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The concept and legal nature of transport obligations

The article examines the concept and legal nature of transport obligations in civil law, the place of transport contracts in the system of civil law contracts, and studies theoretical provisions on the legal nature of transport obligations in legal literature. The author analyzed the scientific views of civilian scientists about transport obligations and identified three main ideas in relation to transport obligations: first, the transport obligation is considered as polytypic obligations with one element that is providing services for the movement of goods and people in space; secondly, this system of contracts is the one mediating transportation relations; thirdly, in the legal literature there is a concept of a system of transport contracts, which considers the system of contractual obligations aimed at compensated provision of services. The essence of transport obligations lies in the fact that they include various types of contractual obligations, and the participation of transport organizations in these contracts cannot serve as a criterion for distinguishing the corresponding classification group of contracts. The author draws a conclusion that transport obligations represent an institution of civil law, while being an institution of transport law as well. Transport obligations according to the classification of civil and legal obligations that have been developed in the civil law doctrine, belong to the group of obligations for the provision of transport services.

Keywords: transport obligations, the legal nature of transport obligations, transport contracts, transport services, civil law.

The processes of reforming the domestic economy in the light of the transport system reform objectively stipulated a necessity of reassessment and improvement of the forms of relations regulation in the provision of transport services. The use of new forms and methods of state transport policy has necessitated the development of a scientifically based doctrine of the transport obligation theory, the development of current transport legislation. The stated circumstances predetermined the relevance of the research topic.

The concept of a transport obligation, its place in the system of civil and legal obligations are defined differently in legal literature: the terms «transport contracts» and «transport obligations» are used as synonyms. There are three main points of view regarding transport obligations:

1. Transport obligations is a collective concept that includes polytypic obligations with one, indispensable element that is a service, the essence of which is the activity of moving goods and people in space. «Transport obligation» is investigated as a civil legal relationship, the basis of which is the contract.

Transportation obligations, even though they are a type of civil law, as a whole, as such, do not form a separate, single obligation type, but represent a set of obligations covering independent contractual types and their varieties [1; 29].

This concept is widely used both in educational [2, 3] and in scientific literature [4]. G.P. Savichev defines a transport obligation as «an obligation whereby one person – the carrier (operator) undertakes to commit in favor of another person – the shipper, consignee, passenger, baggage or cargo owner – certain legal or actual actions for the provision of transport services related to transportation, and another person to pay for the services rendered in the amount established by law or by agreement of the parties» [2; 37]. Based on this definition, the concept of transport obligations covers compensated contracts for the provision of transport services related to transportation. Unfortunately, the definition does not cover the subject and content of a set of contracts for the provision of transport services, for example, not all entities providing transport services are covered, limited only to services related to transportation. Because, at present, the whole range of transportation services is carried out by transport forwarders, as well as marine agents, they can carry out both legal and factual actions. Moreover, in the market of transport services, other contracts not related to transportation are concluded as well, for example, a maritime agency agreement, sea mediation, a salvage contract, an aerial work contract, etc. Thus, the transport obligation cannot be identified with the carriage.

A similar definition is given by D.A. Medvedev, V.T. Smirnov: «Transport obligations are obligations for the carriage of goods, passengers and baggage, as well as other obligations for the provision of transport services related to transportation, or aimed at cargo movement by other means» [3; 374].

Supporting and developing the theory of the transport obligation, A.I. Hasnutdinov noted that just as buying and selling, supplying and contracting are reduced to a group of obligations that mediate the transfer of property to property, all obligations for the provision of transport services can be grouped according to their essential economic basis that is a specific service by moving in space. On this basis, all obligations mediating transport activities in any of its forms should be included in the category of transport, despite the differences in their specific economic and legal characteristics [5; 35].

A.N. Romanovich gives a broader concept of transport obligation, defining it as a civil legal relationship, one of the parties of which is a transport organization and which is built on the use of conveyances and means of communication and expresses the main activity of transport on movement or activities that directly ensure its implementation [1; 29]. Further, the author rightly notes that the system of obligations is something more than the usual classification, as it must be built taking into account such an important factor as the interrelation of its links.

