



Legal Regulation of Sea Towage Contracts in the EU Countries

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ABSTRACT

In this article, the authors are trying to compare and analyze the main peculiarities of legal regulation of the contract of towage at sea in such common law countries as Great Britain, USA and Canada, and some countries of the European Union (Germany, Lithuania, Poland). The first part of the study is devoted to the analysis of the influence of towing technology on its legal regulation. The authors consider different towing options with the main difference being towing guidelines. The article analyzes how the technological aspects of towing have influenced the development of various standard forms of towage contracts adopted in the international maritime sector. The second part of the study analyzes the connections, similarities and differences between towing and salvages. Salvages services are provided when the vessel is in such

a dangerous situation that the master has no real choice but to accept salvages services so that the vessel or cargo is not lost. Towing services are provided when the vessel is safe, so the shipowner can choose to have the vessel repaired on site or conclude a towing contract to bring the vessel to a convenient port. The nature of towage and salvages services at sea also determines the difference between towage and salvages charges. Payment for towing services is carried out on the basis and under the terms of the towing contract. At the same time, given the surprising nature of salvages at sea, it is impossible to foresee in advance the amount of remuneration for salvages operations at sea, therefore, the amount of remuneration usually depends on the value of the salvaged property. The third part analyzes the contract of towage, the rights, and obligations of the parties, especially the legal regulation of carriage, some court decisions of common law countries and some of European Union countries, such as Germany, Lithuania, Poland. In Lithuania and Poland, a towage contract can be classified as consensual, paid, and bilateral. In some cases, a contract of towage may be considered as multilateral. Briefly comparing the Lithuanian and Polish legal regulation of towage relations, one can conclude that there are no special differences between them. At the same time, In German law a towage contract is not codified as a specific art of a contract. German law regulates that a towage contract (Germ. Schlepptvertrag or Remorkvertrag) can be recognized either as a contract to produce a work (Germ. Werkvertrag), or as a contract for services (Germ. Dienstvertrag) or a contract of carriage (Germ. Frachtvertrag). In common law countries, a contract of towage is considered to be a service contract. Therefore, in accordance with the contract of towage, the owners of the tug undertake to provide a towing service themselves, during which they are the performer, the crew, and supply, at the same time. Therefore, they undertake to provide 1) an agreed or specified service, or 2) to achieve an agreed specific result, or 3) to provide services for an agreed or specified period of time in exchange for periodic or lump sum payments.

The keywords: *contract of towage at sea, types of towing, contract of towage as a service contract, the responsibility of the tug owner, the responsibility of the owner of the towed vessel, towing and salvage.*

Introduction

Disputes regarding towage services have recently increased in the jurisdiction of Lithuania. However, since the Republic of Lithuania regained its independence in 1990 and, later, had to recreate a new judicial system, there are not so many court decisions regarding towage relations. Whereas in common law countries and some

European continental law countries the legal regulation of towage services has been intensively developed since the 19th century.

At any rate, Lithuanian legislators took efforts to fill the gap of missing legislation and the legal nature of towage contract has been codified in the Republic of Lithuania Law on Merchant Shipping (hereinafter referred to as LMS, lit. Lietuvos Respublikos Prekybinės laivybos įstatymas) and The Republic of Lithuania Code of Inland Waterway Transport (hereinafter referred to as IWTC, lit. Lietuvos Respublikos vidaus vandens transporto kodeksas). Many regulations in these acts are similar to legal regulations in common law and continental law countries because legislators took into consideration legal doctrine and good experience of other countries.

The aim of this article is to review peculiarities on legal regulation to towage contract within various common law and continental countries and to present legal regulation on towage contract in Lithuania. Thus, this article should also be useful for analyzing differences and similarities among different countries, including the UK, the USA, Canada, Germany, Poland and also Lithuania.

This article also tends to reveal that despite the immense impact that the Baltic and International Maritime Council (BIMCO) has made on harmonizing relations between contracting parties for towage services, after it presented the standard towage contracts, such as “Towhire” and “Towcon”, not all the special circumstances can be foreseen in the standard contracts, and depending on applicable national law the outcomes of court decisions might differ. Thus, this is one more reason to compare legal nature of towage contracts among different national legal systems.

Methodology

This research is concentrated on legal definition of a towage contract in various common law and continental law countries. The aim of this research was to disclose different approaches to regulate towage services in separate legal systems that might affect

contracting parties. The research in this article has been performed through reviewing legislative acts and legal doctrine on towage contracts from common law countries including UK, USA and Canada and continental law countries, including Lithuania, Poland and Germany.

1. Nature of towage services and its impact on legal development

The legal nature of a towage contract depends on technical aspects of the towage. Moreover, developing technologies in marine industries have triggered the development of legal nature of towage contract as well. For example, it is considered that the towage as a service began to expand when the English sailors were competing with American sailors. English sailing vessel owners sought to compete with the faster American clippers. Having realized that passages were from warehouse to warehouse rather than from land to land, English sailors found the way to reduce the time lost at the end of voyage. Thus, initially tugs were used only in sheltered waters and estuaries (Gold et al., 2003, p. 575). Today modern tugs have been significantly developed and meet the requirements for the shipping and other marine industries in inshore, offshore, and deep-sea areas. They can be divided into three groups: Ocean-going and Salvage, Coastal, and Harbour and River (Gold, 2002, p. 214-215).

