



## THE SYSTEM OF PROTECTION METHODS FOR THE RIGHTS OF TRANSPORTATION SERVICES CONSUMER

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### Summary

The scientific article focuses on the system of protection methods for the rights of transportation services consumer, which includes the protection methods of the civil rights, provided for in the Civil Code of Ukraine, in the Law of Ukraine "On the protection of consumer rights", and specific transportation Laws. It was established that any violation by the carrier of the substantial terms and conditions of the transportation agreement enables the passenger, as a consumer of the transportation services, to take advantage of the appropriate protection method provided for both in specific transportation laws and regulations of the Civil Code of Ukraine. It was proved that an opinion regarding the fact that all the protection methods of the passenger civil rights, provided for in the specific laws, in fact, are not considered to be "specific" ones, but rather those that derive from "general" ones (art. 16 of the Civil Code of Ukraine) and include all their features.

**Key words:** consumer, transportation service, protection method, violation, law, liability, passenger, carrier.

### Аннотация

В статье акцентировано внимание на системе способов защиты прав потребителей транспортных услуг, которая включает способы защиты гражданских прав, предусмотренных в Гражданском кодексе Украины, Законе Украины «О защите прав потребителей» и в специальных транспортных законах. Определено, что нарушение перевозчиком существенных условий договора перевозки дает возможность пассажиру как потребителю транспортных услуг воспользоваться соответствующим способом защиты, предусмотренным как специальным транспортным законодательством, так и нормой Гражданского кодекса Украины. Доказано, что все способы защиты гражданских прав пассажиров, которые предусмотрены специальным законодательством, являются не «специальными», а такими, которые происходят от «общих» (ст. 16 Гражданского кодекса Украины) и охватывают все их признаки.

**Ключевые слова:** потребитель, транспортная услуга, способ защиты, нарушения, законодательство, ответственность, пассажир, перевозчик.

**The relevance.** The rights, freedoms and legal interests, vested in the Constitution of Ukraine and other regulatory legal acts, bear vitally important meaning to every person, covered by the above-mentioned instruments. Even the very proclamation, the recognition and consolidation of the rights, freedoms and legal interests is of great importance in the development of Ukraine as a social, democratic, and law-abiding state. However, the practical meaning of consolidation of the rights and freedoms of a person, first and foremost, consists in establishing the conditions of their usage for the members of the society in order to meet their needs. Any rights, if their enforcement is not ensured, shall be exclusively a fiction. The rights of transportation services consumers are not an exception.

**Problem statement.** One of the constituents of the proper enforcement for the rights of transportation services consumers appears to be the protection mechanism. The majority of nowadays scientists define that the protection mechanism is composed of the following principal elements: "means", "forms", and "methods" of the legal rights protection

[1 p. 265; 2 p. 34]. Among all these constituents, the substantial meaning belongs to the protection method, since the choice of the protection method is a high-priority action in order to realize the right for the protection, on which further on the enforcement of the protection form, using a particular protection mean, shall depend.

**The purpose.** Therefore, in order to ensure effective enforcement of the right to the protection of transportation services consumers, it is necessary to define methods for the protection of the violated rights, which the passenger can exercise.

The degree of scientific development of the problem. Theoretical regulations regarding the methods of civil rights protection may be found in the works of the following scientists: A.P. Sergeev, Yu.K. Tolstoy, V.D. Andriytsyo, M.M. Hudydyma, H.A. Osetynska, T.M. Pidlubna, G.P. Tymchenko, A.V. Yanchuk, etc. However, the system of protection methods of transportation services consumer rights was not researched on the scientific level. Thus, the principal task of this study is to define, which of the protection methods, provided for in the art. 16 of the Civil Code of Ukraine, the Law of Ukraine "On the

protection of consumer rights", and specific transportation Laws, may be applied in order to reinstate the violated rights of transportation services consumers.

**Basic exposition.** The principal methods for the civil rights protection are vested in p. 2, art. 16 of the Civil Code of Ukraine under the title "The protection of the civil rights and interests by the court". However, these principal methods for the protection of the civil rights may be applied not only for the protection of the rights by legal means, but while executing another form. The principal protection methods of the civil rights and interests of the Civil Code of Ukraine include the following: recognition of the right; voidance of the deed; termination of the act, violating the right; reestablishment of the situation existing prior to the violation; forced fulfilment of the obligation specifically; the change of legal relation; termination of legal relation; indemnification and other methods of the compensation of the material damage; compensation for moral (nonpecuniary) harm; invalidation of the decision, act or omission of the public authority, authority of the Autonomous Republic of Crimea or local authority and their officials [3].



