



The Genesis of the System of Administration of the Transport Routes and of the Transport Law in Russia (9th to 18th centuries)



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ABSTRACT

The article analyzes Russian historical and legal heritage containing the norms governing social relations that arose in the process of development of water and inland roads, transportation, state administration in the transport field, and studies the most important norms of Russian transport legislation.

The purpose of the research was to study legal regulation of transport relations in the historical period from 9th through 18th centuries in order to identify the main stages of development and periodization of domestic transport law.

The study was carried out using methods of legal analysis, including formal-dogmatic method, which allowed to reveal some of shortcomings and gaps of legal regulation; historical and legal method, that, in combination with the methods of taxonomic analysis,

made it possible to carry out authors' periodization of formation of transport legislation during the studied period. The use of achievements of legal hermeneutics and tools of the linguistic-semiotic and semantic approaches provided an opportunity to clarify the content of legal norms and legal documents referring to the period under review.

The results of the study are of interest from the point of view of revealing historical patterns of development of transport law, make it possible to assess the role and place of transport legislation in the system of legal regulators of public relations. The presented scientific results, taking into account already existing and practically substantiated developments, can serve as a starting point for further discussion about the prospects, trends and directions of development of Russian transport law and transport legislation.

Keywords: transport, transport legislation, historical and legal analysis, historical stages, transport routes.

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Introduction. The issues of legal regulation of transport relations at all times were among the most essential for economic and social development of the state and society, which is necessarily determined by the role and importance of transport. Transport, although it does not create new objects of the material world, is a prerequisite for ensuring normal functioning of the sectors of the economy and trade. Since production of transport as a branch of material production is an activity aimed at territorial movement of goods or people, so far transport is a connecting link within the country's economy, covering all types of social production, distribution and exchange. Transport relations are closely connected with other socio-economic relations, which largely determine their nature, as well as the need for their full and rigorous regulation using legal norms.

Obviously, it is possible to adequately and fully cognize any social phenomenon only through the study of its historical roots, the study of its genesis.

Professor of Law at Moscow University A. N. Filippov (1853–1927) defined the task of the historical-legal approach to legal research as follows: *«Whatever legal concept we take in history ... each of them had undergone a long series of changes before it appeared to us in that developed and dissected image, in which it appears in modern legal theories or laws of various countries. In reality, the strict sequence of legal phenomena, the causal dependence of some on others, and the continuity of their development reigns over the visible chaos of a random change of some legal norms and institutions by others»* [1, pp. 231–232].

Many works have been devoted to research on the history of formation and development of transport in Russia, some have come from the pen of such famous representatives of the scientific community and statesmen as S. Yu. Witte, A. A. Golovachov, S. M. Zhitkov, I. M. Rabinovich, N. A. Kisilinsky, P. P. Migulin, I. Kh. Ozerov, A. I. Chuprov, A. S. Senin, D. Yu. Levin, A. V. Postnikov and many others. At the same time, some had as a research subject general historical information, incidentally affecting transport issues, while other researches were directly related to the history of transport, most often railway.

At the same time, there is a clear lack of attention to scientific research on this problem on the part of specialists in the field of jurisprudence. The subject of the study of legal scholars was associated with only certain temporary stages of formation and development of transport legislation governing social relations related to specific branches of transport.

Nevertheless, the results of few available historical and legal studies of a complex nature indicate that legal regulation and organization of transport activity in Russia at all times have been given special importance, predetermined by their



**Vladimir I Svyatoslavich (ab. 960–1015),
Grand Duke of Kyiv.**

significance for development of the economy and defense of the country [2, pp. 5–32].

In the course of our study, we tried to identify the main stages of emergence and development of transport law, focusing primarily on the sphere of legal regulation of state administration of transport routes or, in modern terms, of transport infrastructure. On the contrary we do not suggest a detailed analysis of the legislation governing the transportation process carried out by different modes of transport, which in the year of the 210th anniversary of the single transport administration body will undoubtedly be highlighted in other publications.

The *objective* of the research was to study experience of legal regulation of transport relations in the historical period from 9th through 18th centuries in order to identify the main stages of development and periodization of domestic transport law.

