цели с использованием пропорциональных средств и не могут вредить сути права на свободные выборы и его эффективности.

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LEGAL NATURE OF TRANSPORT SERVICES CONTRACTS

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SUMMARY

The article is devoted to the study of the legal nature of contracts for the provision of transport services. In it, based on the analysis of numerous scientific works in contemporary civilization, devoted to this problem, the materials of jurisprudence and the provisions of the current legislation of Ukraine, the differences in contracts for the provision of transport services from contracts of contract, supply, hiring (lease), etc., were clarified. According to the results of the study, it was concluded that the legal nature of contracts for the provision of transport services is determined by their purpose, which is to move physical persons and objects of the material world with the help of vehicles.

Key words: contracts for rendering transport services, transportation contract, contract of contract, delivery contract, lease contract, charter agreement (charter), contract of transport expedition.

ПРАВОВАЯ ПРИРОДА ДОГОВОРОВ ПО ПРЕДОСТАВЛЕНИЮ ТРАНСПОРТНЫХ УСЛУГ

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АННОТАЦИЯ

Статья посвящена исследованию правовой природы договоров по предоставлению транспортных услуг. В ней на основе анализа многочисленных научных трудов по современной цивилистике, посвященных этой проблематике, материалов судебной практики и положений действующего законодательства Украины установлены отличия договоров по предоставлению транспортных услуг от договоров подряда, поставки, найма (аренды) и др. По результатам проведенного исследования сделан вывод о том, что правовая природа договоров по предоставлению транспортных услуг определяется их целью, которая заключается в перемещении физических лиц и предметов материального мира с помощью транспортных средств.

Ключевые слова: договоры по предоставлению транспортных услуг, договор перевозки, договор подряда, договор поставки, договор найма (аренды), договор чартера (фрахтования), договор транспортной экспедиции.

Problem is solving in general and its connection with important scientific or practical tasks. Agreements on the provision of transport services have traditionally entered into the daily lives of every individual and the activities of legal entities, and the question of their legal nature seemed to have long been exhausted in the thorough theoretical studies and scientific discussions in the pages of legal literature. However, according to the case law, problems with the delineation of contracts for the provision of transport services with other treaties and between them often arise in law enforcement practice. Therefore, the study of the legal nature of contracts for the provision of transport services in the current conditions of the development of contractual law is of vital importance.

An analysis of recent research and publications on this topic, the allocation of previously unsolved parts of the general problem, which is devoted to the article. The contractual relations with the provision of transport services were repeatedly the subject of research in the writings of Ukrainian and foreign civilians, including I. Bezlyudko, I. Bulgakov, M. Braginsky, V. Vitryansky, T. Grinyak, S. Grin'ko (Rus), E. Derkach, I. Dikovskaya, I. Dobidovskaya, A. Klepikova, T. Kolyankovsky, O. Kuzhko, V. Lutsk, S. Morozov, A. Nechiporenko, N. Nechiporenko, G. Samoilenko, L. Svistun, E. Streltsova, R. Tashyan, M. Shelukhin, R. Shishka and many others. Despite the independent legal regulation, as well as the existence of numerous developments in contemporary civilization, devoted to the analysis of this issue, the scientists remained left behind a comprehensive view of the legal nature of contracts for the provision of transport services through the prism of the norms of the current legislation of Ukraine.

The purpose of the article is to study the legal nature of contracts for the provision of transport services by defining the criteria for their differentiation with other closest contractual constructions and some of these agreements with each other on the basis of an analysis of the norms of the current legislation of Ukraine and theoretical developments of modern civilization.

Presentation of the main research material with full justification of the received scientific results. The contract of carriage is perceived by modern civilist doctrine and law enforcement practice as an independent form of the contract in the system of civil legal agreements, defined by the Civil Code of Ukraine on January 16, 2003 (hereinafter – the Central Committee of Ukraine). However, it had a long history. After all, the scientific community has not always clearly defined the legal nature and place of the contract of carriage. By consolidating its legal regulation at the level of the codified act of civil law in the mid-twentieth century, individual lawyers considered the contract of carriage as a variety of contract, supply contracts or as a special type of contract, consisting exclusively of elements of other civil law contracts.