Proponents of this idea proceed from the assumption that transport obligations are divided into basic (transportation) and subsidiary in relation to transportation obligations. The core of the transport commitment system is the transportation obligation. Subsidiary commitments are designed to assist in the fulfillment of basic obligations and are closely related to the latter, in relation to which they perform a service role, have an auxiliary meaning.

Carriage obligations consist of a carriage obligation and a towage obligation. Subsidiary obligations include the following obligations: long-term organizational (hub agreements, agreements on centralized export (import) of goods), 2) forwarding (forwarding agreement, contract for loading and unloading, agreement on centralized settlements for transportation), 3) transport (contracts for the supply and cleaning of cars, for the operation of railway sidings, counterparty contract, railway service contract), 4) rental (rent of warehouses and cargo sites within the territory of transport organizations, rent of wagons and other running composition, etc.) [4; 5].

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

2. In civil law, contracts of carriage regulate an extensive and independent group of relations; therefore, they are distinguished into a separate group of contracts related to transportation. Such wise, some authors include transportation with its sub-types in this group and call them the system of contracts of carriage [7; 8]. The authors proceeded from the system of contracts regulating transportation, provided by the chapter entitled «Transportation» of the Civil Code (hereinafter referred to as the Civil Code). For example, V.V. Vitryansky noted that relations on the transport of goods today are governed by a system of contracts that serve as the basis for the occurrence of relevant civil and legal obligations for the transport of goods. He further writes: «All the contracts named in the Civil Code, of course, differ from each other in a variety of ways: legal meaning, subject composition, subject matter of obligations arising from them, etc., however they are united in the fact that they are all ultimately designed to regulate legal relations arising in the process of transporting goods, passengers and baggage ... It seems that now we should talk about a system of contracts that mediate the transport of goods, passengers and baggage» [7; 254].

According to G.I. Tulegaliyeva, these contracts (provided in Chapter 34 of the Civil Code of the Republic of Kazakhstan) have their own specifics regarding the legal status, subject composition, characterization of rights and obligations, and other grounds, but they have a common goal – carriage regulation. Thus, the Civil Code provides a whole system of contracts mediating transportation relations [8; 166].

In our opinion, transportation contracts do not only lead to emergence of transportation obligations. Since the provision of transport services is not limited to transportation. Practically, compensated contracts for the provision of transportation are also concluded (for example, a freight forwarding contract, a contract for the organization of transportation, a towing contract, contracts for the operation of railway sidings and supply and cleaning of wagons) and other contracts for the provision of compensated services related to transport activities (an agreement on the provision of pilotage services, an agreement on rescue, an agreement on the performance of aerial work, etc.).

3. In the scientific literature there is an established concept of a system of transport contracts. Among the obligations to provide services those that are aimed at the provision of transport services are usually separated into a separate group. However, unfortunately, in civil law science there is an erroneous concept of «transport contracts», which is understood as civil law contracts applied in the field of transport activities with the participation of transport organizations.

According to V.V. Vitryansky, the concept of «transport contracts» covers various types of contractual obligations: transportation, transport expedition, towing, rental (chartering by time) of vehicles, construction

contracts (construction of railway sidings), etc. Quite rightly thinks V.V. Vitryansky when he writes that this approach suffers from a number of shortcomings. According to the author, the traditionally understood category of transport contracts, which includes various types of contractual obligations, does not fit into the system of civil law contracts, and the only unifying feature — participation of transport organizations in these contracts — can in no way serve as a criterion for identifying the appropriate classification group of contracts [9; 63].

S.Yu. Morozov defines transport contracts as «agreements of the parties, according to which one party commits to provide services aimed at ensuring or carrying out transportation of material objects from one point to another, and the other party commits to pay a fixed fee for the services rendered» [6; 12].

As the criteria allowing to single out transport contracts from the system of contractual obligations aimed at compensated provision of services, S.Yu. Morozov names: the subject composition of the contractual relationship and the orientation of the transport contractual obligations. Carriers, charterers, consignors (consignees), passengers should be considered as subjects of transport contracts. All transport contracts are aimed at moving passengers or material objects in space or at ensuring this movement. Such a move should have two mandatory features: made with the help of vehicles; carried out on a reimbursable basis [6; 13].

