



Legal and Organization Issues of Transport Occupational Health and Medical Assistance to Passengers in Russian Federation



Ivan V. KHOLIKOV



Mikhail V. KLYONOV

Kholikov, Ivan V., Institute of Legislation and Comparative Law under the Government of the Russian Federation, Moscow, Russia.*

Klyonov, Mikhail V., Russian University of Transport, Moscow, Russia.

ABSTRACT

The article discusses some issues of transport occupational health in the Russian Federation with attention particularly paid to the legal regulations of health checks of various categories of transport employees, as well as of their medical examination and health assessment. The review of national regulatory legal acts governing the health services provision to the transport employees in the Russian Federation is carried out as well.

The issues of providing first medical assistance to passengers, service users are also considered; problems related to the medical aspects of preventing and eliminating the consequences of transport emergencies are addressed.

The study of the current situation results in conclusion on the need to improve legislation in the field of health services provision in transport industry, to eliminate its fragmentation and bring it in line with international law.

Keywords: *transport occupational health, transport health, medical check, international conventions, medical examination, health assessment, harmonization of national legislation.*

*Information about the authors:

Kholikov, Ivan V. – D.Sc. (Law), professor of the department of state and legal disciplines of the Institute of Legislation and Comparative Law under the Government of the Russian Federation, Moscow, Russia, iv_kholik@mail.ru

Klyonov, Mikhail V. – Ph.D. (Medicine), vice-rector of Russian University of Transport, Moscow, Russia, klenovmv@rut-miit.ru.

Article received 02.04.2019, accepted 28.06.2019.

For the original Russian text please see p. 180.

Introduction. Transport health* is the sphere of specific areas of transport focused health that comprises mainly practical as well as scientific practical aspects. Some of them are common for different modes of transport, others are characteristic of a particular mode.

In aggregate, they are among the most important factors for ensuring traffic safety, uninterrupted functioning of the transport system, increasing comfort of transport services for passengers, that is, ultimately, they serve to solve the key tasks of transport which are growing availability of transport services for business and the public, increasing connectivity of the territory.

Transport health has historically evolved as the most important component of transport developments. The achieved results have ensured and are ensuring now the effective solution of the above-mentioned tasks. At the same time, the success of their implementation in various areas related to transport health depends on a set of organizational measures based on legislation and regulations in this field. The development of transport does not stand still and, accordingly, continuous improvement is required in this field of transport activities.

The *objective* of this study is to analyze the legal regulations in force in the sphere of medical check of various categories of transport employees, of their medical examination, of health services provision for transport employees in the Russian Federation,

* There is a special term in Russian language that, being widely recognized, is used by the authors, and that literally reads as «transport medicine», either can be interpreted as «transport health» or «medicine in transportation sector» but its sense is quite distinct from how this term is commonly used in English. It does not concern transportation of patients, but describes the set of issues related to occupational health (including all issues of medical checks, examinations or health assessment) of transport sector employees, system of providing medical services to them as well as medical services provided to the passengers (please see the title of the article). The sense of the term is mostly close to e.g. «aviation» or «flight medicine» but regarding all modes of transport. Meanwhile the term can't be completely equal either to «transport safety and health» as issues of workplace safety and occupational safety, while medical experts are widely involved in the expertise, do relate in Russia to the transport safety field which is an autonomously managed activity in major transportation companies. See the above explanation, constraints and clauses, the terms used in the article are translated either as «transport health» in general context or as specific terms like occupational health in narrow context. — *Ed. note.*

of first aid to passengers, of medical care services to transport employees, as well as development of proposals for their improvement.

For this purpose, general scientific and specific legal research *methods*, namely, comparative legal, formal legal, and also the method of interpretation of legal rules, as well as an interdisciplinary approach were widely used.

1. Conducting mandatory medical check and providing health services

Medical enabling of traffic safety, which includes, first of all, conduct of mandatory medical check of employees related to movement of vehicles is among main activities under consideration and this activity is common for all modes of transport.

Article 46 of the Federal Law of November 21, 2011, No. 323-FZ «On the basis of health protection of citizens in the Russian Federation» defines the following types of medical check: preventive, preliminary, periodical, pre-shift, post-shift, pre-trip, post-trip check-up [1].

