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## **Formation and development of the transport legislation of the Republic of Kazakhstan**

The history of formation and development of the transport legislation of the Republic of Kazakhstan is studied in the article. The author defines four stages that include different periods of the formation of the transport legislation of Kazakhstan. The prospects of the development of transport legislation of Kazakhstan Republic are analyzed and current state of transport legislation as well as a tendency of development of transport legislation as a complex branch of the legislation of the Republic of Kazakhstan are studied.

*Key words:* transport legislation, stages of the development of transport legislation, national transport legislation, system of the transport legislation of the Republic of Kazakhstan.

The history of formation of Kazakhstan transport legislation has passed four stages: period of formation of transport legislation (1917–1960), development of transport legislation during planned and contractual period (1961–1990); period of formation of transport legislation of an independent Republic of Kazakhstan (1991–2000); period of the development of transport legislation of the Republic of Kazakhstan (from 2001 till today) [1; 78].

The first stage covers the period of formation of administrative and command system which is characterized by strict centralism of economic life based on state-owned property and by the lack of real economic freedom. During that period regulatory regime of transport relations was mainly carried out by the Government regulations and administrative and party bodies. The first Civil Code of RSFSR adopted on November 11, 1922 which was put into effect by the resolution of VTsIK since January 1, 1923 was also in the territory of the Kazakh Autonomous Soviet Socialist Republic (Kazakh ASSR) formed on August 26, 1920. The Civil Code of the RSFSR adopted in 1922 remained in Kazakhstan after the formation of Kazakh SSR on the basis of the Constitution of the USSR in 1936.

Ioffe O.S. describing the history of legal regulation of transport obligations according to the Civil Code of the RSFSR of 1922 emphasized in his works that some contractual institutes were constituted by issuing special legislation usually related to certain types or even whole branches of economic activity. So the situation, in particular, with transportation agreements and other transport agreements adjoining them was (tow-ages, expeditions, operation of railroad side tracks of uncommon use). Starting with the Charter of the railroads of 1922 the legal rules regulating it are incorporated in the codes or charters dated for different types of transport. Since there was a doctrinal tendency to coordinate transportation to the next contractual types of the Civil Code on content declaring it a kind of the contract or an organic combination of multiple contractual elements not only the contract but storage, hiring and orders as well [2; 236].

This period is characterized by lack of all-Union or republican legal instrument regulating transport relations. Transportation agreement was examined according to current laws briefly. Each adopted new regulation was mainly restricted to a regulation applied in practice in the sphere of rendering public services because legal regulation of relations between the Union transport organizations (except auto transport) and their clients was related to the competence of the USSR. In the late forties of the XXth century in the USSR the agreement role in economic life of the country intensified. Due to it the anti-contractual concept is eliminated first from the doctrine on legal forms of transportation processes and then from the very civil legislation.

The second stage covers the period of formation and development of national economy. The general regulations governing transport relations on transportation were Bases of the civil legislation of the USSR and federal republics. On December 8, 1961 the Supreme Council of the USSR adopted «Bases of the civil legislation of the USSR and federal republics». Within federal republics the civil legislation was codified in the form of civil codes. The civil code of Kazakh SSR was adopted by the Supreme Council of KazSSR on December 28, 1963 and was enacted on June 1, 1964. With the adoption of the Principles of Civil Law in 1961 the transportation agreement and agreement of expedition were declared as independent civil and legal agreements and the institutes of the same name were found in federal legislation and republican Civil

Transport regulations and codes included separate sections on transportation planning. The civil code of the Kazakh SSR of 1963 regulated planned and contractual legal relationship on freight transportation. According to Article 365 the transportation agreement of freights was concluded on the basis of transportation plan.

According to Article 3 regulation of the relations of railway, sea, air and pipeline transport with clients and among themselves is referred to bases of the USSR competence. The list given in this article means that regulation of relations on auto transport is referred to maintaining the republics. Thus, the transport legislation of the Soviet period in addition to auto legislation was formed as a federal legislation. Transport regulations and codes have been adopted for all transport modes. Transport legislations have been systematized, primarily codified in the system of the Soviet legislation. Six railway regulations (RC) (1920, 1922, 1927, 1935, 1954, 1964) have been adopted during the period of the Soviet Union on the railways.

During the period of the USSR similar development was gained by the legislation on air, sea and river transport. The regulations and codes that regulated those transportations have been adopted much later than the first charters of the railways and, of course, the experience of previously developed documents was taken into consideration as well [3; 22]. The regulations of an inland water transport of the USSR (RIWT) have been adopted in 1930 and in 1955 it was in force until the adoption of the current legislation of the Republic of Kazakhstan. Air Codes of the USSR (AC) were adopted according to air transport in 1935, 1961, 1983. The Maritime Codes (MC) were adopted two times in 1929 and 1968 in an industry of sea transport. The most important conditions for transportation of goods, passengers and baggage have been established in these transport codes and regulations. Specification of these conditions is defined in the rules issued by the transport ministries and departments within their competence.

There were some features in the development of auto transport legislation. Till 1969 transportation by road transport was regulated by a wide scale of regulatory legal acts. The main legal act regulating road transport was «Regulation on mutual liability of motor companies and customers for the transportation of plan and the safety of transported freight» approved by the Ministry of Road Transport and Highways of the USSR on May 4, 1955 as well as «Uniform tariffs for transportation of goods by road transport» approved by the resolution of Council of Ministers of Kazakh SSR. In the Kazakh SSR road transportations were regulated by the Rules of the organization and implementation of centralized transport of goods by public auto transport approved by the Ministry of Road Transport of the Kazakh SSR, on July 16, 1963.