Separating contractual constructions, first of all, it is worth paying attention to their legal nature, which is determined by the main purpose of the contract. The main purpose of transportation is the movement of individuals or objects of the material world. While the contracts are intended to perform the work of the contractor and obtain the result of his work.

Differences in the legal nature of the treaties under study determine the differences in their subject matter. And although the Central Committee of Ukraine does not contain norms that would be devoted to the subject of such agreements, they can be determined from the analysis of the norms of Art. 901 and Art. 837 of the Civil Code of Ukraine.

Thus, based on the general notion of a contract on the provision of services and the rules of Chapter 64 of the Civil Code of Ukraine, the subject of a contract of carriage is the provision of transport services. In Ukrainian civilization, generally accepted is the understanding that the service is provided by committing a certain action or carrying out certain activities, consumed in the process of its delivery, and has no result, is inseparable from the person of the performer. While the subject of the contract is the work and its result, the result of the work of the contractor has a materialized form.

However, the criterion for the presence or absence of an out-of-date result is not always successful in demarcating transportation and contracting contracts. An example of this is Y. Romanets, pointing out that "loading or unloading works or furniture upholstery on the tenth floor of the dwelling house is also aimed at moving the cargo. However, this sign does not make the specified obligations of transportation" [1, p. 435].

Thus, the work performed under contracts of contract does not always have an overseen result, just as it does in contract of carriage. We believe that the feature of the contract of carriage, which distinguishes it from the contract, is the movement of certain objects by means of transport.

Under contracts for the provision of transport services, the performer (carrier) must provide the service personally (Part 2 of Article 902 of the Civil Code of Ukraine). Whereas contract subcontractors, according to the general rule, have the right to engage other persons (subcontractors) in performance of work (Part 1 of Article 838 of the Civil Code of Ukraine).

The next distinction between contracts for the provision of transport services from contracts is that the latter is characterized by the procedure for receiving and transmitting the results of work, which from a legal point of view testifies to the recognition of a contract of execution performed.

For the treaties under study, there is a different risk distribution that is assigned to the party executing the contract. Thus, under contracts for the provision of transport services in case of impossibility to execute a contract that was not caused by the fault of the executor, the customer is obliged to pay reasonable wages to the performer (Part 2 of Article 903 of the Civil Code of Ukraine). Whereas for subcontractors, the performance of work by the contractor at his own risk is a constitutive feature, which is enshrined in the very concept of a contract (Part 1 of Article 837 of the Civil Code of Ukraine) and the general provisions of the contract, according to which, if the subject of the contract was before delivery to the customer accidentally destroyed or the end of work became impossible without fault of the parties, the contractor has no right to demand payment for work (Part 1 of Article 855 of the Civil Code of Ukraine).

In addition, a significant part of the carriage contracts are accession agreements, which can be concluded only by joining the other party to the terms of the contract proposed by the carrier as a whole. The other party can not offer its terms of the contract. While under contract work the work is carried out by the contractor under the individual order of the customer. In contracts for the provision of transport services, the customer services do not control the process of their provision by the executor, the legislation of Ukraine does not have such powers, while in contract work, the customer has the right at any time to check the progress and quality of the work of the contractor (Article 849 of the Civil Code of Ukraine).

Another contractual arrangement, with which the transportation contract is historically connected, is the supply contract. According to the current

legislation of Ukraine, the supply contract is a variant of the contract of sale. This follows from the consolidation of the rules on this contractual construction in paragraph 3 of Chapter 54 of the Civil Code of Ukraine "Buying and Selling". The supply is devoted to only one article 712 of the Civil Code of Ukraine, according to Part 2 of which the general supply and sale agreement applies to the contract of sale, unless otherwise provided by an agreement, law or does not derive from the nature of the relations between the parties. General provisions on delivery are also defined by the norms of Art. 264–271 of the Commercial Code of Ukraine dated January 16, 2003.

