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## THE CARRIER'S RESPONSIBILITY FOR THE NON-PRESERVATION OF CARGO AT AIR TRANSPORTATION

### ВІДПОВІДАЛЬНІСТЬ ПЕРЕВІЗНИКА ЗА НЕЗБЕРЕЖЕННЯ ВАНТАЖУ ПРИ ПОВІТРЯНИХ ПЕРЕВЕЗЕННЯХ

The article is devoted to the complexity of freight frequency by air transport both in the world and in Ukraine. A necessity for legal providing a certain mechanism of air transportation, the definition of rights and obligations of participants in the delivery process. Authors conclude about the importance of maintaining the safety of air cargo transportation, the protection of all air carriers from unwanted effects and violations, the importance of proper legal regulations of relations between air carriers and other participants in the transportation.

**Key words:** *carrier, cargo transportation, responsibility, air mode of transport, cargo transportation market.*

Статтю присвячено проблемам частоти вантажних перевезень повітряним транспортом як у світі, так і в Україні. Визначено необхідність юридичного забезпечення певного механізму повітряного транспорту, визначення прав та обов'язків учасників процесу доставки. Автори роблять висновок про важливість збереження безпеки авіаційних перевезень вантажів, про перспективи захисту авіаперевізників від небажаних наслідків та порушень, про важливість належного правового регулювання відносин між авіаперевізниками та іншими учасниками.

**Ключові слова:** *перевізнак, вантажоперевезення, відповідальність, повітряний транспорт, ринок вантажних перевезень.*

Стаття посвячена усложненню частоты перевозок грузов воздушным транспортом как в мире, так и в Украине. Определена необходимость правового обеспечения определенного механизма авиаперевозок, определения прав и обязанностей участников процесса доставки. Авторы делают вывод о важности обеспечения безопасности авиаперевозок грузов, защиты всех авиаперевозчиков от нежелательных последствий и нарушений, важности правильного правового регулирования отношений между авиаперевозчиками и другими участниками перевозки.

**Ключевые слова:** *перевозчик, грузоперевозки, ответственность, воздушный транспорт, рынок грузоперевозок.*

Nowadays, air transport grows rapidly; its significant advantages in comparison with other types of transport are the high speed of movement over long distances, efficiency and maneuverability. This mode of transport is out of competition in the implementation of the perishable goods delivery.

Under the contract of cargo carriage, one party (the carrier) undertakes to deliver the consignment to the destination entrusted to it by the other party (sender) and give it to the person who is entitled to receive the cargo (the recipient), and the sender is obliged to pay for the carriage of goods established the fee [5].

The contract of carriage by air is an agreement on the provision of transport services, i.e. services for the movement of passengers, baggage, cargo and mail. Secondly, this agreement is bilateral. One of the parties to any air transportation contract is an air carrier.

The responsibility of the carrier during the performance of air transportation is regulated in accord-

ance with the Convention on the Unification of Certain Rules of International Air Traffic, the Civil Code of Ukraine, the Commercial Code of Ukraine, the Air Code of Ukraine, the Order of the State Service for Supervision of Aviation Safety "On Approval of Air Cargo Rules", other normative acts and general provisions on the rules of transportation and provision of services.

In accordance with above mentioned information, we can conclude that there are some problems with accuracy of cargo transportation. Regardless the decreasing of damage quantity, carriage process should be performed on higher level, which we can see at USA.

The carrier (or airline) is a person who has a permanent place of business in Ukraine and who is a party to the carriage contract, as well as all other persons involved in carriage in accordance with the air waybill and undertakes to perform the carriage [1].

Carrier is responsible for the destruction, loss, damage or delay in the delivery of goods. According to

the Art. 919 of the Civil Code of Ukraine, the carrier is obliged to deliver the goods to the place of destination in terms established by the agreement, if another term is not established by the transport codes (statute), other normative legal acts and rules issued in accordance with them, and in the absence of such terms – within a reasonable time.

