

The Problem of Defining the Concept of Subject of Safety in Road Transport



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Abstract. *In the article, on the basis of the analysis of scientific views of scientists and the norms of the current legislation of Ukraine, the author's definition of the concept of subjects of safety in road transport" was provided. It is substantiated that today in the legal literature there is a lack of scientific works devoted to the problems of safety in transport, including automobile. It is emphasized that in order to ensure qualitative changes and changes in the field of safety in road transport, it is important to develop a meaningful scientific and theoretical basis, which will allow to carry out expedient, timely, consistent and understandable steps towards improvement of this sphere of social relations.*

Keywords: *subject; subject of law; subject of legal relationship; public law; private law; security; subjects of safety in road transport.*

Problem statement

Since the declaration of independence in 1991, our state is trying to build a reliable, efficient and effective mechanism of state administration. To this end, the Concept of Administrative Reform in Ukraine was introduced in 1998. In particular, this document stated that the formation of a modern, effective system of public administration in Ukraine is necessary, since the current one is in general ineffective, it combines eclectically both the institutions inherited from the Soviet era and the new institutes that were formed during the period independence of Ukraine. This system is internally contradictory, incomplete, cumbersome and detached from people, and as a result, existing public administration has become a brake on socio-economic and political reforms [1]. The purpose of the administrative reform is the gradual establishment of a system of public administration that will ensure the formation of Ukraine as a highly developed, legal, civilized European state with a high standard of living, social stability, culture and democracy, will enable it to become an influential factor in the world and in Europe. Its purpose is also the formation of a system of public administration, which will become close to the needs and demands of people, and the main priority of its activities will be service to the people, national interests. This system of public administration will be controlled by the people, transparent, built on scientific principles and effective. The cost of maintaining the managerial staff will be adequate to the financial and economic state of the state [1].

Since the adoption of the above Concept and the initiation of administrative reform (which is happening today), it has already passed 20 years, and a number of its provisions regarding the problems in the system of public administration in Ukraine still loses relevance, which testifies to both their extreme complexity and their low the quality and effectiveness of the work of the entities that must ensure the implementation of the specified reform. One should not deny that a lot of our country has already been made to improve both the mechanism of state administration in general and its individual institutes. However, it should be noted that a number of important issues in this area have not yet

received a satisfactory solution. This situation is not due to the state's lack of attention to the issue, but due to the lack of proper scientific basis for constructive steps to resolve existing problems. As a result, the changes introduced and transformations often do not have the positive result that they were oriented to.

One of such important institutions of public administration, where more or less serious changes have only started to be introduced in the last few years, is the provision of road safety, which is due, above all, to the introduction of European standards for transport safety. M. Noniak noted in this connection that, in the course of 20 years, in Ukraine there was almost no proper control over transport safety, the introduction of which is one of the European obligations of our state [2]. In order for the institute to be reformed, it should be based on a thorough and meaningful scientific elaboration of its main aspects.

Analysis of recent research and publications.

Problems of safety of transport in their works paid attention: S. Azarov, I. Bulhakova, O. Chornomaz, E. Demskyi, V. Hizhevskiy, Yu. Marchenko, V. Razvadovskiy, S. Rudenko, O. Sokolov, L. Svystun, H. Sytnyk and others. Paying tribute to the scientific work of these and other researchers in this field, it should be noted: firstly, some of them are outdated and do not fully correspond to the realities of transport; and secondly, a number of works relate to economic-legal and civil-law aspects, and not administrative-legal, that is, managerial ones. In addition, it should be noted that the transport industry is comprehensive and involves carrying out state policy in several general directions – automobile, railway, electric, sea, river transport, etc. Management of each of them requires separate scientific and theoretical elaboration, since they have both common and specific features.

The purpose of the article is to clarify the essence of the concept of “subject of safety in road transport”.

Presentation of the main research material.

