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## **Protection of passengers' rights in the field of transport services under the laws of Ukraine and the Republic of Kazakhstan**

The article compares the legislation of Kazakhstan and Ukraine in the field of legal regulation of contract for the carriage of passengers and luggage. The authors analyzed the legal rules ensuring the protection of passengers' rights in the field of transport services, that is, the provision of passenger and luggage transportation services enshrined in the laws of Ukraine and the Republic of Kazakhstan. The rights of passenger - consumers of services for transportation by road, rail and air transport are considered as well. Case study of passenger rights' violation and practice-oriented materials of the Main Transport Prosecutor's Office of the Republic of Kazakhstan on application of legislation aimed at protecting the rights and legitimate interests of passengers have been also analyzed. New approaches to the study of this problem are expressed in theoretical concepts formulated by the authors, as well as in the system of proposals aimed at the improvement of civil and transport legislation.

*Keywords:* passenger, consumer, railway transport, air transport, passenger carriage contract, carrier, passenger's rights.

On November 11, 2014 the President of the Republic of Kazakhstan Nazarbayev N.A. in his Message to the People of Kazakhstan «The Way to the Future» noted a new vector of the country's social and economic policy. According to the President's Message, the development of transport and logistics infrastructure is the primary task for Kazakhstan [1]. The application of new forms and methods of state transport policy determined the need in the development of a scientifically grounded doctrine of the theory of transport obligation and the improvement of current transport legislation.

Transportation of passengers takes a significant place in the activities of transport organizations. To meet the growing demand for passenger transportation and improve the quality of their organization, the rolling stock of rail, road, air and water transport has been significantly updated in recent years and track and other arrangements are being improved as well.

The Civil Code of Ukraine (Articles 908-928) and the Economic Code of Ukraine (Articles 306-315) define general rules for contracts on passengers and goods' transportation. More detailed conditions of passengers, cargo and luggage's transportation and the responsibility of the parties for these transportations regulate the charters (codes) of certain modes of transport and the rules adopted in accordance with the established procedure. The Civil Code of Ukraine considers the transportation of passengers in Chapter 64 «Transport». The transportation of passengers is covered both by general requirements for transportation and by special ones related to passenger transportation, in particular, Articles 910 and 911 are devoted to this issue.

Under the contract for carriage of passengers, according to Article 910 of the Civil Code of Ukraine, one party (the carrier) undertakes to transport the second party (passenger) to the destination and the passenger, in his turn, undertakes to pay for an established fare. The same situation is related to the luggage delivery. The carrier undertakes to deliver the luggage to the destination and give it to the person who has the right to get it and the person, in his turn, undertakes to pay for its transportation [2]. Under the contract for carriage of passengers, according to Article 690 of the Civil Code of the Republic of Kazakhstan, one party (the carrier) undertakes to transport the second party (passenger) to the destination and the passenger, in his turn, undertakes to pay for an established fare. The same situation is related to the luggage delivery. The carrier undertakes to deliver the luggage to the destination and give it to the person who has the right to get it and the person, in his turn, undertakes to pay for its transportation [3].

The peculiarity of contracting parties for passengers' carriage is that only an individual can be a passenger. If one party to an obligation is a citizen who orders a transportation service for personal domestic needs, then he has the parties' rights to an obligation according to the Civil Code, as well as the rights of consumers according to the Law of the Republic of Kazakhstan «On Protection of Consumer Rights».

As the contract for carriage of passengers is a public contract, then the legislation on the protection of consumer rights is applied, that is, the protection of passengers' interests, and public legal duties are imposed on the organization of public transport to create comfortable conditions for citizens using transportation services. They are defined by the rules of passengers and luggage's carriage on each transport.

The passenger and luggage carriage contract is settled in accordance with the travel ticket and luggage receipt. The form of a travel ticket and luggage receipt is established according to the legislative acts on transport (Part 2, Article 690 of the Civil Code of the Republic of Kazakhstan. The transport legislation regulates in detail the relations connected with the conclusion of passenger carriage contracts, that is, the relations connected with the sale of travel tickets.