The consignor must have arranged air waybill in accordance with the form, number of copies and method established by the carrier, and provide it to the carrier together with the cargo at the latest time determined by the carrier (his agent). If data on tariffs and fees haven't been established, the carrier must indicate in the aviation invoice the amount of payment for the cargo shipment by the consignor.

According to the approval of air cargo transportation rules of Ukraine:

The consignor is responsible to the carrier (other persons) for the correctness, accuracy and completeness of the data and instructions for the cargo included (or on his behalf) in the air waybill or data provided to the carrier for inclusion in the air waybill.

The consignor is liable to the carrier for any damage caused to him or to another person due to inaccuracy, incorrectness or incompleteness of the data and instructions concerning the cargo included (or on his behalf) in the air waybill or provided to the carrier according to the cargo.

The carrier is accountable to the shipper for any damage caused to consignor or another person due to inaccuracies, inaccuracies or incompleteness of the data and instructions included by the carrier (on his behalf) in the cargo air waybill.

The consignor is obliged to deliver the goods to the airport or to another place of departure no later than at the time determined by the carrier (his agent) for the execution of administrative formalities and appropriate procedures for the goods dispatch.

The carrier is not responsible to the shipper or consignee for losses resulting from the untimely delivery of the goods by the consignor to an airport or to another place of departure determined by the carrier.

The term of the contract of cargo carriage, that is, the time required for its implementation, is determined by the time interval from the moment of acceptance of the cargo for carriage until the moment of its delivery to the consignee at the destination [2].

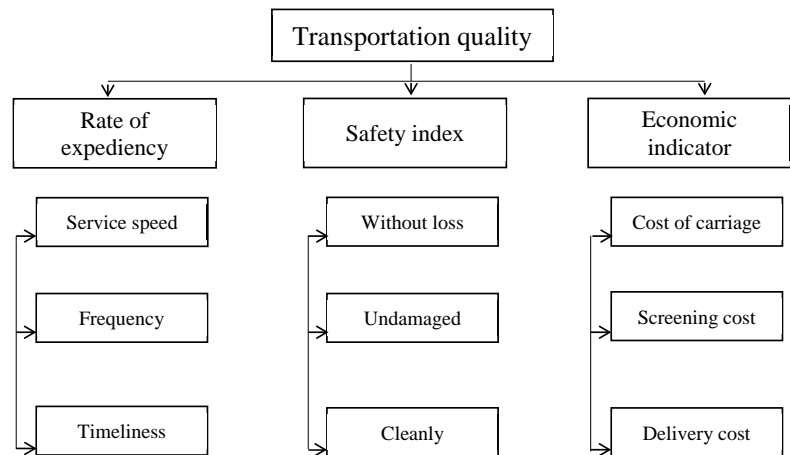


Fig. 1. Nomenclature of transportation quality indicators

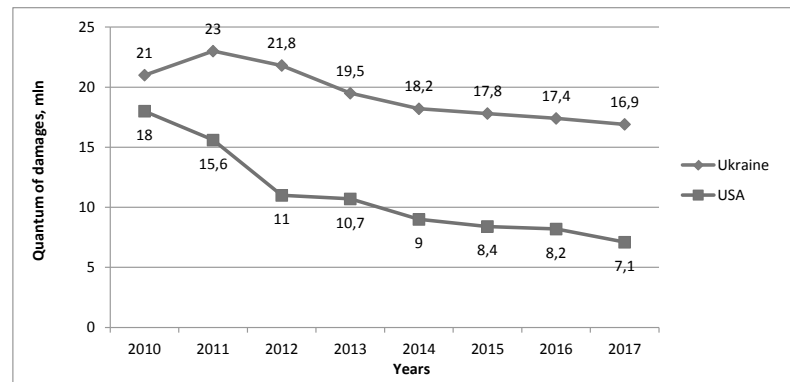


Fig. 2. Quantum of damages comparison 2010–2017, mln.