The authors used *methods* of legal analysis, including formal-dogmatic, achievements of legal hermeneutics, and tools of the linguistic-semiotic and semantic approaches.

Results.

Birth of transport laws in Ancient Rus'

Even before the creation of the Ancient Rus' state, transport lines, mainly waterways, emerged, along which tribal unions developed trade relations. Further development of communications led to emergence and establishment of transport legislation in Ancient Rus'.

From ancient times, Russian princes began to take care of construction of roads and bridges and, in general, the routes, although, at first, they were guided by military considerations.

In the annals of 1014, it is said: *«and Vladimir said: it is required to construct a path and a bridge, if you want to go to oppose Yaroslav»* [3, p. 36]. Fees such as bridge fee [*mostovschina*] and river crossing





Alexei I Mikhailovich, nicknamed the Quietest (1629–1676), the tenth Tsar of All Russia. Years of reign 1645–1676

fee [*perevoz*], which are among the oldest trade duties, ensured construction and maintenance of roads and bridges. Besides, the bridge fee acted also as a conscription, which was imposed on the population and consisted in construction of bridges across the rivers, as well as of wooden flooring on the streets of settlements and of roads in general. The oldest news about it is contained in *Russkaya Pravda* [*literally Russian Truth*] in the edition of the 11th century [4, p. 154].

Adopted in the 60s of the 13th century, «The Charter of duke Yaroslav on bridges» [5, pp. 236–238] contained the rules for organization of paving of the main trading highways of Novgorod and the roads leading to the marinas and the place of urban trade. The charter established a plan for the population of how the bridge service is distributed, the procedure for organizing the construction and repair of the bridge across the Volkhov river and for the delivery by floating of building materials for paving commercial roads and repairing bridges.

Formation of transport law in Russian state (16th through 17th centuries)

For centuries, construction of bridges and river crossings due to lack of funds from the government was carried out as a personal duty of citizens. Those practices continued even in the 16th century. For example, a charter of 1596 established that bridges on small rivers that suffered during the spring spill should be repaired by «*nearby plows*», that is, peasants. The obligation to pave bridges is also mentioned in many charters.

In the first half of the 17th century, there was a noticeable increase in crafts and trade, and a single market of the country was developing. These processes required, to a much greater extent than in previous years, the state and legal regulation of the regime of internal communications and routes and their financial support.

In the middle of the 17th century, the legislative activity of Moscow state increased significantly, the desire of the government to subject to legal regulation

more and more parts and phenomena of public and state life intensified. The culmination of lawmaking was achieved with adoption of the Council Code of 1649.

The road legal regulation prevailing at this time received with it the most complete expression. Chapter IX of the Code «On tolls, and on river crossings, and on bridges» compiled norms of two areas of regulation of public relations: on regulation of collection of tolls and on maintenance and improvement of roads, bridges and river crossings. Combining them in one chapter clearly showed why, at one time, tolls were introduced. The objective was to maintain correctly the ways of transportation.

The use of existing waterways also found its legal settlement in the Code. It provides rules for inland navigation. Since ancient times, river boating has encountered natural difficulties caused by natural phenomena. However, with development of hydraulic work and hydroengineering, serious artificial obstacles began to appear. The Code established: «*and where vessels navigate on rivers, on these rivers do not construct any new ponds, barrages and flour mills in order not to hamper the navigation on these rivers*» [6, p. 98], thus removing obstacles to navigation.

Development of transport laws during the reign of Peter the Great

The organization of road construction in Russia and the legal status of roads that gradually were taking shape at the middle of the 17th century, did not, however, lead to systematic administrative activities in this field. Fundamental changes started during the reign of Peter the Great, who, according to V. O. Klyuchevsky, returned from his first trip from abroad with the idea of Europe as of «*a noisy and smoky workshop with machines, ships, shipyards, plants, factories*» [7, p. 25]. Obviously, the tsar wanted to see Russia to be the same.

Taking care of development of trade and industry, Peter began the first system work on arrangement of water and inland ways. The water network within the state developed through construction of canals. The orders issued at that time demonstrate his efforts to educate the Russian merchants and to establish merchant shipping.

