CIVIL LAW MODELS AND ANALOOGIES IN THE LEGAL DEFINITION OF THE RIDESHARING AGREEMENTS
DOI: https://doi.org/10.24115/S2446-6220202171862p.602-608

Viktor A. Mikryukov

ABSTRACT
The purpose of the work is to identify and use an analogy to elaborate permissible variants of the legal qualification of the ridesharing relationships in the civil law structures. The peculiarity of this work was that the methods of analogy and legal modeling acted simultaneously as both methods and objects of study. The result is that there is a gap in the civil law identification of ridesharing agreements, and analogic uses of existing civil law material are proposed to overcome it. The significance of the work is manifested in its ability to help ensure greater contractual freedom and variability of economic activity, accelerate the integration of ridesharing into the Russian legal framework and improve the efficiency of the civil circulation. At the same time, the study highlights the potential of methods of analogy and legal modeling in the adequate legal regulation of changing ways of providing and consuming transportation services in the digitalization of economic processes.

Keywords: Gaps in the law. Analogy. Ridesharing agreement. Joint activities. Charter agreement.

MODELOS E ANALOOGIAS DO DIREITO CIVIL NA DEFINIÇÃO LEGAL DOS ACORDOS SOBRE CARONA COMPARTILHADA

MODELOS Y ANALOGÍAS DE DERECHO CIVIL EN LA DEFINICIÓN LEGAL DE LOS ACUERDOS DE VIAJE COMPARTIDO

RESUMO
O objetivo do trabalho é identificar e utilizar uma analogia para elaborar variantes admisíveis da qualificação jurídica das relações de ridesharing nas estruturas do direito civil. A peculiaridade deste trabalho foi que os métodos de analogia e modelagem jurídica atuavam simultaneamente como métodos e objetos de estudo. O resultado é que há uma lacuna na identificação do direito civil de acordos de compartilhamento de carona, e os usos analógicos do material do direito civil existentes são propostos para superá-lo. A importância do trabalho se manifesta em sua capacidade de ajudar a garantir maior liberdade contratual e variabilidade de atividade econômica, acelerar a integração do ridesharing no marco legal russo e melhorar a eficiência da circulação civil. Ao mesmo tempo, o estudo destaca o potencial de métodos de analogia e modelagem jurídica na adequada regulação jurídica de mudanças de formas de prestação e consumo de serviços de transporte na digitalização dos processos econômicos.


RESUMEN
El propósito de la obra es identificar y utilizar una analogía para elaborar variantes permisibles de la calificación legal de las relaciones de ridesharing en las estructuras de derecho civil. La peculiaridad de este trabajo era que los métodos de analogía y modelado legal actuaban simultáneamente como métodos y objetos de estudio. El resultado es que existe una brecha en la identificación del derecho civil de los acuerdos de ridesharing, y se proponen usos analógicos del material de derecho civil existente para superarlo. La importancia de la obra se manifiesta en su capacidad para ayudar a garantizar una mayor libertad contractual y variabilidad de la actividad económica, acelerar la integración del ridesharing en el marco jurídico ruso y mejorar la eficiencia de la circulación civil. Al mismo tiempo, el estudio destaca el potencial de los métodos de analogía y modelización jurídica en la regulación legal adecuada de las formas cambiantes de proporcionar y consumir servicios de transporte en la digitalización de los procesos económicos.

INTRODUCTION

Against the background of the trend to recognize the advantages of the sharing economy concept, in which the sharing of goods and services maximizes economic efficiency while reducing overall costs (BOTSMAAN and ROGERS, 2010), and in light of the widespread digitalization of all kinds of economic processes (AFONASOVA, PANFILOVA, GALICHKINA, SUSARZYCZ, 2019), in Russia, as well as in many other countries around the world, there is an active development of ridesharing—relationships to organize ridesharing using information platforms of hitchhiker search service operators, such as BlaBlaCar, Liftshare, BeepCar, GoTogether, Едем, Poputli.com. Millions of people (drivers, passengers [hitchhikers]) and dozens of owners of ridesharing aggregator sites (BUBNOVSKAYA, 2017) are already involved in ridesharing services. Improvements in information technology are further contributing to the growth of shared consumption of goods and services (HAMARI, SJÖKLINT, and UKKÖNEN, 2015). Indeed, the use of ridesharing allows for the automatic digital redistribution of unused or underutilized resources of individuals to other citizens in need who are ready to share the costs of consuming those resources.

