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LEGAL BASIS FOR ENSURING TRANSPORT SECURITY

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Abstract

The article analyzes the basic directions of improving the efficiency in ensuring transport security. Considering a condition of protection from illegal intervention with vehicles and transport infrastructure, the authors assess the current threats and risks to transport security paying special attention to the negative consequences in the form of destabilization in the functioning to the transport complex. This includes the threat to people's lives, harm to health and significant material damage. Within the limits of illegal intervention illegal action (inaction) including the terrorist act representing real threat of occurrence of the listed negative consequences for the person, the state and society is estimated.

Transport security in modern conditions should be assessed as: 1) a set of normative and legal acts; 2) complex on protection of passengers, cargoes, luggage of measures. The mentioned acts and measures are aimed at the transport system as a whole. At the same time, certain features are noted which are typical for each type of transport. Transport safety includes: a) aviation safety; b) safety on subways and railroad transport; c) safety on river and sea transport.

The legal regulation of transport safety is provided by national legal systems. Intergovernmental and interstate agreements focusing on transport security are in place for certain modes of transport. Examples are: 1) International Maritime Organization's International Ship and Port Facility Security Code; 2) International Civil Aviation Organization's Annex 17 to the Convention on International Civil Aviation.

Keywords: international law, national system of law, legal policy, transport complex, transport security.

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INTRODUCTION

Renewal of the world order is accompanied by growing regional and global tensions. The uneven development in countries on different continents of the planet is reflected in the aggravation of intra and interstate contradictions [1]. The struggle for access to markets and resources has brought the problem of establishing control over transport infrastructure and arteries to the forefront including the Arctic and the oceans. As a rule, public and state security is facilitated along with the strengthening of the safe functioning for life-support facilities, other potentially hazardous facilities and transport infrastructure. The level of anti-terrorist protection of the fuel and energy, chemical, nuclear and defence-industrial complexes of the state is to be increased.

The current period of globalization makes it possible to pay attention to the problem of ensuring transport security given that transport creates conditions for the vital activity of society and is an integral element of interstate and intra-state communication. It is transport that is used to solve problems of a socio-economic and foreign policy nature along with other infrastructure sectors [2]. The high level of interstate competition in the sphere of economy makes the problem with competition in the sphere of transport urgent. One of the most significant tasks for each state is now recognized as further progressive development of transport infrastructure.

Adaptation of transport enterprises to new economic conditions seems difficult. A number of issues related to the functioning and development of vehicles and transport complex remain unresolved. The security level of transport activity is low [3]. In this regard, the security of road and air transport, first of all, deserves critical assessment.

The World health organization's report on global road safety notes that 1.2 million people die and 20-50 million are injured in road accidents worldwide each year. These indicators are based on data from a standardised study conducted in 178 countries in 2008. More than 90 per cent of reported deaths occur in middle and low income countries which own less than half of the vehicles. The countries taken into account here are primarily those in Asia and Africa. Motorcyclists (23%), cyclists (4%) and pedestrians (22%) account for almost half of road traffic fatalities (49%). The victims of road traffic crashes are mostly people aged 15-29 years. Remarkably, only 15% of states have comprehensive road safety legislation.

However, it should be recognized that these figures remain essentially unchanged in the current environment. In 2019 UN General secretary A. Guterres called on states to join efforts in overcoming the global road safety crisis noting that about 1.35 million people die annually in the world. Half of those killed in road accidents are drivers of two-wheeled motorized vehicles, their passengers as well as cyclists and pedestrians. Road traffic injuries are recognized as the eighth most important cause of death in the world. For children, adolescents, minors and youth, road traffic injuries are the first leading cause of death for people between 5 and 29 years of age.

In Russia, according to the president of the International automobile federation J. Todt, a significant number of road traffic accident victims are caused by accidents, problems of legal prosecution of offenders, use of phones by drivers, driving intoxicated, lack of educational level of pedestrians and drivers. The UN secretary General's special envoy for road traffic safety notes that the Government of the Russian Federation is making significant efforts to address problematic issues of road safety.