Active practical steps towards the construction of water transport routes contributed to acceleration of development of Russian maritime legislation, as evidenced by the adoption on July 26, 1720 of the Charter on evers*. The charter regulated in detail the relationship between the owner of the vessel and the shipper, set the time for loading and unloading, and also distributed the costs of loading and unloading. Compensation for damage caused to the evers was assigned to the owner of the vessel, and the merchant incurred losses associated with the goods [8, p. 219].

* Evers is a big river boat.

In 1724, the Maritime Commercial Code was issued, which established the procedure for inspecting merchant ships, for producing a list of goods accompanied by their prices, as well as penalties for non-compliance with the codified rules.

Peter the Great paid attention also to the inland roads. Dirt roads were constructed, in particular, from St. Petersburg to Moscow and from Moscow to Azov. In 1711, postal stations were set up on Moscow–St. Petersburg highway in Volokolamsk, Rzhev, and Staraya Russa [9, p. 84]. The procedure for carriageway and workers was enshrined in law. The movement along the highways also became streamlined and had to obey the emerging rules, written and not written, which permeated different sides of road life.

Under Peter the Great, construction of a land road from Moscow to Volkhov began, which became the first experience of modern road construction. In the Senate decree of June 1, 1722 «On construction of a new road from Volkhov to Moscow and on collecting money for this from the merchants and peasant households, located opposite canal location», the construction procedure, the time of its implementation and the forces involved in it were determined. The roadwork was attended by people *«who live off the road even up to 50 miles to the side»*, the work was carried out in *«dry time so that only the roots were dug up»*, and they had to pave and to dig ditches *«in the fall, when they get off the field work»* [10, pp. 716–717].

In the college system of executive bodies created by Peter the Great in 1717, the management of the transport sector was entrusted to the Commerce Board, endowed with the authority to develop transport legal acts. Conducting commercial affairs, which were most directly connected with roads, the Board was supposed to provide unhindered movement along them. Peter instructed it to create the necessary conditions for trading activities of the merchants, and since the main routes were sea and river ones, the merchant fleet with well-trained teams became its concern. The Board was charged with overseeing the work on development of waterways and construction of land roads.

Transport law during the period of palace coup d'état

After the death of Peter the Great, in January 1725, a slight decline was observed in the public economy, that also affected development of transport ways. However, the new rulers did not disregard road construction, allocating funds for repair of old and construction of new roads, as well as for construction of waterways, and, if necessary, providing labor from military garrisons. In 1735 a labour battalion was formed for current maintenance of Ladoga canal. It was stationed near the site. In 1740 lieutenant-colonel Ludwig addressed a report to the government



Peter I Alekseevich, nicknamed the Great (1672–1725), the last Tsar of All Russia (since 1682) and the first All-Russian Emperor (since 1721).

asking to reinforce the battalion with additional subaltern officers and underofficers, and 78 soldiers and 26 batmen, which were necessary to execute the order of general- field marshal, count Minich to ensure quality and safe maintenance of the canal. The colonel asked for recruits but the Cabinet gave instructions to Military Board to send to the battalion the persons retired from field regiments, but to provide that the soldiers could live in their own houses and soldiers' wives and children were transported there to live with their husbands [11, p. 65].

The Chamber Board established by Peter the Great in 1717 was reorganized and was granted a new regulation on June 23, 1731 that widened its functions. It had to supervise the state revenues but also was charged with the control over big roads by the intermediate of governors and local administrators, who had to ensure practicability of roads in the rural districts [12, pp. 168–169]. When it was the case, they were permitted to engage population to repair roads and bridges, but that right of governors was limited during harvesting period.

During the same reign of Anna Ioannovna, the Senate issued in March 1731 the decree «On repairing bridges along St. Petersburg and Pskov roads from the treasury, on allocation of the required amount for this and on the use for repairing the prospective road from Volkhov to St. Petersburg of several companies from garrison regiments» [13, pp. 392–393].

The decree defined the places where bridges and river crossings were to be built, as well as the materials to be used for these purposes. The limited resources of the treasury required their rational use, therefore, within the distance from Novgorod to the promising road (St. Petersburg–Moscow) repairing of bridges and river crossings was planned to be carried out only at the most necessary points for the





Anna Ioannovna (Anna Ivanovna) (1693–1740), Russian Empress from the Romanov dynasty. Years of reign: 1730–1740.

