of electronic commerce, as well as in traditional trade, are not regulated by law, but by ethical, technical and other social norms, business customs, which are related to sources of civil law (article 6 of the Civil Code of the Republic of Kazakhstan), however, in the strict sense they are not legal norms. For example, while giving characteristics to the quality of a product, such a non-legal category as "usually made requirements" is used [2].

Secondly, and this is a much more difficult objective, it is necessary to narrow and specify the range of social relations related to the field of electronic commerce as much as possible. Taking into account the above mentioned, it becomes quite understandable why in this paper we are studying the issue regarding the concept of electronic commerce in detail, not only in legal, but also in economic aspects. This need arises since in both economic and legal literature there is a tendency to expand the concept of trade as a whole.

The scientist G.F. Shershenevich believed that the purpose of trade was to deliver goods to the place and time where and when they were in demand from consumers. Change in goods is not peculiar to the trade. The scientist wrote: "An activity aimed at mediating between producers and consumers in the circulation of economic goods is called trade" [3, p. 44].

The scientist distinguished the legal concept of it from the economic concept of trade and noted that, first of all, trade in the legal sense is the subject of regulation of commercial law. In his work G.F. Shershenevich noted that initially the trade law was really applied only regarding the transactions for the circulation of goods. However, as the author stated, each new codification introduced something new. He illustrates these remarks with references to the French, Italian and German trade laws, which recognized the commercial nature of the transactions of an entrepreneur of public views, the holder of reference offices, transactions of publishing, maintaining the printing houses, buying and selling the real estate made for speculative purposes, and keeping factories and manufactories and etc.

Thus, according to the definition given by G.F. Shershenevich, trade in a legal sense is a system of transactions, the regulation of which is the subject of commercial law. Drawing a distinction between commercial and civil law transactions, the author suggested that the difference is not based on the peculiarities of the legal nature of these transactions, but only on the purposes for which they serve. Purchase and sale, loan, luggage, etc. in their legal construction are always similar whether they are concluded in the trade turnover or beyond it. A transaction becomes a trade because it is made for sale.

As you can see, a scientist in Kazakhstan did not consider the understanding of the legal significance of trade as a simple sum of transactions for the purchase and disposal of goods; it covered any other actions aimed of mediating the provision of compensating any material goods to those who need them, i.e. to consumers not only on the right of ownership [4].

In accordance with the State Standard of the Russian Federation SS R 51303-99 "Trade. Terms and definitions", *trade is a type of business activity related to the purchase and sale of goods and the provision of services to customers*, while a wholesale is the trade of goods with their further resale or professional application, and a retail trade is the trade of goods and the provision of services to customers for personal, family, home use which are not related to business activity [5].

Services to customers mean directly the sale of goods, as well as package of purchased goods, acceptance of preliminary orders for goods, acceptance of orders for mail order trade, loading and delivery of heavy and oversized products, storage of goods and belongings of buyers, provision of a room for mother and child and the services like this. These actions (services) are the seller's obligations arising from the law or the contract on purchase and sale or the seller's actions that do not have independent legal significance and are carried out within the contract of purchase and sale, although it is possible for the extra fee.

There is no doubt that unlike a regular civil and legal transaction, and even a series of ordinary sale and purchase transactions, a trade as an activity is professional, i.e. entrepreneurial activity. This feature is an essential integral feature of the concept of trade, regardless of the scope of intermediary activities for moving goods and services from the manufacturer to the consumer.

It follows that, from a legal point of view, a trade is a sphere of public relations, and within its framework a method of business activity is implemented, which is the sale of goods, formalized through the systematic execution of civil and legal transactions of purchase and sale, as well as the provision of services to customers within the contract of purchase and sale.

The term "electronic" is widely used in public life. This is due to the emergence and widespread introduction of electronic communication and electronic equipment in all spheres of human life. The phrase "electronic computer", more often replaced by the word "computer" recently has become trivial. The adjective "electronic" is an integral part of a number of categories: electronic bargaining, electronic document, electronic signature, electronic payments and electronic government.

In the Law of the Republic of Kazakhstan "On Regulation of Trading Activities", the following legal definition of the term "*electronic*" is proposed: "it is an adjective as a definition that characterizes the subject which is sent to as related to information and communication technology using digital, analog, electrical, magnetic, optical, electromagnetic, acoustic, any other wired and wireless or similar properties" [6].

