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«LEGAL REGULATION OF MULTIMODAL CARRIAGE OF GOODS»

**Specialty 12.00.03 - Civil law; business law; family law; international private
law**

**STRUCTURAL ABSTRACT OF THE DISSERTATION
FOR THE DEGREE
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Relevance of the research. The development of foreign economic activity in context of world markets globalization and the expansion of domestic commercial turnover require actual scientific support for regulation of carriage of goods by the different modes of transport.

However, there has been no comprehensive researches of the legal problems of multimodal transport in Russia. The multimodal carriage of goods is mainly considered in the context of the General conditions of carriage of goods by different modes. Finally, many questions of the theory and practice of legal regulation of the framework of multimodal carriage of goods have not been resolved in the legal science. The scientific doctrine does not have common views on the legal nature of the multimodal transport contract about the procedure and form of conclusion of the contract, on the parties' liability. All these problems show the importance of this dissertation research.

The author achieved the goals of the research and did the comprehensive analyses of legal issues of multimodal carriage of goods, developed scientific proposals on the ways to solve problems in the field of multimodal carriage of goods.

This dissertation research has solved actual scientific problems: investigated the concept of multimodal carriage of goods and specified the features of this type of carriage contract; offered the new scientific definition of the legal nature of contract of multimodal carriage of goods; analyzed the legal problems of the form of the contract of multimodal carriage of goods; specified the legal nature of the relations arising from multimodal carriage of goods; assessed the experience of international unification of legal regulations rules under regimes of international multimodal carriage of goods; investigated the legal mechanism of multimodal carriage of goods; formulated scientific concept of modernization and unification of the legal regime of multimodal carriage of goods; grounded recommendations for improvement of the international and national legislation of the multimodal

carriage of goods; as well as the practice recommendations regarding its application in arbitration of awards.

The **theoretical significance** of the research consists in the resolution of actual scientific problems related to the multimodal transport contract, the identification of legal relations between the parties under the multimodal transport contract. The dissertation is the scientific research where the scientific concept of modernization and unification of the legal regulation of multimodal carriage of goods was formulated.

The **practical significance** of the dissertation research consists that conclusions and proposals can be used in the legislative process in order to improve both international and Russian national legislation in the field of multimodal carriage of goods, as well as in commercial practice. The dissertation research may be used by Russian state bodies which are responsible for the development and improvement of legislation in the field of transport, by the Russian and foreign transport companies, in educational process in the study of civil and business law, as well as for researchers interested in transport and international private law, as well international and transport contract law.

It should be noted this research contains the investigation of the scientific literature on the topic of the multimodal carriage of goods, including foreign literature, and incitingly analyzing them. The author considerable number of courtly cases domestic and international on the chosen topic.

The degree of scientific elaboration of the research. Despite the fact that the discussion of the problems of multimodal carriage of goods from time to time is found on the pages of periodical legal publications, to date there is not a one Russian monographic legal study that would attempt to systematize scientific ideas in this area of civil law. Most of the research in relation to multimodal carriage of goods was not a legal, but a logistic approach to studying the problem.

Theoretical and legal basis of the research. Much attention is paid to the legal regime of multimodal carriage of cargo transportation in the domestic

literature by T. E. Abova, M.K. Aleksandrov-Dolnik, M.I. Braginsky, V.V. Vitryansky, V.N. Grechukha, V.A. Egiazarov, P.V. Kurenkov, G.A. Levikov, S.Yu. Morozov, T.N. Neshataeva, O. N. Sadikov, V. T. Smirnov, N. A. Troitskaya. In matters of research on the peculiarities of legal regulation of international multimodal transportation, foreign literature was used by such authors as B. Soeur, P. Bagden, M. Guner-Ozbek, K. Haak, M. Hoek, M. Sturley and others. Several dissertation papers, in particular, studies are devoted to the study of certain aspects of multimodal transportation of goods: N. N. Ostroumova “Problems of unification and improvement of the legal regime of international air transportation”, Z. M. Stasyuk “Legal issues of freight transport in rail-water transport with the use of sea ferries”, V. V. Tyup, “Contract of carriage in multimodal carriage: theoretical and practical aspects,” N. N. Tyutrina, “Transport Obligations”.

