

ЗАРУБЕЖНАЯ ПРАКТИКА ПРАВОВОГО РЕГУЛИРОВАНИЯ ТРАНСПОРТНОЙ ДЕЯТЕЛЬНОСТИ

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Основные этапы развития правового регулирования транспорта в России, Британии и Франции и их взаимодействие

Аннотация. В статье анализируется становление правового регулирования и постепенное развитие общественных отношений, сложившихся в сфере деятельности транспорта, начиная с периода Древней Руси до наших дней. Рассмотрены причины формирования российского транспортного права как комплекса норм разных отраслей права, регламентирующих обширную сферу деятельности различных видов транспорта. На примере Английского и Французского права и при его сравнении с практикой отечественного правового регулирования транспортных отношений проведена параллель между данными процессами и выявлен ряд общих черт.

Ключевые слова: правовое регулирование транспорта; правовое регулирование общественных отношений; транспортное право.

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The main stages in the development of transport legal regulation in Russia, Great Britain and France and their interaction

Abstract. The current paper has presented the analysis of the formation of legal regulation of public relations that emerged in the field of transport. The paper has considered the gradual development of these transport relations from the period of Ancient Russia to the present day. There were identified the reasons for the formation of Russian transport law, as a set of norms of different branches of law, regulating a wide range of activities of different types of transport. On the example of English and French law and its comparison with the practice of domestic legal regulation of transport relations, there has been drawn a parallel between these processes and there has been established a number of common features.

Keywords: legal regulation of transport; legal regulation of public relations; transport law.

In the process of transport activities, there are being formed certain social relations, the legal regulation of which is carried out using a special set of norms called 'transport law'.

The term 'transport law' appeared in domestic and foreign legal literature at the end of the 19th century and is generally accepted by all scholars. At the same time, the legal regulation of social relations arising in the process of transport activity originated in our country from the period of Ancient Russia, developing simultaneously with the emergence and development of certain modes of transport and of various social relations.

I.V. Spirin noted that «despite the fact that the preserved cultural monuments tell us very sparingly about transport and transport legislation of the early

periods, the available fragmentary information allows us to say about the existence of transport law norms since ancient times» [1].

In the XIV-XVII centuries, transport activity along with economy, begins to be regulated by special norms of a transport nature, which were developed in the following areas: 1) transport taxation; 2) arrangement of national communication lines; 3) state natural transport duties; 4) mail transportation [2].

'Transport law' in its modern sense originated in Russia during the reign of Peter I. At this stage, water transport was considered a priority, since the construction and maintenance of roads was unprofitable. It was during the reign of Peter I that Russian maritime legislation began to develop actively, according to the publication on July 20, 1720 of the Evers Charter, which defined in detail the relationship between the ship owner and the shipper.

The reign of Catherine II was marked by the liberalization of economic relations and the rise of the economy, including transport sphere. The manifest issued in 1775 allowed the free establishment of any enterprises, which stimulated the development of transport system. The establishment of a coherent state system of road maintenance and a network of state post stations and post offices began. The transportation of passengers by road was carried out by postal crews according to the established service rules (so-called 'public transport') or by the own carriages of people. There were introduced uniform rules of service, forms of travel documents, such as passports, waybills for cargo, etc. [3].

In 1781 there was published the Charter on Merchant Shipping, which consisted of three parts. The model for it was French Maritime Charter of 1681 *Ordonnance de la marine*. It should be noted that the Charter on Merchant Shipping was not exclusively an act of maritime legislation, since it also covered relations of the movement by inland waterways, which distinguished this act from the French *Ordonnance de la marine*.

In the 19th century industrial development stimulated emergence of the new modes of transport (railways, steam shipping) and led to the expansion of transport communications. These process necessitated the adoption of special laws regulating the functioning of the transport industry. In 1857 there was adopted the Charter of the Railways of the Russian Empire, then in 1885 there was issued the General Charter of the Russian Railways.