The detailed rules regulating relations for the carriage of passengers, luggage and cargo - luggage by railway transport are established in Articles 100-104 as follows: Ukraine railways regulations, the Procedure for servicing citizens by railway transport, the Rules for carriage of passengers, luggage, cargo and mail by railway transport of Ukraine. The conclusion of contracts for carriage of passengers by auto transport has its own specific nature. Usually such contracts are concluded in a written form (a passenger ticket, contract, receipt). It is established that the contract is considered concluded from the moment the passenger buys a ticket. The contract concluded in this way will enter into force as soon as the passenger gets in the motor vehicle.

Carriage of passengers and luggage is regulated in general form by the Civil Code, transport charters and codes, as well as the current Rules for rendering services on passenger carriage. This is evidenced by the aforementioned Article 910 of the Civil Code of Ukraine and it has a referential character.

In accordance with the Rules of transportation of passengers, luggage and cargo-luggage by railway transport of the Republic of Kazakhstan, approved by Government Decree of July 14, 2011 № 799, the sale of travel tickets is carried out at ticket offices including ticket offices of passenger agencies, and (or) by means of electronic terminals and Internet resources. However, a high wear of passenger train (68.5 %) is observed in «Commutation service» JSC, where the lifetime of carriage rolling stock exceeds normative (i.e. is over 28 years). «The issue on the lack of passenger equipment, which currently consists of more than 150 wagons, is also acute» - the Main Transport Prosecutor's Office of the Republic of Kazakhstan said. Because of this, citizens have to apply to the services of illegal ticketless travel. Only within the audit carried out by the transport prosecutor's office, 45 cases of passengers' carriage without travel documents were revealed [4].

The procedure for protecting the rights of passengers (consumers of transport services) in Ukraine is guaranteed by the Constitution of Ukraine, the Civil Code of Ukraine, the Civil Procedure Code of Ukraine and the Law of Ukraine «On Protection of Consumer Rights».

It should be noted that since the passenger acts as one of the parties in the transportation, and he is the consumer of the service, the Law of Ukraine «On protection of consumers' rights» is applied to this type of transportation. Thus, Part 1 of Article 4 defines the general rights of consumers of services. These include the rights to: 1) protection of their rights by the state; 2) proper quality of products and services; 3) product safety; 4) necessary, available, accurate and up-to-date information on the product, its quantity, quality, range, as well as its producer (performer, seller); 5) compensation for property and moral harm caused due to product defects (defect in products) according to the law; 6) appeal to the court and other authorized state bodies for the protection of violated rights; 7) association in public organizations of consumers (consumer associations).

The Article 911 of the Civil Code of Ukraine contains a list of passengers' rights:

- 1) to get a seat in the transport according to a purchased ticket;
- 2) to bring with you one child under the age of six free of charge without the right to occupy a separate place;
- 3) to buy children's tickets at a reduced price for children from the age of six to fourteen;
- 4) to carry hand luggage with you free of charge within the limits set by the transport codes (charters);
- 5) to do not more than one stop on the way extending the validity of travel documents (ticket) for no longer than ten days, and for the entire duration of illness, in case of illness;
- 6) to refuse to travel, return a ticket and get back a full or partial cost of the ticket. It depends on the date of returning a ticket according to the rules established by the transport codes (charters);
- 7) to get a full and time-sensitive information on the time and place of transport's departure on route noted in the transport document (ticket) [2].

However, this list is not entire and can be supplemented by other laws or administrative ordinance depending on the transport.

Thus, by comparing the rights of consumers and the rights of passengers, it is possible to form a system of consumer rights for transport services. So, the consumer of transport services (the passenger) has the right on: getting a safe transport service; getting the service of a proper quality; getting a necessary information for the organization of passenger's carriage; compensation for harm according to established procedure caused by providing unsatisfactory services [5].