TOPICAL ISSUES OF TRANSPORT SECURITY IN THE CONTEXT OF GLOBALIZATION

Road traffic deaths are high in underdeveloped economies. Experts from the World health organization believe that this is due to poor road surfaces, poor infrastructure, untimely and insufficient health care for road crash victims [4]. In this regard it is stated that economically developed countries tend to provide the necessary conditions for road traffic and pay sufficient attention to safe road traffic.

In Russia 25.2 people per 100,000 died in road accidents in 2008. For comparison, the indicators of other states looked as follows: Australia - 7.8; Austria - 8.3; Argentina - 13.7; Belgium - 10.2; Bulgaria - 13.2; Brazil - 18.3; Great Britain - 5.4; Hungary - 12.3; Venezuela - 21.8; Vietnam - 16.1; Germany 6.0; Holland 4.8; Greece 14.9; Dominican Republic 17.3; Egypt 41.6; Israel 5.7; India 16.8; Iraq 38.1; Iran 35.8; Spain 9.3; Italy 9.6; Canada 8.8; Cyprus 10.4; China 16.5; Colombia 11.7; Cuba 8.6; Morocco 28.3; Mexico 20.7; Mongolia 19.3; New Zealand 10.1; Norway 5.0; UAE 37.1; Poland 14.7; Portugal 10.4; USA 13.9; Thailand 19.6; Turkey 13.4; Finland 7.2; France 7.5; Switzerland 4.9; Sweden 5.2; South Africa 33.2; South Korea 12.8; Japan 5.0.

In 2011, 19.6 people per 100 thousand died in road accidents in Russia. In the United States and the European Union, this figure was 10 and 7 people respectively. In the United Kingdom, the number of deaths in road accidents in 2011 was 1960 people, 4009 people were in Germany, 3860 people were in Italy, 4189 people were in Poland and 3963 people were in France. According to the World health organization, in 2013 the following death rates per 100,000 people were recorded in different countries: Libya - 40.0; Russia - 18.9; China - 18.8; India - 16.6; USA - 10.6; Australia, Canada, New Zealand, Japan - 10.0; Great Britain - 2.9; Sweden - 2.8.

According to the World health organization in 2015 the following mortality rates per 100,000 population were noted: Liberia 35.9; Venezuela 33.7; Central African Republic (CAR) 33.6; Thailand 32.7; Cameroon 30.1; Saudi Arabia 28.8; Kenya 27.8; Ethiopia 26.7; Syria 26.5; Viet Nam 26.4; South Africa 25.9; Sudan 25.7; India 22.6; Iraq 20.7; Iran 20.5; Brazil 19.7; Morocco 19.6; Colombia 18.5; China 18.2; UAE 18.1; Russia 18.0; Laos 16.6; Mongolia 16.5; Argentina 14.0; Peru 13.5; Mexico 13.1; Chile 12.5; USA 12.4; Turkey 12.3; Montenegro 10.7; Romania 10.3; Bulgaria 10.2; South Korea 9.8; Egypt, Poland 9.7; Greece 9.2; Cuba 8.5; Hungary, New Zealand 7.8; Portugal 7.4; Iceland 6.6; Luxembourg 6.3; Belgium, Canada 5.8; Australia, Italy 5.6; France 5.5; Austria 5.2; Cyprus 5.1; Finland 4.7; Israel 4.2; Germany, Japan, Spain 4.1; Denmark 4.0; Netherlands 3.8; UK 3.1; Singapore, Sweden 2.8; Norway, Switzerland 2.7; Micronesia 1.9; Maldives 0.9; San Marino 0.

In the USA 37133 people died in traffic accidents in 2017. Accordingly, the death rate per 100,000 people increased to 11.4. In Japan, the number of deaths in road accidents was as follows: 2011 year – 4612 people; 2017 year – 3694 people; 2019 year - 3215 people. In this regard, a comparative analysis of the death toll in Russia, the United States and a number of the most prosperous countries deserves attention.