However, the list of such protection methods of the civil rights is not full and we may assume the existence of other protection methods, provided for by the agreement or the law.

The abovementioned protection methods are of universal nature (in the literature they have inherited the name as general), which may be applied to all or the majority of the appropriate subjective rights. The other “methods, set forth in the agreement or the law”, are named by the scientists as specific methods, applied for the protection of some certain types of civil rights (i.e., provided for by the regulations of land or family legislation) [4, p. 629]. There are many other classifications for the protection methods in the literature (liability and protection measures; preventive, banning, renewing, compensational, etc.). The classification of the protection methods into general and specific is of interest for the legal relations in the protection of transportation services consumer rights, since transportation services are governed additionally by the transportation legislation and the Law of Ukraine “On protection of consumer rights”. Therefore, one more task arises: to research whether the protection methods of the transportation services consumer rights, provided for by the Law of Ukraine “On the protection of consumer rights” and specific transportation legislation, are deemed to be specific or just detail the general protection methods of the civil rights in the specific legislation.

The application of a specific protection method of the civil right depends both on the contents of the subjective right, raised by the person, and on the nature of its violation.

The person, whose legal interest or right has been violated, may seize an opportunity of the protection method, directly provided for by the regulation of the substantive right or may take advantage of the option between some protection methods, unless otherwise prohibited by the law. If the specific regulations do not establish any particular measures, the person is entitled to choose an option from those, provided for by the art. 16 of the Civil Code of Ukraine, taking into account the peculiarities of the violated right and the nature of infraction.

Apart from that, the application of the particular protection method of the civil rights for the transportation services

consumers depends on nonfulfillment or failure to fulfil by the carrier his obligations under the transportation agreement. In other words, the violation of the transportation agreement may be considered as the cause. The following conditions are of carrier responsibility: rendering of the good-quality service in passenger transportation and baggage delivery; transportation services in due time, set forth in the agreement; respect for passenger rights, provided for in the art. 911 of the Civil Code and other specific transportation laws.

The main condition resulting from the transportation agreement is the delivery of the passenger (and in some cases, baggage) to the point of destination. The violation of this condition may be estimated as nonfulfillment of the carrier’s obligation. The example of such a nonfulfillment is the cancellation of the transportation. In such a case, the passenger shall be entitled to protect his rights by receiving compensation. According to p. 5 art. 104 of the Air Code, “If the passengers were refused in transportation against their will, the carrier shall be liable to pay a remuneration in the following amounts: 250 Euro – for the flights up to 1500 km; 400 Euro – for the flights between 1500 and 3500 km; 600 Euro – for the flights above 3500 km [5]. Except for the remuneration, the carrier shall be liable to offer an option to the passenger:

– remuneration of the transportation cost within seven days to be paid in cash, electronic bank transfer, bank orders or bank cheques or, where the consent of the passenger in writing is available, as traveller’s cheque and/or other services, of the full value of the ticket at the purchase price, for the unused part of the ticket and for the used part of the ticket or part of the ticket, if the flight no longer meets the needs of the passenger, and also, if necessary, to ensure the return flight to the initial departure point at the earliest opportunity;

– or the replacement of the itinerary, which should be accomplished under certain transportation conditions: to the final point of destination – at the earliest opportunity or to the final point – at later time at the request of the passenger and if seats are available.

In other words, the passenger may take advantage of one of the general methods of protection: either remuneration by the

carrier or change of the legal relation, provided for by p.2 art 16 of the Civil Code of Ukraine.

As a general rule, the obligation should be fulfilled in a proper manner under the conditions of the agreement and the requirements of the Civil Code, other acts of the civil legislation, if the abovementioned conditions and requirements are not available, according to the practices of the business conduct or other presented conditions (art. 526 of the Civil Code of Ukraine) [4]. This provision declares the principle of the proper and substantial fulfilment of the obligations. The principle of the proper and substantial fulfilment of the obligations involves its fulfilment by the appropriate parties in the appropriate place, in appropriate time and by the appropriate tool.

