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The concept and classification of transport contracts under the Republic of Kazakhstan legislation

This article is devoted to the problems of the definition of transport contracts. The issue of transport contracts does not find legislatively unequivocal solution not only in Kazakhstan but also in foreign countries. Improving the legal regulation of transport relations is connected to a large extent due to the clarification of the concept of the transport contract. In the obligations to rendering services are usually segregated into a separate group, those that aim to rendering transport services. However, their terms are defined differently. The author attempts to explore the existing scientific research of scientists in the doctrine of civilized law on the definition of transport contracts in the contemporary period.

Key words: transport agreements, transport agreements classification, the freight forwarding contract, the contract of carriage, the transport obligation.

In legal literature, the concept of the transport contract, its place in the system of civil law contracts are defined in different ways: as a synonym of the terms «transport contract» and «transportation obligations» are used. There are three basic viewpoints on the system of transport contracts:

1. Transport obligations — is a collective term that includes different types of obligations with one essential element — the service, the essence of which — is the activity of materials handling and moving of people into space. «Transport obligation» is investigated as a civil matter, at the basis of which the contract lies.

Transport obligations, although they are a kind of civil law, in general, as such, do not form a separate, single obligation type, and represent a set of obligations covering a separate contract types and their variants [1; 29].

This concept is widely used in the study [2, 3], and in scientific literature [4]. G.P. Savichev defines transport obligation as «an obligation, under which one person — the carrier (operator) is obligated to do in favor of another person — the consignor, consignee, passenger, baggage or cargo-luggage holder — definite legal or factual actions to render transportation services connected to transportation, and another person — is obligated to pay for services rendered in the amount established by law or by agreement of the parties» [2, 30]. Based on this definition, the concept of transport obligations covers compensatory contract to render transport services connected to transportation. Unfortunately, the definition does not cover the subject and content of complex of contracts for the rendering transport services, for example, does not cover all entities rendering transport services, and limited to services related to transportation. Because, at present, the whole range of transport services is rendered by transport freight forwarders, as well as maritime agents, they can carry out both legal, and actual actions. And also in the transport market there other contracts are concluded, not connected to transportation, for example, a contract of maritime agency service, marine mediation, salvage contract, contract for rendering aerial works, etc. Thus, the transport obligation can not be equated with the transportation obligation.

A similar definition is given by D.A. Medvedev, V.T. Smirnov: «Transport obligations are called obligations for materials handling and moving of passengers and luggage, and other obligations for the rendering transport services relating to transport, or to the materials handling by other means» [3; 374].

A.I. Khasnutdinov, maintaining and developing the theory of transport obligations, said that just as the contract of sale, supply, contracting obligations are reduced into the group, mediating the transition of property to ownership, all the obligations on rendering transport services can be grouped under a single for them basis of economic character — such as a specific service on the movement in space. By this criterion in the transport category there shall be assigned all the obligations that mediate transport activity in any of its form, despite the differences in their specific economic and legal characteristics [5; 35].

Broader concept of transport obligations gives A.N. Romanovich gives, defining it as a civil matter, as a party of which is the transport organization which is formed by the use of means of transport and communications and expresses the main activity of transport for moving or activity directly providing its implementa-

tion [1; 29]. The author rightly notes that system of the obligations — is more than the usual classification, as it should be built taking into account so important factor as correlation of its links.

The supporters of this view based on the fact that transport obligations are divided into basic obligations (transportation facilities) and subsidiary obligations in relation to the carriage obligations. The core of the system of transportation obligations constitutes obligations of carriage. Subsidiary obligations are called to promote the fulfillment of the basic obligations and are characterized by tight binding to the latter, in respect of which perform a service role, have a secondary importance.

