Karol Lange
student V roku Prawa na Wydziale Prawa i Administracji Uniwersytetu Gdańskiego
PKP Szybka Kolej Miejska w Trójmieście Sp. z o.o.

DOI: 10.35117/A_ENG_20_12_03

Determining the moment and form of concluding a passenger transport contract based on the judgment of the Court of Justice of the European Union in joined cases C-349/18 to C-351/18

Abstract: The article focuses on discussing the norms of Polish transport law and European Union regulations on the correctly defined of the moment and form of concluding a contract of passengers transport in railway systems. The article also describes the problem of discourse between the content of these legal norms and the jurisprudence practice and doctrine opinion. Moreover, was performed to present a comparative analysis of the relation of the Court of justice of the European Union judgment to the norms of Polish and European law and the case law. Commented on the practices of carriers in regulating the said matter. Internal law acts applicable to the means of transport of Polish railway companies were also analyzed.

Keywords: Transport law; Contract of passenger transport; European Union law; Railway transport

The issuing of the judgment by the Court of Justice of the European Union in joined cases from C-349/18 to C-351/18 [5] contributed to a deeper analysis of the problem of legal regulation of the contract of carriage both in Polish law and in European Union regulations. In this study, first of all, the national legal standards regulating the forms of concluding a contract for the carriage of passengers in rail transport and the problems with their application will be discussed. An attempt will also be made to perform a comparative analysis of the relation of the CJEU judgment to the norms of Polish and European law and the jurisprudence in this respect.

The ruling of the CJEU in joined cases C-349/18 to C-351/18 was issued in response to a question referred by the Justice of the Peace in Antwerp (Vredegerecht te Antwerpen) to the Court of Justice of the European Union (CJEU), interpretation of the provisions of Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations.

The presented facts indicate that the party to the dispute made multiple journeys without a valid ticket on board trains operated by the state-owned company of the Belgian railways (NMBS - *Dutch Nationale Maatschappij der Belgische Spoorwegen - National Society of Belgian Railways*). After the Carrier disclosed the fact that he did not have a ticket, the conductor offered the possibility of paying a fare during the inspection, increased by the fee for purchasing a ticket on the train or within 14 days, a higher, lump-sum amount for traveling without paying for its performance. Due to the failure by the defendants to perform any of the above-mentioned payment methods, the NMBS entity filed a lawsuit with the court for an appropriate amount for failure to pay the toll, increased by appropriate additional fees.
The court asked the CJEU about the nature of the legal relationship between NMBS and the defendants, which is directly related to establishing the fact of concluding the contract of carriage. The CJEU, adjudicating in the case, took the position that despite not purchasing a ticket, a contract of carriage is concluded between the passenger and the carrier.

First of all, the national legal standards should be analyzed, due to the more extensive catalog of regulations governing the matter of concluding the contract of carriage. The basic source of law, although poorly regulating the discussed scope, is the Act of 23 April 1964 -

Civil Code, which defines in art. 774 a contract of carriage as a contract under which the carrier undertakes to carry persons or goods for remuneration. In section II, which regulates the transport of passengers, there are only general provisions concerning, inter alia, provide travelers with appropriate safety and transport conditions as well as liability for luggage. The legislator did not reserve the form of the contract of carriage in Title XXV of the Civil Code, therefore, since the provisions of this title constitute lex specialis standards concerning the general part of the Civil Code, it becomes necessary to apply the norm contained in art. 60 of the Civil Code, according to which a contract is concluded through any behavior of a party that sufficiently discloses its will [2]. This matter is dealt with in more detail in the Act of November 15, 1984 - Transport Law, whose Art. 16 reads as follows: *The contract of carriage is concluded by purchasing a ticket for the journey before the travel or fulfillment of other conditions for access to the means of transport specified by the carrier or organizer of public transport, and in the event of failure to determine them - by just taking a seat in the means of transport*. When analyzing the provision, it should be noted that the legislator established the purchase of a ticket for the journey before the commencement of the journey as the basic form of concluding the contract of carriage. As an expression of the freedom to shape the content of the legal relationship between the parties, it was also allowed to establish other methods of concluding a contract. The legislator also provided for the possibility of concluding a contract of carriage by simply taking a place in the means of transport, which is the closest to the content of the ruling of the CJEU judgment under discussion. However, the construction of the above-mentioned any provision to claim that the last of the above-mentioned forms, i.e. taking a seat in a vehicle, may only be used if the carrier or organizer of public transport did not use the right to shape the content of the contract of carriage in terms of the form of its conclusion and did not regulate the above in on your own. When querying the acts issued by the largest railway carriers in Poland, it should be noted that, first of all, it is common practice to include in internal files a catalog of activities that determine the conclusion of a contractual relationship. Secondly, none of them regulates the conclusion of the contract of carriage other than by purchasing a ticket for a journey, its legalization, or issuing a request for payment [7], which, when interpreting a literal legal norm from Art. 16 sec. 1 of the Transport Law, excludes taking a seat in the means of transport as a condition for concluding a contract of carriage. This is a paradoxical situation because the carriers and organizers of collective transport de facto narrow down the catalog of activities that determine the enforcement of a journey made without paying a fee for the transport service.

