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## INTERNATIONAL SHIPPING: CONFLICT – LEGAL REGULATION

**Summary.** The article discusses some issues of legal regulation relating to international shipping, examined through the prism of international private law. Some problems of the legal regulation of international relations of a private law character associated with the passenger's shipping are analyzed.

**Key words:** passenger, carrier, conflict law, conflict norms, international private law.

**The statement of a problem.** International shipping as one of the connecting links between the economies of the states, separates regions and continents, ensuring the active development of international trade, so an important role belongs to the transport in the current conditions of intensive international integration processes in the economic sphere. Nowadays, the international transport law as a branch of international private law is a complex of legal norms contained in national legislation, international treaties, customs, and regulates binding relations for the carriage of goods, passengers and baggage in international traffic. A distinctive feature of legal regulation in this area is the fact that the main issues of transportation are resolved in international agreements, in transport conventions, which contain unified rules that uniformly determine the conditions for international carriage of goods and passengers. In foreign and domestic literature, attention is drawn to the fact that there is hardly any other area of law in which there is such a number of international agreements on the unification of legal norms as in the field of transport law [1, p. 125]. In the absence of the same material and legal norms refer to the rules of national law in accordance with the conflict rules of transport conventions or national legislation.

**The aim of the article** is to analyze some issues of legal regulation of the international shipping. The urgency of the study of conflict norms is connected with the variety of relations that arise in the sphere of maritime passengers shipping, which must be settled through a conflict – legal method. In practice, the question of the applicable law causes a certain complexity, as it is necessary to find out which conflict norm is to be applied.

**The basic material.** Today, Ukraine is a party to many transport conventions, and Ukrainian legal entities and citizens are guided by the provisions of these conventions when transported. Their norms are imperative. It is the international transport law that has a clearly defined sectoral structure, based on the use of one or another type of transport, therefore, we can talk about international private law of the sea.

At present, transportation of passengers occupies a significant place in the activities of transport organizations. It should be considered that the comprehensive nature of the movement of passengers requires detailed regulation of the contractual documentation of transportation and clear regulation as the legal status of the parties to the agreement, as well as the operational resolution of disputed situations arising between them in transportation. Expansion and intensity of various international relations, which, indeed, the whole

world, naturally entail the steady growth of the number of concluded international passenger transportation agreements, as well as the development of the practice of its regulation and enforcement.

International passenger transportation is a rather complex type of services, which has multidimensional specific characteristics. Their principal difference from domestic traffic is the fact that international traffic is being carried out on the territory of several states. International maritime transport in international private law means a special mode of transportation characterized by the general features of transboundary commercial traffic, such as the existence of several competing legal orders, within which it is carried out, the existence of commercial objectives, the presence of a joint movement in the space of the object of transportation and individualized means of transportation, the specifics of the marine space, including the feature of the regime of their legal regulation.

Today, the legal regulation of international passenger transportation is carried out both by the norms of national legislation and international treaties. According to several authors, the national legislation on international transport is subsidiary in relation to the international treaties. In other words, domestic legislation is subject to international transportation agreements in the event that any problem is not regulated by a transport convention, or the convention itself, that is, its conflict of law rule refers to national law [2, p. 345]. Indeed, if any relations are not regulated by an international treaty, the application of an internal act in this case is subsidiary. However, the second situation – when there is a referral to a national law through a convention on conflict of laws – can hardly be qualified as “subsidiarity” of the application of national law. The theorists of the IPL indicate that a conflict rule applies in combination or together with the material norm of the national law of the state. This action is not a subsidiary, but carries a basic character. This is the specificity of the conflict – legal method of international transport law and IPL in general [3, p. 9].

The subject of international private maritime law is the legal regulation of the carriage of goods, passengers and luggage in international maritime traffic. International private maritime law is the branch of international transport law and the subbranch of IPL. In the doctrine, a concept of the international private maritime law established a fairly long [4, p. 98]. For the international private maritime law is characterized by the modification of common conflict bases, their transformation into special: the law of the port of departure instead of the law of the place of concluding of a contract, the law of the place of collision of ships – instead of the law of committing the offense [5, p. 432]. The most important conflict principles are the principle of the autonomy of the will, the law of the flag and the law of the court. Both for IPL in general and for international private maritime law, three types of sources are characterized: norms of national legislation, international treaties and international customs. A significant feature of the regulation of this sphere in recent years is the expansion of multilateral trea-

ties, which include unified substantive and legal conflict rules that allow us to solve complex issues of merchant shipping on an equal basis. The subject of unification, including, there are rules on the carriage of passengers.

