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CONCEPT OF MECHANISM OF LEGAL REGULATION OF CONTRACT RELATIONS WITH THE PROVISION OF TRANSPORT SERVICES

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SUMMARY

The article is devoted to the study of the concept of the mechanism of legal regulation of contractual relations with the provision of transport services. It explored various theoretical points of view regarding the notion of a mechanism of legal regulation of social relations in the theory of law in general and in relation to particular civil relations in particular. On the basis of the analysis, independent conclusions have been made and the definition of the mechanism of legal regulation of contractual relations with the provision of transport services has been proposed.

Key words: mechanism of legal regulation of social relations, mechanism of legal regulation of contractual relations, mechanism of legal regulation of contractual relations with the provision of services, mechanism of legal regulation of contractual relations with the provision of transport services.

ПОНЯТИЕ МЕХАНИЗМА ПРАВОВОГО РЕГУЛИРОВАНИЯ ДОГОВОРНЫХ ОТНОШЕНИЙ ПО ПРЕДОСТАВЛЕНИЮ ТРАНСПОРТНЫХ УСЛУГ

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АННОТАЦИЯ

Статья посвящена исследованию понятия механизма правового регулирования договорных отношений по предоставлению транспортных услуг. В ней исследованы различные теоретические точки зрения относительно понятия механизма правового регулирования общественных отношений в теории права в целом и относительно отдельных гражданских отношений в частности. На основании проведенного анализа сделаны самостоятельные выводы и предложена дефиниция механизма правового регулирования договорных отношений по предоставлению транспортных услуг.

Ключевые слова: механизм правового регулирования общественных отношений, механизм правового регулирования договорных отношений, механизм правового регулирования договорных отношений по оказанию услуг, механизм правового регулирования договорных отношений по предоставлению транспортных услуг.

Statement of the problem. During the last decade the general theoretical subjects of the mechanism of legal regulation of social relations are actively investigated in the study of individual institutes of various branches of law. The institutes of civil law have not become exceptions. However, today in the legal regulation of some of them there are radical changes related to the implementation of the Association Agreement between Ukraine and the European Union.

According to the said Agreement, the legislation of Ukraine in the field of providing transport services should go way closer to the norms adopted by the Eu-

ropean Union. And this requires a theoretical understanding of not only legal norms that will be introduced as changes to the legislation, but also the mechanism of legal regulation of contractual relations with the provision of transport services. This in turn will improve the solution of practical problems.

The analysis of recent researches and publications, which initiated the solution of this problem and based on the author, the allocation of previously unsettled parts of the general problem, which is dedicated to this article. The mechanism of legal regulation of social relations as a gener-

al theoretical concept was studied by many scholars and practitioners, among them A. O. Abramova, M. G. Alexandrov, S. S. Alekseiev, V. M. Gorshe-
nov, A. B. Grinyak, S. Ya. Zinchenko, O. S. Ioffe, O. Ya. Karhut, A. V. Kostrub, Yu. V. Kuznetsova, S. M. Kushnir, V. V. Mazur, O. V. Malko, M. I. Matusov, M. M. Novikova, O. O. Otradnova, S. O. Pogromny, D. I. Rogov, O. M. Rodionova, V. V. Sidorenko, O. F. Skakun, T. I. Tarakonich, V. N. Shabalin, V. L. Yarotsky and others. In the Ukrainian doctrine of civil law, for the most part, attention was paid to the analysis of the peculiarities of the mechanisms



of legal regulation of only certain types of civil relations, in particular, contractual (S. O. Pogrebny), tort (O. O. Otradnova), lease (I. R. Kalaur), contract (A. B. Gryniak), services (N. V. Fedorchenko) and others. At the same time, the subject of the mechanism of legal regulation of contractual relations with the provision of transport services remains poorly researched.

Formulating the goals of the article. The purpose of this article is to study the concept of the mechanism of legal regulation of contractual relations with the provision of transport services.