Pre-shift, pre-trip medical check-ups are carried out before the start of the working day (shift, voyage) in order to identify signs of the impact of harmful and (or) hazardous production factors, conditions and diseases that impede performance of labour duties, comprising alcohol, drugs or other intoxication, and residual phenomena of such intoxication.

Post-shift, post-trip medical check-ups are carried out at the end of the working day (shift, trip) in order to identify signs of the impact of harmful and (or) hazardous production factors of the labour environment and labour process on the health of workers, acute occupational disease or poisoning, signs of alcohol, drugs or other intoxication [1].

Besides, there are a number of medical screening, examinations and health assessments referring to certain categories and professional groups of citizens. The following types of medical check-ups are stipulated: pre-flight and post-flight; of minors, incl. when enrolling in educational institutions and during the period of study in them, while practicing physical culture and sports; for admission to physical education and to participate in mass sports competitions and a number of others.



Regulatory legal acts of the Government of the Russian Federation [2] and of the Ministry of Health of the Russian Federation [3] contain rules on provision of work or services regarding «medical expertise of fitness to fly» and «pre-flight (pre-shift), post-flight (post-shift) medical check-ups».

Currently, expertise of fitness to fly in *civil aviation* of the Russian Federation is a combination of medical check-up, medical examination and medical assessment, as its result, issued in the form of a medical assessment report and medical certificate, is part of a pilot's certificate (license), which gives the opportunity to carry out labour activity and confirms «the medical situation» which entails legally significant consequences.

The President of the Russian Federation has instructed to make amendments to the national legislation aimed at resolving issues related to organization of civil aviation medical examination on flight fitness [4]. To date, a number of steps have been taken in this direction, in particular, a draft federal law «On Amendments to Some Legislative Acts of the Russian Federation Regarding Improvement of the Flight Safety of Civil Aviation Aircraft» has been developed. The draft law provides for inclusion in the Federal Law of 21 November 2011, No. 323-FZ «On the basis of health protection of citizens in the Russian Federation» of provisions governing conduct of a new type of medical expertise, which is medical examination of flight fitness, as well as establishment of procedures for the examination of professional fitness and for assessment of the relationship of a disease with the occupation.

Also draft texts of a decree of the Government of the Russian Federation «On amendments to the regulations on the Federal Air Transport Agency», of an order of the Ministry of Transport of Russia «On approving the procedure for establishment and operation of the central medical examination commission of flight fitness, medical examination commissions of flight fitness, medical experts, as well as on the requirements for members of those commissions and medical experts», as well as of an order of the Ministry of Transport of Russia «On amendments to certain Federal aviation rules» have been prepared (as at the time of preparing the article) [5, p. 11].

Regarding *railway transport*, when carrying out work on medical aspects of safety of train traffic, there is a problem of conducting pre-trip medical check-ups of employees when organizing work using the method of guard's (fixed) driving* and at remote low-capacity stations where there are no health organizations and it is not possible to organize check-ups by medical staff.

In order to reduce injuries and mortality at transport facilities, JSC Russian Railways organized and conducted a pilot project in 2016 on pre-trip and post-trip remote monitoring with the help of telemedicine technology of the health of some rolling stock related employees at several infrastructure directorate facilities. The results of that project were positive. There were 56 posts of telemedicine in 2017.

At the same time, in order to organize pre-trip check-ups using telemedicine technology for railway employees it is necessary to amend Article 46 of the Federal Law of 21 November 2011 No. 323-FZ «On the basis of health protection of citizens in the Russian Federation» regarding the use of that telemedicine technology.

Russian *metro* systems have to use an obsolete regulatory document regulating the conduct of mandatory medical check-ups of metro employees which is the Order of the Ministry of Railways of the USSR of July 7, 1987 No. 23TS. This document has not been used any longer since 1999 for railways, but is still to be applied for metro in part that does not contradict the legislation of the Russian Federation as was stipulated in the Letter of the Ministry of Transport of the Russian Federation of February 05, 2015, No. 0301–07/330. Considering that metro is a high risk enterprise, the lack of a proper regulatory framework for conduct of mandatory preliminary (upon beginning of employment) health assessments and periodic (during employment) medical examinations may entail an increased risk of hiring employees who have medical contraindications to work at the positions linked to train traffic, and adversely affect trouble-free transportation of passengers.