In British legal doctrine a tug owner is often described as a “letting” the tug to the tow; the tow is usually described as “the hirer” of the tug (Rainey, 2018, p. 3). In other words, the tug is a vessel that provides propulsion to another vessel for a specific aim and the tow is a vessel that hires a tug to be moved and guided. Towage can be provided by any vessel, and it is not necessary to be a towage purpose-built vessel. However, usually towage is performed by a trained crew and a dedicated ship. The efficiency of a tug as such is dependent upon the amount of power which can be transmitted from the tug to the tow through a tow rope (Gold et al., 2003, p. 575). The towage can

include various services, such as holding, pushing, pulling, moving, escorting, guiding or standing by the hirer's vessel (Gold et al., 2003, p. 574). The arrangement between tug and tow is properly called towage regardless of whether the tug pulls the tow or pushes it from behind (Robertson et al., 2020, p. 353). In harbor maneuvers, such as the docking or undocking of a large vessel, there may be tugs assigned to push or pull at different positions on the vessel, as necessary. Meanwhile in river systems, the tug usually pushes barges made up into flotillas, some of them greater in length and breadth comparing to largest single vessel afloat (Healy & Sweeney, 1998, p. 253).

The tow can be manned or unmanned. In cases where the tow is fully manned and is simply being towed by a tug, the tug has no possession over the tow but only performs pulling, moving, pushing or analogous service to the tow (Rainey, 2018, p. 4) and the tug is seen as a servant of the tow that suggests that the ship under tow will always be liable for the defaults of the tug (Baughen, 2015, p. 271). Meanwhile, if the tow is unmanned and is only an object being pulled, the tug will have physical possession of the tow. The tow can also be manned by a riding crew put on board by the tug so that the tug has physical possession of the tow (Gold et al., 2003, p. 574).

Technical development of a towage and new experiences in this sector led to the need to standardize agreements between tugs and tows. Internationally most used are "Towhire" and "Towcon", standard towage contracts that have been produced under the supervision of the Baltic and International Maritime Council (BIMCO). One of the BIMCO main functions – to support the efforts of the International Maritime Organization (IMO) to harmonize international regulations that form the bedrock of international shipping and help to retain a level playing field (Hoppe, 2017). Its work is carried out taking into consideration changing developments and industry's experience.

Both standard forms have been revised in 2008. "Towhire" and "Towcon" were created for the towage industry either on a lump

sum or a daily rate basis. These forms for wider offshore services have been supplemented by “Supplytime 1989”, whereas the most popular template was “Supplytime 2005” and the newest was – “Supplytime 2017”. BIMCO has also developed the standard form for the transportation of heavy or high volume objects – currently “Heavycon 2007”, and a special standard form for bareboat chartering of non-self-propelled barges for marine-related construction operations – currently “Bargehire 1994”. In the tug and barge sector, where objects and materials in large-scale projects are being transported under special combinations of tug and tow, the need to use a combination of BIMCO contracts such as “Towcon”, “Heavycon” and “Bargehire” has led to the new form “Projectcon” (Rainey, 2018, p. 10).

2. Towage distinction from salvage

A towage can be performed either contractually, or as a salvage service (Rainey, 2018, p. 2). The importance to distinguish ordinary towage from salvage action lays mostly in the payment, since as a rule ordinary towage is less risky and accordingly less expensive. Meanwhile a salvage is performed under dangerous circumstances such as sudden violence of wind or waves or other accidents. Towage is usually paid on a rate basis, while reward for salvage depends on value of the saved res (Gold et al., 2003, p. 588). The salvor shall get remuneration if only the service succeeded.

Salvage services are provided when the ship is in such a dangerous situation that the master has no real choice but necessity to accept salvage services so that the ship would not be lost or left on some remote place whereas towage services are performed when the ship is safe so that the shipowner is free to choose either to refuse the service or to have repairs done locally or to contract of towage to get his ship home (Rainey, 2018, p. 432).

Canadian authors describe that the main three elements of salvage are danger, voluntariness, and success (Gold et al., 2003, p. 588).

In Canadian law in certain situations, towage can be converted into a salvage service. The criteria are as follows: there was real and unforeseen danger to the tow, the risk has increased after the towage contract has been concluded, the towage task transforms and becomes beyond contractual duties of the tug. In any event, the tug shall not be the reason that causes the dangerous situation of the tug. The tug should be able to prove the unforeseen circumstances such as *force majeure* or inevitable accident. Towage contract remains applicable as long as with reasonable skill and without excessive risk to the tug, the tug can perform the towage and overcome the temporary danger (Gold et al., 2003, p. 589) However, if the tug rescues the tow from some unforeseen and extraordinary peril, the tug shall be additionally remunerated under conditions of a salvage. Otherwise, it is possible that an accident might make the towage contract impossible to perform. If the tug is not to blame of the accident, the towage contract shall be terminated, and the tug is no more obliged to complete it.

Successful salvage entitles to remuneration regardless of whether the parties concluded a contract. Thus, in case of a salvage, the persons who have contributed to a salvage will always have a right for a remuneration. The main feature of salvage is that it exists independently of any contract and a salvor has its rights for remuneration independent of any agreement. However, the parties might agree on payment (Rainey, 2018). Nowadays there are standard contract forms for salvage such as Lloyd's Open Form or "LOF", albeit salvage does not depend on existence of a written or other type of an agreed contract.