Transportation obligations consist of obligations of transportation and obligations of towing. Subsidiary obligations include the following obligations: 1) organizational long-term (nodal agreements, contracts of centralized export (import) of goods), 2) forwarding (the contract of freight forwarding, contract of loading and unloading works, the contract of carriage for the centralized calculations for transportation), 3) transport (contracts for supply and removal of waggons, the exploitation of railway sidings, counterparty contract, the contract of railway services), 4) lease (rent of warehouses and commercial sites within the territory of transport companies, rent cars and other rolling stock, etc.) [4, 5].

In juridical literature, there is an opinion that the concept of «transport obligation» is a collective and to some extent conditional. It combines both private law and public law beginnings [6; 11].

2. In civil law, the contracts of transportation govern a large and independent group of relations, so they are isolated in a separate group of contracts relating to the transportation. Thus, some authors include in this group transportation with its subspecies, and called them as a system of contracts of transportation [7, 8]. The authors started from a system of contracts of transportation, rendered by Chapter entitled «Transportation» of the Civil Code (CC). For example, the V.V. Vitryansky noted that the relations in freight traffic activity now are regulated by a system of treaties, which are the basis of the relevant civil obligations for the transportation of goods. He further writes: «All these contracts in the CC, of course, differ from each other on various grounds: legal effect, subject composition, the subject of obligations arising from them, etc. — but they have in common is that they all ultimately intended to regulate relations arising in freight traffic, passengers and baggage traffic ... It seems that now we should talk about the treaty system, mediating the freight traffic, passengers and baggage traffic» [7; 254].

According to G.I. Tulegaliyev, these contracts (specified in the Chapter 34 of the CC RK) have their own specifics concerning the legal status, subject composition, the characterization of the rights and obligations, and on other grounds, but they have a common goal — the regulation of transportation. Thus, the CC specifies a whole system of contracts, mediating the transportation relations [8; 166].

In our opinion, the transport contracts are resulted not only in the emergence of transportation obligations. Because the rendering transport services is not limited only with transportation. In practice, there compensatory contracts on transportation provision are also concluded (for example, the contract of freight forwarding, contract on transportation organization, towing contracts, contracts for the operation of exploitation of railway sidings and to supplying and removal waggons) and other contract on the rendering of compensatory services related to transport activities (contract on the rendering of pilotage services, salvage contract, contract for aerial works, etc.).

3. In the scientific literature the concept of a system of transportation contracts is established. In the obligations to render services it is usually segregated into a separate group, those that aim to render transport services. Unfortunately, however, civil legal science had the mistaken notion of «transportation contracts», which refers to civil legal contracts, used in transport activities involving transport organizations. According to V. Vitryansky, the term «transportation contracts» covers various types of contractual obligations: transportation, freight forwarding, towing, lease (affreightment for time) means of transport, construction contracts (building of railway sidings), et al. V. Vitryansky argues quite correctly when he writes that this approach suffers from several shortcomings. According to the author's opinion, traditionally understood category of transportation contracts, which includes various types of contractual obligations, do not fit into the system of civil law contracts, and the only thing united them — is the participation in these treaties transportation companies — can not serve as a criterion for the selection of the appropriate classification contracts [9; 63].

S.Yu. Morozov defines the transport contract as «the parties' agreement, under which one party undertakes to render services aimed at ensuring the implementation or transport of material objects from one place to another, and the other party agrees to pay for services fixed fee» [6; 12].

As criteria to allocate transport contracts from the system of contractual obligations for paid services, S.Yu. Morozov calls: subject composition of the contractual relationship and the direction of transport contractual obligations. As the subjects of transport contracts there should be considered carriers, charterers,

shippers (consignees), passengers. All the transport agreements are aimed at moving of passengers or material objects in space or on the provision of this movement. This movement must have two mandatory attributes: produced by vehicles, carried out on a commercial basis [6; 13].

The position of the author, from our point of view, is not without drawbacks. The subjects of transport contracts, in addition to the above subjects may be forwarders, multimodal transport operators, agents, pilots.

Transportation service has two components — translocation, i.e., moving from one place to another, and forwarding services. On this basis, the transport service is divided into the following areas: stevedoring, i.e. loading and unloading operations, tallying — the sale of services, goods calculation, warehousing — trade in services of storage of goods and other support for the implementation of associated services (such as packing, sorting, freight, etc.) [8; 160].