Violation of the conditions of the appropriate transportation service means that it is not rendered or rendered with the certain drawbacks. The term “drawback” is used by the Law of Ukraine “On the protection of the consumer rights”, and the relations in transportation of passengers and baggage are subjected to this law. In case of a drawback in the abovementioned service, the Law of Ukraine “On the protection of the consumer rights” provides an opportunity to protect the right of the passenger in order to obtain a good-quality service and to choose at his/her discretion an option of the method on protection of the violated right. According to p. 3 art 10 of the Law of Ukraine “On the protection of the consumer rights”: “In case any drawback has been discovered in the work performed (service provided), the consumer shall have the right to claim, at his/her discretion:

1) free elimination of drawbacks in the work performed (service provided) within a reasonable period of time;

2) appropriate decrease of the price of the work performed (service provided);

3) free manufacture of another article from the same material with the same quality or repeated performance of the work;

4) indemnification for the loss caused to him/her and elimination of drawbacks in the work performed (service provided) by the contractor (provider) itself or by a third person;

5) realization of other rights provided for in existing legislation as of the day the corresponding agreement was entered into.



It is impossible to establish general criteria of the transportation services quality for all types of transportation. They can be found in transportation regulatory legal act and appear in the obligations of the driver, rules for the procedure in the means of transportation and other actions in ensuring realization of passengers' rights.

Thus, for example, if the quality of the transportation service appears in the comfortability of the seating, food quality, the passenger is entitled to demand from the carrier to be located in that transportation class (i.e., sleeping car (1st class), compartment (2nd class), couchette car (3rd class) – for the rail transportation; the first class, business class and economy class – for the air transportations), indicated in the ticket.

There are cases of violating the rights of transportation services consumers for the good-quality service, while selling two travel tickets for one seat. In such a case, the liability of free of charge elimination of the drawbacks by the carries results from the Law: “in case the seat in the carriage, to which the ticket was purchased, is not available, the train master shall be liable to provide a passenger, at his discretion, with a seat in another carriage (including of higher class – without any extra charges)” (cl. 7.7 of The rules of carriage of the passengers, baggage, cargo and mail by rail) [7].

Usually, the application of such a method to protect the rights of the passengers for a free of charge elimination of the drawbacks is not a demonstration of carrier's liability, though its realization is accomplished according to the direction of the Inspection in the protection of consumer rights, which additionally may bring the carrier to the responsibility for the violation of the law.

Apart from that, such a protection method of the rights of the transportation services consumers, as a free of charge elimination of the drawbacks in rendering the service, leads to the methods provided for in p. 2 art. 16 of the Civil Code of Ukraine as the termination of the action violating the right, since the passenger, having the right for a proper quality of the transportation service, is entitled to demand the termination of violating such a right and providing the proper service.

One more method for the protection of the rights of transportation services

consumers upon detection of the drawbacks in the service is reduction of the price for the service rendered. The fare is considered to be an essential provision of the agreement. Although, under the Law, the price may be agreed by the parties (p. 1 art. 916 of the Civil Code of Ukraine), the agreement on the transportation of the passenger and the baggage is deemed to be a standard form contract and contract of adhesion, under which the fare is determined under the regulations, that is why the passengers are basically deprived of the opportunity to influence the fare rate. Thus, this method for the protection of the rights of transportation services consumers does not have any practical application upon violation of the consumer rights for the proper quality of the transportation services. In such a case, the refund of the ticket purchase cost to the passenger prevails over the change of price for the agreement. The rules of carriage of the passengers, baggage, cargo and mail by rail contain such a provision: “In case the seats indicated in the ticket are not available and in case of the passenger's refusal to take advantage of other seats or train thereof, in order to obtain the refund, the passenger is obliged to present travel tickets for the check “The travel ticket has not been used fully through the fault of the railroad” (c. 19.16) [7].

The following protection method that may be applied by the passenger in case of rendering an improper transportation service is the reimbursement of losses with the further elimination of drawbacks for the service rendered by own means or by means of the third person. The application of such protection method is possible under the following conditions: in the course of rendering the transportation service, the carrier discovered that the transport vehicle is malfunctioning to proceed with the transportation, therefore the passenger was forced to make use of the transportation services of another carrier in order to arrive to the point of destination. The consequence of such a situation to the passenger is to demand reimbursement of the losses, incurred to the passenger by using the services of another carrier.

All the above-mentioned demands regarding the protection of the rights of transportation services customers may apply or may not apply at passenger's

option. Furthermore, the list of the demands is not limited and it is provided for in c. 5 p. 3 art. 10 of the Law of Ukraine “On the protection of consumer rights” and may be supplemented by the other methods based on the violated right.

If the consumer did not manage to re-establish his condition, applying all of these methods, and the carrier did not eliminate the drawback of the rendered service, the passenger shall be entitled to terminate the agreement on rendering services and to demand reimbursement of the losses. The consumer of the transportation services may immediately use the same protection method, if there is a significant drawback available in the service with all its descriptions, provided for by the Law of Ukraine “On the protection of consumer rights”.