International customs serve as formed over a long period of time, rules and customs of maritime navigation, which are legally binding. The main difference between international conventions and treaties is that they are unwritten, as they are in the terminology of the Charter of the International Court of Justice, a proof of general practice. Among the international treaties regulating international passenger transportation are of the greatest interest: the Athens Convention relating to the carriage of passengers and their luggage by sea 1974, in the versions of the London Protocols of 1976, 1990 and 2002. From the outset, the Brussels Convention 1961 contains both material and conflict norms. All conflict rules are based on the application of the law of the court. The Brussels Convention 1961 has a limited scope: applies only to an international passenger transportation (transport between ports of different states or one state, but with an approach to a foreign port). The Brussels Convention 1961 defines terms used, enshrines the obligations of a carrier, establishes his responsibility. An important legal meaning is the definition of a concept "transportation", which is associated with the period of time it covers. Passenger's period of transportation means the period during which a passenger is on board, the time of embarkation and disembarkation, as well as the carriage of a passenger by water from shore to ship, and vice versa, if the cost of this transportation is included in the ticket price or the vessel used for this subsidiary transportation, provided to a passenger by a carrier. It is within the timeframe that a carrier is responsible for his obligations to a passenger. At present, the transportation of passengers is governed by the Athens Convention of 1974, which was developed and adopted under the aegis of the International Maritime Organization (IMO).

The Athens Convention of 1974 adopted many of the rules of the Brussels Convention of 1961, namely: the liability of a carrier for damage, the principle of presumed guilty of a carrier, establishing limits of his liability and exemption from liability in the case of guilty behavior of a passenger. The Athens Convention of 1974 contains the definition of the concept of international passenger transportation and provides for the possibility of increasing the limits of liability of a carrier on the basis of a precisely expressed written agreement between the passenger and the carrier. In accordance with Clause 9 of the Article 1 of the Athens Convention of 1974, the international carriage of a passenger is defined as any carriage in which, in accordance with the contract of carriage, the place of departure and destination are located in two different States or in one state, if, in accordance with the contract of carriage or the intended flight, the intermediate port of the event is located in another state. The Athens Convention of 1974 applies to any international carriage if the ship floats under the flag of a State Party or is registered therein; the contract of carriage is concluded in the State Party; in accordance with the contract of carriage, the place of departure or destination is in the Member State [6]. However, the convention does not apply when the carriage falls under the civil liability regime provided for by the provisions of any other international convention on the carriage of passengers and their luggage by another mode of transport (provided that these provisions apply to the carriage by sea).

The liability of the carrier for the damage caused by the death of a passenger or causing him a bodily injury, as well as the loss or

damage to the luggage, occurs if the event giving rise to the damage occurred during the carriage and due to the fault of a carrier. The carrier may, in accordance with the law of the country of the court, be released from liability in whole or in part if it proves that the guilty conduct of a passenger has caused or contributed to his death or injury, loss or damage to the luggage. Article 16 of the Athens Convention of 1974 fixes the limitation period. Any claim for compensation for damage caused by the death of a passenger, injury to him or loss or damage to luggage shall be subject to a statutory limitation period of two years. The most significant normative act for the legal enforcement of maritime passenger and luggage transportation at the national level is the Merchant Shipping Code of Ukraine. The MSC was put into effect on July 12, 1995. It refers to the codified acts of the legislation regulating both the field of public law of the sea and the sphere of private maritime law. The Article 7 of the MSC of Ukraine establishes a kind of hierarchy of application of the norms of the international and the national legislation [7]. Thus, Ukraine's international maritime shipping agreements are applied in Ukraine in the manner prescribed by the Law of Ukraine "On International Treaties of Ukraine" [8]. According to the Law of Ukraine "On Private International Law" [9] dated at 23 June 2005, an international treaty of Ukraine is a valid international treaty of Ukraine, the consent of which is binding on the Verkhovna Rada of Ukraine.