* Operating a locomotive with several (two, three, four) locomotive crews permanently assigned to it, and who travel in a specially designated class (guard's) car.

This predetermines the need for speedy development of the specified relevant legal framework.

Medical care and health protection of the *seafarers* and their medical examination and support were carried out in a certain legal vacuum. It arose after the Ministry of Health of Russia recognized to be invalid the Order of the Ministry of Health of the USSR of September 6, 1989 No. 511 «On improving organization of medical care and sanitary protection of the merchant sea, river fleet and fishery», which identified medical institutions authorized to provide medical assistance to seafarers, to examine them, as well as the procedure for conducting such an examination [6].

In June 2013, Maritime Labour Convention 2006 of the International Labor Organization, ratified by the Russian Federation, entered into force; it sets minimum requirements for work of seafarers on ship board, including requirements for the health status of seafarers and provision of medical care on ship board and ashore [7].

The failure of the Russian Federation to comply with the requirements of international conventions on establishment of a register of approved medical organizations or doctors eligible to conduct medical examinations of seafarers, and approving a form of medical certificate may lead to the fact that medical documents issued to Russian seafarers by domestic medical institutions and doctors will soon not be recognized as legitimate by other nations as not complying with Manila amendments to the Convention on Standards of Training, Certification and Watchkeeping for Seafarers [8]. Russian seafarers will be significantly limited in their employment opportunities in the international maritime labor market due to the lack of the documents complied with Convention, giving the right to work on sea vessel. Russian shipping companies might experience a shortage of qualified personnel and be placed in unequal conditions compared to foreign competitors and undergo the risks of possible detentions of Russian ships by port control authorities of other states due to non-compliance with international requirements in this regard.

Another problem was related to the fact that in accordance with national regulatory documents (order of the Ministry of Healthcare and Social Development of Russia dated May

05, 2012 No. 499n as amended on November 29, 2012 «On approval of the procedure for establishing the contents of a first-aid kit for equipping ships, inland navigation vessels and vessels of mixed (river-sea) navigation that do not have a medical officer's position in the staff») the ship's first-aid kit shall include, among other items, controlled drugs to provide effective medical care. This order was canceled by the Order of the Government of the Russian Federation of September 30, 2014 No. 1935-r. One of the main reasons is that in the Russian Federation the existing regulations for working with this group of drugs does not allow these drugs to be on board of a ship in the absence of an appropriate license, regardless of whether there is a doctor, or not [9, p. 96]. A more balanced approach to these issues is required, which may possibly necessitate amending the Federal Law of January 8, 1998 No. 3-FZ «On narcotic drugs and psychotropic substances» in terms of better governing the procedure for circulation of narcotic drugs and psychotropic substances for medical purposes, on sea vessels, vessels of mixed (river-sea) navigation and inland vessels.

2. Providing medical assistance to passengers

186 medical posts were organized at railway station territories (2017)*. Medical posts are structural units of non-state healthcare institutions of JSC Russian Railways. Most medical posts operate around the clock. The main objectives of medical posts include provision of primary premedical and medical care in ambulatory outpatient conditions, in emergency and urgent cases to citizens who are in the medical post, station building and within the borders of station tracks (platforms), in passenger (cargo) long-distance trains and commuter trains during the train stop. Medical posts of stations are equipped with all necessary medical equipment and medicines to provide emergency medical care.

However, currently there are no regulatory legal documents of the federal executive authorities on regulation of operation of medical posts of stations and other transport hubs, on requirements for their location, equipment, staff size, etc.

When conducting inspections of medical posts of stations by control and supervisory

* *Gudok* newspaper. Iss. 65 (26204) of 19.04.2017.





bodies it is pointed out that there is also a discrepancy in their compliance with the requirements of sanitary norms and rules applicable to medical organizations providing primary health care in terms of premises, equipping medical posts of stations with medical supplies, as well as of qualification requirements for the medical staff.

The first-aid kits with which all long-distance trains are equipped do not allow to provide medical assistance to passengers along the way due to the lack of the necessary minimum of medicines and medical supplies, even if a medical employee is on board the train. The presence of drugs in the first-aid kits for long-distance trains is not provided for by the federal laws, e.g. by Federal Law of November 21, 2011 No. 323-FZ «On the basis of health protection of citizens in the Russian Federation».