In this case, the Government of the Russian Federation predicts the further development in Russia of car-sharing services that meet the needs of users to carry out transportation without personal ownership of the car and help to avoid the costs of vehicle ownership (payment of transport tax, maintenance costs, repairs, and others), including ridesharing (DECREES OF THE GOVERNMENT OF THE RUSSIAN FEDERATION No. 831-r of April 28, 2018). “On approval of the Development Strategy of the Automotive Industry of the Russian Federation for the period until 2025.” Intensification of ridesharing as a new phenomenon for economic and legal reality causes the need to develop new adequate approaches to the civil legal qualification of arising relations, taking into account their legal specificity and peculiarities of the transportation process.

LITERATURE REVIEW

Revealed in scientific research, the ability of ridesharing to significantly reduce congestion, their costs, and excessive fuel consumption (LI, HONG, AND ZHANG, 2016), as well as its overall ability to provide significant social and environmental benefits by reducing the number of cars used for personal travels (AGATZ, ERERA, SAVELSERG, and WANG, 2010), explain the growing popularity of this phenomenon. Turning on an Internet app, searching for a nearby driver using a GPS signal, and quick carpool to the desired destination is now a daily practice for many people around the world (STEMLER, EVANS, AND HIMEBAUGH, 2019). Current online ridesharing platforms allow drivers and hitchhikers to manage rides in real time, securing reservations for available vehicle seats, picking up and delivering passengers all along their route, not just at common departure points like hitchhiking benches or carpool pick-up locations. Given that a very large number of below-average income users can particularly benefit from engaging in the sharing economy (FRAIBERGER and SUNDARARA, 2017), ridesharing is expected to become even more widespread. Ridesharing can also be positively perceived from the public side as a phenomenon that can combat the lack of transport infrastructure and transport strikes (YEUNG, ZHU, 2021).

The above indicates that ridesharing has every chance to enter the economy extensively, firmly, and for a long time, which requires adequate legal qualification and proper regulation. Indeed, when market conditions change dramatically, or when new technologies affect the need for regulation, including from a consumer protection perspective, then public policy must evolve and adapt to these realities (KOOPMAN, MITCHELL, AND THIERER, 2015). However, in fact, from a legal point of view, ridesharing falls into a “legal gray area” (CRESPO, 2016). Issues of ridesharing efficiency are linked to a set of issues about service levels, control over pricing, and different approaches to setting, maintaining, and enforcing standards (WITT, SUZOR, and WIKSTROM, 2015). Regulators in many countries stand at a crossroads realizing, on the one hand, that innovation in the sharing economy should not be suppressed by excessive and (all the more) outdated regulation but, on the other hand, realizing that there is a real need to protect users of new services from fraud, liability and unqualified performers (RANCHORDAS, 2014).

It has become inevitable to compare the legal regime of ridesharing and taxis (FARREN, KOOPMAN, and MITCHELL, 2016). Thus, some legislators and regulators, in an attempt to adapt to the growth of ridesharing, have made clumsy attempts to fit it into the existing regulatory framework governing taxis (FEENEY, 2015). Concerning the Russian legal realities, it is also necessary to agree with the statement that ridesharing remains not regulated by special norms of law (MAKHIBORDA, 2020). The mere mention of ridesharing by the Government of the Russian Federation as “the sharing of a private vehicle with the help of online hitchhiking services” (DECREES OF THE GOVERNMENT OF THE RUSSIAN FEDERATION No. 724-r of March 25, 2020) “On Approval of the Concept of Road Safety with the Participation of Unmanned Vehicles on Public Roads” is not enough. The starting point in
determining a comprehensive and consistent approach to the regulation of ridesharing should be a civil law modeling of the relationship of drivers and hitchhikers. However, to qualify the manifestations of digitalization processes in modern social relations, researchers most often use the tools of economic analysis of law and deviate from the classical foundations (matrix) of civil law (Vasilevskaya, 2020). As a result, no efforts are made to fit the new into time-tested civil legal forms and structures, and the wealth of available civil tools is underestimated.

