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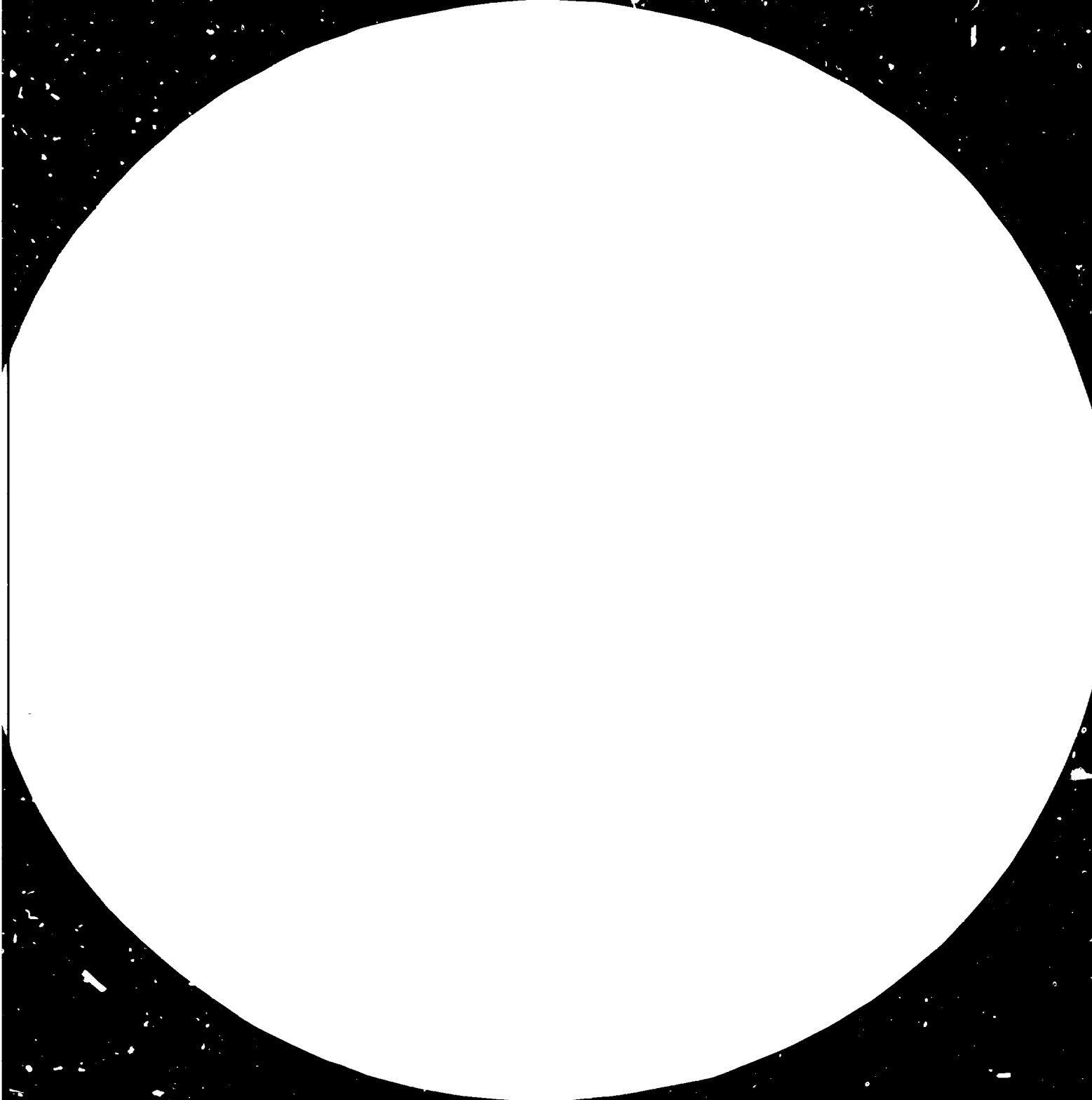
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ORGANIZATION AND LEGAL REGULATION OF INSPECTION OF GOODS AND
SERVICES IN YUGOSLAV DOMESTIC AND FOREIGN TRADE RELATIONS*

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Economic development of each country is to the great extent connected with the quality of production and services. There are in many countries numerous examples of social attempts aimed to achieving better production and services. Quality of goods and services is therefore under special care in every society and such is the case in Yugoslavia too.

