



3. Обоснована необходимость разработки «Основ развития административного законодательства в Украине» для обеспечения единых подходов к стратегическому планированию развития существующих и внедрения новых элементов системы административного законодательства, в том числе касательно кодификационной деятельности.

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FORMATION AND DEVELOPMENT OF LEGAL REGULATION OF CONTRACT RELATIONS IN THE FIELD OF TRANSPORT SERVICES PROVISION

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Summary

The article deals with the study of the formation and development of legal regulation of contractual relations in the field of transport services provision. It analyzes the development of contractual relations regulation in the field of transport services provision from the time of Roman private law up to nowadays. Particular attention is paid to the legal regulation of transport services in the acts of codification of civil law, which are acted on Ukrainian lands at different periods of time. On the basis of the conducted research, there were formulated the main historical stages of the legal regulation development of contractual relations in the field of transport services.

Key words: transport services, contract of carriage, legal regulation of transport services, act of codification of civil law.

СТАНОВЛЕНИЕ И РАЗВИТИЕ ПРАВОВОГО РЕГУЛИРОВАНИЯ ДОГОВОРНЫХ ОТНОШЕНИЙ В СФЕРЕ ПРЕДОСТАВЛЕНИЯ ТРАНСПОРТНЫХ УСЛУГ

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Аннотация

Статья посвящена исследованию становления и развития правового регулирования договорных отношений в сфере предоставления транспортных услуг. В ней проанализировано развитие регулирования договорных отношений в сфере предоставления транспортных услуг со времен римского права до настоящего времени. Отдельное внимание уделяется правовому регулированию транспортных услуг в актах кодификации гражданского законодательства, которые в разные периоды времени действовали на территории Украины. На основе проведенного исследования сформулированы основные исторические этапы развития правового регулирования договорных отношений в сфере предоставления транспортных услуг.

Ключевые слова: транспортные услуги, договор перевозки, правовое регулирование отношений транспортных услуг, акты кодификации гражданского законодательства.

Statement of the problem in general and its connection with the important scientific and practical tasks. Having chosen a course on the European integration, Ukraine has embarked on a number of reforms in various spheres of public relations, including the field of legal regulation of contractual relations for the provision of transport services. In this context, the main task is to bring Ukraine's legislative base to the European standards. This

requires a thorough and comprehensive scientific and theoretical analysis of the current state of legal regulation of contractual relations in the field of transport services provision taking into account the historical preconditions for their emergence and development in the civil law of Ukraine.

The analysis of recent researches and publications, which the author relies on and which initiated the solution of this problem; the allocation



of previously unsolved parts of the general problem, which are dealt with this article. Separate aspects of legal regulation development of contractual relations in the field of transport services were the subject of study in the works of both domestic and foreign scholars. They are the following ones: I.O. Bezlyudko, O.E. Blazhivska, M.I. Braginsky, I.V. Bulgakov, V.V. Vitryansky, E.M. Derkach, I.A. Dikovska, A.V. Klepikova, T.O. Koliakskovska, O.S.Kuzhko, V.V.Luts, O.M.Nechiporenko, G.V. Samoilenko, L.Ya. Svystun, E.D. Streltsova, N.V. Fedorchenko, M.L. Shelukhina and others. However, in the doctrine of civil law of Ukraine a comprehensive study of the genesis of legal regulation of contractual relations in the field of providing transport services through the prism of acts of civil legislation codification which are acted on Ukrainian lands is remained without the attention of scientists.

Formulation of the goals in the article. The purpose of this article is to study the genesis of legal regulation of contractual relations in the field of transport services provision, to distinguish historical stages of the development of legal regulation of contractual relations in the field of transport services provision.

Presentation of the main research material with the full justification of the received scientific results. Characterizing the historical preconditions for the emergence of obligations for the provision of transport services in the law of Ukraine, it should be noted that the roots of the contractual law of the most European countries, including Ukraine, reach the Roman private law.