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

According to G.A. Ilyassova pursuant to the classification of civil law treaties that have been developed in the doctrine of civil law, «transport contracts belong to the group of contracts for the provision of transport services. Thus, the transport contract is an institution of transport law, at the same time it is an institution of civil law as well». The author gives the following definition of the concept of a transport contract «this is an agreement of the parties, according to which one party (the performer) ensures to provide transportation services for the movement of goods, baggage, passengers with the help of vehicles, or for the operation of vehicles and ways of communication, and the other (customer, client) — to pay a fixed fee for the services rendered» [10; 42].

The transport service represents two components — translocation, i.e. moving from one place to another, and forwarding services. Proceeding from this, the transport service is divided into the following parts: stevedore, i.e. loading and unloading operations; tallyman — selling services, invoices of goods; warehouse — trade deliveries, services for the storage and sale of other types of services (for example, tare and packaging, cargo sorting, etc.) [8; 160].

A.N. Romanovich identifies four main features inherent in transport relations: one of the parties of these legal relations is always a transport organization; they add up to the operation of vehicles and means of communication; the subject of them is the activity of providing services; they express relations aimed at fulfilling the main transport function or directly contributing to its implementation. The first three features are characterized by the author as common, since they can be peculiar not only to transport, but also to other legal relations with the participation of transport authorities, and the fourth — as special, because it is inherent only in transport legal relationship [1; 21]. Thereby, the author names the features characterizing the transport contracts. The following features that characterize the transport contracts can be added as well: transport of goods, baggage, passengers is carried out on a paid basis; the provision of transportation services; a carrier, a multimodal transport operator, a charterer, a forwarder, an agent, a pilot, etc. can serve as a party to a contract providing transportation services.

In our opinion, transport obligations represent an institution of civil law, while being also an institute of transport law. To determine the place of transport obligations in the civil law system, it should be noted that according to the classification of civil and legal obligations that have been developed in the civil law doctrine, they belong to the group of obligations for the provision of transport services. Thus, the transport obligation is an institution of transport law, at the same time it is an institution of civil law as well.

The above said allows to develop a definition of the concept of a transport obligation: a transport obligation is an agreement of the parties, according to which one party (performer) undertakes to provide transport services for transporting goods, baggage, passengers with the help of vehicles, or for ensuring this movement, for operating vehicles and means of communication and the other party (customer, client) is obliged to pay a fixed fee for the services provided.

A transport contract is a civil law contract and is part of a complex branch of transport law. If to consider business activity as a type of civil law activity, then the provision of transport services is a type of business activity. Furthermore, the entrepreneur will always be the party providing paid transport services. Therefore, the transport contract is a type of business contract.

The issue of transport obligations legally did not find an unequivocal resolution not only in the Republic of Kazakhstan, but also in foreign countries. Improving the legal regulation of transport relations is to a large extent related to the clarification of the concept of transport obligation. The obligations to provide services are usually separated into a separate group those that are aimed at the provision of transport services. However, their range is determined in different ways.

Transport obligations can be classified into several groups. The first group consists of a contract of carriage; the second group consists of organizational contracts (contracts for the organization of transportation, hub agreements, contracts for centralized delivery (export) of goods); the third group includes the contract of transport expedition; the fourth group includes contracts for the provision of compensated transport services or contracts for the provision of other services in the field of transport (contracts for the supply and cleaning of cars; for the operation of railway sidings; towing agreement; contract for the provision of pilotage services; contract of sea agency services: contract of sea brokerage; agreement air navigation services; rescue agreement, etc.)

Chapter 34 of the Civil Code of the Republic of Kazakhstan provides for the types of contracts regulating transportation (contract of carriage of goods, contract of carriage of a passenger and baggage; contract of carriage by common use transport; contract of direct mixed message; chartering agreement (charter); agreements on the organization of transport; agreements between transport organizations (hubs agreements, contracts for the centralized delivery (export) of goods. If to take into account the types of transport by which the transportation is carried out, then the system of transport contracts is expands respectively.

The main part of the transport contractual relations are governed by special transport laws. As for the codified civil legal acts (GK RK), they include only certain fundamental provisions defining the system of legal regulation of the carriage of goods, passengers and baggage, and otherwise refer to transport laws.