In order to achieve better production and services their inspection is inevitable. Self-inspection of the activities of businessmen is not sufficient due to two reasons: first, such inspection is not effective without the application of the most modern scientific methods (which are developing rapidly), and secondly, such inspection must be objective and impartial. Inspection of someone's own goods and services, naturally cannot gain the social recognition. For this reason the inspection of goods is a separate commercial activity performed by specialized organizations in exchange for a reward.

Inspection of goods and services is allocated to the special economic organizations. Such is the case in Yugoslavia also where JUGOINSPECT has a special social role and function having in its net-work number of inspection organizations.

Inspection of goods and services – performed by the inspection organizations – is regulated by the quality inspection contract. These contracts are basically contracts on services with many special characteristics. Therefore it is necessary to have special regulations for such contracts which is the case in Yugoslav Law on Obligations of 1978, where special attention is given to mutual relations of the contracting parties, to liability of the inspection organizations as well as to the particular kinds of contracts for inspection of goods and services.

In business practice and in regulating the contract for inspection the General conditions of inspection organizations have very important role. The use of these conditions should also be regulated as is done in Yugoslav Law on Obligations of 1978.

Development of foreign trade exchange in each country in the field of inspection of goods leads to unification of rules in that respect. These efforts towards the unification represent a positive contribution to the world's division of labour.

The inspection of goods contract is a contract according to which the inspection organization, on the basis of a contract, undertakes the obligation to establish impartially the quality and other properties of the goods for which the organization is entitled a reward. After the inspection the organization is obliged to issue a certificate.

Inspection of goods transaction belongs to a group of transactions which is not enough studied in the legal theory. In the comparative law it is rare to find this contract legally regulated. Rather detailed provisions for such a contract are found in the Code of International Trade of the Czechoslovak Socialist Republic of 1963, but

even in it there are no answers for all controversial questions that might arise in practice with reference to the inspection of goods contract.

In Yugoslav Law the inspection of goods contract is regulated in the Law on Obligations of 1978 as well as in the Law on Sale of Goods and Services Abroad of 1977. There are certain differences in those two texts in treating this contract which inspired many Yugoslav authors to analyse this contract rather extensively.

The inspection of goods contract is gaining in its importance especially in the international sale of goods. The lack of legal regulations is somewhat diminished by the existence of the general conditions. However, these general conditions must be taken with certain reservations not only because they are often one-sided, since they are prepared by the inspection organizations, but particularly because the inspection organizations enjoy *de facto* monopolistic position in the majority of industrially developed countries. The fact is that the services of the inspection organizations are needed more and more but at the same time among them there are less and less competition.

Inspection of goods transactions as independent economic activities started developing only at the beginning of XX century. At that time many international inspection organizations were established which even to-day enjoy high international reputation.

Inspection of goods is of a particular importance in a distant sale of goods. Geographical distance between the place of production and that of consumption of goods creates a risk of uncertainty in regard to conformity of the delivered goods with the goods described in a contract. The expenses of delivery of goods are being increased not only because of transportation but also because of the need of special packing, storage, duty charges, etc. If the representative of the buyer could be present at each inspection of the goods this also would increase the price and expenses and the question would remain whether this would contribute to better inspection of the goods. This is the reason why the task of inspection of goods is given to specialized organizations which enjoy reliable business reputation. It should be pointed out that often inspection relates not only to quality of the goods, but to the means of transportation, loading and disloading (discharge) of the goods, packing, proper way of putting the goods in the means of transportation, storage of goods, etc. Economic interest for the inspection of goods have both parties i.e. the buyer and the seller. It is a misconception that the buyer is the only one interested for the inspection of goods and services, which conclusion is drawn from the fact that it is the buyer who concludes the contract with the inspection organization. It is true that the buyer is eager to safeguard the proper delivery, but the seller as well has an interest to provide by a competent person a reliable statement that he had — at the place of deportation of goods — correctly fulfilled his contractual duties. For the seller inspection is important because it gives him more security in business relations and diminishes the risk of uncertainty.