Presentation of the main research material with full justification of the received scientific results. In scientific legal literature, the term "mechanism" is used in various phrases, in particular, the "mechanism of the state", "the mechanism of interpretation", "the mechanism of management", "the mechanism of law-making", "the mechanism of legal influence", "mechanism of legal regulation", "mechanism of implementation norms of law", "mechanism of realization of rights and freedoms", "mechanism of protection of rights and freedoms", "mechanism of introduction of the rule of law", etc. In the Great Explanatory Dictionary of Modern Ukrainian, the term "mechanism" is interpreted differently.

So, under the mechanism understand: 1) the device that transmits or converts the movement; 2) internal structure, system of something; 3) method, method; 4) a set of states and processes, of which a certain physical, chemical and another phenomenon is formed. [1, p. 523]. It is obvious that in most cases this term is used to characterize technical processes.

In legal literature, the term "mechanism" was first applied to the legal concepts of M. G. Aleksandrov. He called the mechanism of legal regulation as a category that mediates the interaction of a set of legal norms that ensure the dynamics (movement) of legal relationships [2, p. 183]. Such a point of view was further supported and developed in the works of S. S. Alekseev, who defined the mechanism of legal regulation as taken in unity the whole set of legal means, through which the legal influence on social relations is ensured. In his writings, the scholar stated that the question of the mechanism of legal influence is central to the problem of legal regulation.

The task of the mechanism is to ensure the effectiveness of the influence of law on social relations, that is, the expediency and effectiveness of legal measures, legal norms [3, p. 3-4, 32-35]. Reflecting on this problem, the scientist changed his views on the structure of the legal regulation mechanism several times.

In his opinion, at the first stage of this mechanism there is a "regulation of social relations that require legal mediation" (the element of this stage is a legal norm). The second stage was formulated by the author as "the effect of legal norms, resulting in or changing legal relations" (element – legal relations). The third stage involves the realization of subjective rights and obligations [3, c. 35, 48, 61-62]. That is, initially in the understanding of S.S. Alekseev, the mechanism of legal regulation contained three main elements (or parts): legal norms, legal relationships and acts of the implementation of subjective legal rights and responsibilities. Subsequently, he noted that there are also two elements (non-essential in the opinion of the scientist) – normative legal acts, legal consciousness and legal culture. But in recent works, "under the strictly instrumental angle", the scientist distinguishes in the mechanism of legal regulation, three main links: legal norms – the basis of legal regulation; legal relations, in particular, subjective rights and legal obligations of their participants; acts of realization of rights and obligations; the fourth link, which in some cases is included in the mechanism of legal regulation, – acts of the application of law, as well as separate additional elements – individual acts, the rule of law, etc. At the same time, elements of the mechanism of legal regulation of civil property relations can be considered as separate its subsystems [4, p. 30; 5; 29; 6, p. 48-49].

Such a concept is the basis of the modern theory of law, where under the mechanism of legal regulation is understood to mean the system of all state-legal (legal) means by which the state exercises power influence on social relations. It does not coincide completely with the legal system of society; it is somewhat "narrower" from it. After all, to the latter one way or another include such phenomena in which neither the state nor society is interested (in particular, the offense). The mechanism of legal regulation is accompanied, intertwined, associated with the influ-

ence of other social phenomena, which in general can be reflected in the concept of the general social mechanism of legal regulation.

Elements of the mechanism of legal regulation P. M. Rabinovych shares on: 1) obligatory at the appropriate stages of regulation: the rules of law (model, regulate social relations); normative legal acts ("organize" the content of legal norms, express them from the outside, ensure their entry into force); legal facts (generate, change or terminate subjective legal rights and obligations of personified entities); legal relations (specify the mutual legal rights and obligations of the personified subjects); acts of interpretation (clarification) of the content of legal norms; acts of realization of subjective legal rights and obligations; 2) mandatory throughout the regulation: legal consciousness (ideologically, spiritually provides the process of legal regulation); legality (guarantees the reality of the implementation of the regulatory process); 3) Optional: Interpretative-legal acts (providing the same understanding of the content of legal norms); acts of the application of legal norms (provide the power organization of legal relations between right-implementers) [7, p. 156-157].

