

Forms of Transport Safety in Air Transport

Marian P. Hurkovskiy*

Lviv State University of Internal Affairs
79007, 26 Horodotska Str., Lviv, Ukraine

Abstract. In the article with the help of the complex system analysis of the legal phenomena the forms of maintenance of transport safety on air transport are considered. The urgency of the topic is determined by the need to increase the level of aviation security. In air transport, the issues of interaction of entities that provide different types of security in one transport complex, are not properly regulated, which leads to organisational, informational and other management barriers. The purpose of the article is to study the forms of transport safety in terms of interaction and coordination of the activities of special competence bodies in civil aviation. Formal-legal and comparative-legal research methods are used. As a result of studying the organisational system of ensuring transport safety in air transport, the statuses of executive bodies, operational headquarters, commissions established at airports, and transport safety forces are characterised. Achieving the rule of law in the area under consideration is impossible without classifying transport safety as a strategic national task, to be solved, along with state, in particular, law enforcement agencies, under their patronage and control, related to the priority legal status of the latter must be not only employees of carriers are involved, but also divisions and forces of maintenance of transport safety. A solution to the problem that negatively affects the state of transport safety, on legal uncertainty in the delimitation of territorial, object, zonal and functional competence of law enforcement agencies, and others, including non-state actors in aviation security in the context of determining areas of activity this type of security

Keywords: aviation, aviation rules, administrative and legal regime, act of illegal interference, state programme, protection

Introduction

National security is considered as a set of interconnected segments of security, one of which is transport security. Such complexity is conditioned upon the presence of common threats to different types of security, direct and indirect impact of the state of protection of one related group of public relations on the security of relations of another group. In activities to neutralise threats, there is a tendency to specialise in a set of tools to ensure specific types of security.

The current stage of development of Ukrainian society is characterised by the growing role of the transport sector. It is a system-forming factor, actively influences the state of economic, political, defense security of Ukraine. Transport safety is differentiated by modes of transport. Ukraine's national security depends on ensuring transport safety. The main tasks in this area are: legislative regulation of transport safety; search and consolidation of threats of acts of illegal interference; maintaining the level of vulnerability assessment of transport facilities; definition of categories of transport infrastructure objects; constant development and implementation of requirements aimed at ensuring transport safety; training of specialists in the field of transport safety. A special place in the system of transport safety is occupied by aviation safety and flight safety, which are integral elements of transport safety. The main form of transport safety in air transport is the administrative and legal regime. One of the important forms of ensuring transport safety in air transport is the administrative-procedural form.

Ensuring transport safety is carried out in legal, organisational, technical and procedural forms. The purpose of ensuring transport safety includes measures aimed at: technical arrangement of transport infrastructure facilities and vehicles; establishment of special administrative and legal regimes that correspond to the current situation, the level of threats; creation of effective security forces; ensuring compliance with safety requirements by individuals and legal entities located on the objects of transport infrastructure and vehicles. In air transport, the issues of interaction between law enforcement agencies and coordination of law enforcement measures, which in parallel ensure security in the common sphere, and often in one transport complex, different types of security have not received due attention from the legislator. This leads to the emergence of organisational, informational and other management barriers, uncertainty in the content of the elements of the status of legal entities belonging to different groups of transport security forces.

Research on various aspects of transport safety was carried out by Ukrainian and foreign scientists, in particular: N. Bortnyk, S. Yesimov [1], I. Hutsal, A. Luchok, O. Myronets [2], O. Ostapenko [3], G. Ferdman [4], O. Yarema [5], S. Mitroff, B. Sharpe [6], A. Selehian, M. Sheikholeslam [7]. The need to implement an action plan for the implementation of the National Transport Strategy of Ukraine for the Period up to 2030 [8] poses the task of studying the effectiveness of implementation.

The purpose of the article is to study the forms of ensuring transport safety in air transport.

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*Corresponding author

Transport Security is a Component of Ukraine's National Security

The problem of ensuring transport safety in recent decades has been very important. This is conditioned upon the fact that the effective functioning of the transport complex depends on the progressive socio-economic development of the state. The issue of transport security has been brought to the highest level of political attention. In particular, the National Security Strategy of Ukraine determines the need to form a single transport space based on a balanced transport infrastructure and increase the level of transport connectivity of the country, create transport corridors, increase the volume and improve the quality of transport [9].

One of the priorities of domestic and foreign policy is the smooth functioning of the transport sector and the maintenance of national security. The role of the transport industry is constantly growing. The development of national interests in the transport sector directly depends on three factors: the implementation of the Association Agreement between Ukraine and the European Union [10]; domestic political situation in the country, the implementation of tasks related to economic and social development; realisation of interests and priorities of the state.