Inspection of goods in contemporary conditions is an extremely complex task. Development of technology created possibilities of producing very complex products. The seller and the buyer often do not possess enough knowledge to inspect the goods either themselves or through their representatives. In such conditions engagement of services of the inspection organizations become the necessity not only in a distant sale of goods but often even when the seller and the buyer are in the same place.

Activities of the inspection organizations enable speed in handling business transactions. In the international exchange of goods payment on the basis of documents is very frequent. By presenting among other documents a positive certificate of the inspection organization, the seller is often in a position to get the price for delivered goods even before they arrive in the place of destination.

Contract of inspection of goods in Yugoslav law

The contract of inspection of goods is regulated in Yugoslav law in the Law on Obligation Relations of 1978 (article 847-856) and in the Law of Sale of Goods and Services Abroad of 1977 (article 61). It has already been pointed out that this contract is differently treated in those two texts which inspired Yugoslav lawyers to devote more attention to such a contract. This difference, however, did not produce any difficulties in practice.

Another question which requires attention deals with the name of such a contract in Yugoslav law. All previous and present legal definitions speak of a „contractual inspection of quality and quantity of the goods“.

In the Law on Obligation Relations of 1978 inspection of goods is called „inspection of goods and services“.

The inspection of goods contract in Yugoslavia is also regulated by the General conditions of work of the inspection organizations of 1958 which have to be applied by all inspection organizations in Yugoslavia. The Yugoslav General Conditions were influenced by those used at that time in the international sale of goods.

Since there is in Yugoslavia the new Law on Obligation Relations of 1978, which has the provisions concerning the inspection of goods contract, the need to modernize the Yugoslav General Conditions became very pertinent. This task had been undertaken and it should be expected that the new general conditions will contribute to the improvement and development of the everyday business practice of the inspection organization. They might also represent a valuable guide for the courts when deciding cases in this field.

Importance of general conditions

The lack of legal regulations concerning the inspection of goods in the comparative law contributed to the birth, development and importance of the general conditions in this area.

It is interesting to point out that all inspection organization do not have their own general conditions. Some of them - very reputable though - have only the prospects in which they advertise their activities but in which they do not give any indications as of how the future contract is going to be regulated. The other inspection organizations in their standardized contracts have only the clause according to which they exclude or limit their liability. The inspection organizations are not very interested in national general conditions since there is very little competition between them. In international relations the general conditions used by the inspection organizations show great extent of similarities.

Application of usages in the inspection of goods in the situation when inspection organizations enjoy monopoly, leads in fact to the application of the method of inspection of such organizations. This then means that business usages in this area often do not have objective and equal value for both contracting parties. In such a case it would indeed be more proper to apply the international usages but their application is far from being simple, especially because they are difficult to establish, hard to reach and sometimes different depending on a particular inspection organizations.

There are not enough cases in the field of inspection of goods and court practice show certain amount of reluctance. The uncertainty in this area is caused by ill defined rights and obligations of the parties, so one party is not sure whether he will succeed in the procedure in case he decides to sue the other party. This is the reason why the cases are often decided by other means especially by reaching a compromise but this procedure, in principle, is better suited for the inspection organization.

Legal aspects of an inspection of goods contract

The legal nature of the inspection of goods contract is disputable in legal theory. There are views according to which this contract could be regulated by the rules already known in the law of contracts. The other — more correct view — is that this is an independent contract in the field of commercial law. Therefore, this is a specific commercial transaction with lots of particular characteristics which require specific regulation. This is not a new commercial transaction since it exists over 60 years. The lack of regulations in this field is not a proof that this transaction is not an independent contract, but rather that there are legal lacunae. Analysing the various aspects of such a contract one must come to the conclusion that this is a contract for performance of services. The inspection organizations offer professional services after which they issue a certificate. If the inspection organization under a contract undertakes some other obligations, for instance, the obligation to take delivery of the goods, then it is a special category of a contract which besides the elements of services have also the characteristics of some other contracts, such as agency, storage or some other. It is essential that the inspection of goods is basically always the contract for performance of services regardless of the fact that in certain circumstances it may gain the elements of other contracts as well.