As you can see, the authors made an attempt to give a legal definition of the category of "electronic" based on the practice of using means of communication to organize civil and, in particular, commodity circulation.

There is no legal concept for the category of "electronic commerce" in the legislation of Kazakhstan. There is no common understanding of this term in foreign civil law as well.

The dictionary by S.I. Ozhegov and N.Yu. Shvedova gives the following definition of the concept of "electronic". "Electronic has the meaning "associated with the application of the electrons' properties based on their properties. Electronic computing machine". In its turn - "Electron (spec.) is the elementary particle with the smallest negative electric charge". As can be seen from this definition, the term "electronic" refers to special terms that denote the name of elementary particles used in physical science [7, p. 102].

The issue of the concept of electronic commerce is the subject of research by specialists in the field of civil, commercial law, as well as specialists in the field of economic sciences. A variety of different approaches to this phenomenon has been formed.

So, electronic commerce is often considered as a special form of transactions, in which their conclusion and execution is carried out using electronic means of communication. At the same time, the legal nature of transactions remains unchanged, and they must be regulated by the rules of law that regulate relations of the appropriate type (purchase and sale, transportation, contract, rent, etc.). According to this position, electronic data exchange does not change the essence of the relationship between the

parties and affects only the form in which these relations are established. Some viewpoints have been formed within this approach.

A number of specialists consider electronic commerce as the production, advertising, sale and distribution of goods using telecommunication networks. Others interpret it as electronic business. For some researchers, electronic commerce is commercial transactions made using electronic communications.

V.S. Belykh can be called as the author of the first position. A specialist in the field of business law considers electronic commerce as an independent type (stage) of the production process. It is part of the exchange of labor products. Therefore, he believes that the interpretation of electronic commerce as a simple set of transactions is hardly acceptable. V.S. Belykh states that trade, in its economic content, is entering the stage of exchange, distribution and redistribution of material resources. Being an integral part of the production process, electronic commerce consists of separate actions, including lawful acts of civil and legal obligations aimed at transferring property, performing work, providing services or paying money [8, p. 81].

The author notes that, based on the main areas of electronic commerce, the first of them is retail trade with the participation of consumers of goods, works, services and businessmen offering goods, works and services based on the civil and legal transactions. The second area includes all levels of information and managerial interaction between legal entities and state structures. In the latter case, it concerns the electronic wholesale.

The experts in the field of economics most often keep up the second point of view. In particular, E.V. Balyberdin defines electronic commerce as a set of technologies covering various areas of commercial activity and providing a complete closed series of operations using electronic means of data exchange [9, p.13]. He explains the lack of mention of the word “trade” in the definition by the fact that trade is only a special case of electronic commerce. In his work, the author notes that the main forms of electronic commerce are not only trading through online stores, trading platforms, etc., but also providing access services to information and communication networks, information services, financial services in the form of payment systems, advertising business, distance learning.

In its turn, in her work S.V. Afonina indicates that electronic commerce should be understood as “specialized Internet technology, which gives trade participants new opportunities to expand the scope of their activities. Electronic commerce is a branched business structure which is divided into several areas that perform various functions. At the same time, electronic commerce is business system using the latest information technologies during various business operations”. In the author’s opinion, electronic commerce includes not only on-line transactions, but also conducting marketing research, identifying opportunities and partners, organizing workflow, maintaining contacts with manufacturers and consumers. In this case, electronic commerce is a method of conducting electronic business [10, p.128].

As can be seen from the opinions of experts in the field of economics, it can be concluded that they consider electronic trade (commerce) as a technological way of organizing the enterprise’s trade and production process and a way of doing business that allows them to increase the entrepreneur’s capabilities and improve the work of entities of economic relations, including the introduction of electronic workflow and, thus, to reach a higher level of economic relations. Moreover, the expansion of economic relationships and trading opportunities through electronic commerce is assessed as rising to a new, higher level of economic relations. In addition to the directly production and trade organizations, there is a wide range of other participants among the subjects, the participants of electronic commerce. These are credit organizations, insurance companies, organizations that provide various services, for example, consulting, information, warehouse ones, etc.