The modern legal regime of international transport is not sufficiently studied in Russia. In the existing works of Russian and foreign authors devoted to the contract for the international multimodal transport of goods, there is no common vision of the problem of forming the institute of multimodal transport, its structure and place in the system of other transport contracts.

The research is an independent research, which solved a number of scientific problems that have important theoretical and practical significance.

The scientific results found their full reflection in scientific publications of the author.

The object of the dissertation research is the legal relations arising in the implementation of multimodal carriage of goods. The basis of these legal relations is the contract of multimodal carriage of goods. In this regard, the main object of the dissertation research is a complex of civil law relations of the parties to this contract.

The subject of the research is the transport contracts, domestic and foreign legislation, the terms of the contract of carriage, defining the legal regime of

multimodal carriage of goods, as well as judicial practice and doctrinal sources in this area.

The target of the research is to resolve the widest range of theoretical and practical problems arising from the implementation of multimodal carriage of goods, to form, based on the results obtained, a theoretical concept of modernizing and unifying legislation in the field of multimodal carriage of goods and justifying its practical application.

The achievement of this goal was carried out by solving the following main **tasks**:

- to show the formation and development of multimodal carriage of goods, to explore their entrepreneurial properties;

- to explore domestic legislation, international transport conventions in the field of regulation of unimodal transport on various types of transport, extending their effect on multimodal carriage of goods;

- explore the causes, trends and prospects of the process of international unification of legislation regulating multimodal transport, ways of its regulatory impact on the behavior of participants in relations in multimodal carriage of goods and their place in international and domestic law;

- to identify the specifics of the contract for multimodal carriage of goods, which characterizes its legal nature;

- explore the procedure for concluding a contract for multimodal carriage of goods and reveal the legal significance of its form;

- identify the features of the contractual regulation of multimodal carriage of goods;

- determine the place of the contract of multimodal carriage of goods in the modern system of transport contracts;

- consider a contract for multimodal carriage of based on the positions of the Russian and foreign doctrine, determine its characteristics and features, show the practice of its use;

- to consider the subject composition and problems of liability of the operator of multimodal carriage of goods for non-performance (improper) performance of the contract for multimodal carriage of goods;

- to work out recommendations and proposals on the improvement of the current legislation and law enforcement practice in the field of multimodal carriage of goods.

The most significant results of the research:

1. In the thesis, multimodal carriage of goods is a contractual relationship that includes various services (transportation, storage, transshipment, etc.) related to the organization of the process of shipping goods by two or more types of transport according to a single document. All these services are interconnected, consistent and the integrity and completeness of the entire transportation depends on the accurate and timely performance of each service. Such transportation is a single transport process. Therefore, multimodal carriage of goods should be considered as a complex legal relationship, and not a set of separate services that form a chain of different legal relations.

2. In the thesis it is proved that a significant sign of multimodal carriage of goods is the continuity and integrity of the transportation process. In the implementation of multimodal carriage of goods, this kind of organizational interaction of various types of transport occurs, cost-effectiveness, which cannot be achieved by a simple combination of several types of transport with the execution of individual contracts of carriage. The legal design of multimodal carriage of goods is designed to ensure the achievement of the unified entrepreneurial goal of diverse transportation participants - the most efficient delivery of cargo from one place to another. The structure of relations in multimodal carriage of goods is an objective combination of various transportation processes into a structurally ordered holistic unity, which has relative autonomy, stability and autonomy of operation.

3. Legal relations in multimodal carriage of goods have a structural originality and are classified as a single legal relationship, consisting of several legal relations arising at a time. The first at the time of occurrence is the legal relationship between the parties to the contract - the shipper and the operator of multimodal transport. The latter form the legal relationship between the operator of multimodal transport and the subcontracting parties, who actually perform the functions of multimodal transport in the part assigned to them. Of the above legal relations, the first is the main one, the second is of an auxiliary nature in relation to the main one. Any of them is complex, i.e. consisting of a set of simple legal relations / the content of a simple legal relationship includes one power and a corresponding responsibility to it /.