In the practice of settling disputes concerning the cargo non-preservation, the carrier's liability for goods damage, if delivered with a violation of the relevant delivery period (delay), is especially relevant when goods are transported with a high degree of damage. It refers to cases of goods delivery with a violation of its delivery time, but within the period of its transportability. In all cases the violation of the delivery of perishable goods and the arrival at the place of destination spoiled, it must be established a causal connection between the admitted delay and damage to the cargo. If it is found that damage to the cargo occurred only due to delayed delivery, the carrier is responsible, regardless of the fact that the period of transportability is not violated. If the goods have been delivered to the address of the recipient within the delivery period, but with a violation of the term of transportation and the carrier will prove that such damage was according to the reasons that did not depend on him, responsibility should be imposed on the consignor [3].

However, the damage to the cargo may be due to the incorrect definition of its transportability term, and vi-

Table 1

Quantity of losses and damages

Indicators	2010	2011	2012	2013	2014	2015	2016	2017
Quantity of losses and damages	6000	6800	6120	5879	5473	5321	5105	4980
Quantity of losses per 100 000 transportations	40	50	45	39	34	30	25	21
Quantity of damages per 100 000 transportations	400	530	420	398	354	312	289	224
Quantum of damages UAH, mln	21	23	21,8	19,5	18,2	17,8	17,4	16,9

olation of the transportation mode. In this case, the liability of the shipper and the carrier should be solved. If the damage to the cargo is not related to the assumed delay in delivery and the carrier will prove that this was due to reasons that depended only on the shipper (for example, loading of spoiled vegetables and fruits, unclassified products, etc.), the responsibility should rely on the consignor. Thus, if we compare the cargo duration with the delivery period, we can conclude that in the case of the transport of perishable goods, the main time period for the carrier should be the delivery period.

In accordance with the Montreal Convention, the carrier's liability in the event of destruction, loss, damage or delay in the carriage of goods is limited to 17 SDR per kilogram (Special Drawing Rights, approximately \$22.95), except when the shipper has done at the time of shipment place a special declaration of interest on the carrier and pay an additional fee if necessary. In this case, the carrier is required to pay an amount not exceeding the amount claimed, unless he proves that this amount exceeds the actual interest of the sender in delivery [4].

Liability of the carrier for the loss, shortage, damage to the cargo, baggage, mail:

The carrier is responsible for the storage of cargo, luggage, mail from the moment they are accepted for carriage and delivery to the recipient unless it is proved that the loss, shortage, damage to the cargo, baggage, mail occurred due to circumstances which the carrier could not prevent and eliminate, which did not depend on him. It can be concluded that non-compliance with deadlines of the carriage contract the carrier must be liable in the amount of actual damage that was caused to the sender.

The carrier shall be liable for the loss, shortage, damage to the goods, baggage, mail, in the amount of actual

damage, unless proved to be due to his fault. The carrier is responsible for preserving the cargo from the moment it is accepted for carriage and delivery to the recipient unless it is proved that the loss, shortage, damage to the goods was due to circumstances which the carrier could not prevent. The carrier is responsible for the loss, shortage, damage to the goods, baggage, mail in the amount of actual damage if it is not proved that this was not due to his fault.

Cargo damage – is a chemical or biological cargo change, and damage-mechanical changes that have occurred as a result of improper transportation of cargo.

Lack of cargo means the difference between the quantity (by weight) of the goods indicated in the transport document and the actual quantity (by weight) of the cargo arriving at the point of destination. It is important to note that the amount (mass) arrived at the destination of the cargo is determined in the same manner as it was installed in the transfer to its carrier for transportation.

Damage to cargo is the result of such impact on the freight, which was manifested in the change in its integrity or deterioration of properties, qualitative characteristics, which caused a decrease in the value of the goods or its unsuitability for use. Damage is usually associated with a mechanical impact on the load, and damage is usually the result of a violation of the temperature regime, the impact of atmospheric pressure, humidity of the environment of the cargo in the process of transportation, etc.

To resolve the issue of liability for non-preservation of cargo, the issue of fixing the fact of its nonpreservation becomes important. Therefore, in the process identifying signs of loss of cargo, its shortage, damage (damage), it is necessary to make a commercial act or act of general form. The most common is a commercial act.

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