FORMATION OF AN EFFICIENT SYSTEM OF LEGAL REGULATION OF THE TRANSPORT SERVICES MARKET

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INTRODUCTION

Economic integration in the transport sector is carried out based on the principles of international economic law concerning the transport services market as one of the branches of the international economy, as well as by pursuing a common transport policy that reflects the supranational nature of world integration. In this case, the legal means ensuring the implementation of the common transport policy are the acts of international organizations and international treaties to which the member states are parties.

At the same time, the Russian Federation has a fairly high transport attractiveness coefficient, but this indicator is prospective and can only be achieved in serious competition with other transit states. Therefore, purposeful consideration of the regularities associated with the functioning of public life on trade and transport routes will help the Russian Federation to achieve a new level of development in the implementation of the country’s main priorities, including those in the field of global integration processes.

The study of the issues of the transport services market regulation is reflected in the works of Gerasimov (2019), Dulesina (2020), Kvasov (2020), Ognetov (2019), Polyakova (2019), Fayzulloeva (2019), and others. However, depending on the changing conditions, the approaches used to form an efficient system of legal regulation of the transport services market should change and develop.

METHODS

The theoretical and methodological basis of the research included the abstract-logical method, methods of induction, deduction, analysis, synthesis, and systematization, used to justify the approach to the formation of an efficient system of legal regulation of the transport services market. The information base of the article included statistical data of state bodies, legislative and regulatory documents governing the functioning of transport enterprises, approaches to regulating the system of interaction among the main players of the transport services market, as well as the results of scientific research (LOBANOV et al., 2020; OGLOBLINA et al., 2020; REPNIKOVA et al., 2020).

The research aim was to substantiate the reasons for creating an efficient system of legal regulation of the transport services market, to determine the tasks in the field of legal regulation of the transport industry and general transport policy, as well as to consider the issues of regulating relations in the transport services market.

RESULTS

The analysis of the transportation development trends in the territory of the Russian Federation shows that in the case when the country’s policy is aimed at supporting and developing transportation through a system of legal, economic, and organizational means, there is a sharp increase in transportation volumes, the expansion of foreign trade relations, and the emergence of new routes. At the same time, the development of transportation depends
entirely on the state policy, namely, the national transport policy. At that, the state’s transport policy is pursued in several directions, namely, tariff policy, tax policy, and transport safety policy, which provides for the creation of a safe transport environment (Figure 1).

**Figure 1. Creating a safe transport environment**

Source: Search data.

The most urgent tasks in the field of legal regulation of the transport industry include the following: 1) elaborating and adopting a concept for the transport industry development, which should determine, first of all, the main goals and objectives of the national transport policy, the stages of reforming the transport industry, the main measures to be taken, and the responsible persons; 2) elaborating and adopting a set of normative legal acts on the development of the national network of international transportation corridors; 3) codification and harmonization of transport legislation. The legislation of the Russian Federation has begun to form a modern concept of legal support for state economic policy, focusing on different sectors of economic activity. At present, it is important to consolidate the foundations of the state economic policy at the level of a codified normative act, as well as to further develop and improve the legal support for economic policy.

In the context of economic and legal support of relations between the state and business entities, it is important to define the economic policy of the state, and transport policy as its component. As known, transport plays an important role in the economy of every state, including the Russian Federation, mediating the commodity exchange process both within the country and abroad. At present, it should be stated that the current trends in the development of the world economy are characterized by a constant expansion of economic ties. Therefore, integration processes that provide for the creation of conditions for the free movement of goods, services, capital, and labor have become the priority vector in the policy of developed countries.

All this leads to the constant growth of transnational flows and international transit of shipments. Besides, transport policy is the activity of the state and relevant industry institutions aimed at providing various transportation services to the economic sectors and the population of the country. Also, transport policy can be understood as the activities of government bodies
aimed at fully meeting the needs of the population, economic sectors, and enterprises in transportation.

In this case, the state transport policy can be understood as a comprehensive implementation plan in various areas of the transport industry, including its technical and technological modernization, adaptation to market conditions, institutional changes in the field of ownership, economic relations, management systems, integration into the world transport systems, human resources and social policy, as well as economic security at the state level.

Therefore, transport policy should be organized based on a market economy, as well as free and fair competition in all countries. Gradual facilitation of access to the transport market should be achieved. The transportation of goods and passengers in the territories should be carried out on a mutual and bilateral basis, and according to the progress in the field of achieving the free movement of goods and passengers within national territories and in the process of harmonization of competitive conditions.

