
PECULIARITIES OF THE CARRIAGE CONTRACT UNDER THE KAZAKHSTAN REPUBLIC LAW

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One of the priorities of the Transportation Strategy planned till 2015 and confirmed by the Kazakhstan Republic President Nursultan Nazarbayev is development of international relations and improvement of transportation services. Contract of carriage and transportation terms and their special features are important problems of the civil law. Kazakhstan has chosen innovational development and it requires radical reforms in all spheres. Nowadays transportation is widely used, so there are different legal problems concerning it.

Lately, transportation facilities and services have improved much. For example, construction of railway network, legislation development, purchase of transportation facilities and etc.

It is important to look into the history of the legal relations relating to transportation services during market economy and independence time, to analyze its gradual growth and define development succession. The contract of carriage is considered to be a well known contract in the history of law. It is included to the legislation of Anglo – Saxon, continental Europe, socialist countries including Kazakh Soviet Socialist Republic and the Republic of Kazakhstan.

Transportation relations being the core topic were legally regulated during the soviet epoch, but legal normative documents corresponding to requirements of the market economy have been developed after gaining independence. Transportation service is a complex sphere of national economy has passed different stages (investment, privatization and renewal of transport facilities), moreover it is legally regulated. Under conditions of market economy reforms in Kazakhstan along with formation of new civil right institutions, transportation contracts must be clearly determined. Transport and related to it contracts were confirmed by the ownership right legislation and directly influences on economic turnover. The role of the given contract is connected with theoretical and practical link.

The transport of Kazakhstan Republic – all registered railway, automobile, sea, inner water, commercial air transport, river, land and city electric transports. We include a long – haul pipe line as one of the types of transport. There are different types of transport according to the objective characteristics, their utilization has its peculiarities and they influence on confirmed content terms. Transport facilities are automobiles, carriage, planes, air transport, motorbikes and etc. If we give a definition to some of them, say, carriage – designed for railway, moved by trailers, road haulage ; automobile transport types are buses, micro buses, trucks, auto trailers, semi trailers, specially designed automobiles (designed for special cargo), lorries, special automobiles (not for transportation) air liners – different flying appliances.

Transport facilities must meet safety, medical – sanitarian, labor and ecology protection norms, international and state standards, besides they must have certificates that correspond to technical characteristics and must be registered by the law. The right to operate transport facilities should be given to a person who has corresponding qualification and has medical certification about health, also special documents. Qualification requirements about operation of transport facilities and assessment of health are determined by the Republic of Kazakhstan normative – legal act regulations.

We think, that the main regulations of the civil code of the Republic of Kazakhstan adopted in December 27, 1994 were implemented according

to market economy requirements formed in Kazakhstan, “the transport law adopted in 1994, norms introduced to the contract of carriage in July 1, 1999 took into account all the changes and real life conditions.

Legal regulation of transport relations, the subjects, objects of cargo and passenger transportation terms, the rights and tasks of sides, railway transport legislation as natural monopoly carrier, their responsibility were added with changes and amendments. Thus, according to the article 688 of the civil code of the Kazakhstan Republic, transportation relations are defined by the norms of the civil code, legislation about general requirements of transportation, other legal acts and corresponding regulations. If transportation requirements by lorry, passenger transport or by separate types or other transport are not determined by the civil code, legislation and corresponding regulations, then they are established by contracting parties.

The most important aim of our sovereign country is to regulate and improve transport laws which meet market relation requirements. The transport organizations play an essential role in providing appropriate service to passengers. The Republic of Kazakhstan has chosen market economy direction and its active participation in market relations influence on transport facilities’ renewal and improvement of service providing.

A passenger is a part of the carriage contract and it is relevant to ask the question, who is the passenger? This is a person who uses transport means, facilities and has a ticket. According to the civil code article number 690 and carriage contract terms the carrier or transporter must take the passenger to necessary destination, if the passenger handed over his baggage, they also must be delivered where it is supposed to be and the carrier undertakes to give it to a trusted person. The passenger pays for using transport, and for taking back his luggage or bail cargo¹.

