

СЕКЦІЯ 4. ЦИВІЛІСТИКА В АНГЛОМОВНОМУ ВИМІРІ

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«RESPONSIBILITY OF THE PARTIES FOR FAILURE (IMPROPER IMPLEMENTATION) OF THE CHARTER AGREEMENT»

In the conditions of the active development of Ukraine as a legal state, as well as the adaptation of Ukrainian legislation to European, the contract of the charter is increasingly being used. At the same time, it is the least investigated form of treaties in the national legal doctrine. The lack of modern scientific developments, theoretical generalizations and practical recommendations on this issue, the lack of proper legal regulation of liability relations which arise from the charter agreement at the national level and incorrect application of international law in this area create a threat to investing in Ukrainian industry and its development.

In order to know the problem inside out, you need to understand the nature of the contract of the charter, its essence and legal consolidation.

The charter contract is one of the oldest in contractual law, namely in the field of transportation. Initially, this treaty originated as an institute of maritime law, in which during the Middle Ages there was a treaty called «tsertepartia» (French: char-te-partie, where char-te is a charter, partie – a part; English: charterparty). The very term of this contract arose from the ancient custom to write such contracts on a sheet of paper (charte), which should then be broken into two parts (partie), each of which remained with the counterpart. This was a guarantee of compliance with the contract and its full implementation, in the worst case one of the parties declared the claims, and proved their compliance with the contract by the fact that those two parts were connected [2, p.48].

Today, a charter agreement is widely used in irregular cargo and passenger transportation by sea and air, mainly in international destinations.

Traditionally, the rules governing the issue of this contract were contained in the Code of Merchant Shipping (hereinafter – the CMS) and the Air Code (hereinafter – the AC). Very often the regulation of sea freight traffic is carried out according to the convention of business turnover.

However, the Civil Code of Ukraine (hereinafter – the CC of Ukraine) changed this tradition a little by securing in Part 1 Article 912 the definition of the contract of the charter, as a contract on which one side (freighter) undertakes to provide the other party (charterer) for a fee all or a part of capacity in one or more vehicles for one or more flights for the carriage of cargo, passengers, baggage, mail or for another purpose, if this is not contrary to law and other regulations. At the same time, the CC of Ukraine determines that the procedure for concluding a charter contract, as well as the form of this contract, shall be established by transport codes (statutes) [1, p.155].

In addition, it should be emphasized that the CC of Ukraine contains provisions in the chapter «Transportation», which allows solving another problem, that provoked discussions in academic circles for a long time, namely the place of the charter contract in the system of private law contracts.

The responsibility of the parties under the charter contract for improper performance of their duties is similar to the responsibility of the parties under the contracts of carriage of cargo, passengers and baggage, taking into account the specifics of liability in the sea and air transport. However, the carrier is obliged to compensate the damage caused not only by transportation, but completely for all the damage [3, p.365].

With regard to liability under the charter contract of the parties of the treaty the legislation of Ukraine establishes the same regime of liability under the contract of carriage of goods for the damage caused by the cargo, namely loss, shortage or damage to the cargo. Speaking about the responsibility of the parties to the air charter agreement it should be noted that, depending on the type of violation it may be limited or unlimited.

The limits of liability for air transport are set out in the Convention for the unification of certain rules relating to international air transport, signed in Warsaw on October 12, 1929 (hereinafter referred to as the Warsaw Convention). The Warsaw Convention applies to Ukraine as amended by the Hague Protocol of September 28, 1955.

In carrying out international transportation, the scope of liability of the parties is wider than in the framework of national legislation of Ukraine. In accordance with the Warsaw Convention, the liability of an air carrier is limited not only to the loss or

lack of cargo or baggage accepted for carriage, but also in cases of moral damage as a result of death, injury or any other bodily harm to the passenger, and in the event of damage caused by delay while performing air charter transportation. In all other cases, the liability of the parties is unlimited [3, p.366].

Considering the peculiarities of civil liability in the performance of air charter transportation, we should separately focus on cases where there are two carriers in the carriage: the carrier under the contract and the actual carrier.

In charter transportation the division of carriers on a contractual and actual basis is possible when the airline acts as a charterer. This occurs when the air charter agreement is concluded specifically for the purpose of fulfilling the obligation of air transportation to third parties. So, for example such situation is possible, when the airline lacks its own fleet of aircraft at high demand for transportation. To meet this demand, it concludes an air charter agreement with another airline.

In particular, according to the CC of Ukraine responsibility for non-fulfillment or improper performance is borne by the party under the contract from which it arose, unless the law provides that the liability is borne by the immediate executor.

For international charter services the definition of the subject to liability to the presence of the carrier under the contract and the actual carrier is carried out on the basis of the Guadalajara Convention, supplementary to the Warsaw Convention in order to unify certain rules relating to international air transportation undertaken by persons who are not carriers under the contract [1, p.156].

The Guadalajara Convention stipulates that the actions or inactivity of the actual carrier are considered exclusively under the contract. It is also established that orders and claims submitted to the carrier under the Warsaw Convention have the same validity, regardless of whether they are referred to the carrier under the contract or the actual carrier. However, there is an exception to this rule: the requirements of the consignor regarding the handling of cargo can be claimed only to the carrier under the contract.

As a result, it should be noted that, in our opinion, the legal regulation of liability under the contract of the charter and generally of all aspects of this contract does not meet the requirements for the operation and development of charter transportation. The lack of legal consolidation of the terms of the charter agreement only extends problems with the responsibility of the parties under this agreement. It should be noted that there is a lack of unified rules on the charter contract and there is an existence of gaps in the current norms not only in Ukraine but also in most countries of the world. Therefore, in our opinion, there are two options for solving this problem. The first is the continuation of the way those countries have gone, namely the signing of another convention that would eliminate these gaps. The

second option is local, but more effective, it is the adoption of internal acts by the states on the basis of the existing practice.

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THE MEANING OF CODIFICATION OF JUSTINIAN FOR THE DEVELOPMENT OF EUROPEAN LAW

Code of Justinian, Latin Codex Justinianus, formally Corpus Juris Civilis («Body of Civil Law»), the collections of laws and legal interpretations developed under the sponsorship of the Byzantine emperor Justinian I from 529 to 565 CE. Strictly speaking, the works did not constitute a new legal code. Rather, Justinian's committees of jurists provided basically two reference works containing collections of past laws and extracts of the opinions of the great Roman jurists. Also included were an elementary outline of the law and a collection of Justinian's own new laws [1].

The purpose of Justinian's compilation was to restate the whole of Roman law in a single legal source of law with binding force over the entire empire. Justinian's major legal work, often called a codification, was not a codification in the modern sense but rather an up-to-date and systematized compilation or collection of legislation and legal literature. Emperor Justinian himself gave no collective title to his compilation. He used only once the expression *corpus iuris* in the generic sense of body of law (*one corpus iuris*). In the Middle Ages, the whole compilation was called *Corpus iuris* by the medieval glossators. From the end of the sixteenth century up to our own time, to distinguish Justinian's compilation from the compilation of canon law (*Corpus Iuris Canonici*), jurists have usually referred to Justinian's compilation as *Corpus Iuris Civilis*. That collective name was first used in the edition by Dionysius Gothofredus (Denis Godefroy) in 1583 [2].