The main national interests in the transport sphere include: ensuring the satisfaction of the needs of the individual and the state in transport services and their implementation; achieving a high level of economic efficiency and safety of the transport process through technical progress and the introduction of European Union standards; ensuring the availability of transport services at a level that should be a guarantor of stability and security; bringing transport safety up to NATO standards; development of export-import services; ensuring public order and safety at transport facilities. This is provided by the action plan for the implementation of the National Transport Strategy of Ukraine for the period up to 2030 [8].

According to G. Ferdman, transport safety in modern conditions should be considered as one of the main goals and an integral part of the activities of people, social groups, societies, states and the world community. In view of this, a natural concrete-historical process for Ukraine is the revision of the constitutional and legal basis of the national security system considering the security factor in the transport complex, which is one of its most important components [4, p. 235].

Ensuring transport safety provides a number of goals, the achievement of which depends not only on the state, but also on individual entities that implement it, including citizens. Such goals include: continuous and safe operation of the transport complex; protection of the interests of the individual, society and the state in the field of transport complex from acts of illegal interference. The main tasks in this area are: legislative regulation of transport safety; search and consolidation of threats of acts of illegal interference; maintaining the level of vulnerability assessment of transport facilities; definition of categories of transport infrastructure objects; constant development and implementation of requirements aimed at ensuring transport safety; training of specialists in the field of transport safety.

Transport safety should be constantly monitored by the entities that implement it, using information, material and scientific and technical means and technologies. The main

principles of transport safety are: legality; compliance with the balance of interests of the individual, society and the state; mutual responsibility of the individual, society and the state in the field of transport safety; continuity; integration into international security systems; interaction of transport infrastructure entities, state authorities and local self-government bodies. The implementation of the state policy in the field of transport safety of Ukraine is assigned to the Ministry of Infrastructure of Ukraine, which deals with the development of regulations governing activities in this area. This issue is relevant for law enforcement agencies, including the National Police [5, p. 207].

Disclosure of the content of activities to ensure transport safety in air transport is of methodological and practical importance, because only on this basis can we share the responsibilities of executive bodies and other entities, set realistic goals and provide the necessary powers to solve problems, establish rights and obligations. In the field of transport safety, public safety measures are implemented and at the same time the rights and freedoms of citizens are protected.

The analysis of the Air Code of Ukraine allows naming the areas of transport safety: the establishment of special administrative and legal regimes of access of people to certain areas of airports or airfields; establishment of a special procedure for boarding passengers, loading cargo and luggage on aircraft; ensuring the safety of unmanned aerial systems; implementation of special measures to counteract acts of illegal interference in aviation activities; exercising control over aviation security [11]. The procedure for boarding passengers is an element of the administrative and legal regime. Therefore, the following list includes: establishment of administrative and legal regimes; ensuring compliance with regime requirements; control [12].

The State Program of Aviation Security of Civil Aviation identifies 12 areas that can be combined: the adoption of regulations, improving the system of legal regulation; organisational support; implementation of legal regulations (protection of airports, aircraft and air navigation facilities; control for the safety of persons and objects placed on board the vessel); supervision and control in the field of aviation security; logistical support (technical means and security systems; information protection); financial security [13].

Forms of Transport Safety

The main form of transport safety is the administrative and legal regime. Administrative-legal regime is a special order of functioning of its subjects based on the norms of administrative law, aimed at overcoming or preventing negative phenomena in the relevant sphere of public administration [3, p. 572]. Despite the fact that administrative and legal regimes are designed to ensure the stability of legal regulation as their main and most valuable quality, to ensure the adaptability of legal regulation through the development of regimes: ordinary – for different areas of the airport and aircraft, depending on the category of aircraft transport, and extraordinary – introduced in case of complication of the operational situation, increasing the level of threats to transport safety is the task of the legislator.

In the field of public law, the interests of society and the state are of paramount importance for the legal regime, so the generally prohibitive type of regulation is used. Establishment of specific administrative and legal regimes at air transport facilities, application of extraordinary administrative

and legal regimes in case of complication of the operational situation, ensuring compliance with regime requirements – tasks that require the participation of entities endowed with appropriate powers. These tasks cannot be solved by one subject – one executive body. The participation of several executive bodies, state organisations, air transport entities, and special collegial bodies that coordinate the actions of security entities is required. An effective organisational form of transport safety must be established. Collegial bodies that coordinate the functioning of the whole system are necessary because aviation differs from other modes of transport in a number of essential features, such as the lack of routes, participation in air transportation of independent and self-employed companies that own and operate airports, operate aircraft.