According to Russian statistics (RBC), the death toll per 100,000 people in 2017 was as follows: Russia - 13.0; USA - 11.4; Spain, Finland - 3.9; Germany - 3.8; Japan - 3.7; Israel - 3.3; Netherlands - 3.1; Denmark - 3.0; UK - 2.8; Switzerland - 2.7; Sweden - 2.5; Norway - 2.0.
Despite this, in 2017 Russia still lags far behind the European Union states in ensuring human security. According to the data of 2017, the risk of death in road accidents in Germany is lower than in Russia by 3.4 times, in Great Britain - by 4.6 times, in Sweden - by 5 times. The significant gap in Russia is determined by the following factors: a) poor quality of roads; b) poor level of discipline of drivers; c) lack of traffic organization.

In 2018 these indicators were subject to change: Zimbabwe 45.4; Venezuela 41.7; Central African Republic (CAR) 31.8; Thailand 31.7; Kenya 30.5; Cameroon 28.1; Iran 28.0; Saudi Arabia 27.5; Viet Nam 24.0; Tunisia 23.0; Brazil 22.6; South Africa 21.3; India 21.2; Mongolia 20.8; North Korea 20.7; Syria 19.7; China 19.4; Colombia 18.9; Morocco 18.6; Iraq 17.8; Russia, Uruguay 17.4; Argentina 14.1; Egypt, Peru 13.3; South Korea 12.0; Mexico 11.8; Chile 11.6; USA 10.8; UAE 9.8; Poland 9.4; Croatia 9.2; Romania 8.9; Turkey 8.8; Slovakia 8.2; Greece, Macedonia 8.1; Luxembourg, Portugal 7.7; Bulgaria, Cuba 7.6; Hungary 7.5; Belgium 7.1; Cyprus, Czech Republic, Slovenia 6.5; New Zealand 6.1; Canada 5.8; Austria 5.7; Italy 5.6; Australia 5.4; France 5.1; Japan 4.7; Finland 4.4; Germany 4.2; Ireland 4.0; Singapore 3.7; Iceland, Netherlands 3.6; Denmark 3.4; Norway 3.3; Israel 3.2; Sweden, United Kingdom 2.9.

The Russian official statistics on the number of deaths due to road accidents per 100 thousand people deserves attention. The dynamics of these indicators in the period 2010-2018 is as follows: 2010 year – 18,7; 2011 year – 19,6; 2012 year – 19,6; 2013 year – 18,9; 2014 year – 18,8; 2015 year – 15,8; 2016 year – 13,9; 2017 year – 13,0; 2018 year – 12,4. There is a positive trend in reducing the death rate in road traffic accidents during 2013-2018 which emphasizes the effectiveness of measures implemented to protect and prevent illegal acts that lead to death.

Positive trends are observed in official statistics in 2019 when 16981 people died in Russia as a result of 164358 road accidents. At the same time, 210877 people were injured. Comparative analysis shows a steady annual decrease in road traffic accidents in 2014-2019: 2013 year – 204068; 2014 year – 199720; 2015 year – 184000; 2016 year – 173700; 2017 year – 169432; 2018 year – 168099; 2019 year – 164358. Thus, over a six-year period, the rate of recorded road traffic accidents decreased by 19.46%. The number of deaths due to road accidents is subject to a constant decrease in 2013-2019: 2012 year – 27991; 2013 year – 27025; 2014 year – 26963; 2015 year – 23114; 2016 year – 20308; 2017 year – 19088; 2018 year – 18214; 2019 year – 16981. The absolute death toll decreased by 39.34% over the seven years. The number of injured in road accidents has been steadily decreasing in 2013-2019: 2012 year – 258617; 2013 year – 258437; 2014 year – 251785; 2015 year – 231197; 2016 year – 221140; 2017 year – 215374; 2018 year – 214853; 2019 year – 210877. The number of wounded decreased by 18.46% over seven years.

LEGAL MEANS OF TRANSPORT SECURITY IN NATIONAL JURISDICTIONS

The legal basis for international cooperation in the sphere of transport security is recognized to be international legal instruments of universal and regional character adopted and ratified by national parliaments. Within the framework of universal international legal and regulatory instruments aimed at ensuring aviation security, attention is consistently focused on the following conventions on: international civil aviation, crimes and certain other acts committed on board aircraft, combating illegal hijacking of aircraft, combating illegal acts against civil aviation security and marking plastic explosives for the purpose of detection [5].