«postal run» (post stage-coach service). Also, the road from Volkhov to St. Petersburg could only be repaired in places strictly defined by count Minich with allocation of several companies from the garrison troops for work. 10 thousand rubles were allocated to the builders for road works and wages from the Police Chancellery of St. Petersburg, as well as part of the excise taxes received by the treasury. In case of lack of funds, it was proposed to apply to the Senate. As for the wood necessary for construction of bridges, according to the calculations of Moscow road inspectors, thousands of trees were required that could be taken at the dachas (houses) of the landowners, as well as from the palace and synodal estates. It was recommended to use wood on bridges and river crossings in the most necessary places, «so that there was no waste of wood». Given this circumstance, another 4000 rubles were allocated from the treasury in excess of the above amount.

To intensify the work on construction of the road in 1733 the Chancellery of the Prospective Road was established, then the Rules for construction of roads and their paving with fascines in marshy places were issued. The Chancellery was the first specialized body to deal directly with roads. It was subordinate to the Senate, and its current operations were carried out at the expense of funds received from road users [14, p. 223].

At the end of 1733, the Cabinet of Empress Anna Ioannovna received a report from count Johann Bernhard Weibach «about a bad road from Klin to Moscow and near Tula and Kursk». This report was submitted to the Governing Senate for consideration. As a result, in January 1734, the Senate issued the decree «On repairing bridges and river crossings». Since the Chamber Board was to a greater extent responsible for the condition of roads in Russia at

that moment, appropriate instructions were given to it. Firstly, bridges and river crossings that were handed over to it had to be inspected, and tax farmers, owners of «bad bridges», were forced to carry out repair work «at a convenient time» and henceforth keep these objects in good condition. Secondly, on bridges and river crossings that were held on trust, the Chamber Board should immediately have made a decision «on construction and repair of those bridges». Thirdly, on roads that were to be repaired by the state, an inventory was required, indicating the areas where repairs are needed, the need for materials and manpower «on horse and on foot», and how far the forests are from the roads. The experts who carried out the above activities should have made proposals «how better without further treasury loss and public burden to make necessary corrections», and the appropriate inventory of the work and estimates for them were to be sent to the Chamber Board, and the latter, having studied it, had to send it to the Senate with its own considerations. In the final part of the decree it was noted: «and where across the rivers and streams in whose villages and settlements the bridges are in poor condition, the inhabitants of those villages, whatever they are, are forced to build and repair immediately, as ordered by the decrees, and watch tightly, so that there would be no stopover for those traveling in those places» [15, pp. 258–259].

Thus, it is obvious that the legal measures taken by the government of Anna Ioannovna were aimed at developing inland navigation, road construction, improving maintenance works, improving management of the industry in the center and in the localities, and, most importantly, caring for the merchants and the population, involved in work in the road construction and maintenance.

In the subsequent reign of Elizaveta [Elizabeth] Petrovna, the legal regulation of road construction and operation of land roads was further developed.

In 1744, it was prescribed not to allow trees to overgrow Moscow road. Owners of estates were charged with the duty to clean up nearby sections of roads. In all provinces, large roads in order to ensure free and safe passage had to be cleared of trees on both sides for a distance of 15 sazhen [1 sazhen is equal to 7 feet]. By analogy with Moscow road, each landowner was charged to clear roadside sections from trees in front of his dachas [estates] [9, pp. 184–185].

In 1754, with beginning of the customs reform, which included, among other things, elimination of internal charges, it was confirmed that the roads remain under the responsibility of the governors of provinces, who must ensure their proper condition and, if necessary, involve the population in the repair work.

The Chancellery of the prospective road in 1755 was renamed into the Chancellery of construction of

state roads and became the body that supervised construction and maintenance of state roads. It was headed by the chief judge, and governors of the provinces remained the direct executors of the orders of the Chancellery [14, p. 221].

In 1760, there was an order prohibiting repair work involving the population on the road between the capitals, and from then maintenance had to be done by hired workers. Of course, this measure greatly facilitated the situation of people living near roads and contributed to improving the quality of repair work.

Empress Catherine II at the very beginning of her reign paid attention to the road business.