At that, the ultimate goal of the joint policy of the states in the transport sector is to establish a common transport services market. Therefore, the main goals and objectives of the national transport policy include the following: 1) developing the national market of transport services; 2) developing the nation-wide market; 3) further development of the transport industry; 4) ensuring the involvement of the state in international trade and the international transport services market; 5) legal support for the development of the transport system of the Russian Federation.

Besides, the transport services market is characterized by the presence of special participants - market players. These include customers of services, i.e. passengers, baggage owners, and cargo owners, as well as entities that provide these services, i.e. carriers and freight forwarders. At the same time, an important role among the participants in the transport services market is played by state authorities and local self-government bodies that perform the functions of state regulation and control over the participants in the transport services market, as well as by participants providing auxiliary transport services (vehicle maintenance, storage, warehousing, packaging of cargo).

However, in the most general form, the transport services market in the economic and legal context is a system of relations among carriers, customers of transport services, other participants and the state, represented by authorized state authorities, regarding the transportation of passengers and cargo both at the national and international level. Therefore, transport services should be considered as a set of services related to the physical movement of passengers, baggage, and cargo in space.

Besides, transport is a key factor in the modern world economy. A contemporary transport system should be able to consistently meet the economic, social, and environmental interests of society. At the same time, according to the purpose of the transport policy, transport can be used as a type of business activity related to the provision of services to individuals and legal entities concerning the transportation of passengers and cargo, and as a means of transport used for transportation by citizens for personal purposes, without the purpose of providing services to third parties.

In this case, the purpose of the common transport policy is to establish general rules applicable to international transportation within the territory of the member states; to determine the conditions under which nonresident carriers can provide services within the member state; and, finally, to develop measures to improve transport security. At the same time, the legal regulation of the transport services market should include standards of business regulation of economic activities and regulation of labor relations (Figure 2).
Figure 2. Legal regulation of the transport services market

Source: Search data.

At that, legal regulation of types of transport, such as road, inland waterborne, sea, air, rail, combined, and mixed, is added to the general transport policy. From the standpoint of territorial affiliation of transport, legal regulation of the railway transport is combined with that of road and inland waterborne transport and is called inland transport.

When regulating railway transport, the authors propose to adhere to the following principles: guarantying the independence of the railway enterprises management; separating the railway infrastructure management from the operation of railway transport enterprises; improving the financial condition of railway sector enterprises; ensuring the right of access to the railway networks of member states to create international associations of railway transport enterprises, as well as for railway transport enterprises providing international combined transportations.

In this case, each state should establish a body responsible for licensing, but the license should not mean automatic access to the railway infrastructure. It is necessary to provide fair and nondiscriminatory access to the freight and passenger market for licensed railway companies. This could open up access to a network of rail terminals and ports for international freight services.

Besides, the authors propose to implement a mechanism for monitoring the rail transport market to reform it. The responsibility of authorized persons for infrastructure management and capacity allocation should be provided for. It is also necessary to establish an authorized regulatory body to resolve disputes arising between railway enterprises and the commissioners for the distribution of transportation facilities. Besides, it is necessary to establish conditions for providing safety certificates by bodies whose activities do not depend on railway enterprises.

In this case, one of the main components of organizing a competitive environment in the field of rail transport is the mechanism providing schedules that can be compiled according to the network’s newsletter. Such a system should minimize any discrimination when the carrier attempts to obtain traffic schedules. It is also necessary to establish an authorized body in each state to harmonize the safety certificates format, define the main safety objectives, common safety management systems, and establish an independent body for accident and event investigations.

All measures taken should be aimed at further liberalizing rail transport and creating more flexible conditions for access to the infrastructure. The purpose of these changes is to open access to third parties called “authorized applicants” that may not even be railway enterprises, which are able to reserve time without the obligation to provide the traction vehicles themselves. Such rules also provide for the expansion of the rights to develop for railway transport enterprises providing international freight transport on a contractual basis (and not only the access rights of international associations of enterprises, as was the case earlier), and establish a book-keeping distinction between freight and passenger transport.

It is also necessary to provide for the responsibility of railway enterprises to implement uniform safety measures in states to further harmonize national regulations, obliging states to establish bodies for investigating accidents on railways and consolidate uniform principles of railway safety management. Opportunities can also be created for the interconnectedness of high-speed rail.
DISCUSSION

The reliability of the presented approaches is confirmed by the fact that the rail, road, inland waterborne, air, and sea transport carrier is required to have a license to carry out all types of activities subject to licensing in the course of transportation. This represents a method of obligation since the norm imposes on the carrier the obligation to obtain a license through active actions (AGAMIROVA et al., 2017; LUKIYANCHUK et al., 2020; ZAVALKO et al., 2017).