One operating company uses several airports, including foreign ones, foreign operators use national airports, one airport serves several national and foreign airlines. In the practice of aviation security, there have been repeated cases of aircraft being sent to other airports. In 2021, the Interdepartmental Commission on Civil Aviation Security was established to coordinate in the field of aviation security, a component of transport security [14]. Ensuring transport safety in air transport involves the implementation of technical measures.

In particular, the need for technical measures required by the legislation of a foreign country arises in the national airline, which opens flights to a foreign country [6, p. 387]. There are many such requirements, they apply to aircraft and airports. These are technical forms of transport safety.

One of the important forms of ensuring transport safety in air transport is the administrative-procedural form. Features of the legal nature of administrative-procedural measures applied in connection with the commission of an offense, create a certain theoretical basis for the development of measures to improve legal regulations and practice [1, p. 31]. Various measures to ensure transport safety are implemented in the form of administrative procedures. The National Police conducts special inspections of candidates for the positions of employees of transport security units, other services and airport units, as a result of such inspections employment contracts are concluded, passes are issued to protected areas of airports. For special inspections, a peculiar procedural form of providing administrative services is determined. State control (supervision) is carried out within the control and supervision proceedings. The administrative-procedural form is typical for proceedings in cases of administrative offenses in the field of transport safety.

To determine the forms of transport safety, it is advisable to start from the purpose of the activity. The purpose of ensuring safety in transport is stated in the Law “On Transport” [15]. This is a stable and safe operation of the transport complex; protection of the interests of the individual, society and the state. This view does not fully correspond to the concept of “transport safety”, based on the provisions of the Air Code of Ukraine [6], which implies one goal – the safe operation of the transport complex. If the act of illegal interference threatens the safety of the transport complex, the main goal will be to maintain or maintain safe activities. The act of illegal interference may be aimed directly at the functioning of the transport complex, for example, power outages, communications, false reports of explosive devices; or indirectly through causing property damage – damage to aircraft, buildings, equipment, damage to life and health or by violating public order.

The state is interested in ensuring that the transport complex functions safely so that events that affect people do not occur. The interests of society are diverse. The transport complex meets a number of social needs – freedom of movement, social contacts, development of the labor market and various economic spheres, jobs in the transport complex. The interests of a person in the transport complex may also be different. The definition of “transport safety” in the Law “On Transport” [15] does not indicate the interests of the individual, society or state.

Thus, the purpose of ensuring transport safety is to maintain the sustainable and safe operation of the transport complex, bearing in mind that acts of illegal interference threaten its sustainable and safe operation. This goal is achieved by preventing the commission of acts of unlawful interference, termination and elimination of consequences, if the act was committed. Prevention, termination and restoration of the right is a range of tasks to achieve this goal, but the Law “On Transport” [15] does not specify anything to eliminate the consequences of acts of unlawful interference.

Acts of Illegal Interference in the Context of Transport Safety

Transport security is a state of protection of transport infrastructure and vehicles from acts of illegal interference, including political [16]. Given that the aviation industry has the absolute ability to transport any type of people or factors to the global arena at an extraordinary rate, this feature makes the aviation industry a platform for the spread of threats and develops them as a transnational threat. Given the growth of the aviation industry and its far-reaching implications for the international community, security threats have also evolved as a result of the impact of this technology [16].

The stability of transport can be disrupted by events, including those involving people who cannot be identified as acts of unlawful interference (for example, a sudden deterioration in a passenger’s health, a bird hitting an aircraft engine or a lightning strike). Acts of unlawful interference include terrorist acts. Regulation of public relations regarding acts of illegal interference in national legislation is enshrined in the Air Code of Ukraine [6]. Article 86 of the Code establishes the definition of an act of unlawful interference as an act or an attempt to endanger the safety of civil aviation. The provisions of the Law on Combating Terrorism [17] may be applied to the relations that are the subject of regulation of the Air Code of Ukraine [11], which provide for compensation for damage caused by a terrorist act, social rehabilitation of victims involved in the fight against terrorism [16]. These measures should be applied in the event of terrorist acts on transport.

