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**LEGAL TOOLS FOR ORGANIZATION AND SELF-ORGANIZATION
OF RELATIONS IN THE SPHERE OF MOTOR TRANSPORTATION:
CIVIL ASPECT**

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Introduction: the article considers problems of selection of civil tools used for organization and self-organization of public relations in the transport sphere. **Purpose:** the author proves the possibility to apply a civil contract as a legal instrument for self-organization of social relations in the sphere of motor transportation. **Methods:** the methodology of the research comprises a set of scientific methods, with a dialectic method playing the leading role. The author uses general scientific (dialectics, analysis and synthesis, abstraction and specification) and specific scientific methods of research (technical, comparative law). Moreover, to obtain new knowledge the author uses both system and tool approaches. **Results:** according to the author, legal tools for self-organization of passenger transportation should be treated as a set of non-legislative instruments, able to generate synergistic relations and to overcome obstacles by means of mutual co-operation and effective modeling of public relations to meet passengers' needs in regular, timely, comfortable, and safe transportation at a reasonable price. The author insists on efficient combining both individual and legal means for the most optimal organization of passenger transportation. First of all it is necessary to use such individual (non-normative) tools, as organizational civil relations and a civil contract. Self-organization is concluded to have advantages over regulatory organization and management. Self-modeling of civil relations by means of individual legal regulators is possible due to characteristic features of the method of civil regulation. Civil law is considered to play a very important but still a secondary role in proper managing synergistic processes and preventing destruction of the system of legal relations. Only civil contracts and organizational relationship are appropriate to regulate synergistic processes. **Conclusions:** the most effective remedies for self-organization of public relations between automobile carriers and passengers are civil organizational relations and organizational civil contracts.

Keywords: legal tools; organization; self-organization; organizational contract; civil organizational relations; automobile transport; passenger transportation; legal purpose; legal result; synergistic potential

Information in Russian

ПРАВОВЫЕ ИНСТРУМЕНТЫ ОРГАНИЗАЦИИ И САМООРГАНИЗАЦИИ ОТНОШЕНИЙ В СФЕРЕ АВТОМОБИЛЬНЫХ ПЕРЕВОЗОК: ГРАЖДАНСКО-ПРАВОВОЙ АСПЕКТ

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Введение: в статье рассмотрены проблемы выбора гражданско-правовых средств, используемых для организации и самоорганизации общественных отношений в транспортной сфере. **Цель:** обосновывать возможность применения гражданско-правового договора как правового инструмента самоорганизации общественных отношений в сфере автомобильных перевозок. **Методы:** методологическую основу данного исследования составляет совокупность методов научного познания, среди которых ведущее место занимает диалектический метод. В статье использованы общенаучные (диалектика, анализ и синтез, абстрагирование и конкретизация) и частнонаучные методы исследования (формально-юридический, сравнительно-правовой, технико-юридический). Для получения новых знаний автор использовал также системный и инструментальный подходы. **Результаты:** по мнению автора, под правовыми средствами самоорганизации отношений в сфере автомобильных пассажирских перевозок следует понимать совокупность ненормативных правовых инструментов, позволяющих формировать синергетические связи, и на основе договора и конструктивного моделирования общественных отношений преодолевать препятствия на пути удовлетворения потребностей пассажиров в бесперебойных, своевременных, комфортных и безопасных перевозках за приемлемую плату. Автор настаивает на том, что для наиболее оптимальной организации пассажирских перевозок автомобильным транспортом необходимо разумное сочетание индивидуальных и нормативных правовых средств. В первую очередь следует применять такие индивидуальные (ненормативные) средства, как организационные гражданско-правовые отношения и гражданско-правовой договор. Также сделан вывод о том, что самоорганизация имеет неоспоримые преимущества перед нормативной организацией и управлением. Самомоделирование гражданских правоотношений с помощью индивидуальных правовых регуляторов возможно благодаря особенностям метода гражданско-правового регулирования. Нормам гражданского права отводится хотя и очень важная, но в то же время вспомогательная роль – направления синергетических процессов в нужное русло и недопущения разрушения системы правовых связей. Только гражданско-правовые договоры и организационные правоотношения пригодны для регулирования синергетических процессов. **Выводы:** наиболее эффективными средствами самоорганизации общественных отношений между автомобильными перевозчиками и пассажирами являются гражданско-правовые организационные отношения и организационные гражданско-правовые договоры.