3. Brief review on legal regulation of towage contract in some common law and continental law countries

Marine industry is global and accordingly parties from different countries conclude towage contracts quite often. As it was described, the most commonly used standard forms for the towage services

are “Towhire” and “Towcon”. However, in those cases when the contracts do not foresee specific circumstances of a dispute, the national laws might be applicable by national court. Therefore, in this article the authors’ aim is to analyze similarities and differences regarding legal regulation in different national systems.

3.1. Legal nature of a towage contract and rights and obligations of contracting parties in common law

In common law a contract of towage is described as ‘a contract for services and under such, the tug owners agree to provide services for the tow with tug, which they themselves officer, crew and supply, for an agreed or defined service or to attain an agreed or defined result or for an agreed or defined period of time in exchange for periodic or lump sum payments’ (Rainey, 2018, p. 3).

The tug owner is often described as “letting” the tug to the tow, meanwhile the tow is usually described as “the hirer” of the tug. However, a towage is not a lease nor a contract for the hire of the tug. There is no hiring of the vessel in the true sense (Rainey, 2018, p. 4). The towage contract is merely a contract for services to the tow that are performed by the tug and its crew.

Initially towage as a service was performed to manned vessels where no question of physical control over the tow arose. The duty of the tug to the tow was based on proper care while performing towage. Those principles of proper care were transferred to cases of unmanned tows that are physically controlled by tug, including dumb barges, making no difference whether the tow was or was not manned.

The issue whether a towage contract shall be deemed to be a contract for services or a contract of towage has been crucial in several court cases. In general, a bailee is liable for loss of or damage to the cargo if he cannot exculpate himself. His liability is strict. Meanwhile since the tug owner is merely a provider of services, the tow must prove breach of the tug’s obligations of good care and

skill to have damages recovered (Palmer, 2009, para. 1.047). The tow must take into consideration the main rule that the liable party is the one that was navigating and prove that it was fault of the tug that caused damages. Hence a claim against tug for damages cannot be successful without proper allegation of fault or neglect on the part of the tug (Rainey, 2018, p. 4).

In the USA there was a similar approach to the qualification of a towage contract. In *Brown v Clegg* (1870) 3 Mar LC 512 (Supreme Court of Pennsylvania), the owner of barges laden with coal that were damaged sought to argue that the owners of the tugs which drew them were liable as bailees and carriers of the tow. The court declared that both in American and English law tugs are not common carriers of the vessels which they tow. Accordingly in the *Margaret*, 94 US 494 (1876) the court stated that the tug was not a common carrier.

Canadian law followed the American law tradition and rejected strict liability of the tug for damage to the tow. In the *Tug Champlain* [1939] 1 DLR 384, the Exchequer Court, at p. 389 declared that the occurrence of an accident raises no presumption against the tug and the burden is on the complaining party to prove a lack of ordinary care (Rainey, 2018, p. 5). Thus, Canadians deem towage contract as a contract for services as well.

It is also important to consider that the owners of cargo are not bound by any contract of towage or salvage made by the owner or master of the vessel on which the cargo is laden. Accordingly, the owners of the vessel and the master do not have authority to bind the cargo carried or the owners of such cargo by any such contract of towage (Rainey, 2018, p. 14). Moreover, when the tug and vessel are owned or operated by the same person, the relationship between the tug and the owner of goods being towed on the vessel will be also deemed as a contract of affreightment (Rainey, 2018, p. 8).

On the other hand, if it is necessary for the ship to take towage or salvage assistance to save the cargos, it is not possible or practical

for the ship to communicate with cargo owners and it is in the cargo's interest, the cargo may be bound by a contract of towage or salvage (Rainey, 2018, p. 14). Such action should be seen as a general average measure taken by the vessel to save cargo from loss.

It might be difficult to distinguish the difference, when the goods are carried on the tow. This issue is significant for insurance coverage. For instance, in the Canadian case *Burrard Towing v. Reed Stenhouse*, where the key question was whether the towage insurance covered the cargo on the tow. The B.C. Court of Appeal decided for the insurer. In this case the performance of towage and the performance of the affreightment were separated and only the towage was the subject of the insurance (Gold et al., 2003, p.591).

Meanwhile in *Catherwood Towing v. Commercial Union Assurane Co.* the court decided in favour of the cargo owner (Gold et al., 2003, p. 592). The insurer admitted the liability for the barge but not for the damaged goods on it. The B.C. Court of Appeal ruled that the tower's liability coverage included damage to "tow or the freight thereof or to the property on board". The reference to the "freight thereof" was recognized as to refer to the goods transported on the tow.

Tug owners can also benefit from being able to exculpate their liability within a contract. It is common to have an expresses term that the master and the crew of the tug are deemed to be the servants of the hirer of the tug. The purpose of this clause is to impose vicarious liability on the hirer for negligent acts or omissions of the tug, albeit only regulates the liabilities of the parties to the contract but not to the third parties (Mandaraka-Sheppard, 2009, p. 565). Contractual "knock-for-knock" arrangements included in the "Towhire" and "Towcon" that exculpate liability would not be applicable in case of a damages of a third party whose rights are protected by mandatory laws (Martinez Gutierrez, 2011, p. 77).

The exculpation of liability is also restricted where a seaworthy tug was not provided and where the towage service has not been

performed and also in case of a fundamental breach of a contract (Gold et al., 2003, p. 580). Meanwhile, in the United States, liability exemption is not allowed in general (*Bisso v Inland Waterways Corp.*, 349 U.S. 85, 1955).