On September 11, 1896 the Minister of Railways M.I. Khilkov adopted the decree «On the procedure and conditions for the transportation of weights and passengers along the highway of the Ministry of Railways in self-propelled carriages» [4].

The result of the legislative work carried out in the 19th century was a sufficiently developed, well-coordinated system of normative legal regulation of various social relations in the field of transport, which contributed to the formation of the Russian transport law at the turn of the 19th-20th centuries.

The XX century was marked for Russia by a sharp expansion of areas of legislative regulation and numerous changes in public relations, which affected all spheres of activity of all types of transport.

In the Soviet period the regulatory framework, primarily of railway transport, was actively developed, expanded and revised. The first all-Union Charter of the USSR Railways, approved by the USSR Council of People's Commissars of May 24, 1927, included the norms of the previous Charter without changing. The next Charter of Railway Transport of the USSR, approved by Decree of the Council of Ministers of the USSR in December 8, 1954, was adopted already in the conditions of the functioning of a relatively harmonious and well-formed transport system of the USSR, where all types of transport occupied their niches, and the uninterrupted railways operation was considered a necessary condition for economic growth. On April 6, 1964, the Decree of the Council of Ministers of the USSR No. 270 approved the last Charter of the USSR Railways, which determined the rights, duties and responsibilities of railways, as well as enterprises, organizations, institutions and citizens using railway transport, and in legal terms it was more perfect than the old Charter.

The legal regulation of road transport activities, in contrast to railway, sea and inland waterways, developed in a peculiar way. In 1969, there was adopted the Charter of road transport of the RSFSR, which lasted until the adoption of the new Charter of road transport and urban land electric transport [5; p. 25—26] in 2007.

In the middle of the XX century there was done an active work to harmonize the legal basis of international transport by various modes of transport with international rules by the USSR joining a number of international treaties and conventions.

The end of the XX century was marked by the focus of the regulatory legal framework on getting rid of planned norms, which was due to the transition from a command-administrative economy to a market economy and the expansion of civil law regulation, the strengthening of civil law principles in the complex legal regulation of public relations in transport activity. The Transport Charter of the Russian Railways issued in January 8, 1998, got rid of planned norms and consolidated the advantages of railway services in the new economic conditions.

The modern period of development of legal regulation of public relations in transport activity and Russian transport law are characterized by a comprehensive settlement of relations in the sea, air, inland waterway, rail and road transport. The relations that develop on all these modes of transport are regulated by numerous international treaties, legal customs, regulatory legal acts, among which there are special transport charters and codes, containing norms of civil, administrative, land, labor and other law areas and, as a result, are complex.

In addition, nowadays, Russian transport law is being developed under the influence of the processes of transport reformation, which is especially clearly

manifested in the analysis of the updated railway legislation, which legitimizes the restructuring of railway transport.

In order to compare and make complete the analysis of this issue, let us say a few words about the development of legal regulation of public relations from the activities of transport in a number of European countries, in particular in *Great Britain and France* [URL: http://www.opsi.gov.uk/acts/acts1995/Ukpga_19950021_en_1].

The conducted analysis of the sources of English law allowed us to conclude that social relations arising in the process of transport activities in Great Britain were regulated in sufficient detail and comprehensively. Developing initially on the basis of customs, and then on the basis of judicial precedents, at present, the norms governing the activities of transport in England were consolidated in numerous consolidated acts, the adoption of which began in the middle of the 19th century and still goes on at the present.