Noting the absolute economic effect of electronic commerce, the specialists in the field of economics do not take into account the specifics of this category in the legal sense. In our opinion, the categories of “electronic business” and “electronic commerce” are not identical. The concept of “electronic business” rather characterizes the social relations which are related to the category “entrepreneurial activity”, and its legal definition is formulated in Art.10 of Civil Code of the Republic of Kazakhstan.

The scientists S.P. Maroz, V.V. Kazantsev have a different opinion. Taking into account the degree of using the Internet in Kazakhstan, they consider the electronic trade as purchase and sale of goods and services through electronic networks, including via the Internet, which provides access to the Network to

search for a trading partner, select goods or services, place an order, provide a guarantee of payment, deliver goods or provide services and obtain the seller's contractual value.

As a qualifying feature of electronic commerce, a number of authors focus on the type of activity and the way counterparties interact. V.V. Kazantsev believes that "electronic commerce" should denote entrepreneurial activity carried out electronically, in which electronic communication networks are used as a means of interaction between participants in the corresponding relations. Moreover, the author suggests using the categories of indirect and direct electronic commerce depending on whether computer networks are used only for transactions or offenses, as well as the fulfillment of obligations [11].

Some authors have the opinion that electronic commerce is "a set of issues arising in connection with all relations of a commercial nature, which include (but not limited) the following transactions: purchase and sale, supply, distribution agreement, trade office or agency, factoring, leasing, designing, consulting, engineering, investment contracts, insurance, operation and concession agreement, banking services, joint ventures and other public relations of industrial and business cooperation, the transportation of goods or passengers by air, sea, train".

"Electronic commerce is the conclusion of the following transactions provided (but not limited) by exchange of electronic documents: purchase and sale, delivery, provision of paid services, transportation, loan and credit, financing against the assignment of a monetary claim, bank deposit, bank account, calculations, storage, insurance, commission, agency service, fiduciary management, commercial concession, partnership, public promise of a reward, public tender, as well as acquisition and implementation using electronic means, other rights and obligations in the field of entrepreneurship". In this definition there is no word concerning the trade. The authors equated almost all transactions named by civil law and the legal category – "trade".

The others unfairly simplify this category. For example, M. Otstanov defines electronic commerce as "a part of the digital economy" broadly, and as "trade of intangible goods that can be transmitted and defined digitally" in a narrow sense. The author of the publication relates the information in text, graphic or sound presentation to "intangible goods".

We disagree with this opinion, since it does not accurately reflect the essence of electronic commerce. The object of an electronic transaction can be any object of the material and intangible world that is able to participate in the commodity circulation.

Electronic commerce is proposed to understand the implementation of actions provided for by law, other operations in the execution of transactions for the sale of goods, work and services based on electronic procedures by the parties of the transaction. At the same time, it is proposed to understand electronic procedures as a special procedure (rules, regulations) for electronic operations in a transaction, and electronic operation on a transaction as performing certain actions by the parties to the transaction to execute the transaction through remote interaction of the parties of the transaction, other entities and their information systems in electronic commerce.

And, in its turn, an electronic transaction is any transaction within the Civil Code of the Republic of Kazakhstan, which is executed by the parties through electronic transaction operations [2].

In this definition, a method for taking actions in the execution of transactions for the sale and delivery of goods, the performance of work, and the provision of services based on the performance of electronic procedures was chosen as a qualifying feature. It is unclear what the authors of the bill mean by electronic procedures, technical or legal means?

All the above definitions of the studied category do not give a complete idea of this social phenomenon. In particular, this is caused by the fact that the world community did not formulate this concept either.

The Standard Law on Electronic Commerce, adopted by the United Nations Commission on International Trade Law does not reveal directly the content "electronic commerce". In this act, electronic commerce is mainly referred as a special way to carry out trade operations - through electronic data exchange. While the Standard Law was prepared, the Commission took a decision that "when considering this theme, it will be based on the broad concept of electronic data exchange (EDE), which will cover a variety of trade-related application of EDE, which in a broad meaning can be included in the category "electronic commerce" although other descriptive terms may be used".

In this document the data transmission tools covered by the concept “electronic commerce” include the following methods of transmission based on the use of electronic methods: data transmission by EDE in narrow meaning of this concept as data transmission of a standardized format between computers; transmission of electronic messages using either public or patented standards; transmission of free text by electronic means, for example via the Internet. It was also noted that in some cases, the concept “electronic commerce” could cover the use of tools such as telex and telefax.