A.N. Romanovich assigns four main features inherent in the transport legal relations: one side of these legal relationships is always the transport organization, they are developed over the operation of vehicles and communications is the subject of their rendering service activities, and they express their attitudes towards the implementation of the basic transport function or directly contribute to its implementation. The first three features are characterized by the author as common as they may be characterized not only transport but also other legal relations with the participation of transport, and the fourth — as special, because it is unique inherent only to transport legal relationship [1; 21]. Thus, the author refers to features that characterize transportation contracts. You can also add the following symptoms that characterize the transport contracts: compensatory movement is carried out by vehicles freight, luggage, passengers, rendering services to provide transportation; as a party to the contract rendering transportation services may be the carrier, multimodal transport operator, charterer, freight forwarder, agent, pilot, et al.

We are supporters of the theory of transport contracts. In our view, the system of transport contracts is an institution of civil law, but they have also institute of transport law. With respect to determining the place of the transport contract in the civil law system, it should be noted that they according to the classifications belong to the group of contracts to provide paid services. Thus, the transport contract is an institution of transport law, at the same time it is the institution of civil rights.

This allows us to develop a definition of the transport contract: transport contract — an agreement of the parties under which one party (the performer) is obligated to render transport services for movement with the help of vehicles freight, luggage, passengers, or to ensure that movement, on maintenance of the vehicles and communications and the other party (customer, client) agrees to pay for services rendered for a fixed fee.

Transport contracts can be classified into several groups. The first group consists of the contract of transportation, the second group consists of organizational contracts (contracts for transportation organization, nodal agreements, contracts for centralized import (export) of goods), the third group is the contracts of freight forwarding, the fourth group includes agreements on rendering transport services or for value contracts for the rendering other services in the transport sector (contracts for supply and removal of waggons, for the operation of railway sidings, contract of tawing, contract for the rendering pilotage services, marine agency contract: the contract of marine mediation, contract for air navigation services; salvage contract, and so on).

The chapter 34 of the CC RK provides types of contracts of transportation (contract of the freight transportation; contract of transportation of passengers and luggage, the carriage common use transport; contract directly mixed messages, contract of affreightment (charter) agreements on organization of transportations, treaties between transport agencies (nodal agreements, contracts for centralized import (export) of freights). Taking into account the types of transportation, which the transportation is made, accordingly the system of transport contracts expands.

The bulk of transport contractual relations are governed by special transport laws. As for the codified civil acts (CC RK), they include only a few fundamental provisions that define a system of legal regulation of freight transportation, and removal of passengers and luggage, and the others are referred to the transport laws.

References

- 1 *Романович А.Н.* Транспортные правоотношения. — Минск: Изд-во «Университетское», 1984. — 126 с.
- 2 *Савичев Г.П.* Глава 44. Транспортное и экспедиционное обязательство // Гражданское право: Учебник. В 2 т. Т. II, полутом 2 / Отв. ред. проф. Е.А. Суханов. — М.: Изд-во БЕК, 2000. — С. 35–81.

- 3 *Медведев Д.А., Смирнов В.Т.* Гражданское право: Учебник. Ч. II / Под ред. А.П. Сергеева, Ю.К. Толстого. — М.: ПРОСПЕКТ, 1998. — С. 373–419.
- 4 *Тютрина Н.Н.* Транспортные обязательства: Автореф. дис. ... канд. юрид. наук: 12.00.03. — М., 2005. — 28 с.
- 5 *Хаснутдинов А.И.* Понятие транспортного договора // Правоведение. — 1990. — № 3. — С. 34–42.
- 6 *Морозов С.Ю.* Транспортное право: Учеб. пособие. — М.: Изд-во «Волтерс Клувер», 2010. — 320 с.
- 7 *Брагинский М.И., Витрянский В.В.* Договорное право. Книга четвертая: Договоры о перевозке, буксировке, транспортной экспедиции и иных услугах в сфере транспорта. — М.: Статут, 2007. — 910 с.
- 8 *Тулугалиев Г.И.* Избранные труды по транспортному праву / Сост. М.К. Сулейменов. — Алматы: НИИ частного права КазГЮУ, 2003. — 506 с.
- 9 *Витрянский В.В.* Некоторые итоги кодификации правовых норм о гражданско-правовом договоре / Кодификация российского частного права. — М.: Статут, 2008. — С. 47–72.