Scientific and practical comments to the Civil Code of Ukraine [2, p. 587–588; 3, p. 690–691; 4, p. 282–284] and in the legal literature pages, the issue of the ratio of carriage contracts and delivery contracts is not given proper attention. And this can be explained by the separation of legal regulation of these two contractual constructions. However, during the planned economy, the contract of carriage, in particular, the carriage of goods was associated with the contract of delivery. As noted by M. Khodunov, the right of the sender to impose on the recipient the obligation to accept the cargo and pay the carrier unpaid bulk payments arises from the contract of delivery or other contract concluded between them until the signing of the contract with the carrier or compulsory for the sender and the recipient of an administrative act of a higher authority [5, p. 73].

At the same time, as V. Yeghiazarov notes, a number of scholars believe that the contract for the transportation of goods serves the achievement of the goals defined by the supply contracts, capital construction, and other contracts and is based on them by a normative act. That is, a contract of carriage is one way of fulfilling obligations for the consignor arising from the specified agreements. When concluding these agreements, the buyer of the products under the contract of sale (subsequently – the recipient of the products under the contract of carriage) undertakes to obtain it, and in the contract is determined and the method of delivery to the recipient. Thus, the future recipient of the ordered product already in the process of concluding the relevant contract (supply, sale and purchase), first, gives consent to the conclusion of the contract of carriage, in which he will be the recipient, and, secondly, undertakes not only to accept cargo from the transport organization, but also to perform other actions arising from the contract of carriage. In turn, the shipper (supplier), concluding a transportation contract, entrusts the transport organization with its obligation to transfer the product (cargo) to the recipient (buyer), the consent of which has already been obtained upon the conclusion of the relevant contract [6, p. 50–51; 7, p. 163–164].

However, such an approach to the interconnection of transportation and delivery contracts is difficult to assess from the standpoint of modern realities. After all, today these two contractual constructions are independent with each other with their own legal regulation. For the supply contract, there are special features that will distinguish it as a variant of the contract of sale and at the same time separate from the contract of carriage of cargo. Thus, the supply contract is always used in the field of entrepreneurial activity, which distinguishes it from the contract of carriage of goods, which applies not only in the business sector, but also to meet the needs of individual individuals. The supply contract is limited to the delivery of the goods "for use in business activities or for other purposes not related to personal, family, domestic or other similar uses" (Part 1 of Article 712 of the Civil Code of Ukraine), which is not included in the contract of carriage of goods, since goods can be any material objects of the material, regardless of their purpose and scope. In the end, the treaties under study differ in their legal nature. The contract for the carriage of goods is one of the varieties of the contract of carriage and belongs to the group of contracts for the provision of services, in particular transport. While the contract of delivery, as well as in our opinion emphasizes O. Yavorskaya, according to the direction of the legal result belongs to the contractual obligations to transfer property to property [8, p. 20]. Such an approach is also reflected in the case law, for example, in the Case of the Economic Court of Chernivtsi Oblast of November 5, 2018 in case № 926/1510/18 [9].

Of course, the subjects under the contract of delivery may coincide with the entities under the contract of carriage, since the same participants in civil relations can simultaneously enter into different contractual relationships. For example, the consignor under the contract for the carriage of goods may be any natural or legal person, including a supplier under a supply contract, which is a natural or legal person who carries out business activities. A recipient under the contract of carriage may coincide with the buyer under the contract of delivery.

Complicated in delimitation is a charter agreement (charter) and a contract of hire (lease) of a vehicle. So, under a charter contract (chartering), one party (freighter) undertakes to provide the other party (charterer) for payment all or part of the capacity in one or more vehicles for one or more flights for the carriage of cargo, passengers, baggage, mail or from other purpose, if it does not contradict the law and other normative-legal acts. The procedure for concluding a charter agreement (charter), as well as the form of this contract, is established by transport codes (statutes) (Article 912 of the Civil Code of Ukraine).