Thus, despite the variety of scientific approaches to resolving the issue regarding the qualifying features that define the category “electronic commerce”, one can distinguish its main essential characteristics.

1. Electronic commerce mediates economic and civil circulation. Like traditional commerce, the electronic one is a form of commodity circulation that ensures the movement of goods from the manufacturer, through an intermediary to the final consumer. Public relations in the field of electronic commerce are property relations of a commodity-money nature.

2. Unlike the traditional commerce, electronic commerce is connected with the method of conducting commercial operations - in remote access, and the mechanism by which they are committed. In electronic commerce, all commercial operations to promote goods and services from a producer to a consumer or some of them are carried out in electronic form.

3. Electronic commerce is one of the types of professional entrepreneurial activities for businessmen who are engaged in trade activities and related trading in the accordance with the charter, etc.

4. The actions for the sale, the supply of goods and the provision of services within the framework of electronic commerce are associated with the additional actions when the transactions are executed. The additional actions of electronic commerce participants are connected mainly with organizational issues, namely: the need for a computer availability and other equipment, software, access to a telecommunication network, additional tools of addressing (domain name, e-mail), etc. But it is these organizational actions that provide the opportunity to participate in electronic commerce.

Having studied the qualifying features of electronic commerce, we can draw the following conclusions.

As it can be seen, except for some aspects, electronic commerce practically has the same set of basic characteristics as the traditional one. Unlike the traditional commerce, the peculiarities of electronic commerce are associated with the method of conducting commercial operations - in conditions of remote access, additional organizational actions and the mechanism by which they are completed. But it is these factors that determine the specific features of public relations in this area.

Such concepts as “digital product” and “digital service” are used in electronic commerce. Nowadays, the definition of these concepts has not been developed. In most studies, digital goods mean literary, graphic, musical, audiovisual works, software, which can be downloaded directly from the seller’s website. A digital service means a service provided via the Internet.

М.А. Жұмаділова¹, Е.Ш. Дүсіпов², Б.Ж. Айтимов³

^{1,3} Ілияс Жансүгіров атындағы Жетісу мемлекеттік университеті, Талдықорған, Қазақстан;

² Президент жанындағы Мемлекеттік басқару академиясы, Қазақстан

ЭЛЕКТРОНДЫҚ САУДАНЫ ҚҰҚЫҚТЫҚ РЕТТЕУДІҢ ТҮСІНІГІ

Аннотация. Электронды саудада жинақталған қоғамдық қатынастар зерттеледі, «электронды сауда» категориясы оқытылады, осы қызметтің топтастырылу белгілері анықталады, «сауда» және «электронды сауда» ұғымдарының арақатынасы айқындалады, электронды сауда саласындағы қоғамдық қатынастарды құқықтық реттеудің ұғымы мен пәніне авторлық анықтама жазылады.

Осылайша, электронды сауда, көбінесе олардың жасалу мен жүзеге асырылу коммуникацияның электронды құралдарының көмегімен жүзеге асырылатын мәміле жасаудың ерекше нысаны ретінде қарастырылады. Мәміленің құқықтық табиғаты мұндай жағдайда өзгеріссіз қалады және олар тиісті түрлерді (сатып алу-сатуды, тасымалдауды, мердігерді, аренданы және тағы басқаларды) тәртіпке келтіретін қатынастардың құқық нормаларымен реттелуі қажет. Осындай позицияға сәйкес, мәліметтермен электронды айырбас тараптардың өзара қатынасының мәнін өзгертпейді, тек осы қатынастарды құратын нысандарға ғана

асер етеді. Осы тәсіл аясында бірнеше көзқарастар қалыптасты. Бірқатар мамандар электронды сауданы телекоммуникациялық желіні пайдаланған өндіріс, жарнама, сату және тауарларды тарату деп түсінеді. Басқалары бизнестің электронды түрде жүргізілуі деп айтады.

