



Transport and Transport Law: Historical Relationship and Prospects



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ABSTRACT

The article, dedicated to the 210th anniversary of creation of a single Russian transport administration and transport education and based on historical information, analyzes the relationship between development of transport and transport law in Russia.

The increasing need for legal regulation of more and more complicated and increasingly complex transport relations comprises development of transport law as one of the key tasks in achieving the goals of the transport industry.

When considering the current state of transport law in Russia, various approaches to the composition and degree of autonomy of the transport law area, as well as certain regulatory issues, are analyzed.

The general tasks of transport law in the sphere of regulation of the most relevant fields of transport activity are determined, the possibility of creating a single code of transport legislation and legal norms, the importance of intensifying transport and legal research are substantiated.

***Keywords:** transport law, transport, transport relations, transport legislation, science of transport law, legal relations, transport safety, state law, civil law.*

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Article received 14.03.2019, accepted 27.06.2019.

For the original Russian text please see p. 56.

Background.

The development of public relations confirms the historical relationship of development of transport and of legal regulation of transport relations, traced from the earliest times. With formation of statehood as long ago as in Ancient Rus' (as Russia was called at the epoch), and then with development of internal and external water and land routes in medieval Rus', a need arose to govern and regulate transportation. The first legal norms began to appear that governed the relations regarding those first modes of transport. Traces of legal regulation of transportation are visible in the first written code of laws «Russkaya Pravda» [that can be literally translated as Russian Truth] by Yaroslav the Wise in 1016, where the legal norms of civil and criminal law were interlinked [1]. The combination of the words «transport» and «law», merged into one capacious category «transport law», had come into use already before 20th century.

2019 is a jubilee year for the Russian transport administration and transport education. 210 years ago, in 1809, the corps of railway engineers and an institute under its auspices were established, laying the foundation of modern transport education; legal regulation of transport administration was strengthened; the Department of Water and Land Communications, first single transport administration body in the history of Russia was created, replacing the Department of Water Communications and the Expedition for Road Construction in the State.

This date gives a legitimate reason to analyze the genesis of transport law in Russia and assess the current problems and tasks associated with its development.

The *objective* of the work is to determine the modern problems of transport law, including its problems as of a field of scientific research.

The author used general scientific *methods*, methods of formal legal, comparative legal and historical legal analysis.

Results.

Development of transport law in 19th century

The decisions that laid the foundation for creation of a single governing body in transport field and of transport education were based on state and economic reasons, and were further developed under the influence of technical achievements of their time, primarily under the influence of a new type of traction, a newly born steam locomotive. Together, technological progress and the new system of transport education, founded by Alexander I, gave a powerful impetus to

development of the engineering culture in Russia. These particularly significant decisions led Russia to breakthrough railway construction, resulted in the rise of industry and in strengthening of international relations, which facilitated Russia's rise to the heights of a new technical culture. A great contribution to the positive resolution of the discussion [see, for example, 2] on construction of railways was made by the works of P. P. Melnikov [3].

The start of operation of the first railways required appropriate legal regulation of their activities, as well as improvement of the norms related to the transportation process involving several modes of transport. As a result, during the reign of Nikolay I, the regulatory legal acts governing the transportation process were substantially updated. In 1842, the content of the Code of Laws of the Russian Empire was supplemented by 820 articles regulating the procedure for water and land transportation in Russia, while the terms associated with railway communications were not highlighted due to insufficient legal practices.

By the middle of 19th century, the conditions had matured for the reform of Russian transport law. In 1857, the Code of Laws of the Russian Empire incorporated Volume XII «Code of Institutions and Charters of Railways» [4]. This historical stage is characterized as a process of new development of transport law, consisting of legal norms of various sectoral lines, forming the complexity of legislation.

Technical progress, reflected in rapid construction of railways, as well as in fundamental changes in the legal system of Russia, thanks to adoption in 1864 of legal documents that fundamentally changed the legal proceedings, putting them on the basis of an objective and fair resolution of court cases, led to further improvement of public administration of the transport industry and to enhancement of transport law. In 1865, the Ministry of Railways was created, endowed with broad powers to build an extensive network of railways. The further development of railway transport prompted preparation and adoption of new legislative acts, the need for which grew in progression, equal to the growth of the railway network. In 1879, experts developed the foundations of the first «Charter of Railways», and on June 12, 1885, Alexander III signed and put into effect the first «General Charter of Russian Railways», which got the status of law. The Charter became the legal basis for the activities of railway transport. This



legal document enshrined the rules governing maintenance and operation of railways, the norms governing management of railways, transportation of passengers and goods. The Charter of Railways included: «Section on transportation of passengers and goods by rail»; «Section on the rules on jurisdiction and limitation of railway claims and on the procedure for execution of decisions on claims to the railways»; «Section of railway police regulations» [5]. This legal document combined the norms of different legal branches, becoming thus the general regulatory instrument of transport relations, confirming the vital necessity of existence of transport law and of establishment of a unified transport legal order.