Passenger transportation contract like cargo transportation paid. However, in most cases cargo transportation contract is considered as valid, but cargo transportation is concession agreement, because in concession agreement contracting parties have certain rules and the contract completed at different time.

¹ Civil code of the Republic of Kazakhstan, Almaty 2012.

There is a trilateral agreement between consignor, consignee and cargo carrier according to the carriage contract, but carriage of passengers carried out by bilateral agreement. As above said, the passenger pays and gets ticket, for cargo – receipt. The ticket and receipt objects are set by the rules of law acts which is stipulated in transport law.

The carrier is committed to deliver passengers and cargo to necessary destination at specified date stated in the transport law acts. If the delivery date is not indicated in the contract, it may be delivered at any suitable time.

The passenger has the right:

- take children free of charge if has contract benefits;
- within norms at no charge hand-luggage;
- pay according to baggage rate and hand over for carriage;

Other rights in conformity with carriage contract and corresponding transport facilities charters:

- get real information in time;
- information about arrival and departure time;
- information about the ticket and luggage price;
- booking office, cloak-room office hours;
- about station layout;
- passenger service;
- about privileges to some passengers;
- banned things in hand – luggage.

Moreover, if transport facilities delay, don't arrive at stated time, passenger has the right to get back his money.

The main document in transport is ticket. The ticket certifies that the agreement has been made and the passenger has paid for using the transport. The agreement is drawn in the written form and has several terms including the ticket price, time, expiration date, validity and etc. In air and railway contract the name of the passenger is written, in other types of transport terms the names of passengers are not indicated.

We mentioned above, that carriage contract is in the written form and we must bare in mind it is related to air and railway transporta-

tion, because in inter town transport facilities names are not indicated in tickets, but in case the passenger loses his or her ticket, it is impossible to prove. However, we think we are to solve the problems that certain amount of money was paid and it find the ways to prove. Nowadays urban transport organizations provide services, to long-distances, remote places tickets mainly are sold by computer programs. If it is not done by computers, the copy of passenger ticket is left in the transport organization. Taking into account these circumstances, if the passenger loses the ticket and he repays certain some of money it must be reimbursed, because the passenger mustn't pay for not being serviced.

According to any agreement, considered commitment is to reach certain goal and covers complex of elements (subject, object, commitment content). We must differentiate special and general goal taking about the special goal of the commitment. Considering the special purpose of the commitment, it is important to consider economic and legal purposes. Carrying out economic tasks, purposes we reach economic material results. So, changing the size and volume of the cargo is economic purpose of the cargo transportation process.

Following legal tasks and objectives, contracting parties receive legal outcomes. M.B. Gordon states: "Legal purpose is the tool of reaching economic goals"².

Characteristic signs of the carriage contract are as follows:

- one side is committed to deliver to the stated destination and this is the subject of the carriage contract.
- the second side undertakes to pay. General concept of the carriage contract covers these things. Thus, the carriage contract concept is characterized by its content.

The purpose of the given contract is to provide transport service, to replace the place of cargo. As a result of this service the place of cargo and things are changed. According to the definition of carriage contract it is considered as valid contract, that is drawing a carriage contract to reach an agreement isn't enough, the cargo must be

² The contract system in the soviet civil law, Kharkov 1954, p.85.

handed over. This process certifies that the carriage contract has been drawn³.

Permitted system of international motor transportation is carried out in conformity with permission by international road haulage authorized bodies. According to the international contract confirmed by the Republic of Kazakhstan authorized body gives a permission to foreign transporters, carriers movement in the territory of Kazakhstan and to carriers of Kazakhstan Republic in foreign countries territory.

