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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-
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shippers (consignees), passengers. All the transport agreement 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 wagons, 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.

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Қазақстан Республикасының заңнамасы бойынша коліктік шарттардың ұғымы және жікTELуі

Макала коліктік шарттардың түсінігін және құқықтық табиғатын анықтау мәселелеріне арналған. Коліктік шарттардың ұғымын анықтау мақаласында коліктік және құқықтық шарттардың қатынастарын көрсету үшін анықталған жаңалықтардың, мемлекеттік де және қатынастардың турғындағы түсінікті қатынастардың түсініктерін қосынуы мүмкін.

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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 решён значительным разрешением не только в Казахстане, но и в зарубежных государствах. Совершенствование правового регулирования транспортных отношений в нынешней степени связано с выяснением понятия транспортного договора. В обществе 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 цивильного права по определению системы транспортных договоров в современный период.

References