To prevent the commission of acts of illegal interference, a set of measures with a specific focus is being implemented. The provisions of the Law “On the State Program of Aviation Security of Civil Aviation” [13] allow to identify measures aimed at creating an environment at infrastructure facilities and vehicles, which eliminates or minimises the threat of illegal interference. This is ensured by the arrangement and establishment of an administrative and legal regime adequate to external conditions. The second area can be described as “staff” – organisations and people who provide transport safety. In the State Civil Aviation Security Program, they are defined as transport security forces. In this area, requirements are set for these persons, permissive administrative procedures of

attestation and accreditation are carried out, state control (supervision) is exercised over how they perform their assigned duties and adhere to mandatory requirements. The third direction can be described as “users” – passengers, visitors, employees. They are subject to access, inspections and interviews are conducted, behaviour is monitored, and measures of administrative coercion are applied.

To prevent acts of unlawful interference, measures are taken primarily aimed at users. An act of unlawful interference may be committed by a staff representative, such as an aircraft commander. In such cases, these individuals should be considered as users, as they do not act in favour of transport security forces, but in favour of terrorist organisations or on their own. In case of illegal interference, to restore the right it is necessary to restore the transport infrastructure, provide assistance to victims, ensure the delivery of passengers, luggage, cargo in alternative ways, to compensate for the damage. At the same time, according to the authors of the research “Theoretical and legal aspects of protection of civil aviation from acts of unlawful interference”, the issue of legal regulation of protection of civil aviation from acts of unlawful interference in its activities remains open for research, discussion and suggestions [2, p. 287].

Conclusions

The theory of administrative law and legislation do not identify areas for transport safety. Complexity, multi-vector

activities to ensure transport safety allows to identify areas – organisational, rule-making, permitting, law enforcement, control and supervision in the context of water, air, rail, road, urban electric transport. Ensuring transport safety is carried out in legal, organisational, technical and procedural forms.

An analysis of the provisions of the State Program of Civil Aviation Safety, which define the activities of ensuring transport safety, indicates that the purpose of these activities is not defined specifically. The purpose of ensuring transport safety should be considered to maintain the sustainable and safe operation of the transport complex, bearing in mind that acts of illegal interference threaten its sustainable and safe operation. This goal is achieved by solving three main tasks: preventing acts of illegal interference; termination of committed acts of illegal interference; elimination of the consequences of acts of illegal interference, restoration of the transport complex, elimination or compensation of the caused damage.

The purpose of ensuring transport safety includes measures aimed at: technical arrangement of transport infrastructure facilities and vehicles; establishment of special administrative and legal regimes that correspond to the current situation, the level of threats; creation of effective security forces; ensuring compliance with safety requirements by individuals and legal entities located on the objects of transport infrastructure and vehicles.

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Форми забезпечення транспортної безпеки на повітряному транспорті

Мар'ян Петрович Гурковський

Львівський державний університет внутрішніх справ
79007, вул. Городоцька, 26, м. Львів, Україна

Анотація. У статті з використанням комплексного системного аналізу правових явищ розглянуто форми забезпечення транспортної безпеки на повітряному транспорті. Актуальність теми визначається необхідністю підвищення рівня авіаційної безпеки. На повітряному транспорті питання взаємодії суб'єктів які, забезпечують різні види безпеки на одному транспортному комплексі, не урегульовані належним чином, що зумовлює виникнення організаційних, інформаційних та інших управлінських бар'єрів. Мета статті – дослідження форм забезпечення транспортної безпеки щодо взаємодії та координації діяльності органів спеціальної компетенції у цивільній авіації. Використано формально-юридичний і порівняльно-правовий методи дослідження. Унаслідок вивчення організаційної системи забезпечення транспортної безпеки на повітряному транспорті охарактеризовано статуси органів виконавчої, оперативних штабів, комісій, створюваних в аеропортах, сил забезпечення транспортної безпеки. Досягнення стану правопорядку у галузі, що розглядається, неможливе без віднесення забезпечення транспортної безпеки до розряду стратегічного національного завдання, до вирішення якого поряд з державними, зокрема, правоохоронними структурами, під їх патронажем і контролем, пов'язаними з пріоритетним правовим становищем останніх, повинні бути залучені не лише працівники перевізників, але й підрозділи та сили забезпечення транспортної безпеки. Запропоновано рішення проблеми, що негативно впливає на стан транспортної безпеки, щодо правової невизначеності у питаннях розмежування територіальної, об'єктової, зональної та функціональної компетенції підрозділів правоохоронних органів, а також інших, включаючи недержавних суб'єктів забезпечення авіаційної безпеки у контексті визначення напрямів діяльності щодо даного виду безпеки

Ключові слова: авіація, авіаційні правила, адміністративно-правовий режим, акт незаконного втручання, державна програма, захист