If in international motor transportation in countries where permission system is used, demand permission exceeds the number permitted to Kazakhstan Republic carriers, the permission is given in the first place to:

- 1) motor transportation of humanitarian goods;
- 2) export transportation by road goods from the Republic of Kazakhstan;
- 3) joint motor transportation with other types of transport;
- 4) motor transportation of perishable goods.

Cargo transportation agreement is made up between cargo carrier and consignee. According to the contract clause the consignee pays the cargo carrier for delivery, the carrier fills in shipping documents, delivers goods to destination and hands over to the receiver of cargo. Thus, the receiver of the cargo is also the part of the carriage contract and has certain rights and obligations. Even if it is known to contracting parties who will receive the cargo, the consignee doesn't participate in drawing up the contract. In spite of this, he is obliged to receive the cargo in time and pay for handled operation. For delaying to receive the cargo, the consignee has to pay the fine and pays ware house expenses. During the cargo transportation if the

³ We should mention other definitions in this case such as: transit – the service provided within the region by vessel; Direct water transportation – implementation of carriage by river – sea transport in conformity with carriage documents; Piggy-back mixed, combined traffic – railway, road, water transportation with corresponding carriage documents; Types of water shipment: Small coastal traffic – single sea inter port carriage of goods; Big coastal traffic – inter port cargo transportation in different seas; Other types of water transportation: Local relations; Foreign relations – cargo transportation to foreign countries through Kazakhstan Republic ports.

sender of the freight didn't pay any sum, even if it hadn't been agreed beforehand, the receiver of the cargo is committed to pay for that.

Consequently, the cargo receiver is a participant of legal relations. Mainly parts of the carriage contract consignor and consignee are authorized persons to receive cargo, that is the contract is made up without consignee, but his name and address are indicated in the contract. So, the participants of the commitment are not only the sender of the freight and carrier, but the receiver of the cargo as well. He executes or carries out tasks proceeding from the contract.

Participation of consignee in the legal relation determines the meaning of the carriage contract. Transportation result – for certain reason to deliver the cargo to the destination. Thus, according to the general rules, the contract is made up not only for consignor's sake, but consignee's as well. The carrier receives cargo without consignee's consent, nevertheless the receiver of the cargo is indicated in shipping documents.

Constant international transportation of passengers and luggage carriage by the road between authorized body of the country and the same organ of foreign countries, the itinerary of buses, micro buses (indicating the beginning and final bus stations) is organized by time table. The carriers, bus drivers of Kazakhstan Republic carrying out inconstant international passenger and luggage transportation by road, must have passenger list certified by an official. International road transportation between the Republic of Kazakhstan and foreign states are carried out only through the Kazakhstan Republic border control post.

During constant international passenger and luggage transportation by road, passenger transportation in the region or within Kazakhstan Republic is strongly forbidden. International transportation through the border control posts of Kazakhstan Republic is carried out by document checking and buses engaged in international transportation are passed out of turn.

Legal characteristics of the carriage contract has always been disputable and moot point for many years. Some authors consider carriage contract as contract of merger. They say that, transportation organization is monopolist in the carriage sphere. Individuals who need transport service try to prioritize their position, and the clients agree with transport

organization. The definition of legal characteristics of cargo carriage contract is still one of the disputable problems in civil law science.

In order to determine legal characteristics of the carriage contract, it is enough to reveal its place in the civil law contract system. It is necessary to define the position of cargo receiver and relation between the consignor and carrier to give vivid legal characteristics of the cargo carriage contract. There are different points of view in science concerning to relation between the consignor, consignee and the carrier in the contract. Some authors consider that cargo carriage contract is drawn up taking into account the interests of the third side. M.K. Alexandrov – Dolnik considers the consignor and consignee to be one part in the cargo carriage contract.

According to M.A. Tarasov's point of view, the consignee is not the third part or side, he is separate person or together with consignor considered to be one side.

