

LEGAL CONTENT OF THE MECHANISM FOR ENSURING TRANSPORT SAFETY

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ABSTRACT

The authors of the article justify the necessity of designing a scientifically based model of the mechanism for functioning of the system of ensuring the country's transport safety. The importance of implementing a set of legal and

organizational measures in this area, taking into account national interests and the realities of world development, is noted, and certain meaningful and legally not always accurate provisions in legislative documents affecting the stated topic are critically evaluated.

Keywords: legislation, law, science, theory, model, national security, transport safety, transport system, national priorities.

Background. Counteraction to internal and external challenges and threats to national security remains today a key issue on the international agenda. At the same time, one cannot fail to realize that the state of protection of the individual, society and the state, which ensures implementation of constitutional rights and freedoms of citizens, decent quality and standard of living, sovereignty, independence, state and territorial integrity, sustainable socio-economic development of the country, cannot be maintained without reliance on scientifically based, theoretically verified legal approaches. Security is a sphere where there is always a fine line, a zone of responsible decisions with extremely complex, often complex legal nuances suggesting a particularly careful interpretation of the letter of the law.

Objective. The objective of the author is to consider legal content of the mechanism for ensuring transport safety.

Methods. The authors use general scientific methods, comparative analysis, evaluation approach, statistical method.

Results.

I.

The legal, political and transport map of the modern world essentially changes primarily under the influence of globalization processes that simultaneously integrate and disconnect the world community, exacerbating the problem of the national security of each state, regardless of its geographic coordinates.

Ensuring transport safety is one of the priorities of the Russian Federation state policy in the field of national security. The effectiveness of the measures being implemented with regard to transport safety directly affects the result of the ongoing reforms in the country in domestic, economic, social, information, military, environmental and other important areas.

The system of legal, economic, organizational and other measures to ensure transport safety, constituting a structural and functional whole, should be brought into the directed movement by an effective mechanism, the design of which is determined by the strategic goals set and at the same time complies with the requirement of qualitative «restructuring» in the emerging conditions.

Objectively assessing the state of transport safety in Russia, we can conclude that the existing mechanism for its provision requires comprehensive improvement, taking into account the entire set of factors and conditions of life of Russian society and the trends of global development.

Consideration of some measures as being of great importance in comparison with other measures to ensure transport safety, for example – organizational ones, can lead to failure of the single mechanism of their implementation due to violation of the fundamental principles of coordinated interaction of all elements of the system.

State authorities and local self-government bodies, transport infrastructure actors and civil society institutions, while maintaining a constructive dialogue, need to create, we believe, a model of the mechanism for ensuring transport safety with specified parameters for its optimization. It seems that the initial guidelines that would differentiate the program target content are best reflected in a separate normative legal act – the Concept of Transport Safety of the Russian Federation.

The «National Security Strategy of the Russian Federation until 2020», which is now null and void, approved by the President on May 12, 2009, determined the focus of efforts and resources to ensure national security in the domestic political, economic, social spheres, in science and education, spiritual, information, military, defense-industrial and environmental spheres, as well as public safety. This «strategic» position made it possible to judge the conditional allocation of various spheres of national security that do not allow for arbitrary broad interpretation, which raised the question of assigning transport security to one of them.

The current National Security Strategy of the Russian Federation [1], designed with new threats in mind, having a complex interrelated nature, proceeds from the premise that national security includes the defense of the country and all types of security stipulated by the Constitution and the legislation of the Russian Federation: first of all, state, public, information, environmental, economic, transport, energy, and personal security. In fact, the document not only defines in many respects an «open» list of types of security, but also directly names among them such as the transport one, and among the species with the signature «first of all».

The strategy of national security of the Russian Federation recognizes as a fait accompli the aggravation in the modern world of contradictions, including, inter alia, control over transport arteries.

In order to ensure state and public security, the regime of safe functioning is strengthened, the level of anti-terrorist protection of transport infrastructure is growing as a critically important and potentially dangerous object.