MATERIALS AND METHODS
The worldwide development of digital technology and the widespread dissemination of ridesharing required the implementation of the method of comparative law and the study of the works of Western colleagues. A peculiarity of the methodological basis of the work was an attempt to move away from the method of economic analysis of law, actively used in foreign studies, and to a greater extent to focus on the methods of analysis and synthesis, induction and deduction, comparison and generalization, analogy and legal modeling, typical of civil doctrinal studies. The legal framework of the study consisted of the provisions of the Civil Code of the Russian Federation on the simple partnership agreements (on joint operations), on transport contracts, and the liability of owners of sources of increased danger. Analysis of ridesharing relationships using the charter agreement model required reference to the Federal Law of November 08, 2007, No. 259-FZ “The Charter of Road Transport and Urban Land Electric Transport.” For practical confirmation of the theoretical provisions of the work, case materials of the Russian courts of specific disputes related to the legal qualification of ridesharing agreements were used.

RESULTS
The permissible existence of three basic models of civil law qualification of relations between owners of private vehicles (drivers) and hitchhikers in the framework of ridesharing has been established:

1. The driver-volunteer and passenger-hitchhiker agree on a gratuitous (friendly) domestic service, the provision of which is not in the sphere of civil-law regulations.

The most significant issues of liability in the case of harm to the person or damage to property of rideshare participants can be resolved using the norms of tort law.

2. Contractual relationship between the driver and the passenger, emerging in the ridesharing implementation, planned through the aggregator, represents the implementation of the joint operation agreement (simple partnership agreement).

This perception of ridesharing means a shift towards the contractual component of regulation and the need to apply norms of civil law on the simple partnership agreement in cases of dispute.

3. Ridesharing relationships are built on the model of a non-public charter agreement, similar to that implemented through the elements of the legal framework of passenger cab chartering.

Detection of the fact of the private driver engaging in the commercial transportation of hitchhikers involves the application (by the analogy of the law) of the rules on the passenger taxi chartering. State regulators should not try to fit ridesharing into any one of these structures. The choice of a particular legal model of the relationships in question must be made by the court (or other competent regulatory agency) in the event of a conflict, taking into account the establishment of the actual will of the parties and the circumstances of a particular case.

DISCUSSION
Regarding the owner of an aggregator, a well-established position is to qualify it as a mediator that provides an information service (DERYUGINA, 2018) and incur liability solely for providing proper information service to users about persons who offer goods or services for sharing. Subsidiary liability of the aggregator owner for the actions of users is not established (PODUZDOVA, 2021) unless the aggregator itself has chosen to be legally complicit in the formation and performance of the transportation service (for example, by providing processing, organizing transportation, or providing services related to transportation) or has not made its solely mediating role clear, and a good citizen-consumer may have formed the opinion that the transportation agreement is concluded directly with the aggregator, and the actual carrier (driver) is its employee or attracted person to transportation (in such cases, as stated in paragraph 18 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of June 26, 2018, No. 26 “On some issues of the legislation on the contract of carriage of goods,
passengers and baggage by road and on the forwarding contract, the aggregator is responsible to the passenger for the damage caused during transportation). Therefore, the civil task of primary importance is to determine the legal nature of the relationship between the driver (volunteer) and the passenger (hitchhiker) as subjects who come into contact with the information mediation of the aggregator.

First of all, it should be noted that the contractual relationships between the driver and the hitchhiker in the implementation of ridesharing do not involve the withdrawal of the vehicle from the economic possession of the owner, and therefore do not fall under civil law provisions on the vehicle rental agreement with a crew (time charters), since the latter involves a vehicle transfer to the lessee for possession and use (and the purpose of this transfer is of secondary importance), that is, the lessor does not retain the right to own the vehicle (Art. 632 of the Civil Code of the RF). For the same basic reason, it should be agreed that the rideshare agreement is fundamentally different in its civil law nature from the carsharing agreement as a short-term car rental contract, which is concluded based on per-minute billing (DERYUGINA, 2019). If to consider the increased use of digital platforms for ridesharing as a reflection of the trend toward a sharing economy that is not based purely on market relations, as the formation of a new culture that involves the efficient use of resources, natural exchange, and altruism (AYUSHEEVA, 2020), then the economic interaction between drivers and hitchhikers in itself is outside the zone of civil law regulation. By analogy with the way the law is indifferent to friendly household agreements such as "I'll get meat, you bring wood, we'll cook steak together and consume it together," the violation of which has only moral and ethical consequences, the model of "altruistic" ridesharing, as a kind of "digital hitchhiking" is quite acceptable.

