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ADMINISTRATIVE-LEGAL ISSUES OF ENSURING TRANSPORT SAFETY

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Ensuring of transport safety as a system, which includes the provision of transport safety, safety of traffic and transport operation, is considered in the article.

Here is noted that a key role of internal affairs bodies in the system of ensuring transport safety is not entirely justified, since many of the issues at stake are of technical, technological, organizational and other nature and go beyond the limits of competence of internal affairs bodies. The author proves that the place and role of internal affairs bodies in ensuring transport safety should be conditioned and limited by protective (police) function.

Argues that there is a gap in the administrative-legal regulation of participation the subjects of ensuring transport safety in assessing the vulnerability of transport infrastructure and vehicles.

The article suggests the study and enshrining of a conceptual apparatus, as well as the consolidation of norms about different types of transport safety in one (basic) legislative act.

Keywords: transport safety, transport security, types of transport safety, subjects of ensuring transport safety, law enforcement activity in transport.

In the Federal Law No. 16-FL "On Transport Safety", transport safety is understood as a state of protection of transport infrastructure facilities and transport vehicles against acts of unlawful interference.

In our opinion, the legislator used extremely general and rather abstract collective term by introducing in administrative turnover obviously meaningful concept without disclosing of its essence and full content. In other words, the general concept that combines several derived concepts and directions of activity is applicable to refer to only the part of the content of the concept of "traffic safety". This content turned out narrowed to technical equipment of transport infrastructure facilities and vehicles, primarily in terms of their anti-terrorism protection and law enforcement activity in this area, in particular administrative and criminal jurisdiction.

In our view, the attempt to combine by a generic concept all types of transport safety would be successful if the "threat of terrorism" does not prevail, if the legislator is not limited to urgent adoption of anti-terrorism measures, and would put in this concept a broader sense. Then the law would not have been such "framework", containing predominantly "charging" norms, and transport security system would acquire additional tasks to ensure technical and technological security, security related to natural phenomena, would be enriched with new actors and their functions.

In essence, the legislator has disseminated the already adapted in the Air Code of the Russian Federation and other normative legal acts specific concept of "air safety" for all types of transport, giving it a generic value. The concept of "air safety" under article 83 of the Air Code of the Russian Federation [1] is defined by the legislator as "a state of aviation security from unlawful interference into activities in the field of aviation". In this formulation the concept correlates to the concept of "transport security" provided for by the analyzed federal law, as a part and the whole. However, article 28 of the Air Code of the RF states that "the purpose of state supervision in the field of civil aviation is ensuring the safety of aircrafts' flights and air safety". So, the legislator in the Air Code distinguishes two diversified concepts - "ensuring the safety of aircrafts' flights" and "air safety", - which, in our view, could be covered by the concept of a more general nature - "safety in air transport".

In addition, we believe that the content of the concept of "transport safety" in broad sense should match the content of the concept of "transportation security". In turn, the concepts of "safety in certain types of transport", "air safety", "safety in air transport" are derived concepts and should correlate to the concepts of "transport safety" or "transportation security" as a part and the whole.

It should be emphasized that the Law of the Russian Federation No. 2446-I from March 05, 1992 “On Security” [3] contained reference to “safe work practice on transport” (article 12), implying the traffic safety and operation of transport, fire security, industrial safety, etc. Federal Law No. 390-FL from December 28, 2010 “On Security” [5] leaves open the question about the types of security, offering to solve it by using sectorial thematic laws. Consequently, the developers of draft laws and sub-legislative acts on certain types of security will have to agree on the terminology used in them.

Currently, there are several federal laws on sectorial types of security along with codified acts (Merchant Shipping Code of the Russian Federation, Air Code of the Russian Federation, Code of Inland Water Transport of the Russian Federation), in which there are chapters (norm) on the relevant types of security. They are the Laws “On Road Safety”, “On Safety of Hydraulic Engineering Structures”, “On Fire Safety”, “On the Radiation Safety of the Population”, “On Industrial Safety of Hazardous Production Facilities” and so on.