There are one hundred and ninety-nine members from the International union of railways from five continents today including eighty-two active members, eighty associate members and thirty-seven affiliated members. The Union aims to achieve the following objectives: 1) to promote the dissemination of the best practices in the field of rail transport; 2) to assist its members in implementing new ideas in the field of rail transport; 3) to promote technical progress; 4) to unify and standardize rail transport; 5) to develop electronic technologies and competence centres. The Union created and published in 1995 a trilingual thesaurus of railway special terms.

Standard requirements for container and other cargo transportation by rail were subject to development. The Union was developing transport corridors of Euro-Asian scale. Uniform technical standards of the railways are being developed. The existence of common rules and regulations ensures the rapid and unhindered movement of goods across national borders by national railways.

Resolution 91/440/EEC of 29.07.1991 which provided for the establishment of a unified train traffic control system due to the previous adoption of the key ETCS standards was subject to adoption. In 2001 the European parliament approved by directive 2001/16/EC measures for the gradual unification of the European railway network. The European commission adopted ETCS as compulsory for high-speed railways in 2002. ETCS has been fully extended to trans-European railway corridors since 2004. ETCS systems have been implemented for 2013 in thirty-

four countries including China, New Zealand, Libya, Israel, Turkey and others.

Amendments to chapter VII "Transportation of dangerous goods" of the International convention for the safety of life at sea which was adopted in May 2002 changed the status of the International maritime dangerous goods code making it mandatory since January 2004. Today, more than 150 states apply the provisions of the Code to regulate the carriage of dangerous goods by sea. The Code is aimed at: 1) ensuring safe transportation by sea of dangerous goods; 2) prevention of marine pollution and protection of ship crews. The Code provides for: a) separation and placement of dangerous goods on board ships; b) transportation of sea pollutants; c) actions in emergency situations; d) other issues of ensuring transport safety at sea. The Code under analysis will apply to products and substances of the corresponding class based on the type for which they are dangerous. Certain classes will be divided into subclasses. The classes include: 1) explosive articles and substances; 2) gases; 3) flammable liquids; 4) flammable solids, capable of self-ignition, emitting flammable gases; 5) organic peroxides and oxidizing substances; 6) infectious and toxic substances; 7) radioactive materials; 8) corrosive substances; 9) other hazardous articles and substances.

It is necessary to note the different approaches and forces in different states to the tasks of ensuring transport security. In the United States, for example, the aviation transport security Act is enforced by the transport security Administration which develops transport system security policies [6]. The TSA is comprised of air marshals, inspectors, managers and security personnel who are involved in the security of existing modes for transportation. Protection of state vehicles is guaranteed by subway patrols, inspection of railway wagons and checkpoints at airports where explosives are present. The effectiveness of these activities is reinforced by the involvement of law enforcement officials. It is likely that private organizations that have received TSA approval will be involved in this work.

In the UK, transport security is provided by the British transport police who have control over the railways. These services are provided to passengers, staff and railway operators by the British transport police in the whole country. Security is also provided in the underground such as London, Glasgow and a number of airlines, airports and tram systems. Airport security is traditionally handled in the United Kingdom by the airport Police services. Since January 2010, the airport security planning System which brings together airlines, airport operators and the police force has been in operation at 44 UK airports.

The Canadian air transport security service has been established in Canada. In 2002 Regulation № 2320/2002 regulated the requirement to conduct safety checks on passenger flights in the European Union including domestic flights. Regulation (EC) № 300/2008 of the European Parliament and the Council establishes common European Union rules for protection against unlawful interference by civil aviation. In Germany the aviation safety Act was adopted on 11.01.2005 taking into account EU Regulation № 2320/2002.

The following methods are used to ensure transport security in Russia: 1) subdivisions of departmental security for federal executive authorities in the sphere of transport; 2) FSUE «SECURITY» of the Russian guard; 3) aviation security service; 4) transport security divisions of transport infrastructure entities. Control and supervision in ensuring transport security is exercised by the Russian transport supervision.