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Қазақстан Республикасының заңнамасы бойынша көліктік шарттардың ұғымы және жіктелуі

Мақала көліктік шарттардың түсінігін және құқықтық табиғатын анықтау мәселелеріне арналған. Көліктік шарттардың ұғымын анықтау мәселесі тек Қазақстанда ғана емес, сонымен қатар шетелдік мемлекеттерде де заңнамалық тұрғыдан түпкілікті шешімін тапқан еместігі туралы айтылған. Көліктік қатынастарды құқықтық реттеуді жетілдіру белгілі бір дәрежеде көліктік шарттар түсінігін анықтаумен байланысты. Авторлармен қызмет көрсету бойынша міндеттемелердің ішінде көліктік қызмет көрсетуге бағытталғандары, әдетте, жеке топқа жатқызылады, алайда олардың топтамасы әр түрлі анықталды. Мақалада қазіргі кезеңдегі көліктік шарттардың жүйесін түсіну бойынша цивилдік құқық доктринасындағы ғалымдардың ғылыми ізденістерін зерттеу және талдау жүргізілген.

М.Т.Акимжанова, Г.А.Ильясова

Понятие и классификация транспортных договоров по законодательству Республики Казахстан

Статья посвящена проблемам определения понятия и правовой природы транспортных договоров. Отмечено, что вопрос определения понятия транспортного договора законодательно не нашел однозначного разрешения не только в Казахстане, но и в зарубежных государствах. Совершенствование правового регулирования транспортных отношений в немалой степени связано с выяснением понятия транспортного договора. В обязательствах по оказанию услуг, как выделено авторами в статье, обычно обособляются в отдельную группу те из них, которые направлены на предоставление транспортных услуг, однако круг их определяется по-разному. Предпринята попытка исследовать существующие научные изыскания ученых в доктрине гражданского права по определению системы транспортных договоров в современный период.

References

- 1 Romanovich A.N. *Transport legal relationships*, Minsk: Publ. house «University», 1984, 126 p.
- 2 Savichev G.P. *Civil law: Coursebook, in 2 v. Volume II, half volume 2* / Res. Ed. prof. Y.A. Sukhanov, Moscow: Publ. house BEK, 2000, p. 35–81.
- 3 Medvedev D.A., Smirnov V.T. *Civil Law, coursebook. Part II*, under edit. A.P. Sergeyev, J.K. Tolstoy, Moscow: PROSPECT, 1998, p. 373–419.
- 4 Tyutrina N.N. *Transport obligations*. Abstract. dis. ... candidate of Juridical Sciences: 12.00.03, Moscow, 2005, 28 p.
- 5 Khasnutdinov A.I. *Jurisprudence*, 1990, 3, p. 34–42.
- 6 Morozov S.Y. *Transport Law, coursebook*, Moscow: «Wolters Kluwer» Publishing, 2010, 320 p.
- 7 Braginsky M.I., Vitryansky V.V. *Contractual Law, book Four: Contracts on transportation, towing, freight forwarding and other services in the transport sector*, Moscow: Statute, 2007, 910 p.
- 8 Tuleugaliyev G.I. *Selected works on Transport Law*, comp. by M.K. Suleimenov, Almaty: Institute of Private Law KazSUU, 2003, 506 p.
- 9 Vitryansky V.V. *Codification of Russian civil law*, Moscow: Statute, 2008, p. 47–72.