Some other authors state that in the carriage contract the one side is carriage or transportation, the other side is the sender of the freight. In the carriage contract, the carrier is one side, the sender of the freight being the owner of the cargo the other side. During contract making up the owner of the cargo is the consignor and it isn't necessary to prove that, but the cargo receiver participates only to receive executed commitment.

The receiver of the cargo and the freight sender at different stages of the contract mutually add each other. Here the cargo receiver is not considered to be the third side in the contract drawn at his favor, because according to the contract, the third side must participate in the very beginning or during contract making, but there is no reason for cargo receiver to be a part in insurance agreement. In conclusion, there are two contracting parties in the carriage contract the first, carrier (transport organization) is responsible for cargo carriage and hand over to the receiver of the freight, the second – the sender of the freight is responsible for giving to the carrier (transport organization) and for payment. The consignor and consignee are the clients of carrier. Handing over the cargo to the consignee, the carrier fully performs his obligations before the consignor. The receiver of the cargo joins in legal relation with the carrier in the following cases:

- 1) when demands the cargo from the carrier;
- 2) when receives the cargo;

Thus, the receiver of the cargo joins in legal relation on the last stage of commitment. The legal importance of the carriage contract is that, it can be legal base of carriage obligation between the consignor and the consignee. In order to carry out transport services (established by international agreements and laws of the Republic of Kazakhstan) it is important to define more precisely carriage contracts and agreements. Relations between them requires to make amendments in carriage contracts.

If contracting parties don't fulfill their obligation or perform improperly, in this case the carriage contract is the base of property responsibility. The subject of the carriage contract obligation are the participants of the carriage contract who possess rights and obligations. The analysis of the carriage obligation subjective structure gives an opportunity to define how carriage relation implements transport laws.

One of the obligations of freight sender is marking. There are three types of marking:

- 1) shipping marks – in each cargo destination, names and addresses of the consignor and consignee are indicated;
- 2) special marking – the type of cargo, specific characteristics and some measures of handling the cargo during transportation and unloading are written;
- 3) transport marking – the number of shipping documents, piece of luggage, space and cargo weight are indicated.

Along with carrier and the sender of the freight, the receiver of the cargo also participates in legal relation proceeding from carriage process and this defines carriage contract peculiarities. Here the problem of legal position of the cargo receiver arises. Specific peculiarity of the carriage contract is that besides the cargo sender and carrier, the receiver of the cargo also participates in carriage relations, and the carrier is obliged to hand over him the cargo. In the process of concluding carriage contract the cargo sender must indicate the receiver of the cargo in the contract. This is an essential clause of the contract.

It is important in the carriage process to define clearly the relations between the carrier and the cargo sender in order to provide cargo safety

and to deliver it to indicated destination and this relation is defined by the object of carriage contract. The object of the carriage contract is in written form. On each stage of the carriage process there is necessity to support different types of cargo with shipping documents. The order of compiling shipping documents depends on transport type. The object of this cargo carriage contract is shipping document. The main shipping documents are: consignment note, bill of lading, cargo sheet, goods receipt.

Consignment note is the document which is used in rail, road, inner water, automobile, and air transport; evidence that carriage contract has been concluded; the document which is the base to demand that consignee has given the cargo to the carrier after transportation⁴. The rights and obligations of the carriage contract participants are based on shipping documents. The main shipping document of rail and inner water transportation are consignment note, marine waybill, in air transport – air bill of lading, in sea transport – liner waybill. In oil transportation through the Caspian Sea, in direct and combined water transportation consignment note is used instead of waybill.

Consignment note is the document covering all the stages of carriage beginning with cargo acceptance (receive) and carriage to the final destination. It proves or witnesses the rights and obligations of the carrier and the cargo sender. In all types of transport except sea transport cargo carriage is made out by the consignment note: The consignor while transporting the cargo is obliged to give filled in consignment note to the port or freight terminal.