The Romans have created a legal framework for a wide range of treaties. This ensured the proper development of economic, including trade relations. However, the Romans distinguished neither a group of service contracts, nor an independent contract of carriage. The provision of services was regulated within one of the consensual contracts – a contract of employment (*locatio conductio*), which covered in Roman law a fairly wide range of relations for reciprocal use of things, the execution of works and the provision of services. In Roman private law there were three types of employment contract: the hiring of a thing (*locatio rei*) is a prototype of the contract of employment

(lease); contract of employment (*locatio conductio operis*) is a prototype of a contract of work, which also included a transportation; hiring of a workforce (*locatio conductio operarum*) or hiring of services is a prototype of an employment contract [1, p. 164].

It indicates that the contracts of carriage in Roman private law were settled within the framework of the contract of employment (*locatio conductio operis*). Therefore, we can assume that the genealogical roots of the modern contract of carriage date back precisely from *locatio conductio operis*.

It is interesting to study the first written sources of Ukrainian law that is the sources of law in Kievan Rus', taking into consideration the legal regulation of the contract of carriage. Just in the first memorials of the law of Kievan Rus', in particular, in the Treaty of Rus' with Byzantium in 911, there is a memorial about the carriage by waterways. The treaty established the mutual obligations of the Rus' and Byzantines, related to the preservation of an alien ship's property broken down on the shore until a legitimate possessor appearing. In Western Europe, in this case, the property belonged to the owner of the shore [2, p. 75].

The existence of international transportation in Kievan Rus' indicates that the overseas trade formed the basis of economic system of Kievan Rus', since one of the largest world commodity flows «from the Vikings to the Greeks» passed through Kiev along the Dnieper River, crossed the Black Sea and finished in Constantinople -the trade center. Every year about 50 thousand tons of goods were transported to Byzantium through Kiev. In Kievan Rus' the tax meant the tax paid for the transportation of goods, the transfer of cattle across the borders of certain territories. There was a duty (tax) «dry» concerning the land transportation of goods and a duty «water» concerning transportation of goods on water [3, p. 71].

Despite the active implementation of transportation both within the country and international transportation, there is not a legal regulation of contractual relations of carriage in the written sources of Kievan Rus'. So, in the first codified act – the Russian Pravda of the XI-XII centuries, the contractual relations of transportation are not mentioned [4, p. 9].

In the Statutes of the Grand Duchy of Lithuania in 1529, 1566 and 1588, the transport relations also did not receive a legal regulation. Investigating the development of the Institute of contractual obligations to provide services in domestic law, N. V. Fedorchenko suggests that the genealogical roots of the modern service contract originate in the *locatio conductio operarum*. Therefore, in the scientist's opinion, in the Lithuanian statutes of 1529, 1566, 1599 which indicate about a higher level (in comparison with the time of Kievan Rus') of economic development, the contractual commitments on the provision of services are regulated by the provisions of the free hiring relationship [5, P. 6.9]. However, the norms of the specified Lithuanian charter can hardly be called the sources of regulation of such a variety of contractual relations for the provision of services as transportation. The contract of carriage among other treaties in the Statutes is not regulated; in Chapter 26 in the Charter of the Grand Duchy of Lithuania in 1529 there are some mentions about the passage on the roads [4, p. 19].

In the Code of Conduct (1649) in Chapter IX, the mention for the transport is stated, not like a contractual relationship, but in the context of tax relations. In particular, it is prohibited to charge a fee for transportation from servants, nobles and children of knights, from foreigners for their passage through the bridges. The perpetrators were liable in the form of a triple reimbursement of the pledged fee and physical punishment (whipping) (Chapter IX, «About duties and transporting and about bridges») [4, p. 321].

Thus, on the territory of modern Ukraine from the time of Kievan Rus' (Xth century.) until the end of the XVIIIth century in the written sources of law and acts of codification of civil legislation on Ukrainian lands there is no legal regulation of contractual relations in the field of transport services provision. Some transport acts are mentioned, but in the context of regulating others, not contractual relations. We suggest to name this period of legal regulation genesis of contractual relations of transportation as the period of origin.