Exemption clauses may also not apply to undertakings by the tug owner to the tow that are separate from the towage contract. For example, in *Engine & leasing Co. v. Atlantic Towing*, a case where the tug owner agreed to repair a barge and then to tow a barge, the Canadian Federal Court Trial Division held that the parties concluded two separate contracts. The barge sank because of faulty repairs and therefore the tug owner could not benefit from the exculpatory clauses (Gold et al., 2003, p. 578).

Hence, in spite of existing standard contract, many legal issues are still regulated by mandatory national laws and the gaps in legislature might be filled by the court. The parties should be careful in making agreement on applicable national law. Therefore, it is important to compare different approaches to regulate towage contract in different legal systems.

3.2. Legal nature of the towing contract at some continental law countries, including Germany, Poland and Lithuania

In German law a towage contract is not codified as a specific type of a contract (Rabe, 2018, p. 205). German law regulates that a towage contract (Germ. *Schleppvertrag* or *Remorkvertrag*) can be recognized either as a contract to produce a work (Germ. *Werkvertrag*), or as a contract for services (Germ. *Dienstvertrag*) or a contract of carriage (Germ. *Frachtvertrag*) (Hartenstein & Reuschle, 2015, p. 172). However, renting of a tug is also possible (Rabe & Bahnsen, 2018, p. 206). Under § 631 I German Civil Code (hereinafter BGB) by a contract to produce a work, a contractor is obliged to produce the promised work and the customer is obliged to pay the agreed remuneration. The subject matter of a contract to produce a work may be either the production or alteration of

a thing or another result to be achieved by work or by service (§ 631 II BGB). Thus, one of the main features of a ‘*Werkvertrag*’ (contract to produce services) is a produced result of services or work that can be both tangible and intangible. In contrast to the services contract (Germ. *Dienstvertrag*) that is regulated under § 611 BGB, under ‘*Werkvertrag*’ not only a work itself shall be performed, but a certain work success. In this case the contractor carries the risk to provide results and not the customer. For example, erection of building, translation of a text, repair of a machine and hairdresser services are performed under a ‘*Werkvertrag*’ (Brox & Walker, 2013, p. 287).

The contract of carriage has its special rules described in §§ 407-452d of German Commercial Code (hereinafter HGB). One of the main features of this contract is that § 407 HGB is only applicable if the carrier obliges himself to take goods into his custody (Germ. *Obhut*) and possess and protect them from damage or loss. Thus, a carrier shall take care of the cargo property (Koller, 2020, p. 17).

As an example, in Germany a towage of a breakdown vehicle would always be regulated under a contract of carriage because it is deemed that such a carried and unmanned vehicle is in custody of a carrier. Accordingly, a towage of an unmanned barge or any other vessel is also considered to be a contract of carriage (Koller, 2020, p. 36). Thus, in such situation the tow does not have its own nautical guidance (Herber, 2016, p. 235). However, the legal situation is different if a tug is only supposed to turn the direction of the vehicle or assisted it while it is manned. In such cases a towage contract would be recognized either as a ‘*Dienstvertrag*’ or a ‘*Werkvertrag*’.

When the tow has its own leadership, the towing contract would be recognized as a contract for services ‘*Werkvertrag*’ under German law and cannot be seen as a affreightment contract whereas in older cases a towage contract was recognized as a ‘*Dienstvertrag*’ if the tug acted only as an assistant, for instance, when the tug supported tow’s own maneuvers when entering or leaving the port or when moving in port (Rabe & Bahnsen, 2018, p. 206). If a towage contract

is recognized as ‘*Dienstvertrag*’ (a contract for services), then in case of a collision with third parties the tug owner shall be liable against third parties under § 480 HGB (German commercial code) as “the tug is the servant of the tow” (Herber, 2016, p. 235).

It is important properly to qualify a towage contract either as a ‘*Dienstvertrag*’, ‘*Werkvertrag*’ or as a contract of carriage because of the burden of proof. If a towing contract is qualified as a ‘*Werkvertrag*’ or ‘*Dienstvertrag*’ in that case the person sustaining the damage shall provide evidence that the damages raised because of the tug owner (Fischer, 2016). Meanwhile, if the contract is to be qualified as a contract of carriage, the carrier is liable simply because the goods have been transferred to the carrier damaged or they are missing unless the carrier can prove *force majeure*.

In addition, in case of a contract for services, the liability of a contracting party might be unlimited. Meanwhile, if the towage contract is deemed to be a contract of carriage, carrier’s liability can be limited under German HGB (Commercial code) and CMNI (Koller, 2020, p. 36; Fischer, 2017).

The parties cannot agree to qualify a contract otherwise, for instance a towage contract which has a nature of a contract for carriage cannot be agreed to be a contract for services (Rabe & Bahnsen, 2018, p. 206). However, contractual parties can still agree on liability limitation regardless of whether it is qualified as a contract for services or a contract of carriage.

Hence, in German law there is a different approach towards a towage contract comparing it to common law countries because in this legal system a towage can be regulated both as a contract for services or contract of carriage with different legal outcomes.

Regarding the fact that Poland is the closest neighbor to both Lithuania and Ukraine, it is important to review the regulation of towing relations within Poland. The main legislative source regulating the towing relations within the Country is Kodeks morski (hereinafter referred to as KMP). Article 214 of the aforementioned

code establishes that towing services are services provided by the operator of the vessel for remuneration. Article 214 of the aforementioned code defines towing services as: towing or pushing of a vessel, holding or other assistance during a navigational maneuver, as well as standby of a tug near the vessel to be towed provided that such assistance would become required (towing assistance).