Сондай-ақ әлемдік тәжірибеде «сауда» терминін шарттық және шарттан тыс сауда сипатындағы барлық қатынастардан туындайтын мәселелерді қамту үшін кеңінен түсіндіру қабылданған. Ал сауда сипатындағы қатынастар мұнымен шектелмей, мынадай мәмілелерге бөлінеді: кез келген сауда мәмілелері тауарларды немесе қызметтерді жеткізуге, тауарлармен немесе қызметтермен алмасуға арналған; дистрибьюторлық келісімдер; коммерциялық өкілдік және агенттік қатынастар, факторинг; лизинг; өнеркәсіп объектілерін салу; консультациялық қызметтер көрсету; инжиниринг; лицензияларды сатып алу-сату; инвестициялау; банк қызметтері; сақтандыру; пайдалану немесе концессия туралы келісімдер; бірлескен кәсіпорындар және өнеркәсіптік немесе кәсіпкерлік ынтымақтастықтың басқа да нысандары; тауарлар мен жолаушыларды әуе, теңіз, темір жол немесе автомобиль көлігімен тасымалдауды қамтиды.

Сауданы мұндай кең түрде түсіну осы ұғымды егжей-тегжейлі зерттеуге ықпал етпейтінін және практикалық тұрғыдан жарамдылығы төмен екенін мойындау керек. Сондықтан да қазіргі ғылымда экономикалық «сауда» терминінің маңызы кең таралған. Кең мағынада сауда тауарлардың айналымын, олардың өндіріс саласынан айналыс саласына қозғалысын қамтамасыз ететін халық шаруашылығы саласы ретінде түсініледі.

Неғұрлым тар мағынада, сауда, өндірушілер мен тұтынушылар арасындағы экономикалық делдалдық ретінде айқындалады, кейіннен басқа тұтынушыларға сату мақсатында өндірушілерден тауарларды сатып алу жолымен жүзеге асырылады.

Электрондық сауда-саттықта тараптардың электрондық рәсімдерді орындау негізінде тауарларды жеткізу, жұмыстарды орындау, қызметтерді көрсету бойынша мәмілелерді рәсімдеу және жасау кезінде, заңдарда көзделген әрекеттерді, өзге де операцияларды жүзеге асыруын түсіну ұсынылды. Бұл ретте электрондық рәсімдер деп мәміле бойынша электрондық операцияларды жасаудың ерекше тәртібін ұсыну ұғынылады (ережелерін, регламентін), ал мәміле бойынша, электрондық операция – тараптардың жекелеген мәмілелер жасауы және оны орындау үшін белгілі бір әрекеттерді, басқа субъектілердің және олардың ақпараттық жүйелерінің қашықтықтан электронды түрде өзара әрекеттестік жасауы.

Түйін сөздер: электронды комиссия, электронды сауда, цифрлы қолтаңба, тауар, келісім, интернет.

М.А. Жумадилова¹, Е.Ш. Дусипов², Б.Ж. Айтимов³

^{1,3} Жетысуский государственный университет им. Ильяса Жансугурова, Талдықорган, Казахстан;

² Академия государственного управления при Президенте Республики Казахстан

ПОНЯТИЯ ПРАВОВОГО РЕГУЛИРОВАНИЯ ЭЛЕКТРОННОЙ ТОРГОВЛИ

Аннотация. Исследуются общественные отношения, складывающиеся в электронной торговле, изучается категория «электронная торговля», выявляются квалифицирующие признаки этой деятельности, производится соотношение понятий «торговли» и «электронной торговли», вырабатывается авторское определение понятию и предмету правового регулирования общественных отношений в сфере электронной торговли.

Так, нередко электронная торговля рассматривается как особая форма совершения сделок, при которой их заключение и исполнение осуществляется с помощью электронных средств коммуникации. Правовая природа сделок остается при этом неизменной, и они должны регулироваться нормами права, упорядочивающими отношения соответствующего вида (куплю-продажу, перевозку, подряд, аренду и прочее). Электронный обмен данными, согласно такой позиции, не меняет сущности взаимоотношений сторон и влияет только на форму, в которой эти отношения строятся. В рамках этого подхода сформировалось несколько точек зрения. Ряд специалистов понимают под электронной торговлей производство, рекламу, продажу и распространение товаров с использованием телекоммуникационных сетей. Другие трактуют как электронное ведение бизнеса.

В мировой практике также принято термин «торговля» толковать широко с тем, чтобы он охватывал вопросы, вытекающие из всех отношений торгового характера как договорных, так и внедоговорных. А отношения торгового характера включают следующие сделки, не ограничиваясь ими; любые торговые сделки на поставку товаров или услуг или обмен товарами или услугами; дистрибьюторские соглашения; коммерческое представительство и агентские отношения, факторинг; лизинг; строительство промышленных объектов; предоставление консультативных услуг; инжиниринг; купля – продажа лицензий; инвестирование; финансирование; банковские услуги; страхование; соглашения об эксплуатации или концессии; совместные

предприятия и другие формы промышленного или предпринимательского сотрудничества; перевозка товаров и пассажиров воздушным, морским, железнодорожным или автомобильным транспортом.