The current situation with transport health regarding *road and city passenger transport* excites questions. The appropriate educational and training field, relevant medical structures, scientific research and methodological materials on specific topics are almost missing here.

This has resulted in a situation where it is not always possible to provide qualified medical assistance by medical personnel for people at transport facilities and transport infrastructure (because of their remoteness from medical organizations), for example, when performing intercity bus trips, especially in areas with low population density. In the event of an accident the condition of the victims may significantly deteriorate before ambulance crews arrive to the site.

Although the current legislation provides for provision of first aid to injured by persons with special training, the level of training of persons responsible for transportation of passengers (drivers of intercity buses, crews of ships, airplanes), based on an analysis of the content of their training programs, is in some cases lower than required to provide the necessary volume of first aid.

3. Factors of effective medical and social protection of employees

Without giving a detailed analysis, we note that sectoral health care, in addition to the problems discussed above, should address specific issues related to functioning of sectoral enterprises and medical and social protection of employees' health.

One of the main issues in the field of medical support of employees in the transport industry is associated with participation in solving general problem of maintaining labour resources, the growing shortage of which in global terms is one of the main strategic risks and the economic threat to Russia's national security in the long term [10, p. 46]. This is especially true for occupations related to traffic safety of various modes of transportation (first of all, for drivers' professions, pilots, seafarers, vehicle operators), that is, for occupations that set not only specific, but increased health requirements. It should be borne in mind that the medical condition of employees of transport occupations is directly related to such socially significant criterion as professional fitness, which contributes to successful performance of production tasks that assume specific requirements for work load.

Obviously, to reduce the morbidity rates of employees of leading transport

occupations, to preserve labour capacity, there is a need for the comprehensive system of medical, and social and labour rehabilitation of employees. It should be based on the results of psychophysiological, clinical, and medical statistical studies.

Another problem of transport health that requires increased attention is the issue of preventing and eliminating the consequences of emergency situations in transport [11, p. 4073]. We should consider validity and practical implementation of a complex of medical and medico-social measures aimed at reducing the risk of emergency situations, minimizing medical and sanitary consequences, preserving human health and reducing damage to the natural environment.

Conclusion. The considered legal issues of organization of medical care in transport indicate disunity, gaps and fragmentation of domestic legislation in some issues that are subject to regulation in this area, and this is substantially indicated by experts in the field of transport law [12, p. 99].

So, there is a lack of proper legal regulation of certain areas of transport health, as well as their non-compliance with the requirements of international conventions, which may have adverse consequences for the transport system of the Russian Federation. In this regard, it seems necessary to organize a systematic work on elimination of these problems in order to harmonize domestic legislation and bring it in line with international law.

REFERENCES

1. Federal Law of November 21, 2011 No. 323-FZ «On the basis of health protection of citizens in the Russian Federation» [*Federalniy zakon ot 21.11.2011 № 323-FZ «Ob osnovakh okhrany zdorovya grazhdan v Rossiiskoi Federatsii»*].
2. Decree of the Government of the Russian Federation of April 16, 2012 № 291 «On licensing of medical activities (except for the specified activities carried out by medical organizations and other organizations within the private health care system in the territory of Skolkovo Innovation Center)» [*Postanovlenie Pravitelstva Rossiiskoi Federatsii ot 16 aprelya 2012 goda № 291 «O litsenzirovanii meditsinskoi deyatel'nosti (za isklyucheniem ukazannoi deyatel'nosti, osushchestvlyаемoi meditsinskimi organizatsiyami i drugimi organizatsiyami, vkhod'yashchimi v chastnuyu sistemu zdravookhraneniya, na territorii innovatsionnogo tsentra «Skolkovo»*].
3. Order of the Ministry of Health of Russia dated March 11, 2013 No. 121n «On approval of Requirements for organization and performance of work (services) for provision of primary health care, specialized (including high-tech), emergency (including emergency specialized), palliative medical care, provision of health care via sanatorium-resort treatment, during medical assessment,