The national judicature adopted a much more pragmatic position, creating a rational line of jurisprudence, corresponding to the real needs of the parties to the concluded transport contracts. The jurisprudence of the courts contributed to the grounding of the thesis that even in the absence of the passenger's intention to purchase a ticket, the contract is concluded implicitly per facta concludentia, through the traveler's behavior, i.e. taking a seat in the vehicle and commencing the carriage by the carrier. [6]

The position of the doctrine is consistent with the concept presented in the jurisprudence of courts, thus confirming that the act of purchasing a ticket is the moment of concluding a contract of carriage only in specific circumstances, including in the case when it was acquired before the journey commences and at the same time contains all the data allowing the essentialia negotii of the contract of carriage to be determined, such as the duration of the itinerary [1]. The purchase of a ticket is considered the beginning of the contractual relationship, among in cases of strict control of boarding the means of transport, when only its possession entitles you to enter the ticket zone. Examples of the application of this mechanism are undoubtedly air and sea transport, where the meticulously carried out check-in process does not allow for uncontrolled entry into the means of transport without presenting the appropriate ticket or boarding pass. An indirect form of control is the use of

gates, installed in the station building or on platforms, which allow you to enter them only with a valid ticket. However, the functioning of the ticket gate system is characterized by a certain disadvantage in terms of settling the moment of concluding the contract, because, first of all, they do not ensure full control of the flow of passengers; secondly, the verification of the validity of the ticket long before using the journey, when entering the platform, does not guarantee the use of the connection, described on the form, which destroys the qualification of the purchase of the ticket as the conclusion of the contract, because the subject of the transport contract is different from that constituting essentialia negotii , an entry on your ticket.

The subject of the discussion is also the editing of art. 16 sec. 1. The defectiveness of the provision is manifested, inter alia, by a wide and inconsistent catalog of legal events resulting in the conclusion of a contract, which in fact is no longer used literally, but only based on the jurisprudence rationalizing its content. Moreover, the very legitimacy of the said provision is questioned, because the legal norms in the Civil Code sufficiently regulate the manner of concluding a consensual agreement, in every legally prescribed manner [1].

Attention should also be paid to doctrinal discrepancies in the assessment of the adequacy of expressing the will of the parties to conclude a contract in the light of the provisions of the Civil Code and the Transport Law. In line with the already quoted Art. 60 of the Civil Code, one of the elements conditioning the validity of submitting a declaration of will is its expression through each behavior that reveals its content. According to part of the doctrine, evasion of the toll payment, even after taking a seat in the vehicle, proves that the passenger does not intend to conclude such a contract [3] and cannot be proof of concluding a contract of carriage, since the traveler does not make a declaration of will to travel and thus does not declare a willingness to conclude a contract of carriage. Such a view has far-reaching consequences, for example in terms of the basis for imposing additional fees for travel without paying for its implementation. It cannot be said that its enforcement is a contractual penalty, because, due to the failure to conclude a contract, this sanction has no legal basis. Over the years, mechanisms have been developed to sue for the effective enforcement of additional charges, by qualifying them as a measure essentially similar to liability for an offense [3], however, taking into account the nature of the legal relationship, the enforcement of complaints about failure to comply with the obligations of the parties to the contract of carriage should remain within the sphere of civil law institutions.