The basic rights and obligations of the carrier are specified in Article 690 of the Civil Code of the Republic of Kazakhstan, in the definition of the contract for carriage of the passenger. The main duties of the carrier: transport of the passenger to the destination and if the passenger registers his luggage, the carrier must deliver the luggage to the destination and give the luggage to the person entitled. The duties of the carrier are not limited to the above duties. He must also have a license providing the right to transport; ensure the passenger's safety, create the necessary conveniences and service conditions; prompt transportation and safety of the luggage if the passenger registers it; provide traffic safety; provide the client with freedom of transport choice in the market of transport services; insure his civil liability to passengers in the procedure defined by the legislative acts of the Republic of Kazakhstan on compulsory insurance.

Individual rights and obligations of the carrier and the passenger are defined in the passenger carriage contract.

The duties of the carrier in the passenger carriage contract can be divided into two groups according to legal regulation: the duties established by the transport legislation and rights and obligations determined by the contract of carriage.

The first group of the carrier's obligations includes: timely provision of transport; transportation of the passenger and the luggage if the passenger registers it to the destination; ensuring the passenger's safety, creation of the necessary conveniences and service conditions on the way; ensuring the safety of luggage.

In practice, there are facts of violation of the passenger's right to quality of service on the part of the carrier. For example, there are no necessary facilities for disabled people in railway station buildings and some railway station buildings are not equipped with appropriate ramps and lifts for the disabled. The results of the audit of railway stations' activities and wagons also show numerous violations of the requirements of sanitary rules and regulations. This situation is wide-scale and is one of the causes of improper sanitation of wagons and violations of passengers' rights.

The carrier must ensure transport for passenger carriage in time and ensure departure in accordance with the established schedule on route. In practice, numerous violations of passengers' rights have been identified in the activities of enterprises providing services in air transport. The results of the inspection show the inadequate quality of services provided. The growth of delays in the passengers' carriage, the loss of luggage and the violation of the passenger's rights in the provision of transportation services continue. One of the reasons for delaying flights and affecting the regularity of flights is the insufficient number of the standby aircrafts. According to the Main Transport Prosecutor's Office of the Republic of Kazakhstan, this is facilitated by the lack of corresponding legal regulation of the procedure for reserving aircrafts and their further use, as well as the established standard for the number of check-in desks in terminal buildings. A serious concern is the increase of cases of loss and delay of passengers' luggage.

In case of non-fulfillment or improper fulfillment of the obligations for transportation, the parties bear responsibility established by current Code, legislative acts on transport and other legislative acts (Article 701 of the Civil Code of the Republic of Kazakhstan).

According to Article 20 of the Law on Transport in the Republic of Kazakhstan, the carrier bears property responsibility for harm caused by inflicting death or damaging the passenger's health during transportation unless he proves that the damage arose from the victim's intent or force majeure. Every consumer has the right to purchase a quality and safe goods (work, services).

According to Article 21 of the Law of the Republic of Kazakhstan «On Protection of Consumer Rights», moral harm caused to a consumer as a result of the violation of his rights done by the seller (manufacturer, performer) and legitimate interests provided for by the legislation of the Republic of Kazakhstan on the protection of consumers' rights is subject to compensation through seller's (manufacturer's, performer's) fault in the amount determined by the court, unless otherwise provided by the laws of the Republic of Kazakhstan.

In the course of inspection by the transport prosecutor's office it was established that the Carrier's response to the passenger's application done by Kim R. V. (№-18-10 / K-1766.1 of 22.09.2014, signed by Kangaliyev A.Zh.) has no information on compensation or refusal to compensate for moral harm and the amount of lost earnings for the period of temporary incapacity for work, i.e. these arguments have not been

considered. Also, in response to passenger Kim R.V. the procedure for appealing against the decision was not clarified [4]. Thus, the carrier did not provide an objective and comprehensive review of the appeal done by Kim R.V., which entailed a violation of the applicant's rights.

The facts mentioned above allow us to conclude that the measures taken to enforce acts of procuracy supervision and collegial decisions on the part of railway and air transport enterprises are insufficient.

