

ГОСПОДАРСЬКЕ ПРАВО, ГОСПОДАРСЬКО-ПРОЦЕСУАЛЬНЕ ПРАВО

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PECULIARITIES OF LEGAL REGULATION OF INTERNATIONAL TRANSPORTATION IN THE CONTEXT OF MARTIAL LAW

The article analyzes in detail the national and international systems of regulations in the field of international transportation by various modes of transport at the present stage. The author identifies the main factors that impede the work of transport services market players and the implementation of the national transport policy in general. The author concludes that it is necessary to revise the conceptual framework for legal regulation of international transportation in general.

The author emphasizes the importance of understanding and forecasting the peculiarities of the functioning of the international transportation system in the post-war period as the entire transport sector of the State.

The research paper also focuses on the importance of taking into account the obstacles to the safe and unhindered delivery of goods at both the national and international levels. The author analyzes the features of the "Grain" agreement, "transport visa-free regime", etc. It is proposed to develop a clear and effective strategy for legal support of international transportation in the postwar period. Special attention is focused on the shortcomings of the regulatory and legal regulation system in Ukrainian legislation, the main "diplomatic" gaps in the regulation of international transportation of goods are identified, and the author proposes to revise the Agreement on "transport visa-free travel" with a view to improving its provisions and restoring its validity.

Keywords: *international transportation; mixed transportation; cargo transportation; multimodal transport corridor; transport security.*

Statement of the problem. An analysis of the historical experience of highly developed countries of the world allows us to conclude that the way out of the economic crisis is closely related to the development of an efficiently functioning transport system, of which international transportation should be an indispensable component. In the

global economy, there is an axiom: the greater the density of transportation routes in a country, the higher the level of its economic development. Ukraine stands out among other countries because a significant number of its cities are located on traditional transport and communication routes of the Eurasian continent. The country has a fairly high

coefficient of transport attractiveness, but this indicator is potential and can be realized only in competition with other countries that carry out transit transportation and have a strong market for transport services. A topical issue today is the implementation of international transportation in wartime. Our country has not had such experience, so we need to study this problem and find optimal solutions now.

Analysis of recent research and publications. International transportation has been studied by scientists of various scientific fields and schools, lawyers, economists, logisticians, and so on. In particular, there are certain theoretical and practical developments of specialists in the field of administrative, commercial, civil, and customs law who have studied the legal nature of the transport services market, ensuring transport security, international transportation in general, certain types of international transportation, the procedure for crossing the border by cargo, the functioning of transport corridors, the peculiarities of international transportation of goods in the context of the COVID-19 pandemic, etc. At the level of dissertation research, we can distinguish the works of: Matveeva A. V., Minchenko A. O., Nikolaichenko I. R., Nechypurenko O. M., Reznichenko S. V. and Samoilenko H. V. (collective monograph), Pavliuk S. M., Samoilenko H. V., Sirko R. B., etc. The issues of providing transportation services are also covered by the works of domestic scientists: Abramov A. P., Averichev I. M., Bakayev O. O., Belov I. V., Gurnak V. M., Dmitriev V. A., Zagorulko V. M., Zayonchuk L. G., Kutakha L. A., Kulaev Y. F., Kotlubai M. I., Kotlubai O. M., Livshytsia V. M., Makarenko M. V., Matveeva A. V., Mitaishvili A. A., Morozova I. V. Moro-

zova, V. O. Persianov, O. P. Petrov, M. T. Primachov, N. K. Rozdobudko, O. Sapronov, E. M. Sycha, O. V. Filipenko, T. S. Khachaturova, Y. M. Tsvetov, V. G. Chekalovets, B. I. Shafirkin, V. G. Shynkarenko and others.

Although the number of scientific works in the field of legal support of international transportation seems to be sufficient, scholars have not paid comprehensive attention to the prospects of international transportation in the presence of special factors, such as war, pandemic, etc. A number of scholars (both lawyers and economists) have studied the content of the international transportation system and transportation by certain types of transport. However, today, the issue of the effectiveness of introducing such rules and regulations that would allow Ukrainian business entities to function more or less effectively as full-fledged participants in the international transportation of goods market in conditions that are far from optimal conditions for the transportation of goods is coming to the fore.

Statement of the task. The purpose of the article is to clarify the peculiarities of international transportation under the legal regime of martial law. To achieve this goal, the following tasks are performed: 1) to find out the importance of the level of transport security of our State; 2) to outline the key features of international transportation; 3) to analyze the essence of the system of legal regulation of international transportation; 4) to clarify the place of multimodal transport corridors in ensuring international transportation.