4. The thesis substantiates that the regulation and execution of multimodal carriage of goods is carried out on the basis of a civil law contract, which acts as the only legal regulator of legal relations in multimodal carriage of goods. This contract should form and coordinate legal relations between the parties to the contract of multimodal carriage of, determine their common goals based on the common interests of the parties, the subject and content of the contractual relationship, ensure the protection of the rights and legitimate interests of the parties.

5. The thesis revealed that the contract of multimodal carriage of goods is an example of an organizational contract, since the condition on the subject of the contract consists of two parts: the constitutive - fundamental part, the content of which constitutes the determining condition for organizing the movement of cargo from the starting point of the route to the final and transfer of cargo to the recipient; functional, determining the composition of the subsequent actions necessary to achieve the objective of the contract - the delivery of cargo to the final recipient. The conclusion of a contract for multimodal carriage of goods implies the fact of organizing various transportation processes: the timely supply of various types of transport, their reasonable combination, avoidance of downtime,

coordinated loading / unloading / reloading activities. It was concluded that the contract for multimodal carriage of goods is an organizing contract, and contracts concluded in pursuance of multimodal carriage of goods are organized. The organizational element is included in the structure of legal relations on multimodal carriage of, as a regulator of future property legal relations on the actual implementation of multimodal carriage of goods. This means that the contract of multimodal carriage of goods independently forms a system of transport contracts related to each other.

6. The thesis substantiates that, by its legal construction, a contract for multimodal carriage of goods is consensual, since it is based on the preliminary approval of all the conditions for multimodal carriage of goods, types of transport involved in multimodal carriage of, transshipment points, etc. and is concluded at the time an agreement is reached between the shipper and the operator of simple multimodal transport for all essential conditions prior to the transfer of the goods for transport. In this connection, the date of conclusion of the contract of multimodal carriage of goods and the date of the actual transfer of the goods for transportation will never coincide.

7. The thesis substantiates that, by its legal nature, the contract for multimodal carriage of goods is a Sui Generis mixed contract, meaning “unique legal construction”. Transportation is part of the range of services offered to be performed as part of multimodal carriage of goods. It is concluded that in the obligation for multimodal carriage of goods, actions for receiving, reloading, transshipment, storage and delivery of cargo have the same meaning as carriage. Shipping activities do not have priority over other elements of the content of the obligation of multimodal carriage of goods. Therefore, “carriage”, as an element of a contract for multimodal carriage of goods, does not absorb other elements associated with the commencement and termination of carriage. All elements of the contract of multimodal carriage of goods are legally equal.

8. The thesis has developed a “voluntary” model of a document for the registration of multimodal carriage of goods. This document should note that the document is multimodal, specifies the basic data on the cargo, route, shipper / consignee, transport operator, carriers involved in multimodal carriage of goods, loading / unloading / transshipment points, other necessary information. Since the model of the document is voluntary, all participants of multimodal carriage of goods must give consent to its execution.

9. In the thesis, the concept of “Unified electronic transport multimodal document” was developed. A single electronic transport multimodal document is a document that is drawn up for the entire multimodal carriage of goods and is an integral part of the multimodal electronic freight system. It has been proven that the necessary condition for the use of the Unified Electronic Transport Multimodal Document is its use in a multimodal electronic freight system that would link intermodal and inland transport networks of various states. This system is designed to ensure the legitimacy of electronic document circulation for all participants in multimodal carriage of goods all the way.

10. The thesis defines the legal status of the operator of multimodal carriage of goods. “Multimodal transport operator” is a multifunctional category, as the operator can simultaneously act as a carrier, forwarder and consignor. The operator of multimodal transport is considered as a legal entity whose responsibilities include both organizing and executing transportation under the contract, and providing additional services, such as cargo storage, transshipment, etc. The operator enters into contractual relations with subcontractors and actual carriers, performs settlements with them for the work performed and is responsible to his client for the cargo along the entire route. Its main task is to establish control over the cargo. The operator is characterized as a participant in the carriage, assuming responsibility for compliance with contractual obligations, both in respect of actual carriers and in relation to the consignor.