Dr. Justyna Nawrot has described the towing contract within Poland law as a bilateral, remunerated, reciprocal and consensual contract. Article 215 of KMP established that the master of the vessel to be towed shall be responsible for the navigation, unless provided otherwise within the towing contract. It shall be noted that KMP does not stipulate any requirements regarding the form of the towing contract. As note by Dr. Justna Nawrot, a verbal agreement is a quite often seen agreement in practice (Pyć & Zużewicz-Wiewiórska). Poland maritime law doctrine provides two types of towing contracts.

First: Port towing contract (polish: Umowa holowania portowego) is a contract where the master of the tugboat is often responsible for fulfilling the commands of the master of the vessel to be towed or port pilot. Dr. Justyna Nawrot believes that the article 750 of the Civil Code of Poland may apply towards the above towing contract, provided that provisions of legal rules for assignment agreements are absent (Pyć & Zużewicz-Wiewiórska). It should also be noted that the towing services are not limited to the completion of actual actions but also include preparation and awaiting of the command to commence the towing operation.

Second: Long-distance towing contract (Polish: Umowa o holowanie dalekomorskie). The aforementioned contract is a service contract where the vessel to be towed or other object are agreed to be towed from origin point A to destination point B.

The law stipulates that the towing formation shall be considered to be formed from the moment when the masters of all ships are ready to carry out the commands of the master in charge of towing. The dismantling of the aforementioned formation shall be

considered to be the moment when the last maneuver was carried out and the vessels were separated from each other at a safe distance (article 215 of KMP).

The Lithuanian approach to harmonize regulations on towage contract was similar to the Polish approach because this type of contract and its regulations was also codified.

The main legal act regulating the relations under the civil law in Lithuania is the Civil Code of the Republic of Lithuania (hereinafter referred to as CC). Even though, carriage (articles from 6.807 to 9.823 of CC) and freight forwarding relations (articles from 6.824 to 6.829 of CC) are regulated under the CC, towing relations are not regulated under the aforementioned CC. However, in the event of collision between the CC and other laws, the provisions of CC shall apply, except in cases where CC gives priority to the provisions of other laws (Article 1.3(2) of CC) (Mikelėnas, 2001, p. 70).

The towing relations within the Republic of Lithuania are regulated under two main legislative reference frameworks: a) Law of the Republic of Lithuania on Merchant Shipping (hereinafter referred to as LMS) and b) Republic of Lithuania Code of Inland Waterway Transport (hereinafter referred to as IWTC).

LMS regulates legal relations arising from the carriage of freights, passengers and baggage by sea and provides for the peculiarities for work on vessels and social guarantees for seafarers, as well as other civil law relations related to maritime transport, insofar as these relations are not regulated by international agreements of the Republic of Lithuania (article 1(1) of LMS). Article 2(2) of the aforementioned Law provides for the concept of a sea towing contract. According to the aforementioned contract, a towing contract is an agreement by which the master of a tugboat undertakes to tow another vessel or other floating object for remuneration. It should be noted that the relations regarding the towing contract are regulated by the law of the place of conclusion of the aforementioned contract, unless the parties to the contract have agreed otherwise (article 5(10) of LMS).

The seventh chapter of the LMS regulates the towing relations in a broader sense.

Relations regarding Lithuanian inland waterway provide for a broader description of the concept of towing contract than compared to the description provided for in sea transport. Under the towing contract, the operator of the tugboat undertakes to tow or push (tow) the vessel to be towed for a certain distance or time, as well as to perform a maneuver, and the operator of the pushed or towed vessel undertakes to pay the agreed fee for towing services (article 53(1) of IWTC). Having regards to the above, the concepts for towing contract provided for in the LMS and IWTC allow for the conclusion to be made that these legal reference frameworks describe the aforementioned contract as consensual, remunerative and bilateral. On the other hand, it can be considered that towing services can also be agreed upon under various multilateral transport relations.

The Republic of Lithuania allows for the sea towing contract to be concluded both in writing and verbally. Moreover, the agreement for entrusting the master of a tugboat with the task of towing may only be proved by use of written documents (article 44(1) of LMS). Having regards to the above, the agreement for towing itself may be concluded in verbal but the conclusion thereof can only be proved by use of written evidence. We believe that the above may be regarded as a shortcoming within of the legal reference framework and is in need for rectification.

Towing contracts for towing services within inland waters must be concluded in written or other means. The law provides for other following methods: the exchange of letters, telephones, faxes, the list is not final (article 53(2) of IWTC).

Rights and obligations of the parties to the towing contract

The main rights and obligations of the parties to the towing contract in the Republic of Lithuania are derived from the concept of the aforementioned contract and do not differ from the obligations

of the towing contracts concluded in other states. One party – the operator of the tugboat – undertakes the obligation to tow another vessel or a floating object for remuneration, meanwhile the other party – the operator of the vessel to be towed or other object – undertakes the obligation to pay for the towing services and the right to demand that the aforementioned towing services shall be provided in a timely and proper manner.

In addition to basic obligations requiring for the provision and remuneration of the rendered towing services, article 44(2) of LMS stipulates that each party to a towing contract must properly prepare the tugboat, vessel to be towed or other object for towing in advance. It should be noted that the operator of a tugboat shall not be held liable for the defects of the vessel to be towed occurring during towing procedures provided that they are able to prove that such defects could not have been noticed (invisible defects) prior to the conclusion of the towing contract.