Ключевые слова: правовые средства; организация; самоорганизация; организационный договор; гражданско-правовые организационные отношения; автомобильный транспорт; пассажирские перевозки; правовая цель; правовой результат; синергетический потенциал

Introduction

The question about the concept “legal means” is not new for national science. Etymologically the word “means” is come from the Latin words “average”, “mid” because it is intermediate position in the logical chain “purpose – means – re-

sult”. A. I. Ekimov fairly approves: “The purpose is existed only in connection with means. One or other purpose receives the definiteness and concreteness exactly in means of the realization. So, determination of specifically legal purpose is assumed detection of specific means of its realization” [29, p. 4].

Main content

Now several methodological approaches are applied for research of the concept “legal means”. One of them is called instrumental approach. M. A. Kostenko explains: “The right can be considered as system of legal means from positions of the tool theory because elementary particles of the legal system are shaped by using of them and of which are consisted such legal educations as norms, institutes, branches and sub-branches” [13, p. 8]. Being the supporter of tool approach, B. I. Puginsky showed “possibilities of legal means in the process of their use in economic activities, principal approaches to the order of their appliance” [9, pp. 262–263]. The scientist approves that tool doctrine is submitted methodologically and philosophically productive and reasonable [22, p. 24]. B. I. Puginsky insists: “Legal means are represented the conjunction (combinations) of the legally significant actions made by subjects with legal degree of the discretion and serving to achievement of these purposes (interests) which are not contradicting the legislation and interests of society” [21, p. 87]. Legal means, according to the author, though are used in the direct connection with rules of law, but not covered by them and not reduced to them [21, p. 6].

The follower of this theory is S. Yu. Filippova. In her opinion: “The need in application of legal tools is arisen at subject of enforcement... In order that the opportunity established by the right was earned, it is necessary that the subject appropriated the solution proposed by the right and gave an objective shape of the actual behavior. So, legal means are appeared in activity of the subject” [26, pp. 34–35].

N. A. Barinov disagrees with this approach and he notes: “Therefore legal means are called legal because they are provided by the right... B. I. Puginsky writes: “Freedom of the discretion of subject of the economic relations is arisen from the fact of a presence of dispositive norms” [3, p. 91]. Ya. S. Grishina expresses disagreement with position of B. I. Puginsky following to N. A. Barinov. She doubts the inexpediency of attribution of legal norms to legal means [8, pp. 6–7]. N. A. Barinov understands under legal means: “The legal opportunities mortgaged in norms of the civil legislation which are used in process of realization these norms” [4, p. 49].

According to the fair statement of A. V. Malko, the concept “legal means” is allowed to generalize those phenomena (processes and tools) which are urged to provide achievement of effective purposes. The main thing in the theory of legal means is: “What social problems these legal mechanisms can solve, where and in what order they can be used in practical legal activities for achievement of socially important results” [17, p. 42]. According to the author, the important assignment of legal means is a fastening of the result and the purpose. Proceeding from it, for legal means pair categories should be considered the legal purpose and the legal result.

We are solidary with B. I. Puginsky and S. Yu. Filippova’s position calling the satisfaction of human needs the sense of the category “legal means”. There is contact of positions of the called scientists with the position of N. A. Barinov believing that “the fact that specified means is aimed at a satisfaction of property needs of citizens. It is characteristic of all specified means” [3, p. 102]. Therefore, the concept “legal result” is signified the result which is satisfied or does not satisfy the person, and therefore can be estimated only by the person. If we look at the problem from a different angle, then capability of statement of the legal purposes is inherent only in the human consciousness. It turns out that the person stands in the beginning and in the end of the logical chain “purpose – means – result”. Thus, B. I. Puginsky and S. Yu. Filippova’s conclusion about continuous coherence of legal means with the human behavior is represented logical. Legal opportunities about which N. A. Barinov speaks can be implemented only by dint of human activity which is often connected with a use of legal norms. In that case, legal norms can quite play the role of the legal instrument. Therefore S. Yu. Filippova’s argument about inability of the right to satisfy the legal purposes of subject is represented doubtful. In the author’s opinion, any legal instrument is represented human activity that, from our point of view, the reality does not correspond. It is impossible to identify the key and the opening of lock. Of course, the tool is “dead” without appendix of efforts of the person, but from this, it does not lose quality of the tool. Besides, carried by B. I. Puginsky to legal means [21, pp. 92–93] legal capacity and active capacity do not belong to actions. They designate

only the potential possibility of commission of the actions provided by the right.