The next period of legal regulation development of contractual relations in the sphere of rendering transport services is



characterized by the adoption of codified acts on Ukrainian lands which were a part of different states. We propose to name this period as the period of formation of legal regulation.

In «The rights that the Little Russian people are condemning», in 1793 there were fixed the provisions that were tangent to the regulation of transport by water. Thus, Article 1 of Chapter 18 of the Rules refers to «water ports» and the legal consequences of the occurrence of force majeure in the transport of goods and other things [4, p. 634].

In other acts of codification of civil legislation in the Ukrainian lands, adopted at the end of the XVIIIth – the beginning of the nineteenth century, there is no legal regulation of contractual transportation relations. Thus, the Galician Civil Code or the Civil Code of Eastern Galicia in 1797 [6] did not allocate a contract of carriage among other treaties. However, one should not underestimate its significance. This Code, one of the first in the territory of Eastern Galicia and Bukovina (the present territory of Ukraine), reflected in a new way the approach to legal regulation of hiring of works and services and, more importantly, for the first time, distinguished between contractual obligations for the performance of works and the provision of services [5, P. 11]. Thus, according to the Art. 263 of Chap. XVIII of the Code the service of persons may be promised for a certain amount of money, which is the hiring of works or services. Subsequently, the Code became the basis for the General Civil Code of the Austrian Empire in 1811.

In the General Civil Code of the Austrian Empire in 1811, the contract of carriage is also not allocated among other treaties. Chapter 26 of this codified act is governed by personal service contracts, which, according to § 1151, arise «if anyone undertakes to render services or manufacture a particular subject for a certain monetary remuneration» [4, p. 1123]. However, the adoption of the Civil Code of 1811 had a significant positive impact on the development of Galicia. The clear procedure for the conclusion of trade agreements, the certainty of the rights and obligations of counteragents in the treaties, contributed to the effective settlement of civil relations, the exit of Galicia from a state of economic decline. A characteristic

feature of the Austrian Civil Code of 1811 is its in some way cumbersome structure, which may seem arbitrary. However, in general, the conciseness and insufficient theoretical basis of the code make it possible to reveal the flexibility in the interpretation [7, p. 93].

In the Collection of Little Russian Rights in 1807 [4, p. 885], as in previous acts, the contract of carriage is not even mentioned. There is not only mentioned about this agreement, but also about the contracts on the provision of services in general.

An important role in the formation of legal regulation of contractual transport relations on the territory of most part of modern Ukraine played the Code of Law of the Russian Empire in 1832. It carries the first mention of contractual obligations. However, the «transportation of people and things by land and water transportation» is not identified as an independent type of civil law contract, but as one of the possible items of «contract and supply» (Article 1738 Chapter 3 on contracts and supplies in general, Section 3 On the obligation concerning the treaties on property in ownership, Book 4 On obligations to contracts). Such an approach in the act of codification of the legislation in Russian Empire at the beginning of the XIXth century testifies to the reception of Roman private law, where, as noted above, the contract of carriage was regulated within the framework of the contract of employment [8, p. 183].

The Code of Local Laws of the Provinces in 1837 [8, p. 239] was the last attempt to codify Ukrainian civil law within the Russian Empire. It had a fairly ramified system of contracts. In this case, many of them establish special legal norms in comparison with the all-Russian law, or generally provide specific legal constructions [9, p. 66]. In the Code the treaties of donation, mines, purchases, etp. were settled. In addition to the rules relating to certain types of contracts, the Code also contained provisions on the drafting, implementation, execution and termination of contracts, the provision of contracts and obligations [10, p. 100]. However, relations under the contract of carriage in the Warehouse were not regulated. However, this codified act has not yet acquired the status of an official one.

Since the end of the nineteenth century the legal regulation of transport services has been gaining new trends. We suggest to name this period as a period of transformation. Describing mainly codified acts of civil law, it is impossible not to draw attention to an act in which the contractual relationship with the provision of transport services was not the first time received an independent legal regulation. This is the General Statute of Russian Railways of the Russian Empire, adopted in 1885. It fully reflected the contemporary conditions of socio-economic development. Its adoption was conditioned by the active construction of railways, which required the adoption of special legislation in this area.