When describing the mechanism of legal regulation, modern theorists were proposed to consider this concept in two aspects: narrow and broad. Thus, S. O. Sarnovsky, a broad understanding under the mechanism of legal regulation suggests to understand the totality of social and legal means of objectification and implementation of the norms of natural law, which are intended to ensure the stability of social relations by the greatest optimal combination of social and individual interests of members of society in order to create conditions for the progressive development of each individual, as well as the realization of his rights and freedoms. The legal norm in this approach acts as one (but not the only one) of methods of objectification of the norms of natural law. In the narrow sense, the mechanism of legal regulation – is a system of legal means, which should bring social relations in line with certain states of behavioral patterns. However, the second of the proposed definitions, the author criticizes for two reasons. Thus, the first is that, in the case of inconsistency of state-approved models of behav-



ior with the norms of natural law, legal regulation is re-emerging into the open violence of the state over the personality. Second, the determined approach distorts the ultimate goal of legal regulation – subordination of the behavior of subjects of the will of the state [8, c. 45-46].

Undoubtedly, each of the definitions has a scientific value. However, in our opinion, the proposition of any theoretical development should be aimed at improving the solution of practical issues, while such a dualistic approach will further complicate the clarification of the essence and so complex legal concept of the mechanism of legal regulation of relations.

A list of different perspectives on the subject under study can be continued, but this does not seem appropriate. After all, the mechanism of legal regulation of social relations is a complex legal phenomenon, in relation to the concept and its components in the theory of scientific discussions continue to be continued. It is worth noting that the concept of the mechanism of legal regulation is typical for the state to regulate all relations, including civil ones. Therefore, the last decade in the science of civil law affected the considerable attention of civilians to this issue, in particular, in the study of individual civil law institutes. Relying on the general principles of the theory, civilians formulate their own notions of the mechanism of legal regulation of individual relations.

So S. O. Pohribnii in his writings analyzes the mechanism of legal regulation of contractual civil relations, under which he proposes to understand a consistent chain of changes in individual legal phenomena: the norm of law governing civil relations; legal fact; rights and obligations existing in civil legal relations that arose on its basis; realization of civil rights and performance of duties, and, if necessary, protection of violated rights and interests [9, p. 43]. At first glance, the analysis of this definition can form the notion that S.O. The pledge does not consider the mechanism of civil regulation as a "system or set of civil remedies", which is typical of the instrumental approach. In fact, this is not the case, since the stated conceptual understanding of the mechanism derives from the very content of the definition proposed by S. O. Pohribnii.

Thus, the scientist speaks of "separate legal phenomena", which include civ-

il law, legal facts, subjective civil rights and obligations, acts of their implementation, as well as means of protection of violated civil rights and interests. By its nature, these legal phenomena are actually civil and legal means, which together form the mechanism of civil law regulation. The indication that the mechanism is a consistent chain of changes in these legal phenomena emphasizes that these phenomena are organized in a certain way, interconnected and in interaction. The latter makes it possible to speak the language not about a simple set of legal phenomena, but about their system, and hence the system of civil remedies. Consequently, the instrumental methodological approach is based on the understanding of the mechanism of civil law regulation as a "system of legal means". At the same time, the basic principle significance is the phrase "legal means", which by its semantic content causes the conceptual direction of the study of the category of "mechanism of civil regulation". This mechanism always, regardless of the different content of the wording, will be raised under the understanding of its not as a process, but as a legal phenomenon, a tool of a certain higher order, covering the instruments of the lower order to ensure the process of civil law regulation and achieve the goal of the latter. Hence the name of this methodological approach is an instrumental approach. An analysis of the legal literature of a civilized trend has shown that it is the instrumental approach that is leading in understanding the issues of the mechanism of civil law regulation, while other methodological approaches are practically not implemented in civilization [10, p. 111; 11, p. 141].