It is unlikely possible to support the point of view B. S. Mongush defining legal means as set of normative establishments, institutes, acceptances and activities of subject of law for their realization [18, p. 43]. Legal instruments cannot be mixed with activities for application of legal means, also as it is impossible to identify the hammer with the clogging of nails.

It is impossible to identify the concepts “legal means” and “legal methods”, despite their close connection because it is possible to application different legal instruments by the same method. To the contrary, using the same tool it is possible to achieve the result by different methods. Different methods of impact of rules of law on the same public relations (the imperative and dispositive method) are known, for example. However, it is not necessary to ignore cases of coincidence of means and methods (the claim, the pretension, the complaint, etc.). At the same time, our reasonings do not disprove existence of means-acts. Nobody, for example, doubts that the contract, at the same time is both the legal means and the action directed to emergence, change or the termination of the civil rights and duties. Summarizing told, we will note that as legal means it is necessary to consider not all methods of achievement of the legal purposes. Self-organization of the relations on passenger transportation of can be the example. It is only method of achievement of the legal result – systematic receiving services on passenger transportation and baggage.

Use of tool approach in the theory of legal means were generated the variety of positions on this problem. So, S. S. Alekseev referred to system of legal means (legal tools) impacts on the public relations such elements of the mechanism of legal regulation as legal norms, legal relations, acts of realization of the rights and duties and optional – individual order and acts of application of the right [1, pp. 319–320]. In the general-theoretical plan the author understood the institutional phenomena of a legal reality embodying a regulatory essence of the right, its energy which possess a role of its active centers as legal means [2, p. 218]. At such approach there was no place among legal instruments to means-acts. According to K. V. Shundikov it is necessary to refer to

legal means norms of law, legal principles and presumptions, the subjective rights and legal duties, bans and sanctions, privileges and encouragement, juridical facts, legal relations, legal institutions, procedures, the modes and mechanisms, contracts and law-enforcement acts, various right realizable actions and transactions and so forth [29, pp. 13–17]. Also O. N. Bobrovskaya, but already in relation to civil means of a satisfaction of needs of citizens for a housing adheres to a similar position [5, p. 43]. It is necessary to pay the attention that the called authors carry legal relations to number of legal means.

Without setting the task of consideration of all problematic issues connected with legal means we consider important the question of allocation and the analysis of civil means which can be applied for self-organization of legal relationship on passenger transportation by the automobile transport. In view of the fact that the dispositive beginnings are inherent in civil law, it is represented the favorable environment for self-organization of the public relations. The possibility of participants of the public relations to use possibilities of the choice of options of the behavior, to work at discretion and to show the reasonable initiative are connected with features of the method of civil regulation to which important role V. F. Yakovlev paid the attention. It is (method), according to the scientist, allows to disclose legal lines of each branch of law in their organic unity and the originality of its impact on the behavior of people [31, p. 367]. Self-modeling of civil legal relationship by using of individual legal regulators is also possible thanks to features of the method of civil regulation. Accounting of the self-organizational beginnings of civil law, – V. L. Yarotsky notes, – “considerably influences also processes of normative fixing of legal designs which application is caused by dispositivity of the method of civil regulation” [19, p. 100]. In the transport law, representing complex legal education, the private-law and public-law beginnings are organically combined. Therefore, it is impossible to satisfy needs of citizens in systematic transportations by the automobile transport unaided of both civil means, and means of public influence. It is also necessary to note that self-organization has indisputable advantages before the normative organization and management.

Opinions about inefficiency of command style of managing in literature were expressed not once. According to R. A. Hannanov: "Practice of managing of the last years was showed that the country was not ready to transformations. ...As a result of such hasty unscientific approach to the future of economy, subjective and command style in managing began to be reanimated again" [27, p. 1234]. Respectively this conclusion is projected also concerning public-law means. In relation to education S. V. Kurov notes that "the public-law means of ensuring of quality of education enshrined in regulatory acts the incompleteness, lack of the system (separation), inconsistency" [16, p. 52]. It is possible to tell the same and concerning the legal instruments used in the field of passenger transportation. Specific legal means are necessary for self-organization of the public relations. "Practice is showed, – I. V. Tsvetkov notes, – that legal means-establishments are of little use for self-organization of activity of economic entities. Of course, they promote self-organization, but no more than that. Real self-organization is reached by dint of active involvement of individual (substandard) private-law means-acts available to numerous subjects of the market and in any way differently" [28, p. 44].