Ensuring national security in terms of the quality of life of Russian citizens as a strategic national priority requires guarantees of accessibility of transport infrastructure facilities for disabled people and other low-mobility groups. Improvement and development of transport infrastructure in this sense is a direct task of public authorities and local self-government bodies, solved in cooperation with civil society institutions.

Elimination of imbalances in the transport infrastructure is an indisputable condition for economic growth, and therefore, ensuring the economic security of the state.

The state social and economic policy implemented today, in counteraction to threats to economic



security, provides for the formation of a common transport space on the basis of balanced advanced development of efficient transport infrastructure and the growth of transport connectivity of regions, taking into account the scale of the Russian territory, creation of transport corridors and multimodal transport and logistics nodes, increase in volume and improving the quality of road construction.

It should be noted that the National Security Strategy of the Russian Federation separately indicates the importance of expanding the use of public-private partnership tools to complete the formation of the basic transport infrastructure, especially in the Arctic, Eastern Siberia and the Far East, the development of the Northern Sea Route, the Baikal-Amur and Trans-Siberian Railway.

At the same time, one of the main directions of ensuring national security at the regional level (for the medium term) is creation of a mechanism to reduce the level of interregional differentiation in social and economic development of constituent entities of the Russian Federation, including by introducing a mechanism for coordinating the deployment of transport infrastructure at all levels.

II.

Analyzing the main provisions of the National Security Strategy of the Russian Federation in terms of ensuring transport safety, it is possible to formulate a general conclusion about the special significance of its strengthening in order to maintain international law and order and strategic stability.

Creating conditions for increasing the competitiveness of the Russian economy and the quality of life of the population, it is necessary to take special measures to improve the complex security and stability of the transport system. Development of competitive advantages in transport infrastructure is one of priority directions of the socio-economic policy pursued in the country. Thus, the current transport strategy of the Russian Federation [2] recognizes the important role of transport system safety in socio-economic development and, as its goal, the item «5» refers to improving the safety level of the transport system, the implementation of which will create the necessary conditions for an appropriate level of national security and reduction of terrorist risks.

The security of any society these days is the result of the fight against terrorism as a deadly disease of all mankind, the healing resistance from which is so important to invent in a timely manner.

The main global challenge of crime in the transport sector has become precisely terrorism. Transport infrastructure facilities and vehicles continue to be targets for the aspirations of terrorist and extremist organizations, due to the high degree of vulnerability of road networks and communications.

Federal Law No. 16-FZ dated February 9, 2007 «On Transport Safety» [3] defines the concept of «transport safety» as a condition for protection of transport infrastructure objects and vehicles from acts of unlawful interference. The legislator, following the requirement of completeness of legal regulation, in Article 1, in the very first provision defines the concept of an act of unlawful interference as follows: this is an unlawful act (inaction), including a terrorist act that threatens safe operation of the transport complex, which has caused harm to life and health of people, material damage or created a threat of occurrence of such consequences.

As follows from the explanatory note to the draft federal law «On transport safety», the necessity of this law is due to a number of factors, the main one of which is the terrorist threat factor, the danger of which for objects of the transport complex has increased dramatically.

Despite the fact that the law was designed to eliminate existing gaps in legal regulation in the field

of transport safety, the problem of «legal uncertainty» has not been completely resolved to date. The issues of legal and organizational support for transport safety continue to be the subject of heated discussions in the scientific community and among experts in this field.

Thus, the establishment of a legal basis for ensuring transport safety with a preponderance of the importance of measures to identify, prevent, suppress, uncover and investigate a terrorist act is understandable and appropriate, taking into account the principle of compliance of legislation and the law-making process in general with the realities of social reality.

However, it is necessary to recognize the urgency of improving legislation in the field of transport safety, including from the point of view of compliance with the requirements of legal technology, namely, the uniformity of the terminology used to eliminate existing contradictions in the conceptual category of an array of legal acts regulating transport safety and other related issues.

So, for example, the Air Code of the Russian Federation [4], along with aviation safety, also highlights the safety of aircraft flights. The definition of aviation safety in Article 83 of this Code as «the state of aviation security from unlawful interference in aviation activities» needs to be expanded in its content part, as well as clarify by the legislator its difference from the safety of aircraft flights, taking into account the different meaning of these concepts.