The quality of the transportation service, as an essential condition of the transportation agreement, contains an important compound as information about this service. In case of a carrier's failure to comply with such a condition, the consumer of the transportation service may apply protection methods in order to obtain full, available, reliable, timely information about the rendered service. The Law of Ukraine “On the protection of the consumer rights” grants consumer an opportunity of choosing a particular method to protect his/her right (p. 7 art. 15), against negative consequences, which came to pass with the consumer upon violation of the right for proper quality of the good. In most cases, the reimbursement of the losses happens to be the protection method, as carrier's liability.

Another reason for the protection of the passenger's rights is nonfulfillment of the obligations by the carrier in due time. As it is provided for in the article 919 of the Civil Code of Ukraine, the carrier is liable to deliver the passenger, the baggage to the point of destination in the time, defined by the agreement, unless otherwise defined by the transportation codes (charters), other regulatory legal acts and rules approved thereunder, and in case such due time is not available, at a reasonable time [5]. As a rule, the time for the departure and arrival is indicated in the travel ticket, though, through the fault of the carrier, such periods may not be maintained. The violation of the time for the transportation of the passengers is one



of the prevailing failure among improper fulfillment of the carrier's obligations.

Let us consider the principal methods for the protection of consumer rights provided for by the legislation on the protection of consumer rights and specific transportation legislation regarding maintaining the terms, while rendering the services.

The Law of Ukraine "On the protection of consumer rights" provides the following methods for the protection of consumer rights against violation of the passenger delivery time to the point of destination by the carrier:

– *termination of the legal relation* is applied in combination with the reimbursement of the losses, if the contractor did not enter upon his duties under the agreement at due time or performs the work in a slow way that it is impossible to complete it in due time. The termination of the legal relation is also possible, if the major part of the service had been already completed (over 70% of the total volume) (p. 1 art. 10 of the Law of Ukraine "On the protection of consumer rights"). Such a combination of the general protection methods of the consumer rights is provided also for the situations, when a consumer has set an additional term for a contractor to eliminate the drawbacks under the agreement, and his demand was not satisfied. Except for the termination of the legal relation and reimbursement of the losses upon violation of the transportation agreement by the carrier, such a protection method as the change of the legal relation may be applied, since an essential change of the provision in the agreement is taking place, which is the time [8, p. 158];

– *payment of penalty (fine)* as a liability, provided for by p. 5 art. 10 of the Law of Ukraine "On the protection of consumer rights". If the contractor is not able to perform (delays the performance) of the work (rendering the service) under the agreement, for each day (each hour, if the duration of performance is fixed) of the delay the consumer is paid a fine in the amount of 3% of the work (service) value, unless otherwise provided by the law [6]. The peculiarity of the fine as a liability lies in the fact that except for the performance of the duties specifically, the carrier shall be liable to a negative consequence as deductions.

In the course of rendering transportation services, two types of time frames are distinguished, resulting in violation of consumer rights: *delay in departure and violation of the time to deliver to the point of destination*. The carrier shall pay a fine for the violation of such time frames in the amount agreed by the parties, transportation codes (charters) (p. 1 art. 922 of the Civil Code of Ukraine), and therefore, the passenger may apply such a method for protection of his right as reimbursement of financial damage. In case the passenger finds out about the delay in the departure of the transport vehicle, he shall be granted an opportunity to terminate the legal relation (reject the transportation) and receive refund for the fare (sum of money, spent for the purchase of the travel ticket) (p. 2 art. 922 of the Civil Code) from the carrier, which basically means that the condition of the passenger existing prior to the violations is re-established.

The amount of compensation for the violation of the transportation time varies and is determined depending on the mean of transportation. For air transportation, it is the following: "liability of the carrier for the damage inflicted as a result of the delay in the course of transportation of the passengers during any flight shall be limited by the sum of 4694 SDR (special drawing rights) with regard to each passenger" (Chapter 5 of the Rules of carriage of passengers and baggage by air) [9]. For rail transportation, it is the following: if the delay of the passengers from the point of departure to the point of destination exceeds one hour, the passenger shall be entitled to reimbursement of the full value of the travel ticket, including distribution services fee (charges) and seat booking (c. 19.16 of the Rules of carriage of passengers, baggage, cargo and mail by rail) [7]. The same regulation is contained in the Charter of motor transport of Ukrainian SSR (c. 83) [10].