By the form legal regulation legal means are classified as follows: "Means are normative (the bans, encouragements, duties established in rules of law and etc.) and individual (acts of direct implementation of the right)" [24, p. 123]. It is the optimum, reasonable combination of individual and normative legal means which is understood as first of all application of individual (substandard) means-acts such as the organizational civil relations and the civil contract will be allowed to organize passenger transportation by the automobile transport. The need in normative means is shown at determination of the framework of application of legal means of self-organization and the direction of synergistic process on the correct way. It is necessary to agree with V. F. Yakovlev that "regulations of civil law are, as a rule, expected on addition of normative regulation by the individual rule-making of the relations at the discretion of accomplices of civil communications" [32, p. 41]. However, in this specific case accents need to be

changed. The individual rulemaking of the relations shall come to the forefront because legal self-organization of the public relations is possible only in its framework. For regulations of civil law it is allocated, though very important, but in too time the supporting role of the direction of synergistic processes in the necessary corridor and prevention of destruction of system of legal bonds. Only civil contracts and organizational legal relationship are suitable for regulation of synergistic processes. It causes their choice as legal means of self-organization of the civil relations on passenger transportation by the automobile transport. To self-organizing systems (subsystems) to which also the modern market economics is belonged, I. V. Tsvetkov notes, usual methods of external linear management including and legal are inapplicable because it is caused emergence in the managed subsystem of the processes counteracting external corrective action [28, p. 51]. It causes need of the short characteristic of each of the called means-acts.

One of forms of rather frictionless development in which, in particular, operation of the law of dynamic balance is implemented is the contract [11, pp. 35–41]. That the civil contract is played the significant role in regulation of the civil relations in the conditions of market economics in legal and economic literature the attention was paid more than once. According to R. A. Hanannov, "in the conditions of the market organization of economics contractual regulation is purchased force of the self-regulation reflecting natural first principle as instinctively arising need of the person, society in conciliatory regulation of their interconnection" [27, p. 1240]. The civil contract is called reasonably the universal mean of self-organization of the civil relations. The matter is that high adaptivity of system of legal regulation to challenges of external environment, normative legal means are not capable to provide. The explanation for such situation is offered by V. V. Zalessky according to whom development of civil contractual relations always "overtakes legislative activity, pushing the legislator to fixing and regulation of spontaneously developed order of the relationship. It is impossible to resist to this process. It is the process of self-organization of the public relations reflecting the transition developing at the moment from the

chaos of the uncountable set of the relations of uncertain number of subjects of law to the order” [10, p. 91]. Therefore, the self-organization provided by civil contracts is allowed civil law to react to dynamics of the changing market relations quickly.

In development of this issue it is necessary to raise the question about the ratio of the civil contract with the similar designs used by other branches of law, for example, with the law-making treaty. This legal instrument according to M. A. Nechitaylo is represented “the joint legal act as it expresses two or the set of the isolated declarations of will. Whereas by dint of individual unilateral declaration of will the regulatory legal act is generated. In it the main difference of the specified sources of law – the regulatory legal act and the law-making treaty” [20, p. 37]. One of the most important signs of the law-making treaty Yu. Yu. Kulakova calls availability in the text of the contract of the legal norm. According to the author “the conventional rule is the approved regulation, the normative establishment developed by dint of the contract. Specifics of contractual standard establishment is consisted in it and, in fact, only in it” [15, p. 6]. Also views are expressed that “law-making treaties according to contents is legal acts, but in a form is contracts” [25, p. 5]. In our opinion, at the identification of the norm of law and terms of the contract which set is recognized as the legal act there is the emasculation of the essence of the contract as individual regulator of legal relations. The law-making treaty, unlike the civil contract, is established the rights and duties for the uncertain group of people. It expresses public interests therefore it is unsuitable for regulation of the private relations on passenger transportation.