Any social activity, regardless of its forms and (or) directions of implementation, presupposes the obligatory presence of the subject, which, in fact, carries out, acts as its source. Activities, as noted by G. Dvoretzka, is a manifestation of human activity in order to change or transform the elements of the world, the consciousness of the person himself. It is always characterized by purposefulness, consciousness, because its subject can be only man [3]. That is why, in the general sense, the term “subject” is associated with a person, an individual, a person who conducts some kind of practical and (or) cognitive activity, and, accordingly, is opposed to the object of such activity. In the

literal translation from the Latin language, the term “subject” (“subjectum”) means “one that underlies” [4, p. 553]. In the philosophical dictionary and encyclopedic literature, the category “subject” is interpreted as: the carrier of substantive properties and characteristics that determine the qualitative features of the object; endowed with the will and consciousness of a person who actively acts and knows; an active component of the cognitive relation, the opposite of the recognizable reality – the object; carrier of subject-practical activity and knowledge – the source of activity directed to the object; an individual as a carrier of any properties [5, p. 439]

Like any other organizational and managerial activity, ensuring safety in road transport takes place within the appropriate legal field, and therefore, the person performing it are subjects of law and the relevant legal relations. For the sphere of law, the concept of “subject” is one of the main, which is usually used as part of such conceptual and terminological constructs as “subject of law” and “subject of legal relationships”. Yes, O. Skakun writes that the subjects (participants) of the legal relationship – individual or collective subjects, which, based on legal norms, use their legal personality in specific legal relationships, that is, implement the subjective rights and legal obligations, powers and legal responsibility. To become the subject (participant) of the legal relationship, you must be a subject of law that is to have a personality [6, p. 394]. M. Marchenko under the subjects of law understands individuals or organizations in which the state recognizes the ability to be the bearers of subjective rights and legal obligations [7, p. 591]. From the position of V. Averianov, the subjects of administrative law determine – they are participants in social relations, which

have subjective rights and fulfill the legal (subjective) responsibilities, established by administrative and legal regulations [8, p. 189]. The scientist emphasizes that it is very important to see the difference between these concepts – the subject of administrative law and the subject of administrative legal relations. After all, the subject of administrative law, has only a potential ability to enter into a legal relationship. In a particular case, he may not be part of them [8, p. 189]. E. Matusov notes that the concept of “subjects of law” and “subjects of legal relations” are in principle equivalent, but it should be borne in mind that: a particular citizen as a permanent subject of law can not be simultaneously a participant in all legal relations; newborns, young children, mentally ill individuals, being subjects of law, are not subjects of most legal relationships; legal relationship – not the only form of realization of law [9, p. 482]. V. Protasov writes in his writings that the subjects of law are potential participants of the legal relationship, these are persons who can only be the bearer of legal rights and obligations. In turn, the subjects of legal relations – the subjects of law, which realized their legal personality and became participants in specific legal relations. The lawyer stresses that any subject of legal relations is always a subject of law (without this he simply could not become such), but not every subject of law – a participant in a particular legal relationship [10, p. 43].

Consequently, as in the general philosophical sense, in the sphere of law the subject is also the bearer of certain properties, characteristics, characteristics, but they are not intangible persons, but are given to it from outside the rules of law. That is, the subject of the right person becomes only because it recognizes it as the right due to the presence of its relevant, legally significant properties. That is why not only individual individuals, but also collective entities act in the right subjects. Recognized by the right ability (ability) of a person to be the subject (participant) of the relationship, to exercise directly or through his representative, subjective rights and legal responsibilities referred to as legal personality [6, p. 395]. Subjective – is the type and measure of the possible or permitted conduct of a

person belonging to an entity, guaranteed or guaranteed by law and law, regardless of whether he is in legal relations with other subjects or not [11, p. 342]. The content of subjective law is expressed through the following powers: the right to own positive actions (right doing); eligibility for other actions (legal proceedings); eligibility of claim (law enforcement); the power to use social benefits (lawful use) [12, p. 388–389]. A legal obligation is also a form and a measure of conduct, but that is required by the subject in a particular situation. That is, duties, in contrast to the rights exercised by the subject at his own discretion, constitute a legally necessary behavior, the implementation of which is ensured by the force of state influence up to coercion. The content of the legal obligation consists of elements that are specific legal requirements for the obliged party to perform certain actions (active duties) or refrain from them (passive duties) – this obligation is an act; to respond to the legitimate requirements of the authorized party for their implementation – this is a commitment to implementation; to bear legal responsibility in the event of refusal to perform legal duties or improper performance of them, that is, contrary to the requirements of the legal norm – an obligation to be subject to restrictions or deprivation of benefits; not to interfere with the rightful party to enjoy the good that she received rightfully – this is an obligation not to hinder the contractor [12, p. 389–390].