Conclusion of an inspection of goods contract

In the Yugoslav law an inspection of goods contract is not a formal contract which means that it could be concluded orally. Nevertheless it should be emphasized that this contract in practice is always concluded in writing.

The inspection of goods activities in Yugoslavia both in domestic and international trade could be handled by the working organizations and the associations only. Individuals are not entitled to perform such activities since these activities are considered as commercial services which can be carried out by the legal persons only.

The users of the services of the inspection organizations in Yugoslavia are the organizations of associated labour (enterprises) and associations but could also be the individuals, since there are no legal obstacles to this regard in Yugoslav law.

At the conclusion of an inspection of goods contract the inspection organization, as a rule, would make a reference to the application of the General Conditions of Work of the inspection organizations of 1958.

The Yugoslav general conditions provide that the contract is concluded when the inspection organization has dispatched its acceptance of the received offer, or when the inspection organization has received the acceptance of its offer.

In article 3 of the Yugoslav General Conditions the essential conditions of the inspection of goods contract are the kind of services (inspection of quality, quantity, samples, making certain analyses, warranty transactions, etc.); the goods, quantity; the name of the party obliged in the name of the principal to put the goods at the disposal of the inspection organization for the purpose of its inspection; the kind and way of transportation of the goods when inspection is performed at the loading, disloading or transshipment of the goods; time for delivery; the place and time for performance of the services (for instance, percentage of goods to be inspected, usages, standards which have to be observed); the reward (commission) for services and method of payments; provision as how the certificate will be sent, which data it must contain, etc.

If the contract does not contain all these provisions the contract — according to the Yugoslav General

Conditions – is not valid. This provision cannot be justified, since all the mentioned elements cannot – as to their nature – be considered as essential, and all of them do not have the same importance in different circumstances. Such a provision in the Yugoslav General Conditions not only diminishes the business efficacy, but brings uncertainty in business relations. It is possible that one of the mentioned elements would be dropped, especially if it is not important in the given situation, which then would mean that there is no contract. It would have been better if at the time of making such General Conditions the usages in this field were codified. In the foreign general conditions there are also provisions according to which if the contract does not contain all mentioned elements it is not valid. It would be better if there would be a provision in the General conditions providing if possible, the method of establishing the element which is lacking in case it is important for a particular transaction.

The idea behind the mentioned provision in the Yugoslav General Conditions was to provide in the contract as many elements as possible since this might facilitate the positions of the contracting parties later on. But these elements should not be considered as essential if they are not such according to their nature. Essential elements by the nature of the transaction should be identification of the kind of services and the method of establishing the price.

Duties of the inspector based on the inspection of goods contract

1. Under the inspection of goods contract the inspection organization undertakes the duty to inspect the goods professionally and impartially.

There are no problems if the contract provides the time, place and method of inspection. Disputes arise when the contract is silent on such questions.

The Yugoslav general conditions provide a solution for such a situation. In article 4 of the General Conditions it is provided that the inspection organization is obliged to perform the inspection according to the rules and regulations in force, usages, provisions of the General Conditions and the concluded contract. In article 522 of the Czechoslovak Code for International Trade of 1963 there is a provision according to which in such a case inspection should be carried out without undue delay in the place where the goods were found in time of the conclusion of the inspection of goods contract. We consider this stand as more correct one than the Yugoslav practice according to which in such cases the time and place for inspection has to be identified on the basis of the sale contract which had been previously concluded and that such provisions on the time and place will be applied with reference to inspection of goods. Such solution is not good since the inspection organization should not be bound by a content of the contract which had been previously concluded by a party who appear to be the same party in the inspection of goods contract (usually the buyer) and the third person.