It is represented that the conclusion of the contract of the organization of passenger transportations shall happen not for the purpose of the bringing of other sense to administrative legal relations, but for realization of the opportunity to use the synergetic potential of civil law and providing the opportunity to carriers on the basis of cooperation with local governments to act as equal co-organizers of transport process. Unfortunately, practice is demonstrate about numerous abuses by local governments at the conclusion and performance of contracts about the organization of passenger transportations. So, for

example, the municipality the city of Perm on the basis of the solution No. 138 illegally was required from the carrier of LLC Tekhstroy-Avto of payment in the budget of 8 963 605 rubles for the right to contract about the organization of passenger transportation. The Supreme Arbitration Court of the Russian Federation (further – SAC of the RF) in the determination of SAC–8440/12 of 10.07.2012 was come to the conclusion that the local government was issued the act inappropriate to the law, than was caused to the carrier the loss.

The civil organizational relations can be considered as mean of self-organization of legal relationship on passenger transportation along with the civil contract. According to O. A. Krasavchikov, the organizational relations is called such as “the social communications constructed on the basis of coordination or subordination which are directed to streamlining (normalization) of other public relations, actions of their participants or to forming of social educations” [14, p. 163]. Before O. A. Krasavchikov’s concept was become the property of the legal public, the organizational relations were considered only as administrative. For example, S. N. Bratus believed that the organizational relations understood as the relations of management (administrative) do not merge with the property relations [6, p. 61]. The scientist also emphasized that management and organizational activity are not the method of legal regulation, but the special type of the public relations [6, p. 64]. O. A. Krasavchikov spoke about the horizontal organizational relations constructed on the basis of coordination which the right is influenced by method of legal equality of the parties.

Let’s allocate from all variety of the organizational relations only those which are at the same time relative, contractual and external. Such selective approach is caused by the fact that only the civil contract is capable to generate organizational and self-organizational legal relationship and it is had synergetic potential. He “brings legally expressed and fixed organization in the interconnected activity of partners” [23, p. 55]. B. I. Puginsky notes that any others private-law, but furthermore, public-law means do not have the synergetic effect [20, p. 88].

Organizational contracts are directed to the organization of other contractual legal relationship. O. Yu. Skvortsov believes that allocation of

organizational contracts as the special kind of civil contracts is caused by character of the certain sort of the system communications developing between subjects of civil circulation and aiming at such organization of the relations which will be allowed to achieve further the certain economic result [7, p. 1, pp. 850–851]. V. V. Rovny explains strengthening of the organizational component in the subject matter of civil law “with the direct connection with transition from state regulated to multistructure market economics, its democratization and centralization of all economic mechanism, development of economic independence, the entrepreneurship, and together with it is also the most civil (private) law” [7, p. 1, p. 25].

Organizational contracts as legal instruments are valuable the fact that they are allowed to self-organize not only the legal relationship arising directly from them but also the obligations legal relationship arising from the organized contracts. Considering this their double value, we believe that passenger transportation by the automobile transport can be effectively organized only by dint of these legal means. O. V. Karpeev, estimating the effect of application of organizational contracts for the organization of transportations, notes that “the organizational relations generated by them are directed to streamlining of activities of contractors for rendering service in transportation, they are given to this activity new quality, and in this sense they are exerted the certain impact and on forming of the relations between carriers and... the passenger” [12, p. 49]. Meanwhile, in the field of passenger transportations by the automobile transport the civil organizational contract is remained obviously underestimated legal instrument. Instead of setting up double cooperation (in the organizational and organized obligations), local governments are continued to apply administrative legal contracts which are suitable only for the purposes of linear management, but not for the organization and furthermore self-organization of transportation process.

Conclusions

1. Under legal means of self-organization of passenger transportation by automobile transport should be to understand the set of non-normative legal instruments that can generate synergetic communications and allowing by mutual cooperation and self-modeling of public relations to overcome obstacles to meet the needs of passengers in uninterrupted, timely, comfortable and safe transportation for a reasonable fee.

2. The most effective means of self-organization of the public relations between automobile carriers and passengers are the civil organizational relations and organizational civil contracts. Normative means of legal impact, including on the administrative relations in this sphere of economic activities, shall play the supporting role, namely establish the framework of self-organization of the public relations.

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