Summary of the main material. It is an obvious and well-known fact that the level of efficiency of the State's

transport system is determined by the level of integration and sustainable development of various modes of transport and their interaction with each other. In fact, the more extensive the national transportation system is, the faster the goods can be delivered, the faster the turnover, and the stronger the country's economic system is. But this is only possible when the level of transport performance is high and when multimodal transportation is a widespread mode of transportation. It is the creation of multimodal transport systems that is one of the most important areas of development of the world's transport systems today, as international trade processes are intensifying. Of course, against this background, the urgency of fast and safe delivery of goods comes to the fore among the main tasks facing states.

Today, in the context of a full-scale war, not only domestic transportation, but also international transportation, which is an important component of the revenue side of the State Budget of Ukraine, is under threat.

An acute and urgent issue is the compliance of the regulatory framework with the current conditions. This includes international agreements in the field of international transportation. The functioning of the national transportation system of Ukraine as a whole and its individual segments is also quite important. It is also worth focusing on the factors that currently impede international transportation by various modes of transport.

One of the main features of transportation is its safety. This means that the movement of passengers, baggage, and cargo in space will contribute to their safety throughout the entire time required for such movement. Since February 24, 2022, the legal regime of mar-

tial law has been in effect on the territory of Ukraine [1]. Clause 3 of the Presidential Decree "On the Introduction of Martial Law" provides that, temporarily, for the period of martial law, the constitutional rights and freedoms of man and citizen provided for in Articles 30-34, 38, 39, 41-44, 53 of the Constitution of Ukraine may be restricted, as well as temporary restrictions on the rights and legitimate interests of legal entities may be introduced within the limits and to the extent necessary to ensure the possibility of introducing and implementing measures of the legal regime of martial law, as provided for in part one of Article 8 of the Law of Ukraine "On the Legal Regime of Martial Law". As we can see, this includes the possibility of restricting freedom of movement within the territory of Ukraine, as well as traveling abroad (Article 33 of the Constitution of Ukraine). In this context, it is advisable to define what national transport security is. And whether it is possible to ensure it in a full-scale war.

The Law of Ukraine "On the Fundamentals of National Security of Ukraine" of 19.06.2003 No. 964-IV defines the basic principles of state policy aimed at protecting national interests and ensuring the security of the individual, society and the state in Ukraine from external and internal threats in all spheres of life. It defines the terms "national security", "national interests", "threats to national security", etc., but the issues of economic security, and even more so - transport security - are not spelled out in detail. However, in our opinion, and in the opinion of some scholars, in particular, O. Sapronov [2, p. 88], transport security should also be included in the main components of national security. At the

same time, it should be emphasized that the division of security into types is quite conditional, since, for example, transport security includes and can be included as a component of national, economic, environmental, information, energy security, etc.

The issues of transport security are rather poorly represented both at the legislative level and in the works of scholars. For example, the National Security Strategy of Ukraine of 26.05.2015 No. 287/2015 refers to transport only once: in the context of one of the priorities of ensuring the security of critical infrastructure, which the legislator included in the list of priorities to strengthen the protection of critical infrastructure, including energy and transport [3]. In his works, I. M. Averichev defines transport security as the protection of an individual, society, the state and their interests in the transport sphere of life from internal and external threats [4, p. 54]. However, this definition is rather narrow and does not take into account the interests of the transport industry as a certain system. The analysis of transport legislation and analytical materials gives every reason to believe that transport security contains the following features – it is aimed at protecting the interests of the state, society and individuals; – it provides for the appropriate state of the national transport system and the legal mechanism for implementing state policy in this area; – it is a component of the economic security of the state, since only the operation of the transport industry makes possible the basis of the state economy – trade. Taking into account the above, we propose to define national transport security as a state of development of the state transport system, which ensures a balance of interests of

the state, society and individual citizens, as well as protection of their interests in the event of internal and external threats [5, p. 14]. As for transportation during the war, oddly enough, it was carried out. Of course, the volumes of these transportations were significantly reduced. And, of course, it was freight transportation that suffered the greatest economic "blow".

As for the modes of transport, it is obvious that the most "affected" by the armed aggression are air transport (as the airspace over Ukraine is closed due to constant threats of shelling) and maritime transport, as both the Azov Sea and the Black Sea are actually "under occupation". As for maritime transport, its work was temporarily unblocked with the help of the Black Sea Grain Initiative – on July 27, 2022, after numerous negotiations, the Joint Coordination Center, which includes representatives of Ukraine, the Russian Federation, Turkey, and the UN, was opened in Istanbul. Although the aggressor state has violated these agreements numerous times, Ukrainian ports involved in the implementation of this agreement have been shelled, and part of the grain has been exported from the territory of Ukraine.