The method of control is determined by the inspection organization if it is not provided by the contract, in which case the inspection organization is obliged to take into account the nature of the goods, acting as a conscientious professional (*lege artis*) „paying attention required in the business transactions”.

During the inspection of the goods the inspection organization usually makes a record in which it records all the actions undertaken and the results achieved. On the basis of such a record the inspection organizations issue later a certificate.

In the Yugoslav law, in accordance with article 849 paragraph 2 of the Law on Obligation Relations, it is considered that the inspection is finished when the inspection organizations issue a certificate.

2. The request by one party is, commercially speaking, the order for certain services. The inspection organization is obliged to fulfill the order by its partner, but since it is an expert for the inspection of goods, it is

important for it to draw the attention of the other party if there are certain inaccuracies in his order. In case the inspection organization fails to do so, it will be obliged to compensate the other party for damages he suffered.

An important rule is contained in article 529 of the Czechoslovak Code on International Trade law according to which the provisions of the contract and subsequent order by the other party by which the inspection organization is forced to take the duties which might interfere with the impartiality of the inspection organization or the correctness of the certificate is considered as invalid (since this may be considered as change of contract). The same rule exists in the Yugoslav law too (article 849 paragraph 1 of the Law on Obligation Relations). This rule however will not be applied in case of a special kind of inspection of goods with „taking of delivery“.

3. The duty to issue a certificate is not well regulated neither in Yugoslav nor in foreign legal regulations. In most of the cases it is provided what should be the content of the certificate.

The duty to issue a certificate is the legal obligation of the inspection organizations and it is regulated in article 847 of the Yugoslav Law on Obligation Relations.

According to the article 9 of the Yugoslav General Conditions the certificate must contain the following data: the date and place of the issuance of the document, the kind of goods, the kind of services, the holder of the goods in time of the performance of services, the kind and method of transportation in case the inspection concerns the inspection of loading, disloading, transportation, the way of performing the inspection, and the results of inspection.

The certificate according to its legal nature is one-sided confirmation of the opinion of the inspection organization that the data in regard to inspection and the results of it are correct. The inspection organization is obliged to compensate for damages in case that later on the party proves that the data in the certificate were not correct. Such a solution is very important since the certificate in practice performs various functions.

Primarily the certificate is a proof that the inspection organization has fulfilled its contractual duties in the way provided in the contract. The certificate often serves also to solve disputes between the buyer (a party to an inspection of goods contract) and third persons. The certificate is more and more treated as the document which is being presented to the bank in regard to the opening of a letter of credit.

All the mentioned characteristics of the certificate have influenced the inspection organizations to provide in their general conditions a clause according to which the inspection organization limits or excludes its liability in regard to the correctness of the data contained in the certificate. It is natural that the other party to the contract accepts such provisions very reluctantly. Such provisions in the general conditions may also diminish the reputation of the inspection organization. It is important to underline that such limitation of liability may produce effect toward third persons acting in good faith only if contained in the certificate.

It should be pointed out that there is a presumption of truth for the content of the certificate until contrary is proved.

4. In order to inspect the goods the inspection organization must have the possibility of a physical contact with the goods. The inspection organization acting as a good business man must secure that the goods should not be replaced. In certain foreign general conditions this is provided as an express obligation of the inspection organization. Yugoslav General Conditions do not provide this duty of the inspection organization, but it is stipulated in Yugoslav Law on Obligation Relations (article 850, paragraph 1).

This duty means undertaking certain actions with the purpose to safeguarding the goods from being replaced. This action may be performed by marking the goods, by special way of sorting it in the warehouse, etc. The duty to safeguard the goods from replacement exists both before and after completed inspection.

5. In case the inspection organization inspects the goods by taking out the samples, it is obliged to keep those samples which should serve as a proof of performed inspection. The samples must be kept adequately, applying the attention of a good businessman. This duty of the inspection organization is provided in article 850 (paragraph 2) of the Yugoslav Law on Obligation Relations, by which the inspection organization is obliged to keep the samples six months after the performed inspection, in case the inspection of goods contract does not provide some other period. The six months period for keeping the samples is a usual time since this is a period for giving the notice in case of hidden defects.