11. The thesis substantiates that the legal liability of the operator of multimodal transport for loss or damage to cargo, as well as delay in delivery, is governed by two types of legal regimes: the Unified Responsibility Regime; Mode network responsibility system. Under a single liability system, the same liability regime of the operator applies to all multimodal transport, regardless of the stage at which the loss, damage or delay in delivery of the cargo occurred. Under a network liability system, the operator's responsibility depends on the localization of the damage, i.e. from which stage of transportation and on which type of transport the damage occurred, is determined on the basis of international transport conventions or national legislation applicable to the type of transport on which the damage was caused.

It is established that at present the responsibility of the operator of multimodal transport for loss or damage to the cargo is networked and will depend on the stage of transportation of the damage. It has been proven that the use of the network liability of the operator of multimodal transport does not contribute to its uniformity, since it is impossible to envisage a specific amount of the operator's responsibility when concluding an agreement on multimodal transport, since it will depend on the type of transport that caused the damage.

12. The thesis establishes that the catalog of exceptions from the responsibility of a sea carrier for the non-safety of cargo carried leads to a limitation of the carrier's liability, which contradicts the interests of the cargo owners, since it does not cover all their losses. In the presence of the circumstances specified in the catalog, the burden of proving the carrier's fault lies on the consignor or the consignee, whereas ordinary entrepreneurial responsibility is characterized by the presence of the entrepreneur's fault, the absence of which is proved by the person who violated the obligation.

The Hague-Visby Rules governing the carriage of goods by sea contain the largest list of exceptions to the carrier's liability, which is in competition with the rules governing the carriage of goods by other means of transport. In

multimodal transport, several types of transport are connected, which is the basis for the use of a list of exceptions to liability that are different in scope. The operator of multimodal transport is not always the carrier, which can serve as a reason for imposing on him full financial responsibility, as an ordinary participant in business activities. Therefore, the thesis proposes that, in order to avoid bringing the multimodal transport operator to full entrepreneurial responsibility for the loss or damage to the cargo, it should be stated that the operator has the right to use the carrier's exemption catalog from the carrier's liability for the type of transport.

13. The thesis contains the rationale for the application of transport conventions regulating the transport on various types of transport to relations in the multimodal transport of goods. It was concluded that in the event of damage during the execution of carriage by various modes of transport, provided that the transport document of the mode of transport that initiated the multimodal transport, a note is made about the multimodality of the transport, the responsibility of the multimodal transport operator is determined by the mode of the mode of transport, where the damage occurred, and not the mode of transportation of the mode of transport that initiated the transportation on the basis of the document issued by it. However, if the damage is not localized, the operator will be liable for the damage under the terms of the mode of transport that last participated in the carriage and delivered the goods to the recipient. This conclusion shows the injustice of the use of network responsibility and the need to form a single responsibility.

The **methodological basis** of the research consists of both general scientific methods of knowledge and special scientific methods used in the field of legal research. In particular, when considering the problems of regulating multimodal transportation relations, special methods of legal knowledge of reality were used: formal legal, comparative legal methods, methods of grammatical, logical and systemic interpretation of legal norms, historical and legal and technical legal methods of knowledge, and also legal modeling, the concept of

economic determinism and the method of rational reconstruction of the development of knowledge and institutions.

The **empirical base** of the study was international agreements, Russian civil legislation in a broad sense, including subordinate regulatory acts, acts of federal executive bodies. The materials used are practices of the Supreme Court of the Russian Federation, the Supreme Arbitration Court of the Russian Federation, courts of general jurisdiction, arbitration courts, foreign judicial practice. Documents of international organizations, legislative materials of the USSR and foreign countries were attracted.

The research consists of an introduction, four chapters, consisting of fourteen paragraphs, conclusion and bibliography.