Detailed analysis for the sake of consistency and internal consistency is also required by other codified acts and statutes regulating relations in the use of various types of vehicles—the Code of Inland Water Transport of the Russian Federation [5], the Code of Merchant Shipping of the Russian Federation [6], the Charter of Motor Transport and Urban Ground electric transport [7], the Charter of Railway Transport of the Russian Federation [8], etc.

III.

One of the basic principles of ensuring the transport safety of the Russian Federation is integration into international safety systems. Only a strategic, equitable and multilateral international interaction is able to give a positive result in this area in a supranational perspective. In this connection, a number of agreements and other acts of the Commonwealth of Independent States, which are aimed at maintaining collective security, deserve special attention. By the decision of the Economic Council of the CIS dated May 27, 2016 [9] the formation of a coordinated policy in the field of transport security is defined as a priority area of cooperation in the transport sector for the period up to 2020, which undoubtedly requires from participating States legislative innovations, and improving law enforcement activities in this area on the basis of ensuring the necessary «consistency» in implementing the measures of the model.

Unity of views and approaches of the CIS member states to cooperation in the field of ensuring transport safety was largely achieved by the approval on May 29, 2015 of the Strategy for Ensuring Transport Safety in the Territories of the Commonwealth of Independent States when carrying out international transportations [10]. The task of creating a mechanism for implementing the strategy in the document is given a primary role.

Despite the specifics of the development of the transport system and the implementation of the vector state policy in the field of ensuring the security of the state, expressing certain national interests and priorities, the degree and nature of international interaction and cooperation, not limited to any associations, like commonwealths, unions,

associations and their other forms, requires from each state a comprehensive account of the experience of justification of legal and institutional initiatives in the field of transport safety abroad.

Interstate integration and, as a result, harmonization of regulatory requirements and methodological approaches, united by a single plan of protection of transport infrastructure and vehicles, would undoubtedly help improve the state administration of the transport system and transport safety.

Today, the world space under the influence of the growing processes of globalization, intensified by the informatization of society, represents the fields of merciless combat – the world information war, the consequences of which pose a serious threat to national security in all spheres of society. In these conditions, the forecasting of risks and threats to transport safety and adoption of advanced measures to prevent them require from the state to solve the problems of ensuring the information security of the transport complex. Russia, like many other countries, is moving to an innovative version of the development of the transport system, introducing the latest information and telecommunication technologies, as well as technologies for planning and managing vehicles and flows. Preservation of the so-called «technological sovereignty» of the state is a very difficult task, the solution of which reveals certain shortcomings in state policy in the information sphere.

It is the development of knowledge-intensive sectors of the economy that made it possible to turn innovative factors into the main source of economic growth in the Russian Federation, including the deployment of new infrastructure projects aimed at creating a high-tech transport system. And the appeal to scientific knowledge is necessary not only in the manufacture of some high-end products, for example, in transport engineering, but also in creating a theoretically consistent and practically significant model of the mechanism for the functioning of the transport safety system. Therefore, the scientific potential for research in this area should be intensified, taking into account the likely growth of the potential threat of terrorist acts on the objects of transport infrastructure.

Conclusion. Preparation of drafts of normative acts that improve the legal basis for transport safety should be accompanied by their legal expertise and discussion in the scientific, technical, advisory and other councils of the relevant state authorities, the representative composition of which will ensure a competent approach to solving the issues that have accumulated to this moment. As Secretary of the Security Council of the Russian Federation N. P. Patrushev notes, «science is the foundation of security ... we need, as never before, fresh ideas, a deep scientific forecast of challenges and threats, as well as scientific substantiation of the decisions made, and search for various alternatives» [11].

Legal means, in turn, do not exhaust the mechanism for ensuring transport safety, but, as it is obvious, are of exceptional importance for its verified work. The assertion that it is the right predetermines

the functionality of all elements of such a mechanism can be critically condemned for its one-sidedness and categoricalness, but it will not lose its initial correctness anyway, because it is grounded in the reality of facts of international and national scale.

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