Consequently, taking into account the above, we can conclude that the subjects of safety in road transport are collective and individual subjects of law, in which the current legislation imposes rights and obligations in the specified sphere. Individuals (officials, citizens, foreigners, stateless persons) act as individual entities. As far as collective entities are concerned, they are legal entities, public associations, political parties, etc. Analysis of the current legislation shows that the main subjects of safety in road transport are physical and legal persons of public law. Public law – a set of agreed norms, united in the field of law, regulating public (state, interstate and public) relations of subordinate entities with the help of an imperative method of legal regulation. Here the leading is the public interest [12, p. 295]. At

the same time, it is not necessary to reduce this provision exclusively to the activities of bodies and officials of the state, and not less important in this process belongs to the subjects of private law. Private law is a set of norms regulating relations that are not related to the exercise of public authority functions in the realization of private interests, with the help of a discretionary method. The subject of private law is the relationship associated with the realization of private interests [13]. In this regard, one should agree with the position voiced by O. Stepanov, I. Nahluk. They emphasize that the state of transport safety affects the fundamental interests and individuals, and society, and the state, the interests of all physical and legal persons involved in the operation of the transport complex. Therefore, issues of the strengthening of transport security can not only be of interest to public authorities, but should concern everyone and everyone. Only the only force will be able to provide stable and lasting safety, including in road transport. The state can not and should not solve this problem alone, because it requires significant material, financial and human resources. The public must actively participate in the task of ensuring transport security [14].

For a more detailed understanding of what constitutes the subjects of safety in

road transport, it is necessary to determine the essence of the concept of “safety”. Y. Surmin writes that security is a state of no threat; This is the state of the object in which it can not be caused material damage or harm; a state of stable existence (development) of an object, in which the probability of unwanted change in any characteristics (parameters) of its life (functioning) is small; acceptable level of danger (acceptable degree of protection against threats), depending on the cost of limiting the factors causing danger; the ability of an object, phenomenon or process to maintain its main characteristics (parameters), the essence of negative actions by other objects, phenomena or processes [15, p. 59]. V. Pasichnyk understands safety as such a state of protection of being, values and interests of the subject (object) from threats and dangers, in which the optimal conditions of his life, development and self-fulfillment are provided. The researcher notes that security is carried out by observing the necessary parameters (indicators) and norms, in which all existing processes take place in a stable and balanced manner. They are supported by a system of measures aimed at creating and maintaining safe conditions in which the danger is not present or minimized, and the potential risks and challenges do not pose a real threat [16].

Conclusions

Consequently, in view of the above, we can define the concept of “subjects of safety in road transport” as a system of bodies and officials of public administration, as well as private organizations and representatives of the public who, in compliance with the obligations imposed on them by the current legislation, and, taking advantage of the same (that is, legislation) the range of legal opportunities (rights), take measures of political-legal, organizational-managerial, educational-educational and other nature for maintenance of safety operation of the automobile transport sector, that is, that which does not endanger the life and health of a person and a citizen (both passengers and other persons), property, public safety and order, environmental safety, other important interests of individuals and legal entities, regardless of ownership forms, society and the state as a whole. The activities of these subjects are aimed at: firstly, the establishment of the most appropriate in terms of safety rules for the use of motor vehicles, the behavior in it; and secondly, to counter (prevention, prevention, termination) of unlawful behavior (offenses of an offense) in the specified sphere; thirdly, to prevent emergencies in the field of motor transport and to effectively eliminate the consequences of their onset; fourth, to ensure the restoration of violated rights, legitimate interests and compensation for damage caused by the onset of appropriate threats.

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