The decree «On bringing the State roads to the best condition» of February 18, 1764, appointed Lieutenant General Nikolai Muravyov as the head of the Chancellery of construction of state roads. He was tasked with «*bringing all state roads to the best condition*», while he could demand help from the Senate and even directly contact the Empress [16, p. 541]. Soon, the Chancellery acquired the status of a central institution, and the local authorities of provinces had to regularly report on the condition of roads to it. A construction battalion was at the disposal of the Chancellery, the battalion was equipped with «*recruits and all sorts of non-resident servicemen who are capable of performing this service*» [17, pp. 152–153]. It solved many issues of construction of roads, artificial structures and of their operation.

In 1775, as a result of the reform of local governments, state chambers were established, the purpose of which was to serve the fiscal interests of the state. However, they were soon forced to engage themselves in road construction. The consequence of the changes in local government was that by decree of October 24, 1780, the Chancellery of construction of state roads was abolished. Ready roads passed under the charge of police officers and lower district police courts, and special expeditions were established for incomplete roads at the provincial state chambers [18, pp. 994–997]. In 1782, the construction battalion was disbanded; Catherine II, in the decree of January 26, explained that «*maintaining roads in good condition is a public matter, in which the lower police district courts are required to observe, and where, according to Our decrees, they are ordered to build them by official dependency, there's all these works are carried out by the essence of the contract*» [19, p. 388].

The need for a specialized body forced the Empress in 1786 to create a new road institution which was named the Commission on roads in the state. The decree of March 14 [20, pp. 319–322] did not emphasize the need for good road maintenance, but noted that they are needed «*to ensure communication between different places of the state, to deliver the necessary for human life, to facilitate trade, and therefore, for the common benefit*». The commission



Elizaveta Petrovna Romanova (1709–1761), Russian Empress from the Romanov dynasty. Years of reign: 1741–1762.

was to develop a master plan for road construction in Russia, having previously obtained road maps from provinces, justifying feasibility of existing and planned roads for construction, as well as information on the material resources available on the ground and the need for construction of bridges and discharge pipes with approximate costs of their construction. The Commission monitored the progress of road construction in all provinces, receiving reports from the expeditions at the provincial state chambers on the work performed and the funds spent. The state chambers and treasuries at the local level directly supervised the construction, including audit of accounts and state penalties.

The first practical experience for the Commission on roads in the state was the construction of a road between St. Petersburg and Moscow. Plans and estimates regarding that project, that had already been submitted to the Senate, were handed over to it.

The waterways during the reign of Catherine II also received further development. However, a serious obstacle to the successful conduct of trade by Russian merchants still existed, as the legal basis for shipping was missing. So, in Russia there was no charter for merchant shipping, and this forced the Russian merchants to be guided by the norms of the laws of foreign states. The unsettled relationship between ship owners and hired workers often led to unrest on ships and hindered development of trade. On June 1, 1781 the Charter [21, p. 157] was finally adopted resolving thus many contentious issues. The Charter contributed to expansion of trade relations within the country, but beyond its borders they were carried out on the basis of the «*maritime convention for protection of neutral merchant shipping*» adopted in 1780.

In 1781, the second part of the Charter of merchant shipping was also published [22, pp. 312–336], which contained the rules governing insurance





Ekaterina Alekseevna Romanova (Catherine II the Great) (1729–1796), Russian Empress. Years of reign: 1762–1796.

of ships in case of shipwreck and damage to goods. However, since at that time there were no insurance companies in Russia (they will appear only during the reign of Nicholas I), the owners of the ships were forced to insure Russian ships and goods in foreign insurance companies, and that created a lot of inconvenience.

In 1784, to create a more reliable floating device for overcoming the rapids, the government announced a kind of competition and promised a reward [9, p. 50]. In St. Petersburg, on the Neva river, a city shipyard was created, funded by the treasury to intensify construction of Russian ships. Everyone could build large and small, sea and river vessels at the shipyard. It was allowed to equip them anywhere at the discretion of the owner of the vessel and even order equipment for these purposes from abroad.

The Black Sea Admiralty Board received the right to allow to Russian natives to use national flags on merchant ships for a period of not more than 6 years for sailing on the Black and other seas. In this case, a single condition was set: these persons should have been famous and trustworthy people [9, pp. 50–51]. These government measures testified to the desire to improve the quality of river and sea shipping.