This method may also include a requirement for the carrier to bring the vessel into seaworthy condition. Thus, if shipping is carried out based on bill of lading, or bill of lading issued according to the charter and regulating the relations between a carrier and holder of the bill of lading not being the charterer, the carrier shall in advance, before the voyage out, bring the ship in a seaworthy condition. This involves ensuring the technical feasibility of a ship for sailing, properly equipping the ship, completing crew, staffing the ship with everything necessary, as well as preparing holds and other spaces of the ship in which goods are transported, for proper storage, carriage, and preservation of the cargo.

Besides, the requirement to make a mandatory claim against the carrier can be also attributed to an obligation. Before filing of suit against the carrier in connection with the carriage of the goods, it is mandatory to file a claim against the carrier. A similar rule is contained in transport charters and codes since the mandatory claim procedure in connection with the carriage of goods is a feature of the entire transport law. However, if the carriage concerns passengers and baggage, the claim is no longer an obligation but becomes a right for the person, and obligation in this situation is replaced by permissibility.

At the same time, legal prohibitions create a barrier to undesirable, harmful social behavior. The main purpose of prohibitions is to establish existing orders and relations raising them to the rank of inviolable, untouchable. If shipping is carried out based on bill of lading, or bill of lading issued under a charter and regulating the relations between a carrier and a holder of the bill of lading not being the charterer, the agreement to release the carrier from liability or reducing the limits of his liability is null and of no effect. This rule is a prohibition on entering into agreements of this kind.

CONCLUSION

Summing up, it can be noted that to create an efficient system of legal regulation of the transport services market, it is necessary to formulate and consolidate the main provisions of the national transport policy. It is necessary to provide for certain specifics that combine state regulation and supervision of transport activities with the contractual principle of the transport services and works provision. According to the general rule, transport obligations should be based on the freedom-of-contract doctrine.

In this case, the parties will always have the autonomy of will in deciding whether to enter or not into a contractual relationship, except for the cases where the services are provided by public transport and are mediated by a public contract. At the same time, given the regulatory status of transport activity as a source of increased danger, as well as its high social significance for the country’s economy, the state should exercise special control and supervision over its entities and take measures to identify the actual state of the country’s transport system.

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Resumo
O artigo visa desenvolver abordagens para a formação de um sistema eficiente de regulação legal do mercado de serviços de transporte. Estabelece-se que para a criação de um sistema eficiente de regulação jurídica do mercado de serviços de transporte é necessário formular e consolidar as principais disposições da política nacional de transportes. Propõe-se o fornecimento de certas especificidades que combinam a regulamentação e supervisão do Estado das atividades de transporte com o princípio contratual da prestação de serviços e obras de transporte. Fica estabelecido que, de acordo com a regra geral, as obrigações de transporte devem se basear na doutrina da liberdade contratual. Neste caso, as partes terão sempre autonomia de vontade para decidirem sobre a celebração ou não da relação contratual, salvo nos casos em que os serviços sejam prestados em transportes públicos e mediados por contrato público.


Abstract
The article aims at developing approaches to the formation of an efficient system of legal regulation of the transport services market. It is established that to create an efficient system of legal regulation of the transport services market, it is necessary to formulate and consolidate the main provisions of the national transport policy. It is proposed to provide for certain specifics that combine state regulation and supervision of transport activities with the contractual principle of the transport services and works provision. It is determined that, according to the general rule, transport obligations should be based on the freedom-of-contract doctrine. In this case, the parties will always have the autonomy of will in deciding whether to enter or not into a contractual relationship, except for the cases where the services are provided by public transport and mediated by a public contract.

Keywords: Law. Regulation. Contract. Economy. Integration.

Resumen
El artículo tiene como objetivo desarrollar enfoques para la formación de un sistema eficiente de regulación legal del mercado de servicios de transporte. Se establece que para crear un sistema eficiente de regulación legal del mercado de transporte, es necesario formular y consolidar las principales disposiciones de la política nacional de transporte. Se propone prever ciertos detalles que combinen la regulación y supervisión estatal de las actividades de transporte con el principio contractual de los servicios de transporte y la provisión de obras. Se determina que, de acuerdo con la regla general, las obligaciones de transporte deben basarse en la doctrina de la libertad de contratación. En este caso, las partes tendrán siempre la autonomía de voluntad para decidir si entablar o no una relación contractual, salvo los casos en que los servicios sean prestados por transporte público y mediados por contrato público.