According to V. V. Luts, such a concept of the mechanism of legal regulation of contractual relations is a reflection of the generally accepted theory of the state and the right to understand the legal regulation as a continuing process, during which the influence of the right to social relations is exercised, and which contains three links (stages): 1) legal norms; 2) legal relations and, in particular, subjective rights and legal obligations of their participants; 3) acts of realization of rights and obligations. However, the selection of individual stages of the legal regulation process is rather arbitrary, since in legal reality, it is not always possible to follow the precise limits of passing this process

at its individual stages. <...> It is necessary to agree with the opinion of many authors, which to the mechanism of legal regulation include much wider range of legal means (acts of law, definitions, fiction, presumptions, etc.) [12, p. 32-33]. Thus, the scientist proposes to expand the content of the concept under investigation.

Exploring the contractual relationship to provide services, N. Fedorchenko proposes the concept of the mechanism of legal regulation of relations, which is a system of interacting elements (legal tools, methods and forms) in which regulation of relations provided by service providers and sold laid in the norms of law and the contract the model of behavior of the customer and the executor in terms of consumption of the service provided and in most cases, remuneration for it. The researcher gives his list of elements of the mechanism of legal regulation of contractual relations for the provision of services: a) the norms of civil law or the terms of service agreement proposed by the parties; b) legal facts; c) the emergence of rights and obligations (legal relationships) arising from the grounds of civil law and service contracts; d) the behavior of the participants in the legal relationship regarding the provision of services for the realization of their subjective rights and obligations, laid down in legal norms and determined by the will of the customer and the executor; e) protection of the provisions laid down in legal norms and determined by the will of the customer and performer of subjective civil rights and lawful interests, provided that they are violated (supplemented by such an important component as responsibility) [13, p. 40, 52].

Extension of the content of the mechanism of legal regulation of relations, including contractual relations with the provision of transport services, justifies R. B. Shyshko. Element of the mechanism of civil regulation is civil, whether in this case, civil liability. It stabilizes the binding legal relationship, encourages the parties to properly fulfill their obligations. Such are the legal nature of prohibitions, incentives, and other incentives and restrictions. Here there is a certain dependence: the prohibition – violation of it – sanction; committing a certain action as a manifestation of loyalty to the proprietor, in particular the carrier – the incentive (discounts on the price, if the transporta-



tion is not selected on peak days, additional bonuses, obtaining from the position of the priority consignor, the advantage of transport services to other applicants, etc.). Concerning the restrictions, they may concern: the conclusion of the contract (the number of passengers and sold tickets is limited to the technical characteristics of the vehicle and types of traffic, the cargo and capacity of the vehicle, the state of highways, including roads, etc.). Thus, in the mechanism of legal regulation of traffic, the rules of positive law are basic, they are specified at the individual level by the contract of carriage and provide regulatory influence through: a) legal facts; b) the legal regime of cargo; c) the legal status of the parties; d) established rights and obligations; e) types, means of stimulation, restriction and prohibition; f) types and means of protection of violated subjective civil rights and legitimate interests of the parties [14, p. 124]. In our opinion, the attribution to the elements of the mechanism of legal regulation of contractual relations with the provision of transport services of liability needs additional justification.