6. In the Law on Obligation Relations there is article 851 in which there is an express obligation for the inspection organization „to inform the other party in time about all the important circumstances during the inspection and during keeping the goods as well as about the necessary and useful expenses done on the account of the other party“.

The other party is interested to be kept informed about all important moments during the inspection of the goods. This duty is especially important in case the new circumstances appear which require the other party to give further instructions to the inspection or when in regard to the inspection of goods the services of another inspection organization should be engaged.

After the completion of the inspection of goods, the inspection organization has the obligation to make an account of the unexpected and unusual expenses which occurred in connection with the inspection of goods. There is a view that such expenses should be paid by the inspection organization on the account of the other party.

The rights of the inspection organization on the inspection of goods contract

1. After the completion of the inspection the inspection organization has a right to a reward provided by the contract. In case that the amount of the reward is not fixed by the contract, it will be determined by the List of charges of the inspection organization and local usages valid in that respect in the place where the inspection of the good was done. In article 852 paragraph 1 of the Yugoslav Law on Obligation Relations it is expressly provided that the inspection organization is entitled to a reward for the performed inspection and for keeping the goods. This reward (commission) is provided either by a contract or by a usage.

The method of determining the amount of reward could be different. It may be fixed by a unity and quality of the goods, according to its value, as a lump-sum, according to the time used for inspection, according to the number of the engaged experts, etc. In article 524 of the Czechoslovak Code on International Trade it is provided that in case the commission is not fixed by the contract it should be in the customary amount, taking into account the subject-matter, the extent, method and place of the inspection. Similar rule is applied in Yugoslav practice, too.

Under article 6 of the Yugoslav General Conditions, the reward for the performed service is due promptly and should be paid seven days after the receipt of the invoice sent by the inspection organization. It is provided also that the inspection organization is entitled to a reward even if the goods is perished or damaged in whole or in part, in case this happened after the performed inspection by the inspection organization. The inspection organization has a right to a reward in the case of a negative statement in the certificate, or in the case when a delivery of the goods has been refused in whole or in part. This rule is obvious, since in all those cases the inspection organization has performed its contractual duties.

2. In case that the inspection organization has credited the other party for the extraordinary expenses it has the right to be compensated for it if those expenses were needed and if the inspection organization is not guilty for their occurrences. The ordinary and normal expenses are calculated in the reward of the inspection organization.

The expenses for manipulation of the goods which has to be inspected are to be borne by the person who ordered such manipulation (article 11 of the Yugoslav General Conditions). It is suggested that the expenses connected with the manipulation should be provided by the contract.

3. The other party to the inspection of goods contract has the duty to facilitate the inspection organization the normal and undisturbed inspection of the goods regardless where the goods is found. It is necessary that the goods to be inspected should be clearly identified (article 7 of the Yugoslav General Conditions). In such a case the other party must submit to the inspection organization the necessary documents if this is the way for the inspection organization to reach the goods. All these acts the other party must perform without delay so that the inspection organization can begin the inspection. In case of a failure by the other party that party is liable for the expenses so incurred.

4. The inspection organization has a duty to keep the other party informed about all important moments in connection with the performance of the order and is entitled to get the further instructions in case of need.

In the Czechoslovak Code on International Trade this right of the inspection organization is stipulated in article 528 as an obligation of the other party to collaborate with the inspection organization in case this would be necessary for the performance of the inspection.

5. The security right and the right to retain the goods which was inspected are the means of securing the correct performance of the contractual duties. These are the remedies of the inspection organization based on the same contract on which the inspection organization took possession of the goods.

The security right of the inspection organization is expressly provided in Yugoslav law by article 853 of the Law on Obligation Relations for securing the contracted or customary reward (commission) of the inspection organization and for the compensation of the necessary and useful expenses which the inspection organization had in connection with performing its contractual duties.