It is also noteworthy that in the RF Presidential Decree from March 31, 2010 “On Creation of a Comprehensive System of Ensuring Public Safety in Transport” [6] he uses the term of “transportation security” rather than the term “transport safety”. The same term has been perceived by the CIS Model Law “On Transportation Security” adopted October 31, 2007 (i.e., after adoption of the 16-FL from 09.02.2007) by the Interparliamentary Assembly of States-participants of the Commonwealth of Independent States.

Thus, the analysis of current normative legal acts related to ensuring of transportation security leads to the conclusion that, despite the presence of the seemingly basic (in terms of terminology, but not content) Law “On Transport Safety” in them continue to “live their own lives” and be used such concepts as “rail safety”, “railway and other technical means’ traffic and operation safety”, “safe for life and health conditions of passengers travel”, “security of cargo, luggage and freight”, “environmental safety”, “air safety”, “flight safety of aircrafts”, “air traffic safety”, “safety of navigation”, “safety of navigation of vessels”, “safety of port and shipping waterworks and inland waterways”, “safety of marine navigation”, “road safety” and many others.

One of the astounding that in chapter 11 of the Code on Administrative offences of the RF [2] “Administrative Offences on Transport” coexist two articles – article 11.3.1. “Violation of air safety requirements” and article 11.15.1. “Failure to comply with the requirements for ensuring transport safety”. We stress that among the requirements, for violation of which occurs administrative responsibility under

article 11.15.1, there are requirements for ensuring transport safety that take into account security levels for different categories of transport infrastructure objects and air transport vehicles, approved by the order of the Ministry of Transport of Russia No. 40 from February 08, 2011 [10]. In general in this chapter, the term of “safety” is used in different meanings in names of nine articles.

Two scientific approaches to determination the content of the concept of “transport safety” have developed in the legal literature. Proponents of the first approach agree with the legislator and consider transport safety in narrow sense – as a condition of protection of transport infrastructure objects and vehicles against acts of unlawful interference. It seems that they are in the minority, as most scientists include in the content of the analyzed concept not only protection of transport complex against illegal acts, but also other elements.

As an option, ensuring transportation security can be considered as a system that includes: 1) ensuring transport safety; 2) ensuring the safety of traffic and operation of transport.

Ensuring transport safety is a system that includes technical means, fencing, facilities, specialized services and guard units, law enforcement bodies, legal and organizational measures defining the state of protection of human life and health, property of owners, transportation facilities, communications, vehicles, conveying equipment against acts of unlawful interference.

Ensuring the safety of traffic and operation of transport is a system that includes designing, testing, production (construction), commissioning and maintenance of vehicles, communications, transport equipment, training and professional development of personnel maintaining transport, medical and meteo control, control of communications functioning, functioning of vehicles and their movements, organizational and legal measures, investigations for determination the causes of accidents (internal investigation) and their account, which defines the state of protection of life and health of people, communications, transport equipment and vehicles, environment and property of owners against threats of man-made, natural and another non-social nature.

Taking into account anti-terrorism focus of the Federal Law “On Transport Safety”, internal affairs bodies take in the system of ensuring transport safety nearly key place. This is not entirely justified, since many solved within the framework of this law issues are of technical, technical-technological, organizational and another nature, go beyond the “traditional” competence of internal affairs bodies. Moreover, administrative-legal regulation in the sphere of ensuring transport safety is carried out mainly by the Russian Ministry of Transport. Because of shortcomings

in the coordination and harmonization of joint actions of the Russian Interior Ministry, Ministry of Transport of Russia, other interested federal executive authorities and the subjects of transport infrastructure legal gaps and contradictions often emerge in normative acts.