If we analyze transport legislation, then there is a lack of strictly formulated criteria for the safety of transport services. According to scientists, safety is the lack of unacceptable risk related to the possibility of causing any harm to life, health and property of citizens, as well as the environment. Thus, it can be concluded that the essence of safety is not to harm the life, health of the passenger and / or his property and luggage while providing transportation services. It is important to note that, from consumer policy's viewpoint, state supervision over technical condition of transport and the quality of transport services is of great importance. This is noted in all legislative and legal acts that regulate this branch. Thus, in the Rules for the provision of passenger motor transport services, the main thing is undoubtedly the protection of the interests and rights of passenger-consumers when organizing all types of transportation. In particular, when passengers are transported by buses (in regular, regular special, irregular mode and route taxi mode), the following regulations are defined: the rights and obligations of the participants in the transport process; safety and reliability of transport; conditions for the opening and closing of urban and suburban routes; conditions of passengers' insurance against accidents in transport, etc. The carrier or an authorized person must have a document confirming the qualification and must transport the passenger safely to the destination and to deliver the luggage to the destination and hand it over to the passenger if he registers it.

Supply and demand for transport are determined by the ability of transport users to pay for transport services and the production capacity of the transport system to meet them [6].

Users of transport services are not interested in the costs on improving the quality of the provision of these services and methods on improving the competitiveness of transport. When going by passenger transport, passengers pay attention not to the service itself, but to their opinion, which they have at each stage of the trip in the process of rendering services. They try to compare the price and service offered by you or other transport, and draw conclusions for themselves, whether the price corresponds to the level and quality of the services it provides.

The quantity of passengers' demand is influenced by factors that are very closely connected. These factors are divided into subjective and objective.

Subjective factors affecting the passengers' demand according to the mode of transport include:

- 1) solvency of passengers: tariff (price), quality of providing services for passengers and various types of services on a particular mode of transport;
- 2) fare, quality of transportation, availability of various modes of transport, level of competition in the transport market.

The objective factors include:

- 1) social and political stability of the country and regions, population growth and population distribution according to the place of residence;
- 2) degree of inflation, siting of labor forces and production, development of social production and actual level of population's income.
- 3) economic security of regions, climate, amount of precipitation and lay of land.

Ensuring efficient passenger transportation requires marketing research of passenger transportation and meeting their needs at a high level.

According to experts, the main criteria for the quality of passenger service are: frequency; variability; speed of transportation; safety of the trip; convenience when buying a ticket; compliance of service and service requirements; behavior of drivers regarding passengers [7]. Although consumer protection legislation does not include quality of service criteria, it guarantees each consumer the right to the proper quality of services.

Informational satisfaction of the passengers' needs established in Article 911 of the Civil Code of Ukraine, that is, passengers must be informed in some way about the time and place of departure of the transport according to the route noted in the transport document. So, according to the «Rules of transportation of passengers, luggage, cargo and mail by railway», passengers should be given a certain information. For example, according to paragraph 2.1., at each station (passenger building) on the stand, there is a timetable for passenger trains, direct trains and trailing cars for the given station. The timetable for passenger trains consists of two separate parts: arrival of trains to the station and departure of trains from the station, p. 2.4.

At each station, passengers are given free information about the availability of seats at the time of the request in all trains departing from this station, paragraph 2.5. Information on the fare is provided through online help systems or through information desks and other information. In accordance with paragraph 2.19., the stationmaster is obliged to accept daily passengers regarding the departure and service at the station. It can be concluded that if passenger's certain rights are violated, he will be able to apply to the stationmaster [8]. For example, in practice, the most common violations of passengers' rights and legitimate interests in aviation transportation are cases of cancellation and delay of flights.

The carrier, canceling or delaying the flight, must provide the passengers with explanations regarding the reasons for cancellation or delay of the flight on their request. If it is necessary to ensure the timely transfer of passengers to connecting flights, the carrier should offer them alternative routes of transportation at the first opportunity.