The strengthening of the legal foundations of transport activities was initiated under the pressure of two factors. The first originated from the process of development of transport technologies, which went along the lines of industrialization. The second factor was associated with the growing need to enhance and improve the quality of transport services. The full implementation of both factors could not be carried out without the appropriate legal regulation, without creation and development of transport law.

On modern approaches to transport law

A brief historical analysis of the process of emergence and development of modern transport law in Russia is important to demonstrate that, firstly, transport law develops inseparably from development of the transport industry, meets the challenges it faces, and, secondly, is formed as an independent area of legal regulation, as evidenced by inclusion of a separate book in the Code of Laws of the Russian Empire. Without setting ourselves the task of tracing in this article the further genesis of transport law in Russia, to which many studies are devoted and, I am sure, will be devoted in the future [eg. 2, 6, 7], we turn to the analysis of the current situation in order to understand its place in the modern legal system, and how it meets the needs of society and the state.

Today, transport is perceived not only as an industry capable of efficiently and safely transporting goods and passengers, but as a backbone industry contributing to balanced development of the state and society, solution of social and economic problems, and spatial development of the country. In these conditions, the need to improve the system of legal norms governing various relations emerging in

connection with transport activity, increasing its security, and efficiency for citizens and business manifests itself even more clearly.

Transport law continues to develop under the influence of the need for further development of transport relations, dictated by the tasks of transport development, defined in the strategic program documents of Russia, aimed at creating conditions conducive to economic growth, increasing competitiveness of the national economy and improving quality of life of the population, creating affordable, safe and high-quality transport services [8].

Currently, transport law represents a large volume of various legal concepts, theoretical provisions, legal ideas, legal principles, followed by a huge number of laws, and an even greater number of various regulatory legal acts adopted by executive authorities, supplemented by numerous corporate legal documents.

For a complete solution of the tasks set, the legal norms of constitutional law, administrative law, financial law, civil law, environmental law, labour law, intertwined with departmental and corporate legal norms, regulating transport relations, form transport law in its dialectical unity. Being in the core of administrative transport relations, state-administrative relations; administrative and procedural relations; control and supervision relations and other similar relations are also regulated by transport law.

But at the same time, the approach has not yet been eliminated, when the narrow interpretation of the transport itself is put at the forefront as exclusively a system for delivering various goods to a given place in the required quantity and assortment on time, as well as timely delivery to destinations of passengers using vehicles in compliance with transportation safety rules [9]. Accordingly, based on this approach, the array of transport law is reduced only to the legal norms governing transportation. Thus, the prevailing opinion about transport as a means of transportation could not but affect a part of jurists who narrowed down transport law and limited its regulatory function only to transportation processes.

At the same time, on the contrary, it is quite obvious that effective legal regulation of transport relations requires a comprehensive branch of law that develops according to a separate methodology and operates its own methods that ensure regulation of the totality of specific transport relations, and not just transportation.

This is as true as the fact that certain branches of law separated by mode of transport, for example, regarding civil aviation, rail or sea transport, in isolation from others, are not able to regulate complex, heterogeneous transport relations, merged into a single relationship, involving various modes of transport, determining their interaction, legal relations. This is equivalent to the fact that transport itself cannot exist if it is represented by separate, unrelated parts. Certain branches of law cannot fully regulate transport relations without being combined into a single complex of transport law.

We also note another aspect of complexity of transport law, which goes far beyond the regulation of specific aspects of the activity of modes of transport.

Transport law has arisen and is developing as a regulator of those transport relations that need to be put in a certain order to meet the needs of a person, society and the state. For our country, this is ultimately the achievement of the constitutional goal of developing Russia as a social state, the activity of which should be aimed at creating conditions that ensure decent life and free human development. Accordingly, under the influence of constitutional principles, the state and other entities have an obligation to promote the development of transport law, focusing legal regulations on ensuring safe conditions of transport activities, satisfying the needs of citizens.

The problem of correlation and interconnection of public and private interests in transport law has not yet been studied so deeply and widely that it could be presented fully and objectively in a short article [10]. But in the current transport legislation, the priority of public interest over private is noticeable. One reason is the need to address threats to sustainable and safe transport activities. Public transport measures are required to ensure transport safety. Public interests reflect the focus of transport law on the necessity to satisfy the needs of people, to contribute to protection of fundamental rights of citizens. Understanding of public interests should increase as the legal culture in transport strengthens.

One cannot fail to note the existence of a number of problems in the transport law of Russia.