As an illustration, one can point to a gap in the administrative-legal regulation of participation of the subjects of ensuring transport safety in the assessment of the vulnerability of transport infrastructure and vehicles. In accordance with part 2 article 5 of the Federal Law "On Transport Security" vulnerability assessment of transport infrastructure and vehicles is carried out, including, by the institutions and units of the Russian Interior Ministry, with taking into account the requirements to ensure transport safety on the base of a public contract on tariffs set by the Federal Tariff Service of Russia.

Order of the Federal Tariff Service of Russia No. 534-a from November 10, 2010 "On Approval of Administrative Regulations of the Federal Tariff Service on Exercising State Function to Establish Tariffs for the Services of Assessment the Vulnerability of Transport Infrastructure and Vehicles" approved the relevant regulations of state functions execution [9].

The order of the Russian Ministry of Transport No. 87 from April 12, 2010 "On the Procedure for Assessing the Vulnerability of Transport Infrastructure and Vehicles" defines arrangements for this assessment [8].

Charter of the Federal State Unitary Enterprise "Ohrana" of the Russian Ministry of Internal Affairs, approved by Order of the Russian Ministry of Internal Affairs No. 267 from March 16, 2007 "On some issues of activities' organization of the Federal State Unitary Enterprise "Ohrana" of the Ministry of Internal Affairs of the Russian Federation", specified assessment of the vulnerability of transport infrastructure objects of the Russian Federation as one of the activities of the enterprise [7]. However, Charter of the Federal State Unitary Enterprise "Ohrana" of the Russian Ministry of Internal Affairs, approved by Order of the Russian Ministry of Internal Affairs No. 367 from May 13, 2011 "On some issues of activities' organization of the Federal State Unitary Enterprise "Ohrana" of the Ministry of Internal Affairs of the Russian Federation", contains no provisions on assessment of the vulnerability of transport infrastructure objects and vehicles [11].

Thus, at present, the Russian Ministry of Internal Affairs does not have organizations that are authorized to exercise the specified activity. In our opinion, in their determination we must take into account that there are no organizations similar to the FSUE "Ohrana" of the Russian Ministry of Internal Affairs, which are

capable to assess the vulnerability of transport infrastructure object and vehicles, in the system of internal affairs in the rail, water and air transport.

In addition, we believe that the place and role of internal affairs bodies in ensuring transport safety should be conditioned by and limited to protective (police) function, that is, protection of legal norms from violations, including measures of prevention. Since, it is in order to relieve internal affairs bodies from the redundant and extrinsic functions the reform of the Ministry of Internal Affairs of Russia has been implemented.

There is no impenetrable barrier between the concept of “law-enforcement functions” and “functions of control (supervision)”, as they correlate as a whole and a part. There is no difference in what sense would be considered “law enforcement activity” – the narrowest, narrow, wide or the widest – always, its key element is jurisdiction, which is implemented by control and oversight bodies, including the bodies of internal affairs.

With regard to the activities of internal affairs bodies, as a central link of law enforcement activity is advisable to consider active monitoring over the compliance with legal norms of the real behavior of participants of protected public relations with subsequent correction where necessary. The monitoring covers all forms of control over compliance with regulations, including supervision, inspection, audits, checks, control in the proper sense of the word, etc. It is inherent for both external and the intradepartmental activities of internal affairs bodies. Monitoring over performance of regulatory requirements by participants of public relations obliges to refrain from violations of the rule of law. This is its social function and significant preventive potential. As examples of the active use of the method of “insider’s view” can be represented the activities traffic police, examination officers at airports, squad of police officers for accompanying long-distance trains, etc.

Jurisdictional competence of internal affairs bodies in the area of transport safety is defined by the relevant norms of the Criminal Procedural Code of the RF about investigative jurisdiction of crimes, as well as by the norms of the Code on Administrative Offenses of the RF about investigative jurisdiction of cases on administrative offences. The scope of this competence is huge, and we think that it is impractical to impose any additional jurisdictional powers on internal affairs bodies. In addition, the law enforcement function in this area is implemented by them not only in criminal-procedural and administrative, but also in operational-search activities.