Liability of the inspection organization on the inspection of goods contract

The inspection organization is obliged to perform its contractual duties by applying the attention required of a good businessman. In case it fails to do so it must pay the compensation for damages. The fault of the inspection organization is presumed and the inspection organization may be relieved from this liability only if it proves that it was not guilty. It should be pointed out that as a rule the liability of the inspection organization on the inspection of goods contract is excluded or limited in the general conditions on various ways.

The clauses on limitation and exclusion of the liability of the contractual obligations, in case they are incorporated into the contract, are considered as valid, except in cases when they refer to a damage caused by gross negligence or on purpose, since this would be contrary to public policy. The limitation and exclusion of liability for minor negligence appear in practice as calculative elements when fixing the amount of a reward of the inspection organization.

The kinds of the inspection of goods contracts

In practice the most usual way of engaging the services of the inspection organization are those of determining the quality and other properties of the goods. Besides the inspection organization is entitled to under-

take other obligations connected with the inspection. In this article three of such cases will be analysed.

1. In Yugoslav law article 855 of the Law on Obligation Relations provides that the inspection organization on the basis of an express order by the other party may be entitled to perform certain legal acts behind the inspection of the goods. In such a case the inspection organization is entitled to special contractual or customary reward (commission).

In such a transaction after the inspection the inspection organization has the obligation to make a statement that the inspected goods is conformed to the contract concluded previously by some third person. Such previous contract is in most cases the sale of goods contract in which the other party was the buyer. The passage of the risk is conditioned upon the positive findings of the inspection organization. In case that the inspected goods has not the quality and properties provided by the contract, the inspection organization is obliged to secure the rights of the other party towards third persons by the corresponding notices.

In such kind of the contract the inspection organization loses impartiality since it undertakes a duty to protect the interests of the other party. By this fact, such a special kind of the inspection is no more the contract for offering services but has the elements of the contract of agency. It should, however, be pointed out that the inspection of goods contract „with taking delivery“ appears very seldom in practice. This is natural since the economic goal of the inspection of goods is not the interference of the inspection organization in the relations between the other party and third persons which the inspection organization is not familiar with.

2. In the inspection of goods with a warranty the inspection organization, according to article 856 of the Yugoslav Law on Obligation Relations, guarantees that the inspected goods will not change its properties during the period of a warranty. For such an obligation the inspection organization has the right to a special or customary reward (commission).

In such a special inspection of goods, the inspection organization — after the completion of the inspection for a much higher reward — undertakes the obligation toward the other party that it will compensate him in case that the quality or quantity of goods is diminished within the period provided in the contract.

The most frequent type of such a special kind of contract in practice occurs in the loading of goods in the place of shipment in which case the inspection organization undertakes the obligation to guarantee the unchanged quality and other properties of the goods until its delivery in the port of destination. It should be expected that such a special kind of contract will in practice gain in importance in cases when the security is more important than the amount of the reward.

3. In the inspection of services — which is a special kind of inspection and one which in the contemporary conditions is gaining in its importance — the inspection organization is inspecting not only the way of offering the services, but also the suitability of the means by which the service is offered. This is primarily inspection of packing of the goods, shipment of the goods, loading, disloading, transshipment, transportation, putting the goods in the means of transportation, inspection of the warehouse, the means of transportation, storage of the goods, etc. The general principles of the inspection of goods transaction are applied here as well, although there are specific elements which are based on the particular characteristics of the subject-matter of the inspection.

According to article 857 of the Law on Obligation Relations the inspection of services is governed by the legal rules applied to the inspection of goods. The same applies to the rights and duties of the parties.

Concluding remarks

In each country special attention is given to the inspection of goods and commercial services. The task of the inspection is usually performed by the specialized inspection organizations with the purpose of gaining a profit. In Yugoslavia there are several inspection organizations.

The basic legal act by which the inspection of goods is regulated is the inspection of goods contract. This contract is not well regulated not only in Yugoslav law but in the comparative law as well. This is the reason why the general conditions have such an importance and they are usually applied as a component part of the contract.

In the further development it should be expected that a more detailed analyses of the inspection of the goods contract will be carried out not only in Yugoslavia but in other countries as well.