As for rail and road transportation, it is thanks to them that there is still no large-scale humanitarian crisis in Ukraine. Thus, Ukraine and the European Union signed an Agreement on Freight Transport by Road [6]. This Agreement is also called the "transport visa-free regime", as since June 29, 2022, Ukrainian carriers have been entitled to carry out bilateral Ukraine-EU transportation without permits, transit transportation through the territories of EU countries, and travel through EU countries without an international driver's license.

At the same time, a number of measures have been introduced at the legislative level to improve the situation in the transport sector of the economy and at least partially unblock the operation of certain types of transport. Actual Problems of Law: Theory and Practice #2 (46), 2023 184 Thus, the following measures were taken in the road transport sector: 1) the procedure for training and admission to driving vehicles was simplified, in particular, the Cabinet of Ministers of Ukraine allowed drivers with a category B license to drive trucks; 2) the procedure for crossing the state border of Ukraine was simplified: drivers with military service, as well as employees of railway transport enterprises, aged 18 to 60 years, who carry out cargo transportation for the needs of the Armed Forces of Ukraine, other military formations formed in accordance with the laws of Ukraine, as well as medical and humanitarian aid, are granted a special permit. Also, the State Customs Service transferred more than one thousand confiscated cars for defense needs; 5) the use of the expired national driver's license of Ukraine was temporarily allowed; 6) the official humanitarian aid platform "SpivDiya" was launched to widely involve owners of motor vehicles (both individuals and legal entities) in the logistics of humanitarian cargo transportation; 7) to ensure the fastest possible flow of humanitarian aid, 14 European countries introduced a permit-free regime for the transportation of humanitarian aid. By rail: 1) More than 3 million people were evacuated free of charge through five railroad corridors, mostly from Kyiv and Kharkiv. Almost 430,000 people were evacuated abroad, primarily to Poland, Moldova, Hungary, Romania,

Germany, and Slovakia; 2) A number of logistics hubs were established in the western regions of Ukraine to facilitate the import of humanitarian aid and its prompt distribution in Ukraine. These hubs provide services for the transshipment of humanitarian aid from road to rail, warehousing and sorting. In total, from February 24, 2022, to March 24, 2022, JSC "Ukrzaliznytsia" transported 1400 freight cars of humanitarian aid, and 7 thousand tons of cargo were transported by passenger cars; 3) to intensify the supply of humanitarian aid to Ukraine, the Transcarpathian Regional Military Administration, in cooperation with the government authorities of the Slovak Republic, launched the European Humanitarian Hub of the Transcarpathian Regional Military Administration in Slovakia on March 29, 2022. Its structure includes a direct railway line to Ukraine, an international airport, an extensive network of international highways, and a well-developed transport and logistics infrastructure; 4) to ensure the functioning of Ukrainian enterprises located in the area of active hostilities, their relocation is underway. JSC Ukrzaliznytsia and JSC Ukrposhta are involved in the implementation of this program, including the transportation of property of enterprises free of charge. In total, as of March 29, 2022, 1164 companies and enterprises have expressed a desire to relocate their facilities; 5) in accordance with the provisions of the Law of Ukraine "On the Basic Principles of Compulsory Seizure of Property of the Russian Federation and its Residents in Ukraine", the procedure for nationalization of railway cars of the occupying country located in Ukraine has been launched. In total, it is about 15 thousand railcars associated with the Rus-

sian Federation. Currently, 482 railcars belonging to Ukraine are located in the territory of the Russian Federation; 6) JSC Ukrzaliznytsia acted as the state operator of the strategic food stock intended to meet the needs of the population in food for a minimum period of one month of consumption. For this purpose, as well as for the procurement of fuel and medicines, the Cabinet of Ministers of Ukraine provided Ukrzaliznytsia with separate funding. As of March 21, 2022, 26.5 tons of food worth UAH 746.2 million had been contracted, and more than 400 agricultural producers were involved in the program [7].

The main task of the leadership of the state of Ukraine and representatives of the relevant ministry is to ensure close cooperation with our foreign partners in attracting our country to the international transportation market in this difficult time for us, especially in the issue of crossing checkpoints at the state border by Ukrainian carriers.

It is obvious that there are many problems here, given the recent strikes on the Polish and Slovak borders. For example, Polish carriers blocked three of the four checkpoints on the Polish-Ukrainian border on November 6. In this way, they are protesting what they consider to be excessive competition following the liberalization of international transportation between Ukraine and the EU.

One of the main demands of the Polish carriers is to cancel the transport visa-free regime for Ukraine, i.e. to return the need for Ukrainian companies to obtain permits for freight transportation.