There is an indefinite number of valid regulatory legal acts adopted as long ago as in Soviet times. Their presence does not strengthen, but weakens the legal framework intended to regulate transport relations.

The main source of transport law is associated with state laws. Other, subordinate regulatory legal acts are called upon to regulate those relations which are not covered by laws. Their mass character and lack of orderliness create difficulties in implementation of legal norms in current activities.

On the other hand, a large amount of legislation acts and other regulatory legal acts is not a reason to believe that transport law does not need to be developed. And proceeding from this, it is necessary to consider first of all the interests of development of society, the state, citizens, taking into account the specific urgent tasks of development of the transport industry.

Modern tasks of development of Russian transport law

The strategic goals of development of the transport system of the Russian Federation are also determined by the tasks of improving transport law. The task of forming a single transport space in Russia on the basis of a balanced, accelerated development of transport infrastructure cannot be solved without legal regulation of relations in the sphere of management, financing and determining the legal order guaranteeing the functioning of the transport system. Legal regulation ensures the functioning of a single system of transport communications, contributes to creation of an integrated system of technological transport infrastructure of all modes of transport. The law governs application of common technological compatibility standards for various modes of transport that optimize their interaction. Relations in the field of creating a single information environment for technological interaction of various modes of transport are also regulated by transport law.

Without legal regulation of transport relations it is impossible to ensure *transport safety*. For all modes of transport, traffic safety, flight safety, and safety at sea are ensured by legal establishment of an order that prevents threats and dangers that can harm people, transport infrastructure, and vehicles. Engineering and organizational measures are structured and applied within the framework of transport law. In order for the transport system to meet the requirements stated in the public program documents, we need clear, convenient legal regulators that guarantee maintenance and safe functioning of the entire structure that forms the transport complex.

Legal regulation needs to be improved in the field of ensuring safety of transportation processes,



safety of vehicles movement, environmental safety and other types of safety in transport, in the field of control and supervision. To this day, a large number of regulatory legal acts are in force in the transport control and supervision process that were adopted back in the Soviet period. Under those conditions, transport control and supervision activities suffer difficulties in solving the tasks assigned to them.

Environmental safety requires special attention, which is ensured by comprehensive respect of the legal standards governing reduction of the negative technogenic impact of the transport system on the environment, which contributes to full and healthy life for people and ensures that transport facilities comply with international environmental standards. Through legal regulators, public administration is enhancing the conditions for converting vehicles to environmentally friendly fuels, increasing the degree of use of hybrid and electric engines of vehicles, materials and technologies that eliminate harmful effects on the environment. Legal measures may ensure environmentally sound management of waste from the transport complex.

The legal impact on transport relations ensures an increase in the *quality of transport and logistics services* in the field of passenger and freight transportation that both meet the development needs of the Russian economy. The introduction of modern transport technologies and guaranteed provision of transport services of social significance are associated with proper legal regulation.

Transport law also manifests itself in development of a market for competitive transport services. Legal regulators ensure *fair competition* in which conditions are created for growing quality of the offered transport services.

The territorial features of Russia, taking into account the geographical location and its developed transport system, contribute to implementation of transit potential, which requires development of legal regulation for solving such problems as *Russia's integration into the global transport system, expanding access of Russian transport service providers to foreign markets, and developing export of Russian transport services*. A huge role is played by transport law in development and functioning of international transport corridors. The success of technical and technological integration of the transport and logistics infrastructure of Russia in the global transport system depends on the level of legal order, which is able to guarantee the solution of the tasks of cargo transportation, can coordinate

business processes of deliveries and transit transportation. Qualified legal analysis is required in the field of the management of the export market of transport services, and of competitive situation in it. Improvement of regulatory measures and development of qualified legal measures to improve technical and technological indicators require organization of activities and planning of contractual cooperation within international transport corridors.

The current state of the infrastructure and vehicles of various modes of transport necessitates development of new legal standards regarding allocation of *financial resources* in the amount necessary to minimize depreciation and to replace obsolete elements of the transport system with new technical means and technologies. The existing procedure for financing the transport industry is unsatisfactory in some aspects, which is confirmed by Rosstat [Federal Statistics Service] data regarding the degree of depreciation of fixed assets of the transport system of Russia as of 2018. So, in rail transport the degree of depreciation of fixed assets is 36,5 %, in air transport – 41,8 % [11]. Improvement of legal measures is required that increases responsibility for effectiveness of investments and prevents misuse of funds.

The achieved level of *informatization* of transport processes and plans for further digitalization of transport require legal regulation in the field of implementation and use of digital technologies, comprehensive and complete equipping with modern information technologies of all structures providing high-quality transport services, ensuring timeliness, completeness, reliability of data transmission and processing, forming the basis of transportation process's development and of transport safety.