According to Art. 798 the subject of the contract of hiring a vehicle may be air, sea, river vessels, as well as land self-propelled vehicles, etc. A vehicle hiring contract may be established that it is transferred to hire with the crew that serves it. The parties may agree to provide the employer with the hire man a set of services to ensure the normal use of the vehicle. That is, in the first and second contracts we are talking about the transfer of vehicles, only in the contract of charter (charter) is determined by the goal – for transportation, and in the contract of hiring (lease) of the vehicle – the goal follows from the essence of the contract, that is, the vehicle is transferred for the purpose of use. The blanket rule of Article 912, which sends to the transport codes, allows us to use the understanding of the charter contract (chartering) in accordance with the Code of Merchant Shipping of Ukraine of 23 May 2005 (hereinafter referred to as KTM Ukraine). In this Code, the concept of a charter contract (chartering) of vessels by nature coincides with the notion of a treaty in art. 912. And as varieties of the charter contract (chartering) it is indicated by the time charter (the charterer provided to the ship may be staffed with the crew) and the bareboat charter

(the boat is not equipped and not equipped with the crew).

The fixed concept of the time-charter is echoed with Part 2 of Art. 798 of the Civil Code of Ukraine, which states that the lease of a vehicle may take place together with its transfer to the crew. However, the understanding of the differences between these agreements is greatly complicated with further familiarization with the norms of Section VI "Ship Charging" by the KTM of Ukraine, where Art. 206 indicate the possibility of sublease in contractual charter (charter). Obviously, such discrepancies in the terminology should be eliminated, because in its legal nature, the contract of charter (charter) and the contract of employment (lease) are different contracts.

Particular attention is required to study the legal nature of the contract of transport forwarding. According to M. Dovhus, the contract of transport forwarding is the most successful legal structure, which enables the most effective transportation of cargo, not only from the point of view of the client – the subject of economic activity or a participant in civil law relations, but also from the point of view of the executor – the forwarder. After all, this transaction allows to optimize their costs, both financial and labor [10, p. 116].

In the Central Committee of Ukraine, the contract of transport forwarding is first isolated at the level of the codified act as an independent contract in the system of civil contracts. It is devoted to Chapter 65 "Transport forwarding" along with transportation contracts and other contracts for the provision of services. Its detailed legal regulation is carried out by the Law of Ukraine "On Freight Forwarding Activity" of July 01, 2004. However, the cornerstone in the discussion about assigning the said contract to the carriage contracts became part 4. Art. 306 of the Civil Code of Ukraine, according to which ancillary activity related to the carriage of goods, are a transport expeditions, as well as placement of art. 316 of the Civil Code of Ukraine, devoted to the general provisions on transport forwarding in Chapter 32 "Legal regulation of cargo transportation".

This allows us to interpret the contract of transport forwarding as a type of contract of carriage. Such a different approach in the two codified acts causes not only discussions in the pages of legal literature, but also problems in the practice of law enforcement, as evidenced by the case law.

For example, according to the ruling of the Supreme Economic Court of Ukraine from April 17, 2012 in the case № 1/93 / 5022–1253 / 2011, "in making the decision the local court concluded that the contract for forwarding in international traffic in its legal form is an agreement transportation of goods, and that the relations under this agreement are regulated by Chapter 64 of the Civil Code of Ukraine and Chapter 32 of the Commercial Code of Ukraine and issued in accordance with it by transport codes, transport statutes and other regulatory acts . The Economic Court of Appeal disagreed with such conclusions, since the local court erroneously defined the legal nature of the disputed agreement and erroneously applied the limitation period set forth in Article 315 of Part 5 of the Commercial Code of Ukraine" [11].

Undermining the legal nature of the contract of transport forwarding, first of all it should be noted that it is directly related to the relevant transport processes [12, p. 33].