Last June, during the Russian-Ukrainian war, the European Union abolished the need for Ukrainian carriers to obtain permits for bilateral and

transit transportation to the EU. That is, Ukrainian carriers have been transporting goods to Europe for more than a year under the same conditions as Polish carriers – without special permits [8].

It should be additionally emphasized that back in 2022, the Agreement between Ukraine and the European Union on road freight transport – the so-called "transport visa-free regime" – was signed, which provides for the main purpose of this Agreement – temporary facilitation of road freight transport between the European Union and Ukraine, as well as transit through their territories, by granting additional rights to transit and transport goods between the Parties to operators registered in one of the Parties due to the consequences of the war of aggression.

A rather important issue is that the period of validity of these temporary "relaxations" – the Agreement itself was valid until June 30, 2023. We believe that it would be quite logical to finalize the provisions of this Agreement, given the protracted hostilities on the territory of Ukraine, and extend its validity. Of course, it is necessary to reach a consensus on these issues.

It is worth noting that the main prerequisites for the conclusion of this Agreement (enshrined in its Preamble) are as follows: 1) significant disruptions faced by Ukraine's transport sector as a result of Russia's war of aggression against Ukraine, 2) the impossibility of using the usual transport routes in the region and the urgent need to ensure supply chains and food security by using alternative routes of transportation by road, in particular, for the transportation of grain, fuel, food and other goods from Ukraine to the Union, 3) support for Ukrainian society and economy by granting per-

mits to operators of motor vehicles and other vehicles.

Unfortunately, all these prerequisites still exist today. The challenges for Ukraine's national transportation system have not diminished. That is why the issue of resuming negotiations between Ukraine and the EU in this area is quite acute. Despite the fact that Ukraine is now effectively blocked from international transportation, the need for such transportation is very acute and urgent. This can explain the agreements reached between several states on the transportation of goods through the territory of Ukraine, including agreements on the part of intermediary states with the aggressor country on the security of cargo transportation.

Conclusions. Today, out of the 4 main modes of transport that can be

used to deliver goods both nationally and internationally, only 2 modes are actually used, and not in full – rail and road transport. The answer to the question of the possibility of international transportation in wartime is that international transportation can be carried out during martial law. However, it is important to understand several fundamental things: to identify those responsible for the safety of goods; to coordinate actions on international transportation with the help of the countries involved in the transportation, as well as intermediary states or intermediaries among international organizations; to define clear boundaries of legal regulation at the international legal level (including certain relaxations, deviations from the usual transportation regimes, etc.).

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Особливості правового регулювання міжнародних перевезень в умовах введеного в Україні воєнного стану

Стаття присвячена проблемі здійснення міжнародних перевезень в умовах дії правового режиму воєнного стану в Україні. Відмічено, що сьогодні з чотирьох основних видів транспорту, якими можна доставляти вантажі як на національному, так і на міжнародному рівнях, Україна фактично використовується лише 2 види, і то не в повному обсязі – залізничний та автомобільний.

Автором детально проаналізовано національну та міжнародні системи нормативних актів у сфері забезпечення системи міжнародних перевезень різними видами транспорту на сучасному етапі. Було виокремлено основні фактори, які перешкоджають роботі суб'єктів ринку транспортних послуг, а також провадженню національної транспортної політики в цілому. На підставі аналізу норм національного законодавства, міжнародних угод, праць українських дослідників – фахівців у зазначеній сфері зроблено висновки про необхідність перегляду концептуальних засад правового регулювання міжнародних перевезень у цілому.

Акцентовано увагу на критичній необхідності переформатування фундаментальних підвалин механізму правового забезпечення міжнародних перевезень в сучасних умовах. Також наголошено на важливості розуміння та прогнозування особливостей функціонування системи міжнародних перевезень у повоєнний час, як всього транспортного сектору держави.

У науковій роботі зосереджено увагу також на важливості врахування перешкод для безпечної та безперешкодної доставки вантажів як на національному, так і на міжнародному рівнях. Проаналізовано особливості «Зернової» угоди, «транспортного безвізу» тощо. Запропоновано виробити чітку та ефективну стратегію правового забезпечення міжнародних перевезень у повоєнний час. Окремо акцентовано увагу на недоліках системи нормативно-правового регулювання в українському законодавстві, визначено основні «дипломатичні» прогалини регулювання міжнародних перевезень вантажів та запропоновано доопрацювання Угоди про «транспортний безвіз» з метою удосконалення її положень та відновлення її дії.

Ключові слова: міжнародні перевезення; змішані перевезення; перевезення вантажів; мультимодальний транспортний коридор, транспортна безпека.