IWTC specifically provides for an additional obligation towards the operator of non-self-propelled vessels requiring the aforementioned operator to properly prepare and present the tugboats at the intended place and time specified within the towing contract (article 54 of IWTC). The present code stipulates for the counter-obligation of a tugboat operator for the acceptance of a non-self-propelled vessel for towing. During the acceptance of non-self-propelled vessels for towing, the master of the tugboat shall be obliged to check whether the technical condition of the non-self-propelled vessels are in accordance with the requirements and to determine whether the non-self-propelled vessels are suitable for towing, as well as draw up a report on the acceptance of the non-self-propelled vessel for towing (article 55 of IWTC).

On the contrary to the provisions of LMS, IWTC regulates that the crew of a vessel to be towed shall be subordinate to the master of the tugboat and shall strictly follow all of their instructions, except for cases where otherwise shall be agreed upon within the

towing contract. LMS does not provide for analogous provision; however, a systematic interpretation of the content of article 45(2) of LMS allows for the conclusion to be made that 2 models of crew subordination are possible during sea towing: a) when the crew of the vessel to be towed reports to the master of the tugboat and b) when the crew of the tugboat reports to the master of the vessel to be towed. On the other hand, the IWTC allows for the possibility for the parties to the towing contract to agree on the provision that the master of the vessel to be towed will be directly responsible for the towing operations.

Liability of the parties and towing duration

Unfortunately, neither the LMS nor the IWTC provide for provisions for the determination of the towing duration or regulate thereof. Having regards to the above, provided that a dispute between the parties to the towing contract would arise, the courts shall be obliged to apply the general provisions of civil law for the determination of the duration of the towing operations. It is quite obvious that a factual situation is unlikely to arise where a contract for an indefinite period shall be possible (article 6.199 of the CC). A time-limit is a period of time determined and fixed by a calendar date or by the termination of a period expressed in years, months, weeks, days or hours (article 1.117(1) of CC). or a time-limit may also be defined by indicating an event that must inevitably occur (article 1.117(2) of CC). We believe that the towing relations in the Republic of Lithuania allow for the possibility of the following two scenarios: Firstly, the towing services shall be provided over a period of time, e.g., the tugboat operator shall provide towing services within a port or other maritime area under the request within a specified time; secondly, the tugboat operator undertakes to tow another object (vessel) from the origin point A to destination point B within the time limit stipulated within the towing contract which – in some cases – may also be defined as ‘at a later date’.

There are no peculiarities of civil liability in towing relations within the Republic of Lithuania. It may also be constituted that a general rule shall apply under towing relations: **in the event of damages caused to vessels involved within the towing operations, the responsibility of the operator of the vessel whose master commanded the towing shall be liable for the aforementioned damages.** For example, if the towing operations are managed under the command of the master of the vessel to be towed, the operator of the aforementioned vessel shall also be liable for the damages caused to the tugboat (article 45 of LMS). It should also be noted that claims arising from towing contracts at sea shall be subject to a limitation period of 1 year (item 2 of article 75(6) of LMS).

On case law arising from towing relations in the Republic of Lithuania

The independence of the Republic of Lithuania was restored on the 11th of March, 1990; therefore, – having regards to objective reasons – there is a lack in case law regarding the legal towing relations. As a general rule, in the event of a dispute arising between the undertakings where the element for the provision of towing services exists, the dispute shall not be held as a dispute for towing services. For example, in the event of a breakdown of the engine of the vessel on the high seas, legal disputes arising in the aforementioned situation shall not be explained in regards to provisions of towing services but in regards to provisions for the technical condition and quality of the engine repairs.

In the present instance, a Court ruling no. 2A-1219-125 of the Klaipeda Regional Court adopted on the 30th of December, 2010 should be noted. The Court examined a case under an appeal. During the examination of the aforementioned case, the Applicant applied to the Court requesting the Court to order the Defendant to pay an outstanding debt amounting to LT 2 695. 35 and annual interest of 5%, counted from the date of the commencement of the proceedings until

the full enforcement of the ruling and the costs of the proceedings. The Applicant noted that on 23.01.2009, the Director-General of K, UAB requested to for towing services of the vessel ‘Š’ operated by the K, UAB from the quay no. 121 towards the quay no. 80 within the Klaipeda State Sea Port and to tow the aforementioned vessel back to the initial quay following the completion of bunkering procedures. A cost of LT 600 including VAT charges has been agreed for each working hour of the tugboat ‘Marsas’. The Applicant also stated that the towing services had been rendered in full and in proper manner; however, the Defendant refused to settle for the provided services.