Aviation security is regulated by the Air code of the Russian Federation (ed. 18.02.2020) and is ensured by: a) aviation security services of airports or airfields; b) divisions for departmental security of the Federal Executive authority; c) authorized in the field of transport; d) aviation security services of operators; e) authorized bodies vested with this right by federal laws. Illegal interference with aviation means illegal acts (omissions) threatening the safe operation of aviation or having negative consequences in the form of material damage, accidents with people, hijacking or hijacking of an aircraft. Persons sending, receiving or servicing an aircraft must take measures to ensure aviation safety.

The basis for ensuring aviation security is as follows: 1) prevention of access to the controlled area of the airport and the airport by unauthorized vehicles and persons; 2) security at aircraft parking lots; 3) exclusion of illegal transportation in aircraft of dangerous substances and items and observance with special precautionary measures in case of permission for their transportation; 4) pre-flight and if necessary post-flight inspection; 5) prevention of illegal interference in aviation activities; 6) excluding the possibility of unauthorized access to unmanned aircraft systems by unauthorized persons (Articles 83, 84).

Russia has a maritime security Service whose activities are aimed at implementing the requirements of the International convention for the safety of life at sea and the International ship and port facility security Code.

The Law of the Republic of Azerbaijan «On transport» does not disclose the understanding of transport security focusing on the implementation of environmental requirements and security in transport (Article 22). The Law of the Republic of Armenia «On transport» notes that the vehicle, having a certificate, must comply with state and international standards of environmental safety, health and safety requirements (Article 16).

The law of the Republic of Belarus «On the basics of transport activity» regulates the following definition for the safety to be carried out. The safety of transport activity is the condition in which the minimum possibility of danger to health, life, property and the environment is ensured (Article 1). The law of the Republic of Belarus "On railway transport" considers the safety for the operation and movement in this transport as a state of security for the movement for railway vehicles and communications which excludes the unacceptable risk for the formation of transport accidents and their negative consequences (Article 24).

CONCLUSIONS

The above makes it possible to conclude that the harmonization of national legislation on transport and aviation security is required first of all. In this regard, the systematization of the national legal system in the field of transport security seems to be consistent taking into account the requirements of universal international legal norms [7]. Such an approach will help to identify key areas to implement the state legal policy in the field of ensuring the safe operation in the transport industry. In this connection, it seems expedient to regulate an independent legal institution of transport security in national legislation.

The essence, tasks, goals, principles, measures to ensure transport security and sources of financing for the above activities are subject to legislative registration [8]. The following are subject to consolidation: a) types of threats (factors, causes and conditions of risk occurrence) to transport security; b) measures and requirements for its provision; c) rights, duties, responsibility of transport security subjects; d) state administration in the sphere of transport security provision; e) distribution of powers between the state and economic subjects; f) financing, personnel and information support of transport security.

Regulation of a number of safety issues on certain types to implement transport activities are regulated by presidential decrees, laws, codes and resolutions of state bodies with unequal legal force and in practice legal conflicts arise. In this regard, it seems expedient to develop and adopt one normative-legal act ensuring unified regulation of public relations in the sphere of transport security within the framework of the national legal system [9].

As a component of national security, it is recognized to ensure the security of the internal transport complex, the violation of which threatens significant technological, environmental, material damage, including harm to life and health of people. Consequently, vehicles are considered to be sources of increased

public danger. The transport system is classified as a system of objects characterized by increased risk [10].

Close attention to transport security issues is predetermined: 1) global threat of terrorist plan; 2) high level of wear and tear in modern transport; 3) annual significant harm to personal, state and public interests as a result of numerous accidents.

The emerging international and national frameworks for transport security should be based on science based proposals for regulating legal norms. The interstate universal legal regulation of transport security should be based on a doctrinally developed definition for the concept of transport security [11]. Transport security is a constant process including the following components within the transport complex: a) state of security for the most significant interests of an individual, state, society; b) preservation of the mentioned state; c) constant monitoring, evaluation of the vulnerability level of the transport complex; d) carrying out of preventive adequate measures taking into account internal and external threats and challenges.

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