medical check-ups, medical examinations and sanitary and anti-epidemic (preventive) measures in the framework of provision of medical assistance, organ and (or) tissue transplantation, supply of donated blood and (or) its components for medical purposes» [*Prikaz Minzdrava Rossii ot 11 marta 2013 No. 121n «Ob utverzhdenii Trebovaniy k organizatsii i vypolneniyu rabot (uslug) pri okazanii pervichnoi medico-sanitarnoi, spetsializirovannoi (v tom chisel vysokotekhnologichnoi), skoroi (v tom chisel skoroi spetsializirovannoi), palliativnoi meditsinskoi pomoshchi, okazanii meditsinskoi pomoshchi pri sanatorno-kurortnom lechenii, pro provedenii meditsinskikh ekspertiz, meditsinskikh osmotrov, meditsinskikh osvidetelstvovanii I sanitarno-protivoepidemichekikh (profilakticheskikh) meropriyatii v ramkakh okazaniya meditsinskoi pomoshchi, pri transplantatsii (peresadke) organicheskoi (ili) tkanei, obrashchenii donorskoi krovi i (ili) ee komponentov v meditsinskikh tselyakh»*].

4. The list of instructions of the President of the Russian Federation on the issue of improving the level of safety of flights of April 29, 2016 No. Pr-800 [*Perechen' poruchenii Prezidenta RF po voprosu povysheniya urovnya bezopasnosti poletov ot 29 aprelya 2016 goda No. Pr-800*].

5. Damaskin, O. V., Kholikov, I. V. Problematic issues of the legal regulation of flight medical examination in Russia [*Problemnnye voprosy pravovoi reglamentatsii vrachebno-letnoi ekspertizy v Rossii*]. *Predstavitel'naya vlast' – XXI vek: zakonodatel'stvo, kommentarii, problemy*, 2018, Iss. 3 (162), pp. 10–13.

6. Order of the Ministry of Health of the USSR dated September 6, 1989 No. 511 «On improving organization of medical and sanitary support of the merchant sea, river fleet and fishery» [*Prikaz Minzdrava SSSR ot 6 sentyabrya 1989 goda No. 511 «Ob uluchshenii organizatsii medico-sanitarnogo obespecheniya morskogo, rechnogo flota i rybnogo khozyaistva»*].

7. Federal Law of June 5, 2012 No. 56 FZ and Decree of the Government of the Russian Federation of November 6, 2013 No. 996 «On measures to ensure fulfillment of commitments of the Russian Federation arising out of provisions of the 2006 Convention» [*Federalniy zakon ot 5 iyunya 2012 goda No. 56 FZ i Postanovlenie Pravitelstva Rossiiskoi Federatsii ot 6 noyabrya 2013 goda No. 996 «O merakh po obespecheniyu vypolneniya obyazatelstv Rossiiskoi Federatsii, vytekayushchikh iz polozhenii Konventsii 2006 goda»*].

8. The 2010 Manila Amendments to the Annex to the International Convention on the Training and Certification of Seafarers and Watchkeeping (the STCW Convention) of 1978 and the 2010 Manila Amendments to the Code on the Training and Certification of Seafarers and the Watchtower (STCW Code).

9. Kholikov, I. V. International legal aspects of implementation of the Transport Strategy of the Russian Federation in the field of medical support for transport [*Mezhdunarodno-pravovie aspekty realizatsii Transportnoi strategii Rossiiskoi Federatsii v sfere meditsinskogo obespecheniya na transporte*]. *Transportnoe pravo i bezopasnost'*, 2018, Iss. 4 (28), p. 96.

10. Buktuyarov, I. V., Rubtsova, N. B., Kholikov, I. V. Occupational Health in Russia. *Trudova meditsina i rabotosposobnost*, 2018, Iss. 3, p. 46.

11. Bagreeva, E. G., Shamsunov, S. Kh., Zemlin, A. I. Environmental Safety Conditions in the Transport Sector by Improving the Culture of Lawmaking. *Ekoloji*, 2019, Vol. 28, Iss. 107, pp. 4071–4076.

12. Zemlin, A.I., Petrov, Yu.I., Kharlamova, Yu. A. Current problems of development of transport legislation in Russia: Monograph [*Aktualnye problem razvitiya transportnogo zakonodatel'stva v Rossii: Monografiya*]. Moscow, Rusayns publ., 2019, 140 p.