Legal regulation of public relations arising in the field of transport in Great Britain is currently carried out both through the adoption of general consolidated acts on transport, and through the regulation of public relations arising in the process of functioning of various modes of transport. For example, *the Merchant Shipping Act 1995* is to a certain extent an analogue of the RF KTM and regulates various social relations developing in the field of merchant shipping, namely registration of British ships, requirements for the crew of ships, accounting of crew salaries, duties to establish the technical condition of a ship, disciplinary offenses of the crew, safety and health of maritime staff, requirements for fishing vessels and their crew, rescue operations, ship accidents, assistance to ships in accidents, lifting sunken property, transporting passengers, freight, limitation of liability for maritime claims, prevention of pollution from ships, investigation of crimes and jurisdiction of ships. A significant number of acts are devoted to the financial and organizational component of transport activities, as well as its safe operation and environmental regulation of transport activities. In addition, it is possible to single out acts aimed at regulating contractual relations in transport.

The formation and development of legal regulation of public relations that are developing in the field of transport *in France* is mainly based on the specifics of the Romano-Germanic legal family. In this regard, France (in contrast to Great Britain) is very characterized by the division of branches of law into public and private, as well as extensive codification (more than 60 codes).

Initially transport law in France developed on the basis of customs. In the 17th century there was a need to streamline legal regulation due to the development and complication of social relations. It resulted in the development of statutory law in France. In particular, the mentioned above *Ordonnance de la marine* was the first experience in the regulation of merchant shipping by legislative means, combining the norms of private and administrative law.

In the XIX century there was adopted another well-known European law, the Commercial Code of 1807 (*Code de commerce 1807*), the second volume of which

almost completely reproduced the norms of the *Ordonnance de la marine*. But, the legislator was forced to exclude the norms of an administrative nature with which the legislation of the 17th century was saturated since the norms of transport law became part of the *Code de commerce*. Currently, France has a new Commercial Code of 2000, taking into account the applicable provisions of EU law and replacing the *Code de commerce* of 1807 that had been in force for almost two centuries [URL: <https://www.legifrance.gouv.fr/>]. The Commercial Code of 2000, unlike its predecessor, excluded the rules on the regulation of social relations arising from merchant shipping. Moreover, despite the most extensive codification, currently in France there is no unified code regulating social relations arising from merchant shipping. These relations are regulated by laws, decrees, special codes that cover a narrow area of legal relations in transport activities. Initially the legislator paid the greatest attention to the regulation of merchant shipping, but other areas of transport also obtained consistent and comprehensive legal regulation.

Thus, public relations in the field of air transport are regulated by the Civil Aviation Code (*Code de l'aviation civile*). This code is a regulatory legal act that combines the norms of public and private law (criminal, civil, administrative, labor, environmental, etc.) and regulates various social relations arising in the field of civil aviation. In particular, it contains provisions on aircraft and their registration, the movement of aircraft, aerodromes, contracts for transportation of goods and passengers, rules for a commander and crew of an aircraft, the peculiarities of their work and rest, disciplinary offenses, investigation of accidents and incidents, operational restrictions because of aircraft noise. A similar act exists in the field of inland waterway transport, it's the Inland waterway transport code (*Code du domaine public fluvial et de la navigation interieure*)

[https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006069577/].

The road traffic is regulated by the Traffic Code (*Code de la route*), as well as the French Road Code (*Code de la voirie routiere*). The first establishes the rules of the road and the requirements for vehicles, the second characterizes the types of roads, their operation, construction and reconstruction.

The legal regulation of public relations in transport activities both in England and in France is based on the necessity to adopt acts that harmonize the norms of national transport law with the common European law.

Thus, there can be made the following conclusions.

1. In Russia the legal regulation of public relations developing in the field of transport activities originated and began to gradually develop on the basis of business customs from the period of Ancient Russia.

2. During the reign of Peter I there was emerged Russian transport law, which formed into a harmonious system of norms by the end of the 19th century, that resulted in the consolidation of the term 'transport law' at the turn of the 19th-20th centuries.

3. Russian transport law has historically been formed as a set of norms of different areas of law regulating a wide range of activities of different modes of transport.

4. The comparison of English and French law and with domestic legal regulation of these relations made it possible to draw a parallel between these processes and identify a number of common features.

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