Today, the Russian Ministry of Transport has prepared a draft decree of the Government of the Russian Federation “On Approval of a Provision on the

Federal State Control (Supervision) in the Field of Transport Safety". In accordance with this document, authorized federal executive body for the implementation of the federal state control (supervision) in the field of transport safety defines the Federal Service for Supervision in the field of transport and its territorial bodies. The subject of implementation the federal state control (supervision) in the field of transport safety is the performance of requirements in the area of transport security by the subjects in the course of their work.

No later than one year from the date of adoption of the mentioned decision the Russian Ministry of Transport, the Russian Interior Ministry and the Federal Security Service of Russia are required to approve a joint normative legal act establishing the Procedure of interaction of the Federal Service for Transport Supervision with the Russian Interior Ministry and the Federal Security Service of Russia in conducting scheduled and unscheduled on-site inspections with application of test-items and test-objects and their use.

The Russian Ministry of Transport, upon consultation with the Russian Ministry of Internal Affairs and the Federal Security Service of Russia, is offered no later than one year from the date of adoption of the decision to approve:

list of objects of transport infrastructure and vehicles belonging to the first category in accordance with the Procedure for determination the number of categories and criteria for categorization of objects of transport infrastructure and vehicles by competent authorities in the field of ensuring transport security, which has been approved by the order of the Russian Ministry of Transport No. 62 from 21.02.2011, where the systematic monitoring over the implementation of requirements in the field of transport safety is carried out with the use of audio and video systems;

List of checkpoints (posts), in which conduct activities for control over compliance with the requirements in the field of transport safety during transportation of passengers and goods by road carried out on federal highways.

Without going into details of the draft Provision on the federal state control (supervision) in the field of transport safety, we note that territorial bodies of the Federal Transportation Inspection Service are offered to exercise the majority of monitoring and oversight events together with the bodies of internal affairs.

Conceptual apparatus of normative legal acts relating to ensuring transport security, first of all of legislative ones, must be streamlined and unified. First of all, must be clarified the conceptual apparatus of the "disturber of peace" in this field – the Federal Law "On Transport Safety". Here we see two ways of resolving.

The first way – the abolition of the law and adoption on its basis the law "On Transportation Security" or "On the Safety of Transport Complex", which will

define all types of transportation security, subjects of their providing and their legal status in this area.

In view of the importance of the anti-terrorist protection of the population, can be adopted a separate law "On Anti-terrorist Security of Transport Complex" or "On the Safety of People in Transport". After all, along with plenty of laws on safety, Federal Law "On the Safety of Hydraulic Engineering Structures" also found its place in the legal system of the Russian Federation. The basis for the new law will be made of the Federal Law "On Combating Terrorism", RF Presidential Decree from March 31, 2010 "On Creation of an Comprehensive System of Ensuring Public Safety in Transport", Comprehensive program to ensure public safety in transport approved by the RF Government Decree No. p-1285 from July 30, 2010 and other regulatory legal acts.

The second way - making changes and amendments to the Federal Law "On Transport Safety". The concept of "transport safety" and the very content of the law must be enriched with norms on such types of transportation security as "air safety", "navigation safety", "safety of navigation on inland waterways", "road safety", "railway traffic and operation safety" and etc. Elaboration and consolidation of the conceptual apparatus, as well as the consolidation of the norms about different types of transport safety in one (base) legislative act, will lead to a common denominator the relevant terminology of other laws, including codified and subordinate acts that regulate the issues of ensuring transport safety.

It is possible that the adoption of a basic law on transport safety may be the ground for cancellation of a part of legislative acts on sectorial types of safety. Thus, the legal framework in this area will be optimized, the intensity of terminological disputes will be reduced, and clearness will appear in the tasks and functions of the subjects of ensuring transport safety.

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