The position of the civilist doctrine of that time was reflected in legislative initiatives. So, at the beginning of the XXth century a draft of Civil Code of the Russian Empire of 1905 was developed. This codified act played an important role in the genesis of legal regulation of contractual transport relations, since the carriage, for the first time at the level of the codified act, is considered as an independent variant of the contract, along with the other contractual constructions, such as sale, mine, donation, hiring, and so on.

The contract of carriage was set out in Chapter XI in Section II of the Contract Commitment (Book V Obligatory Law). The chapter was divided into four sub-headings: I. General provisions. II Passenger transportation. III Freight. IV Luggage transportation [8, p. 617–621].

The developed project of Civil Code of the Russian Empire could not be checked by time or practice, since it did not come into force.

Despite the increasing importance and role of transport as an important sector of the economy, in the first half of the twentieth century, its legal regulation is not properly regulated in Ukraine. Thus, in the codified act of civil law – the Civil Code of the Ukrainian Socialist Soviet Republic of 1922 [8, p. 679] on the contract of carriage among the obligations arising from treaties is not mentioned. The legal regulation of contractual relations with the provision of transport services until the middle of the twentieth century was carried out at the level of by law-making acts passed



by the government of that time (transport statutes and codes) and transport ministries (transport rules).

The active development of legal regulation of transport services accounts for the second half of the twentieth century. The first step in this way was the adoption of the Fundamentals of Civil Legislation of the USSR and the Union Republics of 1961, where contractual transportation relations were regulated by a separate Chapter 9 – «Transportation». Although the Chapter consisted of only six articles (Articles 72-77), the meaning of the Fundamentals in the establishment of legal regulation of the contract of carriage on the territory of Ukraine can not be underestimated, since it was the first consolidation of the codified norms on the contract of carriage as an independent civil law contract in the codified act of civil law, which has become an official status.

The foundations of the civil legislation of the Union of Soviet Socialist Republics and the Union republics in 1961 created the ground for the formation of the next system of legal regulation of goods, passengers and baggage carriage. The norms of the foundations of civil law were reproduced in the Civil Code of the Ukrainian Soviet Socialist Republic in 1963 [8, p. 940]. In this code, the transport relationship is highlighted as a separate type of contractual obligation in Chapter 30 «Transportation», which consisted of 11 articles. The detailed regulation of the contractual relations of carriage by certain types of transport was carried out by transport codes and statutes, as well as by the rules of carriage, by the corresponding types of transport.

Insignificant period of time relations under the contract of carriage were regulated by the Fundamentals of Civil Legislation of the Union of Soviet Socialist Republics and the Republics in 1991 [8, p. 1113]. In Chapter 13 of the Fundamentals (seven articles), the definition of the concept of a contract for the carriage of goods and a contract for the carriage of passengers and baggage was established (similar to the definition of the concept of these contracts in the Civil Code in 1963), the provisions on the carriage of public transport, the norms of the agreements on the organization of transport, norms of the conditions of

the contract for the carriage, liability of the carrier for loss, shortage and damage to the cargo and luggage. In addition, as an independent form of transportation contracts, a contract of transport forwarding has been allocated for the first time.

With the proclamation of Ukraine's independence in the legal regulation of the transport services provision, there have been numerous changes due to the transition of Ukraine to a market economy and the signing of the Association Agreement with the European Union (modern period). Gradually, an own system of legal regulation of contractual relations for the provision of transport services began to form in Ukraine.

The private legal framework for regulating all contractual relations, including relations in the field of providing transport services are formulated in the provisions of the main codified act of civil legislation – the Civil Code of Ukraine of 16 January 2003, the Transport Treaty is devoted to Chapter 64 of this Code, which generally contains 21 articles (Art. 908 – 928). The norms of the Civil Code of Ukraine do not reflect the peculiarities of the carriage of goods, passengers, luggage, mail by various modes of transport, and contain the most general provisions for all transportation contracts.