References

- 1 Романович А.Н. Транспортные правоотношения / А.Н. Романович. — Минск: Университетское, 1984. — 126 с.
- 2 Савичев Г.П. Глава 44. Транспортное и экспедиционное обязательство // Гражданское право: в 2-х т. Т. II, полутом 2: учебник / Г.П. Савичев; отв. ред. проф. Е.А. Суханов. — М.: Изд-во «БЕК», 2000. — С. 35–81.
- 3 Медведев Д.А. Гражданское право: учебник / Д.А. Медведев, В.Т. Смирнов; под ред. А.П. Сергеева, Ю.К. Толстого. — Ч. II. — М.: ПРОСПЕКТ, 1998. — 784 с.
- 4 Тютрина Н.Н. Транспортные обязательства: автореф. дис. ... канд. юрид. наук: 12.00.03 – «Гражданское право; предпринимательское право; семейное право; международное частное право» / Н.Н. Тютрина. — М., 2005. — 28 с.
- 5 Хаснутдинов А.И. Понятие транспортного договора / А.И. Хаснутдинов // Правоведение. — 1990. — № 3. — С. 34–42.
- 6 Морозов С.Ю. Транспортное право: учеб. пособие / С.Ю. Морозов. — М.: Изд-во «Волтерс Клувер», 2010. — 320 с.
- 7 Брагинский М.И. Договорное право. Книга четвертая: Договоры о перевозке, буксировке, транспортной экспедиции и иных услугах в сфере транспорта / М.И. Брагинский, В.В. Витрянский. — М.: Статут, 2007. — 910 с.
- 8 Тулеугалиев 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 / В.В. Витрянский; под ред. Д.А. Медведева. — М.: Статут, 2008. — 336 с.
- 10 Ильясова Г.А. Система транспортных договоров по законодательству Республики Казахстан / Г.А. Ильясова // Вестн. Караганд. ун-та. Сер. право. — 2012. — № 2 (66). — С. 39–44.

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Көліктік міндеттемелердің ұғымы және құқықтық табиғаты

Мақалада азаматтық құқықтағы көліктік міндеттемелердің мәнісі мен құқықтық табиғаты, азаматтық-құқықтық шарттар жүйесіндегі көліктік шарттардың алатын орны қарастырылды, заң әдебиетіндегі көліктік міндеттемелердің құқықтық табиғаты жөніндегі теориялық тұжырымдар зерттелді. Авторлар көліктік міндеттемелер туралы ғалым-цивилистердің ғылыми көзқарастарына талдау жүргізді және көліктік міндеттемелерге қатысты үш түрлі көзқарастарды айқындады: біріншіден, көліктік міндеттемелер бір элемент — жүктер мен адамдарды кеңістікте бір жерден екінші жерге тасымалдау бойынша қызмет көрсетуден тұратын әртүрлі типтегі міндеттемелер деп қарастырды; екіншіден, бұл — тасымалдау қатынастарын реттейтін шарттардың жүйесі; үшіншіден, заң әдебиетінде көліктік шарттар жүйесі туралы тұжырымдама қалыптасқан, ол бойынша көліктік міндеттемелерге өтеулі қызмет көрсетуге бағытталған шарттық міндеттемелердің жүйесі деген анықтама берілді. Көліктік міндеттемелердің мәнісін ашып қарайтын болсақ, ол шарттық міндеттемелердің әртүрлі түрлерін

біріктіреді және аталмыш шарттарда көлік ұйымдарының қатысуы тиісінше шарттар тобын жіктеп дербес алып қараудың белгісі бола алмайды. Авторлар көліктік міндеттемелер азаматтық құқықтың институты болып табылады, сонымен қатар көлік құқығының да институты болады деген қорытынды жасайды. Азаматтық құқық ілімінде қалыптасқан азаматтық-құқықтық міндеттемелердің жіктелуі туралы теориялық тұжырымдамаға сәйкес көліктік міндеттемелер көліктік қызмет көрсетулер туралы міндеттемелердің тобына жатқызылады.

Кілт сөздер: көліктік міндеттемелер, көліктік міндеттемелердің құқықтық табиғаты, көліктік шарттар, көліктік қызмет көрсетулер, азаматтық құқық.