Pavel I, during his short reign, first of all paid attention to development of waterways and continued construction of canals.

The order, issued in 1797, stipulated to connect the Dnieper and Dvina rivers using the Berezhina and Ulla rivers, and also to finish the Oginsky canal, designed to connect the Pripyat and Neman rivers, and the Korolevsky [Royal] canal, connecting the Pripyat and Bug rivers. The same year, in response to requests from the merchants to improve the conditions for navigation, as well as to bypass Lake Ilmenny, construction of a 8-mile long canal from Msta to Volkhov began. In 1798, construction of the canal connecting the Gauja River with the Dvina began, with the aim of improving delivery of goods from neighboring places to Riga. The desire to speed up

the construction of the Vytegorsky Canal, which was supposed to connect the Kovzha and Vytegra rivers, was confirmed in 1799 by a decision to borrow funds from the Orphanage at a cost of 400 rubles annually. After completion, the channel received the name Mariinsky [9, pp. 57–58].

In terms of improving state transport administration, it was decided in 1797 to create a special institution for governing the empire's transportation ways, though initially only waterways were considered. By decree of the Governing Senate of February 27, 1797, the Main Directorate of Water Communications was headed by Privy Councilor Yakov Sievers. A year later, on February 28, 1798, after adoption of the relevant provision containing the specific tasks that it was entrusted with, the practical activities of this institution began. All waterways of the Russian Empire were transferred to the Main Directorate. The Main Directorate, later renamed the Department of Water Communications, lasted until 1809. At that time, it was headed by count Yakov Sievers (1798–1800) mentioned above, then by count G. G. Kushelev (1800–1801), and finally by count N. P. Rumyantsev (1801–1809) [23, p. 59].

Conclusions

The issues of road construction and maintenance, organization of traffic, development of waterways, and improvement of public administration in those areas were initially considered as the subject of attention of rulers and legal regulation by acts of higher legal force in Russia. However, acts that were sources of transport law of that period were often adopted situationally because of the need to resolve suddenly arising problems, in accordance with the subjective perception by rulers of facts of objective reality and at their discretion. The rules governing relations in the field of organizing transport ways were contained in a number of legal acts, sometimes not directly related to transport problems and prepared by persons who did not fully understand either the system nor principles of organization of transport ways, or even less the consequences caused by solving casually various kinds of opportunistic tasks resulted in legislative changes of strategic importance.

Nevertheless, the trend to regulate legal relationship through central administration bodies took shape in 16th–17th centuries. The Code of 1649 paid attention to legal relations regarding roads. The strengthening of legal conditions of inland and waterways was based on the public interests consisting in the necessity to facilitate traveling of soldiers, administrative staff and of couriers. Regretfully the interests of merchants were not considered that negatively affected the rhythm of trade and craft development. The Code contained meanwhile the first law on the protection of navigation.

The systemic governmental activities in the transportation field started during the reign of Peter

the Great and focused on enhancing industrial and commercial exchanges.

The suggested periodization supposes that the period of Peter the Great and the reigns that followed it were characterized by changes in state objectives and in the objectives of legal regulation. There were attempts to create single bodies to govern transport, but the ratio of centralized and decentralized functions was not stable.

Peter the Great established a series of Boards in 1717, comprising Commerce and Chamber Boards, in charge to different extent of development of waterways and of construction of roads.

Ekaterina the Great created the Commission on the roads in the state and personally controlled its activities. Governmental body dedicated to transport issues (Department of waterways) was created during the reign of Pavel I.

The presence of numerous, but contradictory and unstructured legal acts, as well as the absence of a single public administration body in the field of transport did not allow to solve the issues of developing routes properly. Organizational, legal, scientific framework and staffing of transport no longer corresponded to the needs of the economy, trade, and military security of the Russian state, which entailed unacceptable losses in the economic sphere and a potentially catastrophic threat to the country's defense capacity.

At the beginning of the 19th century, the need for systemic transformations of all aspects of government, including administration of transport routes, became increasingly urgent and objectively necessary. The period of fundamental changes in the system of legal regulation of transport was approaching, and those changes further occurred during the reign of Emperor Alexander I.

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