And this follows from the very concept of the contract, enshrined in Art. 926 of the Civil Code of Ukraine, Art. 316 of the Civil Code of Ukraine, Art. 9 of the Law of Ukraine "On Freight Forwarding Activities", according to which the forwarder undertakes "to execute or organize the performance of services specified in the contract related to the carriage of goods". That is, the contract of transport forwarding "can not exist without a contract for the carriage of goods, even if it is a potential" [13, p. 16].

Based on the purpose of the contract of transport forwarding, which is the basis for determining its legal nature, this contract belongs to a group of agreements on the provision of transport services. In legal literature, one can see the point of view that the contract of carriage is an ancillary transport contract [14, p. 221; 15, p. 221; 1, p. 438–439]. This position can be explained by the historical development of this commitment. As is aptly noted N. Trotsyuk and A. Bondareva, in accordance with the legal validity of the Soviet and even earlier pre-revolutionary periods, the contract of transport forwarding was ancillary obligation in relation to the contract of carriage and was in legal and factual connection with the contract of carriage [15, p. 188]. However, today the consolidation of this contractual construction at the legislative level testifies to its independence as a type of contract in the system of civil-law contracts.

Proceeding from the contents of ch. 2.3. 929 of the Civil Code of Ukraine, by the contract of transport forwarding, the duty of the forwarder to organize the carriage of goods by transport and on the route chosen by the forwarder or the client, the forwarding agent's obligation to conclude a contract for the carriage of cargo on his behalf or on behalf of the client, to ensure the dispatch and receipt of cargo, as well as other obligations related to transportation. A freight forwarding contract may provide for the provision of additional services necessary for the delivery of goods (checking of the quantity and condition of the cargo, loading and unloading, payment of duties, fees and expenses charged to the customer, storage of the cargo prior to its receipt at the destination, obtaining the necessary for export and import of documents, execution of customs formalities, etc.) (Part 3 of Article 929 of the Civil Code of Ukraine).

Analysis of the said norm shows that the contract of forwarding may contain elements of various contracts (contract of carriage of goods, contract on services rendering, contract, contract of storage, commission agreement, contract of commission, etc.), which are combined in one legal fact. That is, it belongs to mixed agreements, which "allow adapting civil law to specific legal relationships" [17, p. 266].

The legal literature substantiates the point of view of the inappropriateness of the distribution of services provided by the forwarder under the contract of transport forwarding on the main and additional [18, p. 150–151]. In general, we agree that in practice this division has no meaning, and the performance of additional services is no less important than the main. However, one cannot agree with the position of O. Kuzhko that the division of services into the main

and additional with the specification of their composition at the legislative level is incorrect and needs correction [18, p. 151].

In our opinion, the legislator, fixing the term "additional" services, thus indirectly emphasizes the legal nature of the said contractual obligation. After all, obligations related to the carriage of goods, which are the responsibility for the provision of transport services, are not specified in Part 2 of Art. 929 as the main ones, it follows from the notion of a contract of transport forwarding, and logical reasoning that in the presence of additional services there are also the main ones, without which the contract cannot exist.

An interesting foreign experience in settling the contract of transport forwarding is of interest. Under the German Trade Act (NTU), expeditionary proceedings are governed by § § 408–415. § 408 of the NTU determines by the forwarder of the person who from the personal name of the fishery assumes the delivery of the cargo at the expense of another (sender), using carriers or charterers of sea vessels [19, p. 323].

French law, which has a dualistic system of private law with its division into civil and commercial, considers the institute responsible for transport forwarding, the institute of transport commission [20, p. 116–118].

The commissioner is devoted to st. st. 96–102, and the carrier – item 103–108 of the Commercial Code of France. The Code does not establish a clear boundary between the contract of transport commission and the contract of carriage.

The Civil Code of the Republic of Latvia in Part 4 "Obligatory Law" does not regulate the contractual relationship with the transport expedition.

In the Civil Code of the Republic of Lithuania, the contract of transport forwarding is regulated in a separate section XLI "Expediting of Cargoes" (Articles 6.824–6. 829). General principles of the contract, definition of Art. 6.824, largely similar to the provisions of Art. 929 of the Central Committee of Ukraine, except in the Central Committee of the Republic of Lithuania, establishes the norm that the contract of forwarding of cargoes can be both term and endless.