У.К. Кумарова, А. Лавничак

Понятие и правовая природа транспортных обязательств

В статье рассматривается сущность и правовая природа транспортных обязательств в гражданском праве, место транспортных договоров в системе гражданско-правовых договоров, исследованы теоретические положения о правовой природе транспортных обязательств в юридической литературе. Автором проанализированы научные взгляды ученых-цивилистов о транспортных обязательствах и выявлены три основные точки зрения в отношении транспортных обязательств: во-первых, транспортные обязательства рассматриваются как разнотипные обязательства с одним элементом — оказание услуги по перемещению грузов и людей в пространстве; во-вторых, это система договоров, опосредующих перевозочные отношения; в-третьих, в юридической литературе сложилась концепция о системе транспортных договоров, которая рассматривает систему договорных обязательств, направленных на возмездное оказание услуг. Сущность транспортных обязательств заключается в том, что они включают в себя различные типы договорных обязательств, и участие в указанных договорах транспортных организаций не может служить критерием для выделения соответствующей классификационной группы договоров. Авторы делают вывод о том, что транспортные обязательства представляют собой институт гражданского права, являясь при этом также институтом транспортного права. Транспортные обязательства по классификации гражданско-правовых обязательств, которые сложились в доктрине гражданского права, относятся к группе обязательств об оказании транспортных услуг.

Ключевые слова: транспортные обязательства, правовая природа транспортных обязательств, транспортные договоры, транспортные услуги, гражданское право.

References

- 1 Romanovich, A.N. (1984). *Transportnye pravootnosheniia [Transportation relationship]*. Minsk: Universitetskoe [in Russian].
- 2 Savichev, G.P. (2000). Hlava 44. Transportnoe i ekspeditionnoe obiazatelstvo [Chapter 44. Transport and Expeditionary Obligations]. *Hrazhdanskoe pravo – Civil Law*, 35–81. (Vol. 1-2; Vol. II, half vol. 2). E.A. Sukhanov (Ed.). Moscow: Izdatelstvo «BEK» [in Russian].
- 3 Medvedev, D.A., & Smirnov, V.T. (1998). *Hrazhdanskoe pravo [Civil law]*. (Part II). A.P. Sergeev, Yu.K. Tolstoy (Ed.). Moscow: PROSPEKT [in Russian].
- 4 Tyutrina, N.N. (2005). Transportnye obiazatelstva [Transportation commitments]. *Extended abstract of candidate's thesis*. Moscow [in Russian].
- 5 Hasnutdinov, A.I. (1990). Poniatie transportnogo dohovora [The concept of the transport contract]. *Pravovedenie – Jurisprudence*, 3, 34–42 [in Russian].
- 6 Morozov, S.Yu. (2010). *Transportnoe pravo [Transport law]*. Moscow: Izdatelstvo «Volters Kluver» [in Russian].
- 7 Braginsky, M.I., & Vitryansky, V.V. (2007). *Dohovornoe pravo. Kniha chetvertaia: Dohovory o perevozke, buksirovke, transportnoi ekspeditsii i inykh usluhakh v sfere transporta [Contract law. Book four: Contracts for the transportation, towing, transport expedition and other services in the field of transport]*. Moscow: Statut [in Russian].
- 8 Tulegaliev, G.I. (2003). *Izbrannye trudy po transportnomu pravu [Selected Works on Transport Law]*. M.K. Suleimenov. Almaty: NII chastnogo prava KazHUU [in Russian].
- 9 Vitryansky, V.V. (2008). Nekotorye itohi kodifikatsii pravovykh norm o hrazhdansko-pravovom dohovore [Some results of the codification of legal norms on a civil law contract]. *Kodifikatsiia rossiiskogo chastnogo prava – Codification of Russian private law*, 336. D.A. Medvedev (Ed.). Moscow: Statut [in Russian].
- 10 Ilyassova, G.A. (2012). Sistema transportnykh dohovorov po zakonodatelstvu Respubliki Kazakhstan [The system of transport contracts under the laws of the Republic of Kazakhstan]. *Vesnik Karahandinskogo universiteta. Seriya Pravo – Bulletin of the Karaganda University. Law series*, 2 (66), 39–44 [in Russian].