Legal regulation of cargo transportation is regulated also by Chapter 32 of the Commercial Code of Ukraine of January 16, 2003 (Articles 306 – 316, a total of 11 articles).

The system of legal regulation of contractual relations for the provision of transport services is outlined in the norms of paragraph 2.3. 908 of the Civil Code of Ukraine, according to which the general conditions of carriage are determined by this Code, other laws, transport codes (charters), other normative legal acts and rules issued in accordance with them. Conditions of carriage of cargo, passengers and luggage by separate means of transport, as well as the responsibility of the parties in respect of these transportation shall be established by agreement, unless otherwise provided by this Code, other laws, transport codes (charters), other normative legal acts and rules issued in accordance with them.

That is, the peculiarities of providing transport services by certain types of

transport are determined by special legislation in this area, which consists of: transport codes (for example, the Air Code of Ukraine of May 19, 2011 and the Code of Commercial Seafaring of Ukraine of May 23, 1995), special laws (for example, The Law of Ukraine «On Transport» of November 10, 1994, the Law of Ukraine «On Railway Transport» dated July 4, 1996, etc.), transport charter (Statute of railways of Ukraine, approved by the Cabinet of Ministers of Ukraine from 6 April 1998, and still remain in force in the territory of Ukraine Statute of inland water transport of the USSR, approved by the decision of the Council of Ministers of the USSR of October 15, 1955 and the Charter of Road Transport of the USSR, approved by the decision of the Council of Ministers of the USSR of June 27, 1969), the rules, Issued in accordance with them (Rules for carriage of passengers, luggage and cargo by the railways of Ukraine, approved by the order of the Ministry of Transport and Communications of Ukraine dated from December 27, 2006) and other normative-legal acts.

Conclusions from the given research and prospects for further developments. Thus, the above-mentioned study on the formation and development of legal regulation of contractual relations in the field of transport services on the territory of Ukraine allows to distinguish the following main periods of its evolution.

The period of the conception of legal regulation of contractual relations in the field of providing transport services (Xth century – the end of the XVIIIth century) is characterized by the lack of legal regulation of contractual transport relations in written sources of law and acts of codification of civil legislation in Ukrainian lands. Some transport acts are mentioned, but in the context of regulating others, not contractual relations.

The period of legal regulation of contractual relations with the provision of transport services (the end of the XVIIIth century – the end of the XIXth century) is characterized by the first mention of carriage in contractual obligations, but only as one of the varieties of the contract. In the majority of the same codified acts of civil legislation in the Ukrainian lands the



legal regulation of contractual relations in the field of providing transport services is absent.

The period of transformation in the legal regulation of contractual relations with the provision of transport services (the end of the XIXth century – the end of the XXth century) is characterized by numerous changes. So, at the end of the nineteenth century – at the beginning of the twentieth century the Civil law doctrine and projected acts of civil law recognize the contract of carriage as an independent contract among other civil law contracts. However, in the first half of the twentieth century the transportation services despite their growing role and significance do not receive proper legal recognition. In the second half of the twentieth century the contract of carriage is recognized as an independent civil law contract at the legislative level, however, it acquires a planned character.

The modern period of legal regulation of contractual relations in the sphere of provision of transport services (1991–2017) is characterized by the transition to the private legal principles of regulation of relations in the sphere of rendering transport services, reflected in the norms of the Civil Code of Ukraine, transport codes, statutes and rules. However, the system of legal regulation of contractual relations established in this area is not perfect, since it contains a number of legislative acts that do not correspond to modern realities and contain obsolete norms. In addition, a large part of the norms governing such contractual relationships is contained in numerous sublegal regulations in which the transport services user often remains a less secure party. Therefore, on the way of approximation of Ukrainian legislation to the norms adopted by the party of European Union, it should be taken into account and eliminated the shortcomings in the modern system of legal regulation of contractual relations in the field of transport services provision.

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