How drivers describe their upcoming rides in search of a hitchhiker in advertisements on the websites of some ridesharing aggregators ("I go to Perm, no hurry, with stops" or "not a taxi, no answer to SMS," the purpose: I will bring, payment: can sponsor") indicates that "non-legal" free ridesharing does exist. Under this model, the obligation to "pick up" a hitchhiker and take him to a certain destination is not legal. This means that the driver is not responsible to the hitchhiker neither for the fact of the ride (for the delivery of the car to the agreed place and in time) nor for its successful completion. Judicial practice reflects the approach that ridesharing organized using (through the mediation) online services do not refer to the provision of transportation services, and the service user – the driver who offered the ride – is not a provider of transportation services. In this context, the driver's offer to share seats in his car posted through the aggregator is considered as a personal offer to make ridesharing on the driver's initiative and for personal purposes, which is not covered by consumer protection legislation (DECISION OF THE ALEISKY CITY COURT OF ALTAI TERRITORY of July 20, 2018, in the case No. 2-471/2018).

Of course, the law cannot be indifferent to the property consequences of damage caused by rideshare participants to the person or property of each other. Therefore, civil law, without interfering in the regulation of free relationships, can and should, through tort rules (including the rules on compensation for damage caused by a source of increased danger) solve the most sensitive issues related to the risks of the transportation process. It should be agreed that allowing tort law to establish decisions in such an innovative area as ridesharing can be key to preventing over-regulation while promoting social justice (MCPEAK, 2017). The desire of rideshare participants to save resources and improve the efficiency of private vehicle use without realizing commercial benefits may nevertheless well be accompanied by the intent to legally guarantee both the proper implementation of the transportation process and the distribution of the arising costs. When such legally binding agreements arise, civil law is required not only to provide for the consequences of probable torts but also to identify the contractual obligation.

Since the key characteristic of ridesharing is the coincidence of interests of the driver and hitchhiker in one direction movement (the driver does not just deliver the passenger to the destination but himself seeks to get to this point as the final or intermediate point of his ride), then, to the ridesharing agreement of the driver and hitchhiker, it is possible to try to apply the statutory contractual structure joint operations (simple partnership agreement as defined in Art. 1041 of the Civil Code of the RF). The idea of the possibility of applying the structure of a simple partnership agreement for the legal registration of all kinds of relations on sharing goods and services [not only ridesharing] is perceived positively in the doctrine, so it is proposed to consider the subsidiary application of rules on joint operation agreements when regulating sharing (PODUZOVA, 2019).

Indeed, as participants in joint operations, drivers and hitchhikers in ridesharing can commit combining their contributions, including money (to pay for fuel costs and travel on toll road sections), other property (vehicles), professional knowledge, skills, and abilities (driving skills), and act together without incorporation to achieve a purpose not prohibited by law (movement of participants in space to a common destination). Therefore, the legal
existence of ridesharing on the model of a simple partnership is not excluded. This model may be in demand for ridesharing agreements involving several drivers and hitchhikers simultaneously to organize ridesharing (for example, from the suburbs to the city to the workplace). It is noteworthy that in the case of qualification of ridesharing relationships as a joint operation agreement, the rules on simple partnership agreements, being designed for participation in joint operation not only of entrepreneurs (commercial legal entities) but also citizens who are not engaged in business, will apply to the relevant ties of citizens in the framework of non-business ridesharing not subsidiary (additionally) but directly in general conditions.

In this case, it should be taken into account that when the rules of the simple partnership agreement are applied to the ridesharing relationships, only those issues related to the general costs and losses of partners are sufficiently regulated, and the emphasis on the regulation of internal interaction (between the partners themselves) is shifting to the contractual definition, the lack of which creates some uncertainty. Thus, according to some legal scholars, the parties to a simple partnership agreement do not act as creditors or debtors towards each other (ŠKLOVSKY, 2015). Accordingly, some courts point out the impossibility of forcing one partner to contribute to the common business and to collect penalties for delay in committing this action (DECREES OF THE PRESIDIO OF THE SUPREME ARBITRAZH COURT of August 8, 2000, No. 7274/99). In turn, the choice of rideshare participants of the contract model of joint operations by itself does not solve the pressing problem of the distribution between the partners of the liability risk of the owner of the vehicle used in ridesharing, coming under the rules of liability of vehicle owners (Art. 1079 of the Civil Code of the RF).