R. I. Tashyan makes an attempt to define the mechanism of civil law regulation of transport relations. From the position of this scientist, the mechanism of civil-law regulation of transport relations can be defined as a system of effective legal means aimed at streamlining civil-civilian transport in order to secure the interests of individuals and the functioning of the transport system as a whole, which is realized with the help of actions of subjects of civil law and support and protection of public authority. This mechanism is an integral part of the general mechanism of legal regulation, and therefore has all the features inherent to it. Thus, its elements are the rules of law, legal facts, legal relations, performance of duties, acts of protection of violated rights and legitimate interests. At the same time, the mechanism in transport relations has a certain specificity, which is the widespread application of international legal acts, standard contracts, standard forms of charter, an essential role of customs and conventions, bylaws normative and legal acts [15, p. 107]. The proposed definition is not perfect. The term itself is called "the mechanism of civil law regulation of transport relations". After all, transport relations are

regulated not only by private but also by public law. Only some transport relations are civil and therefore not all of them can be covered by the civil law mechanism.

On the basis of the above analysis, taking into account the foundations of the theory of law and individual developments of civilians in the field under study, we propose, under the mechanism of legal regulation of contractual relations with the provision of transport services, to understand the system of interacting among themselves legal means by which the regulation of contractual relations with the provision of transport services is provided.

Conclusions from this study and prospects for further developments. The theme of the mechanism of legal regulation of relations, developed in the second half of the twentieth century, is still not overlooked in the science of civil law, but needs to be revised through the prism of modern trends. Therefore, in the context of the study of contractual relations on the provision of transport services, it is important to study the mechanism of legal regulation of such relations. Under it, we propose to understand the system of interacting legal means among which the regulation of contractual relations with the provision of transport services is provided. The investigated issue needs further development, in particular, clarification of the structure of the mechanism of legal regulation of contractual relations with the provision of transport services and the characteristics of its individual elements.

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ИНФОРМАЦИЯ ОБ АВТОРЕ

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ENSURING SECURITY TO PERSONS UNDER STATE PROTECTION DURING MASS GUARD VENUES

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SUMMARY

The article examines the main stages of ensuring security to persons who are subject to state protection during mass events. It should be highlighted the existence of radical political forces, whose activities seek to destabilize the society, exert pressure on the authorities to achieve their goals.

Key words: the Law, state authorities, person's security, radical political forces.

ОБЕСПЕЧЕНИЕ БЕЗОПАСНОСТИ ЛИЦ, В ОТНОШЕНИИ КОТОРЫХ ОСУЩЕСТВЛЯЕТСЯ ГОСУДАРСТВЕННАЯ ОХРАНА, ВО ВРЕМЯ ПРОВЕДЕНИЯ МЕРОПРИЯТИЙ МАССОВОГО ХАРАКТЕРА

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АННОТАЦИЯ

В статье исследуются основные этапы обеспечения безопасности лиц, в отношении которых осуществляется государственная охрана, во время проведения мероприятий массового характера. Следует отметить наличие радикальных политических сил, в деятельности которых имеет место попытка дестабилизировать общество, осуществлять давление на органы власти ради достижения своих целей.

Ключевые слова: Закон, органы государственной власти, безопасность лиц, радикальные политические силы.

Statement of the problem. According to the Constitution of Ukraine division of state power divided into legislative, executive and judicial branches. Thus the focus should be not on the field of administrative management, but on the public administration, where the latter is defined as the executive and administrative, carried out on the basis of the laws of the activities of a particular group of public bodies (officials persons) on the practical implementation of the tasks of the state in the direct management of economic, social, cultural, administrative and political construction".

Thus, it is necessary to define the definition of officials or public authorities, in this case of the Department of State Guard of Ukraine (hereinafter – Department).

The purpose of this article is the procedure for the Office of powers in the field of public health.

The main material. In Ukraine, the development of state service as a qualitatively new institution began in 1993, when the purpose of its organizational and legal support on December 16, 1993 was adopted the Law of Ukraine "On Civil Service". Ever since at the first time at the legislative level there has been established principles of public service, general principles of activity and legal status of public officials, the basic components of public service.

In this law first time was legalized the term "public service", under which the law defines the professional activities of persons who hold positions in government and it's apparatus on practical tasks