Specific transportation legislation regarding the violation of the transportation time comprises other protection methods of the passenger rights, which cannot be referred to as additional services of the carrier, resulting from the delay. Thus, for instance, according to the Rules of carriage of passengers and baggage by air "in case of delay over the allowed time (as a rule, delay means a delay over 3 hours)

and passenger's consent to continue the transportation, the carrier shall be obliged to provide passenger with the following services under the approved regulations (depending on the time of day and period of delay) and free of charge: *non-alcoholic beverages, food, accommodation in the hotel, ground transportation (airport – city – airport), etc.* (c. 5, chapter 3) [9]. These protection methods are of somewhat reimbursement nature and bear negative consequences for the carrier through additional financial expenses. In fact, such a protection method of the rights of transportation services customers corresponds to the method provided for in the Law of Ukraine "On the protection of consumer rights", which is "free of charge elimination of drawbacks in the rendered service".

**Conclusions.** Therefore, the system of protection methods of transportation services consumer rights is extremely diverse and comprises all protection methods of the civil rights, provided for by the art. 16 of the Civil Code of Ukraine, the Law of Ukraine "On the protection of consumer rights", and specific transportation legislation. Regardless of the fact that major part of the methods is vested in the specific legislation, they are not defined as "specific". It is related to the fact that the protection methods, provided for in the specific legislation, contain all the features of the "general" protection methods of the civil rights (art. 16 of the Civil Code of Ukraine) and details them for the legal relations in passenger transportation.

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## ПЕРСПЕКТИВНОСТЬ ВНЕДРЕНИЯ В ШТАТ СУДЕБНОГО УЧРЕЖДЕНИЯ НОВОЙ ДОЛЖНОСТИ – СУДЕБНОГО ПСИХОЛОГА-КОНСУЛЬТАНТА

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### Summary

This article analyzes the prospects of implementation of new position into the staff of judicial institution – forensic psychologist-consultant. The article identifies the main areas of activities of forensic psychology consultant to implement psychological accompaniment of judicial activities, namely: psychological diagnostics, psychological training of judicial staff, psychological support of judicial activity and psychological support for the justice. In this article defined the organizational and regulatory bases of the forensic psychologist status and regulatory requirements for his work. The article also suggests the possible functional responsibilities of forensic psychology consultant for each of the named directions.

**Key words:** court, judicial activities, justice, personnel work, psychological support, psychologist, consultant.

### Аннотация

Статья посвящена анализу перспективности внедрения в штат судебных учреждений новой должности – судебного психолога-консультанта. Определены основные направления деятельности судебного психолога-консультанта по осуществлению психологического обеспечения судебной деятельности, а именно: психологическая диагностика, психологическая подготовка судебных кадров, психологическое сопровождение судебной деятельности и психологическая поддержка отправления правосудия. Очерчены организационно-нормативные основания статуса штатного психолога суда и регламентных требований относительно его работы. Предложены возможные функциональные обязанности судебного психолога-консультанта по каждому из названных направлений.

**Ключевые слова:** суд, судебная деятельность, правосудие, кадровая работа, психологическое обеспечение, психолог, консультант.

**Постановка проблемы и актуальность темы.** Вопросам психологического опосредования судебной деятельности посвящен ряд научных исследований, в частности ее психологических основ (А. Дулов, Л. Васильев, М. Костицкий, В. Коновалова, Г. Шиханцов), профессиографии деятельности судьи (В. Бедь, В. Ярошенко, Ф. Скакун, А. Черновский), психологических факторов судебного производства отдельных категорий дел (В. Марчак, Л. Федина, Т. Сахнова) и т. д. Некоторые исследователи отмечают важность непосредственного участия психолога в судебном производстве (М. Костицкий, Ф. Сафуанов, П. Гвоздик, В. Нагаев, И. Петрухин). Однако проблема психологического обеспечения судебной деятельности на основе системного подхода пока не нашла отражения как в научных исследованиях, так и в практике непосредственного применения психо-

логического знания в деятельности судебного учреждения.

**Цель статьи** заключается в анализе проблем внедрения должности судебного психолога-консультанта в судах Украины, обосновании и предложении возможных функциональных обязанностей судебного психолога-консультанта, обосновании перспектив должностного функционального закрепления на законодательном уровне.

**Изложение основного материала исследования.** Привлечение профессионального психолога к решению проблем функционирования судебной системы в мировой практике имеет неоднозначное отражение. В ряде стран (США, Италия, Германия, Грузия, Дания) роль психолога в судебном процессе урегулирована законодательно, в иных (Российская Федерация, Беларусь, Казахстан, Украина) – определена ведомственными и региональными нормативными документами в части,