A similar dilemma of an interpretative nature arose based on the analysis of Belgian national law norms, which was the determinant of referring a question to the CJEU for a preliminary ruling. According to the view of the Commission, both the national norms of generally applicable law and the NMBS regulations concerning the general conditions of carriage, which define the rights and obligations of the parties, are ambiguous, because, on the one hand, they classify the legal relationship between the carrier and the passenger as purely contractual, thus conditioning the conclusion of the contract by staying in a place where it is necessary to have a valid ticket for the journey, as a sufficient expression of the traveler's will to conclude a contract of carriage, which otherwise coincides with the above-discussed jurisprudence of the Polish judicature. According to the second thesis, however, to conclude a contract, it is necessary to purchase a ticket, because it is presumed that the lack of will to pay the transportable means the carrier's lack of will to conclude a contract of carriage without remuneration.

The provisions of Regulation (EC) No 1371/2007 should be cited here, which define a transport contract as a contract of carriage, for a fee or free, between a railway undertaking or ticket vendor and a passenger for the performance of one or more transport services. This definition, apart from extending the website directory to ticket vendors, is similar to national regulations. More important, taking into account the content of the CJEU judgment under discussion, is the annex to the regulation constituting an Extract from the contract for

international passenger transport by rail (CIV), which in Art. 6 sec. 2 indicates that the contract is confirmed by one or more tickets for carriage issued to the traveler. In the second sentence, however, clarifies: the lack of a ticket, incorrectness, or loss of the ticket do not invalidate the contract of carriage, which is subject to the provisions of the unified regulations. Bearing in mind the above provision and the context of the presented facts, the CJEU confirmed that the ticket is only an instrument constituting a material expression of the existence of a contract of carriage and, as a rule, does not constitute a material expression of the conclusion of a contract of carriage.

The ruling of the Court of Justice of the European Union contributed to the analysis of the national regulations of the Member States and confronting them with the Community legislation. In the Polish example, many inaccuracies are resulting from the lack of cyclical revisions of the Transport Law and accompanying acts, adjusting its content to changes due to technological progress and the change like relations, which have changed dramatically since the adoption of the act. On the other hand, it is comforting that, despite the imperfections on the legislative side, both the voice of the judicature and the doctrine have allowed for the application of the provisions following their socio-economic purpose over the years. The ruling of the CJEU proves that the problems described above are not only the domain of the Polish legal system because the equally complex state of Belgian legislation in this respect was a stimulus for the CJEU to speak.

Source materials

[1] Ambroziuk D., Dąbrowski D., Garnowski K., Wesołowski K: Umowa przewozu osób i rzeczy w prawie polskim, Warszawa 2020.
[2] Habas M., Fras M. (red.): Kodeks cywilny. Komentarz, Warszawa 2019.
[3] Jaworski A.: Prawo przewozowe. Komentarz, Warszawa 2012.
[4] Radwański Z., Olejniczak A.: Prawo cywilne – część ogólna, Warszawa 2013.
[5] Wyrok TSUE z dnia 7 listopada 2019 r. w sprawach połączonych od C-349/18 do C-351/18 Nationale Maatschappij der Belgische Spoorwegen przeciwko Mbutuku Kayeba, Larissa Nijs, Jean-Louis Anita Dedroog (Dz.Urz. UE 2020 C 10/12 z 13 stycznia 2020 r.)
[6] Por. Wyrok z dnia 29 sierpnia 2018 r., I C 557/18; Wyrok z dnia 4 stycznia 2016 r., I C 795/15; Wyrok z dnia 25 sierpnia 2016 r., I C 194/16.
[7] Por. § 6 Regulaminu przewozu (RPR) Polregio sp. z o.o. [dostęp: 25.10.2020 r.], § 6 Regulaminu przewozu osób, zwierząt i rzeczy przez Koleje Śląskie (RPO-KŚ) [dostęp: 26.10.2020 r.], § 5 Regulamin odprawy oraz przewozu osób i zwierząt przez „Koleje Mazowieckie – KM" (RP-KM) [dostęp: 26.10.2020 r.]. Analiza swoim zakresem nie obejmowała przejazdów okazjonalnych i zamkniętych.