On 19.04.2010, Klaipeda City District Court in the case No. 2A-1219-125/2010 – acting as a Court of First Instance – upheld the claim in part. In regard to the evidence presented forth within the case, the Court ruled that the Applicant and Defendant entered into a verbal agreement regarding the towing services for the vessel ‘Š’ and in regard to the contents of the concluded contract, ruled that the parties to the contract entered into a contract having the characteristics of a service contract. During the examination of the case, the Court found that the towing services had been rendered in full and in proper manner; however, the dispute had arisen due to failure to settle for the rendered services. Having assessed the arguments and explanations of the parties presented within the case, as well as written evidence, the Court found that the Applicant failed to prove that the parties to the towing contract had agreed on a LT 600 including VAT charge per working hours and upheld the claim in part. Klaipeda Regional Court – acting as a Court of Appeal – had stated within their ruling of 30 December 2010 that a binding legal relationship for provision of services between the parties had been formed (article 6.716 of CC). The contract for provision of services is a contract by which one party to the contract (the provider of services) undertakes to provide to the other party to the contract (the client) by commission of the latter certain services of a non-material nature (intellectual) or other types which are not

related to the creation of a material object (to perform certain actions or pursue certain activities), and the client undertakes to pay for the services provided. With regard to the above, the parties agree that the Applicant rendered services in full and in proper manner; however, the dispute had arisen regarding the price for the services provided. Article 6.720 of CC provides for the provision that the price for services shall be stipulated and agreed upon by parties. The Court had examined and found that the typical pricing for the services provided by the applicant at the time was approx. LT 1200 per working hour, and that the Defendant denied the existence of the towing; therefore, it is quite likely that the parties to the towing contract may have agreed upon a price of LT 600 per hour, as well as increased the requested amount from the Defendant.

Another Ruling of the Klaipeda Regional Court – acting as the Court of Appeals – regarding the provision of the towing services had been adopted on 12.10.2021 as a ruling in civil case no. 2A-1230-622/2012. The applicant brought forth a claim towards the Court requesting the aforementioned Court to order the Defendant to pay a debt of LT 7924. 74 and fine of LT 523. 05, procedural interest and costs incurred. The Court noted that at 02:00 AM on 02.06.2011 the Shift supervisor of the Applicant received a request/order by phone from the Defendant for emergency towing services for the fishing vessel operated by the Defendant due to breakdown of the vessel engine. The vessel of 22 meters in length had started drifting towards shallow waters. From 03:50 to 07:40 AM on 02.06.2011 the tugboat and the onboard crew performed towing procedures. Having found the drifting vessel at the port access, the tugboat attached the aforementioned vessel to the tugboat and safely towed the vessel towards the quay no. 122. The nature of the rendered services: emergency towing of vessel (4 nautical miles from the coast) to the quay. The Applicant issued a VAT invoice for the rendered services. The rendered services had been priced under the standard rates per working hours adding a 50 percent (including VAT charges)

additional cost for rendering of services at night. However, the Defendant failed to settle the issued invoice. The Court of the First Instance upheld the claim in part. The appeal of the defendant was also dismissed. The Courts failed to support the defendant on the grounds that the additional cost for rendering of towing services at night had been agreed upon.

Conclusions

The towage services can be performed either under a towage contract or as salvage services. The importance to distinguish ordinary towage from salvage action lays mostly in the payment, since as a rule ordinary towage is less risky and accordingly less expensive. A salvage is performed under dangerous circumstances such as sudden violence of wind or waves or other accidents. However, in some cases a towage contract can be transferred into a salvage agreement. For example, if the tug rescues the tow from some unforeseen and extraordinary peril, the tug shall be additionally remunerated under conditions of a salvage.

The technologies in towage services influence legal nature of a towage contract in various common law and continental law countries differently. To illustrate, the tow can be manned or unmanned that leads to different legal outcomes in different countries.

In common law countries regardless of whether the tow is manned or unmanned, the towage regulations are regulated under contract for services. The Court in UK, USA and Canada have rejected strict liability of a tug because the towage contract is not deemed to be a contract of bailment. As a result, the tow must prove that the tug breached obligations of good care and skill while performing towage. The burden of proof lays with the tow. However, in common law the owners of cargo are not bound by any contract of towage made by the owner of the tow on which the cargo is laden. Accordingly, the owners of the tow do not have authority to bind the cargo carried or the owners of such cargo by any such contract of towage.

In contrast to common law countries, Germany has taken a different approach and based on the circumstances whether the tow was manned or was unmanned (e.g. a dumb barge) the towage contract can be recognized either as a contract for services or a contract of carriage. If the tug was only delivering services by pulling or pushing the vessel (e.g. in harbour maneuvers by docking) the contract is to be qualified as a contract for services under German law and in case of an accident and damages to the tow, the tow must prove that it was fault of the tug. However, if the contract of towage is to be qualified as a contract of carriage, the tug must prove that the tow was damaged because of *force majeure* or on circumstances which did not depend on him. The qualification of a contract as a contract of carriage would also have other impacts of right and duties of the parties, such as liability limitation.

In addition, in Germany the contract of towage is not qualified as a separate type of contract but can be recognized either as a contract to produce a work '*Werkvertrag*', a contract for services '*Dienstvertrag*' or a contract of carriage '*Frachtvertrag*', in other continental law countries – Lithuania and Poland – a towage contract is codified as a separate type of a contract with specific regulation. The incorporation of legal norms, that regulate a towage contract, into one single act should be seen as positive because it allows the contracting parties to define their rights and obligations more clearly, especially when there are not so many national case laws.

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Дробітько О., Дробітько Н. Правове регулювання договорів морського буксирування у країнах ЄС. – Стаття.