An important aspect is introduction and development of *legal culture*. Transport law forms the vision of managers and specialists of the entire transport complex. Such a vision contributes to solving the problems of improving quality of transport services for the population, of satisfying their legitimate interests and of implementing established social standards. The process of solving problems is based on the norms of transport law, but it does not exist by itself, its implementation should not be carried out formally, but be rooted in the minds of transport employees, who develop the relationships within which the tasks are realized. On the contrary, a weak level of legal culture does not allow a large number of transport employees to understand that implementation of

legal norms requires legal knowledge. Legal knowledge constitutes the basis for understanding of the requirements of law and conviction is formed in favour of legal, legally justified and verified decisions.

It is difficult to overestimate the contribution of transport law to solving problems that promote *mobility of the population and accessibility of transport services*. Among the main tasks set for the transport industry are satisfaction of the rights and legitimate need of people in transportation, in establishing and observing social norms and standards, creating an accessible transport environment for people with disabilities, and ensuring transport accessibility of settlements.

The growing dynamics of the need for legal regulation of transport relations stimulates the strengthening of *scientific research* in the field of transport law. Deep theoretical developments are required to develop and justify changes and amendments to the existing transport legislation, to prepare draft new laws, particularly in the fields where changes in transport relations are most clearly manifested, but sufficient legal regulators are missing.

In other words, in order to achieve high-quality legal regulation in a wide range of transport relations, it is necessary to further develop the science of transport law. Only on the basis of science it does become possible to objectively and fully evaluate the current transport legislation. The science of transport law is the basis for development of new laws and other regulatory legal acts. And this process is closely related to organization of training in transport law. Only on the basis of scientific research it is possible to fully develop new educational programs, new training courses, necessary for legal training of transport employees. The educational process in the field of the study of transport law will be weakened in the absence of close interaction with scientific research.

On the contrary, in the absence of a sufficient number of scientific studies, the conduct of which is mainly based on the enthusiasm of those jurists for whom the involvement in transport law research is the result of a deliberate voluntary choice, but not of a targeted request of the transport sector, the development of new regulations often goes without proper scientific support, by persons who do not have professional competencies in the field of transport law. As a result, in the absence of fundamental legal knowledge of the employees responsible for the law enforcement process, and with flaws in normative legal acts, the value of legal

regulation is lost. Unfortunately, in many such cases, the legal regulation is replaced by the instructions of the chief, which are not taken on a legal basis, but on the basis of subjective assessment of the circumstances that take shape in transport. And this is one of the causes of accidents and other transport incidents.

Conclusions and proposals. In the course of discussions, including those held at scientific forums, Law Institute of Russian University of Transport presented substantiated proposals on development and creation of a code of transport legislation and regulatory legal acts, which will contribute to systematization of legal norms and to development of an internal regulatory legal system of the transport complex. This will create a complete systematic collection of existing regulatory legal acts regulating transport relations. The draft of such a code needs to be developed on a scientific basis and put up for wide discussion at workshops, round tables with participation of legal scholars and practitioners of transport. The creation of the code should be based on principles of systematization of legislation and on other regulatory legal acts. To ensure completeness and reliability of collection of regulatory legal acts related to the transport complex, they should be inventoried, and a thorough scientific analysis should be carried out to identify contradictions and other shortcomings in them, identifying thus grounds for making proposals on amendments and additions. This is a big and painstaking work, but it is necessary, because subsequent adoption of new regulatory legal acts will further aggravate shortcomings of transport legislation. In the process of evaluating existing normative legal acts, it is important to pay attention to their constitutionality, to their compliance with the requirements of Part 2, Article 55, of the Constitution of Russia, which clearly defines that laws should not be enacted in the Russian Federation that abrogate or derogate rights and freedoms of a person and a citizen. Systematization of transport legislation will free it from excesses, unnecessary piling up, eliminate many shortcomings and transform it into a more efficient system, convenient for use and practical application [12].

In general, the science of transport law should be oriented towards development of new concepts expressing relationship between different branches of law, combining them into a single complex branch of transport law, which should be a full-fledged regulator of transport relations. Here it is





necessary to consider that studies in the field of consolidation of transport law are meeting resistance of some jurists who focus only on traditional branches of law and do not recognize an independent role for transport law. At the initiative of Law Institute of Russian University of Transport, proposals have repeatedly been made on the need to introduce transport law in the range of scientific specialties for which postgraduate degrees are awarded, but a positive result has not been achieved yet. Reaching agreement on this issue will raise the science of transport law to a new level, creating conditions for young, gifted lawyers to research on transport law issues. The revitalization of scientific work will bear fruit, increase the number of scientists in the field of transport law, including young ones, and will create and realize the potential for conducting new scientific research, whose results will be fruitfully used both for the development of transport legislation and in the learning process, necessary to strengthen the legal culture in transport.

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