Следует признать, что столь широкое понимание торговли не способствует детальному исследованию этого понятия и малоприспособно в практическом отношении. Поэтому в современной науке распространено экономическое значение термина «торговля». В широком смысле торговля понимается как отрасль народного хозяйства, обеспечивающая обращение товаров, их движения из сферы производства в сферу обращения.

В более узком значении торговля определяется как экономическое посредничество между производителями и потребителями, осуществляемое путём покупки товаров у производителей с целью продажи потребителям с последующей реализацией другим потребителям.

Электронной торговлей предложено понимать осуществление сторонами сделки, предусмотренных законодательством действий, иных операций при оформлении и совершении сделок по продаже поставке товаров, выполнению работ, оказанию услуг на основе исполнения электронных процедур. При этом под электронными процедурами предлагается понимать особый порядок (правила, регламент) совершения электронных операций по сделке, а под электронной операцией по сделке – совершение сторонами сделки отдельных действий по оформлению и совершению сделки посредством дистанционного взаимодействия сторон сделки, иных субъектов и их информационных систем в электронной

Ключевые слова: электронная коммерция, электронная торговля, цифровая подпись, товар, соглашение, интернет.

Information about authors:

Zhumadilova M.A., doctoral student, Zhetysu state University named after Ilyas Zhansugurov, Taldykorgan, Kazakhstan. E-mail: Mira_19820509@mail.ru, <https://orcid.org/0000-0002-4083-0354>;

Dussipov Ye.Sh., candidate of legal sciences, professor, vice-rector of the Academy of Public Administration under the President of the Republic of Kazakhstan, E-mail: d.e._64@mail.ru, <https://orcid.org/0000-0001-6546-4576>;

Aitimov B. Zh., PhD, head of the Department of "Criminal law" I. Zhansugurov Zhetysu state University, Taldykorgan. E-mail: bola_30081978@mail.ru, <https://orcid.org/0000-0001-7928-8550>

REFERENCES

- [1] Alekseev S.S. Law: ABC theory – philosophy: Experience of integrated research / S.S. Alekseev. M.: Statute, 1999. P.712
- [2] Civil Code of the Republic of Kazakhstan dated December 27, 1994 No. 268-XII. (amendments and additions dated of April 2, 2019). [Electronic resource] – Access mode. <http://online.zakon.kz> (Date of access: 02.04.2019).
- [3] Shershenevich G.F. Course of commercial law. T.I: Introduction. Trading figures. M.: Statute, 2003. P. 480 (Classics of Russian civil law). P. 44.
- [4] Shishaeva E.Yu. Legal regulation of the using an electronic document in entrepreneurial activity [Electronic resource] / E.Yu. Shishaeva // Access mode: Reference legal system Consultant Plus, 2005.
- [5] State Standard R 51303-99. Trade. Terms and Definitions. [Text]. 1999-08-11. M., PPC (Publishing and printing complex) Standards Publishing House, 1999.
- [6] Law of the Republic of Kazakhstan dated April 12, 2004 No.544-II “On Regulation of Trade Activities” (amended on May 24, 2018). [Electronic resource] – Access mode. <http://online.zakon.kz> (Date of access: 01/26/2019).
- [7] Ozhegov S.I., Shvedova N.Yu. Glossary of the Russian language. Publishing house «Az», 1992.
- [8] Belykh V.S. Information as an object of legal regulation /V.S. Belykh // Information society: law and power. Collection of articles. – Yekaterinburg: Publishing House of the Ural State Law Academy, 2001. P. 81.
- [9] Balyberdin E.V. Contemporary forms of organizing e-commerce in Russia: On the example of the development and implementation of the online store project. Diss. ... doctor. econ. sciences. Moscow, 2003. P. 13.
- [10] Afonina S.V. Electronic money. St. Petersburg: Peter, 2001. P. 128.
- [11] Kazantsev V.V. Electronic commerce. How to avoid mistakes? Access mode. <https://el.kz/ru/news/> (Date of access: 11/29/2018).