The Civil Code of the Republic of Moldova regulates the contract of transport forwarding separately from the contract of carriage in Chapter XVI "Transport expedition", which includes articles 1075–1085. It is interesting that the definition of a contract of transport expedition does not specify what kind of contract of carriage must be concluded by the forwarder. The contract of transportation expedition is subject to the provisions of the Civil Code of the order.

In the Anglo-American system, the forwarder qualifies as an agent who undertakes to arrange carriage. The arrival of the goods in good condition is provided by the carrier.

In Scandinavian countries there are no general legal norms on the carrier, since there are no uniform rules for forwarding companies for all types of transport. In the Scandinavian countries, the role of commercial practices is very high, and this custom fills a niche deliberately left by the legislator in regulating the condition of the forwarder [21, p. 300].

Conclusions from the research and prospects for further exploration in this scientific direction. The above study of the legal nature of contracts for the provision of transport services allows us to draw the following conclusions. The legal nature of the contract is determined by its purpose, taking into account which one can attribute a particular contractual structure to a particular group of contracts. For contracts for the provision of transport services, such a unifying purpose is the movement of individuals and objects of the material world with the help of vehicles. Taking into account the above, it is possible to carry out the following investigations of separate contracts, which provide transport services.

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РЕСПУБЛИКА ПОЛЬША КАК СВЕТСКОЕ ГОСУДАРСТВО

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АННОТАЦИЯ

Статья посвящена выявлению особенностей модели светского государства в Республике Польша на современном этапе ее развития. Установлено, что отношения между польским государством и церквями, а также другими вероисповедными союзами строятся в соответствии с принципами уважения их автономии, взаимной независимости каждого в своей сфере и взаимодействия на благо человека и на общее благо. Акцентируется внимание на особой роли Католической церкви в политической сфере польского общества и государственно-властных отношениях.

Выделены системные аспекты государственно-конфессиональных отношений в Республике Польша, определены особенности их правового регулирования. Исследованы проблемы реализации принципа религиозной нейтральности органов государственной власти Республики Польша.

Ключевые слова: светское государство, церковь, вероисповедные союзы, Конкордат, свобода совести и вероисповедания, религиозная нейтральность.

THE REPUBLIC OF POLAND AS SECULAR STATE

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SUMMARY

The article is devoted to the research of the secular state model features in the Republic of Poland. It is established that relations between the Polish state, churches and other confessional unions are built due to the respect principles of their autonomy and the mutual independence of each in their sphere and interaction for the benefit for the common good. The author paid attention to the special role of the Catholic Church in the political sphere of Polish society and state-power relations.

The peculiarities of the legal regulation are considered in the article. Moreover, the system aspects of state-confessional relations in the Republic of Poland are reviewed in the article. The issues of religious neutrality realization principle of Polish state authorities are researched.

Key words: secular state, church, confessional unions, Concordat, freedom of conscience and religion, religious neutrality.

Постановка проблемы. В условиях мировоззренческого противостояния и военной агрессии перед украинским народом остро возникает необходимость возрождения национальной культуры и духовности, а также поиска собственных, присущих именно украинской нации, ориентиров и идентичностей. По-новому видится и сама модель украинского государства – государства полиэтнического, многонационального, светского. Изменяется и формат самих отношений между государством, обществом и церковью. Будущее получение томоса украинской церковью воспринимается обществом, да и вообще всем мировым сообществом, как еще одна грань государственной независимости Украины. Оно подчеркивает народную аутентичность и духовно-культурную правопреемственность нашего государства, отделяя его не столько от российского, сколько от московско-имперского. «Нынешняя отмена Константинополем подчинения украинской церкви Москве может иметь такие же серьезные исторические и геополитические последствия, как и вопрос ассоциации Украины с Европейским Союзом в 2013 г. или американская военная помощь для Киева. Оно доказывает,