У цій статті автори намагаються розглянути та проаналізувати основні особливості правового регулювання договору морського буксирування в таких країнах загального права, як Великобританія, США та Канада та деяких країнах Євросоюзу (Німеччина, Литва, Польща). Перша частина дослідження присвячена аналізу впливу технології буксирування на її правове регулювання. Автори розглядають різні варіанти буксирування, основне розмежування між якими полягає у керівництві останнім. У статті аналізується, яким чином технологічні аспекти буксирування вплинули на розвиток різних стандартних форм договору морського буксирування,

прийнятих у міжнародному морському секторі. У другій частині дослідження аналізується зв'язок, подібності та відмінності буксирування та порятунку на морі. Рятувальні послуги надаються, коли судно перебуває у такій небезпечній ситуації, що капітан не має реального вибору, крім необхідності прийняти рятувальні послуги, з метою щоб судно або вантаж не були втрачені. Послуги буксирування виконуються коли судно перебуває у безпеці, тому судовласник може відмовитися від буксирування та у разі несправності провести ремонт на місці або укласти договір на буксирування, щоб доставити морське судно до зручного порту. Характер послуг буксирування та порятунку на морі визначає і різницю в оплаті буксирування та порятунку на морі. Оплата послуг буксирування здійснюється на підставі та за умовами договору буксирування. У той же час, з огляду на призовий характер порятунку на морі, неможливо заздалегідь передбачити розмір винагороди за операції з порятунку на морі, тому розмір винагороди, як правило, залежить від вартості врятованого майна. У третій частині аналізуються договори буксирування, права та обов'язки сторін, особливості правового регулювання відносин перевезення, деякі судові рішення країн загального права та деяких країн Європейського Союзу, таких як Німеччина, Литва, Польща. У Литві та Польщі договір морського буксирування можна кваліфікувати як консенсуальний, оплатний та двосторонній. У деяких випадках договір морського буксирування може бути багатостороннім. Коротко порівнюючи литовське та польське правове регулювання відносин морського буксирування, можна зробити висновок, що особливих відмінностей між ними немає. У той же час, німецьке законодавство встановлює, що договір буксирування (нім. Schlepptvertrag або Remorkvertrag) може бути визнаний або договором на виконання робіт (нім. Werkvertrag), або договором надання послуг (нім. Dienstvertrag), або договором перевезення (нім. Frachtvertrag). У країнах загального права договір буксирування кваліфікується як договір надання послуг. Відповідно до договору буксирування власники буксира зобов'язуються надати послуги з буксирування, в яких вони самі є виконавцем, командою та постачальником послуги, для 1) погодженої або певної послуги, або 2) для досягнення узгодженого певного результату, або 3) на погоджений або визначений період часу в обмін на періодичні чи одноразові виплати.

Ключові слова: договір морського буксирування, види буксирування, договір буксирування як договір надання послуги, відповідальність власника буксира, відповідальність власника судна, що буксирується, буксирування та порятунок на морі.

Дробитько О., Дробитько Н. Правовое регулирование договоров морской буксировки в странах ЕС. – Статья.

В данной статье авторы предпринимают попытку рассмотреть и проанализировать основные особенности правового регулирования договора морской буксировки в таких странах общего права, как Великобритания, США и Канада, и некоторых странах Евросоюза (Германия, Литва, Польша). Первая часть исследования посвящена анализу влияния технологии буксировки на её правовое регулирование. Авторы рассматривают различные варианты буксировки, основное различие между которыми заключается в руководстве буксировкой. В статье анализируется, каким образом технологические аспекты буксировки повлияли на развитие различных стандартных форм договора морской буксировки, принятых в международном морском секторе. Во второй части исследования анализируется связь, сходства и различия буксировки и спасания на море. Спасательные услуги предоставляются когда судно находится в такой опасной ситуации, что у капитана нет реального выбора, кроме необходимости принять спасательные услуги, чтобы судно или груз не были утрачены. Услуги буксировки выполняются когда судно находится в безопасности, поэтому судовладелец может отказаться от буксировки и в случае неисправности провести ремонт на месте, либо заключить договор на буксировку, чтобы доставить морское судно в удобный порт. Характер услуг буксировки и спасания на море определяет и разницу в оплате буксировки и спасания на море. Оплата услуг буксировки проводится на основании и по условиям договора буксировки. В то же время, беря во внимание призовой характер спасания на море, невозможно заранее предусмотреть размер вознаграждения за операции по спасанию на море, поэтому размер вознаграждения, как правило зависит от стоимости спасенного имущества. В третьей части анализируются договор буксировки, права и обязанности сторон, особенности правового регулирования отношений перевозки, некоторые судебные решения стран общего права и некоторых стран Европейского Союза, таких как Германия, Литва, Польша. В Литве и Польше договор морской буксировки можно квалифицировать как консенсуальный, возмездный и двусторонний. В некоторых случаях договор морской буксировки может быть многосторонним. Коротко сравнивая литовское и польское правовое регулирование отношений морской буксировки, можно прийти к выводу, что особых различий между ними нет. В то же время, немецкое законодательство устанавливает, что договор буксировки (нем. Schleppvertrag или Remorkvertrag) может быть признан либо договором на производство работ (нем. Werkvertrag), либо договором оказания услуг

(нем. Dienstvertrag), либо договором перевозки (нем. Frachtvertrag). В странах общего права договор буксировки квалифицируется как договор на оказание услуг. В соответствии с договором буксировки владельцы буксира обязуются предоставить услуги по буксировке, в которых они сами являются исполнителем, командой и поставщиком услуги, для 1) согласованной или определенной услуги, или 2) для достижения согласованного определенного результата, или 3) на согласованный или определенный период времени в обмен на периодические или единовременные выплаты.

Ключевые слова: договор морской буксировки, виды буксировки, договор буксировки как договор оказания услуги, ответственность владельца буксира, ответственность владельца буксируемого судна, буксировка и спасание на море.