So, if an international flight was delayed for a long time and the carrier did not give any proper information about the reasons for the flight delay, did not provide food and drinking water, did not provide accommodation in the hotel for waiting, due to a long delay of the flight; did not provide an opportunity to call for flight delays free of charge, etc., then passengers can apply to the official representative office of the air carrier with the corresponding claim in a written form, where they can make a complaint about the inappropriately rendered air transportation service and a proposal to provide a proper compensation for the violated rights of the passenger.

A citizen, whose rights have been violated by an air carrier, is able to apply to the court with a civil claim to protect his violated right according to the provisions of Part 2 of Article 104 of the Air Code of Ukraine. When applying to the court, in accordance with Part 1 of Article 60 of the Civil Procedure Code of Ukraine, each party must prove the circumstances to which he refers as the basis for his demands and claims. Any facts may be the evidence on the basis of which the court establishes presence or absence of circumstances justifying the claims and objections of the parties and other circumstances relevant to the solution of the case (Part 1, Article 57 of the Civil Procedure Code of Ukraine) [9].

As we see, the implementation of protection of passenger's rights can be carried out both judicially and extrajudicially by applying for the protection of his rights directly to the carrier, to government agencies and public organizations.

Nowadays, when regulating transport relations in carrying the passengers and their luggage, there are two main problems connected with:

- 1) creation of a perfect and codified regulatory framework in the field of transport;
- 2) providing a high level of transport services that meet the world's requirements and satisfy the interests and needs of a passenger.

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## Украина және Қазақстан Республикасының заңнамалары бойынша көліктік қызмет көрсету саласында жолаушылардың құқықтарын қорғау

Мақалада жолаушы және теңдеме жүкті тасымалдау шартын құқықтық реттеу саласындағы Қазақстан және Украина заңнамаларына салыстырмалы талдау жүргізілген. Авторлар көліктік қызмет көрсетулер Украина және Қазақстан Республикасының заңнамаларында бекітіліген жолаушылар мен қол жүктерін тасымалдау бойынша қызмет көрсету саласындағы жолаушылардың құқықтарының қорғалуын қамтамасыз ететін құқықтық нормаларды зерттеген. Автомобиль, темір жол және әуе көліктерімен тасымалдау бойынша тұтынушы-жолаушылардың құқықтары қарастырылды. Жолаушылардың құқықтарының бұзылу фактілері бойынша тәжірибе мысалдары, Қазақстан Республикасы Бас көлік прокуратурасының заңнаманы қолдану бойынша тәжірибе материалдарына талдаулар жасалған. Аталмыш мәселені зерттеуге жанаша қадамдар авторлармен зерттелген теориялық тұжырымдарда, сондай-ақ азаматтық және көлік заңнамасын жетілдіру бойынша ұсыныстар жүйесінде белгіленді.

*Кілт сөздер:* жолаушы, тұтынушы, темір жол көлігі, әуе көлігі, автомобиль көлігі, жолаушы тасымалдау шарты, тасымалдаушы, жолаушы құқықтары.

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## Защита прав пассажиров в сфере транспортного обслуживания по законодательству Украины и Республики Казахстан

В статье проведен сравнительный анализ законодательств Казахстана и Украины в области правового регулирования договора перевозки пассажиров и багажа. Проанализированы правовые нормы, обеспечивающие защиту прав пассажиров в сфере транспортного обслуживания – оказания услуг по перевозке пассажира и багажа, закрепленные в законодательствах Украины и Республики Казахстан. Рассматриваются права пассажиров — потребителей услуг по перевозке автомобильным, железнодорожным и воздушным транспортом. Анализируются практические примеры по фактам нарушения прав пассажира, практические материалы Главной транспортной прокуратуры Республики Казахстан по применению законодательства, направленного на защиту прав и законных интересов пассажиров. Новые подходы к исследованию данной проблемы выражаются в сформулированных авторами теоретических положениях, а также в системе предложений по совершенствованию гражданского и транспортного законодательства.

*Ключевые слова:* пассажир, потребитель, железнодорожный транспорт, воздушный транспорт, договор перевозки пассажира, перевозчик, права пассажира.

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