Realizing that decentralization of economic relations (their organization according to the C2C model) does not mean (does not always imply) their decommercialization, and recognizing that from the passenger’s (hitchhiker's) perspective the compensation to the driver of part of the ridesharing costs does not actually differ from paying fare under the car charter agreement, it is reasonable to "stretch" the ridesharing relationships to the non-public charter agreement, where hitchhikers pay the driver a specified fee for travel, without sharing the risk of losses with the driver. The latter, as the owner of the vehicle as a source of increased danger, is responsible to the passengers for the harm caused during the ride. Of course, it is necessary to mention that the rules of the Federal Law of November 08, 2007, No. 259-FZ "The Charter of Road Transport and Urban Land Electric Transport" regulating chartering of taxis for passenger and luggage transportation are based on the concept of a charter as a legal entity or individual entrepreneur who assumes the obligation to provide the charterer with all or part of the vehicle capacity for one or more rides (i.e. for the participation of the charter in the transportation) since in qualifying the ridesharing on the chartering model these rules can be applied not directly but by analogy.

Indeed, the initial reaction of many regulators to the emergence of ridesharing platforms was to either outlaw them or burden them with the same level of regulation as taxis (Farren, Koopman, and Mitchell, 2017). In Russia, the legal regime of ridesharing and taxi services is also not without comparison. Accordingly, there are attempts (so far unsuccessful) to declare ridesharing, which creates almost insurmountable competitive benefits, illegal as such and as not fitting within the parameters of taxi transportation regulation (Decision of the Arbitrazh Court of the Moscow District of June 26, 2020, in the Case No. A40-135137/2019; Appellate Decision of the Krasnodar Territory Court of December 19, 2017, in the Case No. 33-41539/2017). In some cases, the activities of drivers to implement ridesharing are qualified as aimed at systematic profit-making (Decision of the Kireevsk District Court of Kireevsk on April 20, 2020, No. 12-33/2020), while the intention of the driver to solve some business on the route agreed with the hitchhiker is not evidence of the absence of the purpose of profit-making from passenger transportation (DECISION OF THE GORYACHEKLYUCHEVSK CITY COURT OF KRASNODAR TERRITORY of December 11, 2017, No. 12-139/2017).

Meanwhile, excessive regulatory intrusion into ridesharing operation (as well as other collaborative consumption systems) by making claims to participants in the relevant relationships similar to those existing for traditional B2C business models creates the risk of displacement of C2C-type sharing relationships by business (TAGAROV, 2019). The above leads to the conclusion that generally to the regulation of the diversity of relations in the share of goods and services there should be differentiated approaches, taking into account the differences in the economic and social essence of their forms, depending on the commercial or non-commercial focus of aggregators and suppliers (performers) (SOYFER, 2019). For the group of ridesharing relations, the correct civil law model should be chosen in each specific case (exactly the one for which the will of the aggregator, drivers, and hitchhikers was directed), applying adequate normative parameters for it.
CONCLUSION

All three types of agreements that may mediate the analyzed agreements are not among the transactions that require a written form under penalty of invalidity. Therefore, in many cases, such agreements are made without the execution of fully hedged documents (without the exchange of documents), which does not make it possible to reliably establish the actual will of the parties. This leads to the fact that the executor of the law, in the absence of adequate evidence of the altruistic nature of the driver's intentions to drop the hitchhiker to his destination, cannot proceed from the qualification of the emerging relations as free according to the presumption of the compensatory nature of any civil law agreement (Art. 423 of the Civil Code of the RF). In turn, it is almost impossible to prove the fact of the conclusion and the terms of the ridesharing agreements as a contract for joint operations without a proper written form. Thus, in most situations, it seems most likely to apply to ridesharing the structure of a non-public charter agreement. This contractual model differs from the public taxi charter agreement, in which the charterer is an entrepreneur who has an official permit to engage in the relevant activity. A volunteer driver is at risk of being subjected to administrative sanctions if he cannot prove that his ridesharing is not aimed at systematic profit-making.

REFERENCES


HAMARI, J.; SJKLINT, M.; UKKONEN, A. The sharing economy: why people participate in collaborative consumption. Journal of the Association for Information Science and Technology, 2015. Available at:


---

Assistant Professor of the Entrepreneurial and Corporate Law Department of Kutafin Moscow State Law University (MSAL), Candidate of Legal Sciences. Bid. 9, Sadoveya-Kudrinskaya Str., Moscow, Russia, 125993. E-mail: mikryukov.viktorygandex.ru. ORCID: https://orcid.org/0000-0002-6856-1827.

Received: March 20, 2021.
Approved: 01 Apr. 2021.