The consignment note, as we mentioned above the main certifying document of legal relation of the carriage participants, that is in its turn, the consignment note is bilateral contract document. According to delivery type there are different types of consignment note: a) ship; b) railway; c) container; d) van group or itinerary; e) similar consignment note. This kind of consignment classification doesn't influence on its content and legal meaning.

Any type of consignment note is the object of the carriage contract and has two meanings legal and cash.

⁴ Russian juridical encyclopedia, 1999, p. 564.

The legal meaning of the consignment note are as follows. It is goods – voucher (it is given to the consignee with cargo), the fact that the carriage contract was concluded in the written form (the rights and obligations of contracting parties), all this compile its content. The content of the consignment note is proven only by itself not by other shipping documents. So if the carrier carries out obligations improperly, the cargo sender and receiver have the right to demand showing the consignment note.

In most cases after the cargo shipment there might be some drawbacks (delay of cargo, its breakage or damage and etc.), in these circumstances the complaint or problem can be solved by presenting original consignment note.

Cash meaning can be interpreted in the following way: the consignment note is the base to make payments between people engaged in transportation process, to control and check proper usage of people tariffs and information.

The consignment note covers all necessary information: cargo for shipment, the sender of the freight, cargo receiver, carriage contract, transportation cost , the level cargo capacity usage, carriage speed, the whole information to carry out transportation.

The importance and peculiarities of consignment note as an object of carriage contract:

The consignment note is written to a certain cargo receiver, filled in and stamped by the reception stamp of a carrier. It isn't allowed to erase or correct it. Corrections and amendments are made only by the carrier or transport organization, they must be certified without fail. For wrong information in the consignment note the cargo sender is responsible. The receiver of the cargo has the right to check information, if he finds that there is not enough information, he must demand from the cargo sender a new consignment note with right and detailed information. Correct, properly filled in consignment note provides cargo safety and plays an important role in solving responsibility problems for positive transportation result. Making out correct consignment note, containing detailed transportation information is important for delivery, purchase sale relations between the cargo sender and receiver and for carriage implementation. While receiving the cargo , the consignee checks out this information,

makes payment and if something is wrong, has the right to claim. The carrier can refuse to accept consignment note, if it isn't made out in conformity with established rules. If transport organization accepts improperly made out consignment note signed by the cargo sender, it is considered that carriage contract has been concluded.

Carriage contract is often used in our everyday life. The efficiency of this contract is to satisfy the needs of passenger and property carriage from one place to another by transport means and facilities. The purpose of the given research was to systemize drawbacks in legal regulation of transport relations, to give legal assessment, theoretical and practical recommendations, tasks were the reason and base to define ways in reaching the purpose. So, as we mentioned above, Kazakhstani legislation relating to transportation sphere consists of six stages. The main tasks of our work were to determine different legal problems on those stages and to make right decisions.

Besides, to define the peculiarities of civil law relation objects (service, dispatch service, carriage contract, paid services and etc) when they are considered to be a object deal and what is common point of contact – were also the research tasks.

In the civil law science there are still disputable opinions, point of views, sometimes contradictory attitudes towards the question whether carriage contract bilateral or trilateral. On the one hand it seems trilateral contract, because the cargo sender, carrier and the cargo receiver are all indicated in the contract. We think, it is bilateral contract, because any carrier makes calculation with the person who places an order. In this case the client is the cargo sender as far as he places order to deliver goods to certain destination, therefore contract is concluded between them.

Abstract

Contract of carriage and transportation terms and their special features are important problems of the civil law. Kazakhstan has chosen innovational development and it requires radical reforms in all spheres. Nowadays transportation is widely used, so there are different legal problems concerning it. The purpose of

the given research was to systemize drawbacks in legal regulation of transport relations, to give legal assessment, theoretical and practical recommendations, tasks were the reason and base to define ways in reaching the purpose. Kazakhstani legislation relating to transportation sphere consists of six stages. The main tasks of our work were to determine different legal problems on those stages and to make right decisions.