The current international treaties of Ukraine, the consent on obligation by which is provided by the Verkhovna Rada of Ukraine, is part of the national legislation and is applied in the manner prescribed for the norms of the national legislation. If an international agreement of Ukraine, which entered into force in the established procedure, establishes rules other than those provided for in the relevant act of the legislation of Ukraine, then the rules of the international agreement shall apply. Ukraine has ratified a large number of international treaties, conventions, agreements on merchant shipping. The universal law by its nature, the main international legal instrument, is the United Nations Convention on the Law of the Sea 1982, its content is 17 parts and 320 articles devoted to questions of the legal regime of territorial waters, the open sea, the exclusive economic zone, archipelagic waters, international straits and others [10]. All other international legal acts can be divided into several groups:

- the international legal acts on the use of maritime spaces (The Convention on the Territorial Sea and the Neighboring Region 1958, The Convention on the High Seas 1958, The Convention on the Continental Shelf 1958, The Convention on the regime of straits 1936, The Convention on the regime of navigation on the Danube 1948 and others);

- the international legal instruments on maritime safety (The International Convention for the Safety of Life at Sea 1974, The International Convention on Search and Rescue 1979, The Convention on the International Regulations for Preventing Collisions at Sea 1972, The International Convention on Load Lines 1966, The International Convention for the Measurement of Vessels 1969 and others);

- the international legal instruments on the protection of the marine environment (The International Convention for the Prevention of Pollution from Ships 1973 (MARPOL), The International Convention on Civil Liability for Oil Pollution Damage 1992 and others);

- the uniform international legal instruments for maritime transport (United Nations Convention on the Carriage of Goods by Sea

1978 (Hamburg Rules), The International Convention on the Unification of Certain Rules for the Bill of Lading of 1924 (Hague Rules and Visby Rules – amendments to the Convention, introduced by the Protocol of 1968), The Athens Convention on the Carriage of Passengers and their Luggage by Sea 1974, York – Antwerp Rules of 1950 Regarding General Accident and others);

the international legal instruments on limitation of liability (The International Convention on the Unification of Some Rules on Limitation of Liability of Owners of Navy 1924, The Convention on Limitation of Liability of Shipowners 1957, The Convention on Limitation of Liability for Maritime Claims 1976).

In accordance with the current Ukrainian legislation, carriage of passengers by sea is subject to compulsory licensing. According to the Decree of the Cabinet of Ministers of Ukraine, the body of licensing of passenger transportation by sea / river transport is Ukrmorrchinspektsiya (this body was created by the Resolution of the Cabinet of Ministers of Ukraine dated October 7, 2015, No. 829) [10]. Licensing conditions established a number of organizational, qualification and technological requirements for business entities that provide services for the transportation of passengers by river or sea transport. For the licensing activity without a license, the legislator provided for administrative liability (a fine of one thousand to two thousand non – taxable minimum incomes of citizens with the confiscation of money obtained as a result of the commission of this administrative offense, or without such).

**Conclusions.** According to the analysis, a large number of international treaties have been adopted in the field of international shipping, containing both materially – legal norms and conflict – legal norms. The subject of their regulation includes a wide range of issues arising in connection with carrying out shipping of passengers. So, the specificity of international shipping creates difficulties in determination the applicable law and establishing jurisdiction, which should be overcome.

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#### Иванова Д. А. Міжнародні морські перевезення: колізійно-правове регулювання

**Анотація.** У статті розглядаються деякі питання правового регулювання, що стосуються міжнародних морських перевезень, розглянуті через призму міжнародного приватного права. Проаналізовано деякі проблеми правового регулювання міжнародних відносин приватно-правового характеру, пов'язаних з морським перевезенням пасажирів.

**Ключові слова:** пасажир, перевізник, колізійне право, колізійні норми, міжнародне приватне морське право.

#### Иванова Д. А. Международные морские перевозки: коллизийно-правовое регулирование

**Аннотация.** В статье анализируются некоторые вопросы правового регулирования, касающиеся международных морских перевозок, рассмотренные через призму международного частного права. Проанализированы некоторые проблемы правового регулирования международных отношений частного характера, связанные с морской перевозкой пассажира.

**Ключевые слова:** пассажир, перевозчик, коллизийное право, коллизийные нормы, международное частное морское право.