The Regulation of Road Transport (RRT) of the Kazakh SSR was adopted on June 18, 1970 confirmed by the Council of Ministers of Kazakh SSR. Also the conditions of transportation of goods, passengers and luggage by road were regulated by republican regulations. These regulations except RRT include: Rules of centralized delivery (export) of goods by road transport to the railway stations, ports (to the quay) and airports in the Kazakh SSR (1975); Rules of planning of goods' transportation by public road transport (1977); Rules of goods' transport by road in the Kazakh SSR (1978); Instruction on the procedure of payments for transportation of goods by road; Standard transportation agreements of freights by road transport and other regulations [4; 401].

From 1985 to 1991 there was restructuring in the country and due to it the economic and legal reforms aimed at increasing the independence of state enterprises and the scope of private entrepreneurs were carried out. Law on State Enterprises and associations was adopted in 1987 according to which state enterprises were transferred to self-supporting basis, self-sufficiency and self-financing. The Law of the Kazakh SSR dated from December 15, 1990 «On property in the Kazakh SSR» was adopted on the basis of the Law «On Property in the USSR» dated from March 6, 1990 which marked the beginning of transition from a socialist to a market economy.

On October 25, 1990 Kazakhstan adopted the Declaration of State Sovereignty of the Kazakh Soviet Socialist Republic. The new principles of relations of the federal and national legislation have been laid in the declaration. The priority of laws of the Kazakh SSR over laws of the USSR was proclaimed. Thus, a new period of market economy entered the development of civil and transport legislation of Kazakhstan.

Since Kazakhstan gained independence the former imperative transport legislation stopped playing a major role as a contractual law became a priority at the third stage of the development of transport legislation. The legislation of the USSR was widely used in Kazakhstan in the first years of independence and was gradually replaced by intensively adopted legislative acts. On May 31, 1991 the Supreme Council of the USSR approved the Bases of civil legislation of the USSR and republics which were founded on the principles of market economy. The basis of legal regulation of transport agreements in a current civil legislation of our country included the rules of section 13 of the Bases in 1991.

The Supreme Council of the Republic of Kazakhstan adopted on January 30, 1993 Resolution «On the regulation of civil relations in the period of economic reform». According to this Resolution the Bases of Civil Legislation of the USSR and republics of 1991 are temporarily used in the territory of the Republic of Kazakhstan except for the regulations that establish the authority of the USSR in the field of civil law in the part that doesn't contradict the Constitution of the Republic of Kazakhstan and legislative acts of the Republic of Kazakhstan adopted after January 1, 1990 till the adoption of the Civil code of the Republic of Kazakhstan [5; 32].

As Kazakhstan proclaimed its sovereignty and independence it was necessary to establish the national domestic transport legislation. First of all the Civil code (General part) and the Constitution of RK of 1995 and then on July 1, 1999 the Civil code (Special part) were adopted on December 27, 1994. The Constitution has formed basic principles of the development of Kazakhstan economy. The Civil Code laid down basic principles for regulating transport relations: the equality of ownership's forms and its inviolability, the freedom of an agreement, the equality of business entity. The legal acts which created conditions for the development of market economy in transport industry were adopted on the basis of The Civil Code. The Law on transport in the Republic of Kazakhstan dated from September 21, 1994 is the main legislative instrument and has supreme legal force in the system of current transport legislation. The law proclaims a variety of forms of transport's ownership.

The temporary Rules of Railways of the Republic of Kazakhstan dated from January 18, 1996 № 70 aimed at the transition of the state to market relations eliminated state planning of cargoes' transportation and secured dispositive rules establishing contractual relationships between rail transport and its participants.

The introduction of market relations into the system of rendering transport services as well as the development of private enterprise in transportation created necessary premises for the development and adoption of a number of special regulations (tax, administrative, financial, procedural, land) regulating the licensing of transport activities and its commercial direction.

National transport legislation intensively developed during the development of market economy in Kazakhstan. Special transport laws were adopted for each mode of transport listed in Article. 1 of the Law on transport in the Republic of Kazakhstan: Law of RK «On the use of airspace and aviation activity of Kazakhstan» dated from December 20, 1995 № 2697 (has become invalid); Law of RK «On railway transport» dated from December 8, 2001 № 266-II; Law of RK «On state regulation of civil aviation» dated from December 15, 2001 № 271-II284-II (has become invalid); Law of RK «On Automobile Transport» dated from July 4, 2003 № 476-II; Law of RK «On inland waterway transport» dated from July 6, 2004 № 574-II; Law of RK «On merchant shipping» dated from January 17, 2002 № 284; Law of RK «On the use of airspace of the Republic of Kazakhstan and aviation activities» dated from July 15, 2010 № 339-IV. Rules of transportation of goods, passengers and luggage are regulated in detail by subordinate regulations adopted on the basis of transport laws.

The transport policy of the Republic of Kazakhstan respectively influences the development of transport legislation. The acceleration of the integration processes of Kazakhstan transport complex into the international transport system and development of the country's transit potential were mentioned as one of priorities in the Concept of the Republic of Kazakhstan state transport policy. In this regard determination of the main directions of improving transport legislation becomes important. Decrees of the President of Republic of Kazakhstan on important issues were adopted. They were not regulated in detail in the laws of the Republic of Kazakhstan and defined the main directions of the development of transport complex as a state important strategic object. For example, the Republic of Kazakhstan President's Decree № 86 dated from April 11, 2006 «On Transportation Strategy of the Republic of Kazakhstan until 2015» which provided a transition of transport system to a new level of functioning. Nowadays this Decree has become invalid due to the adoption of the Republic of Kazakhstan President's Decree «On state program for accelerated industrial and innovative development of Kazakhstan for 2010–2014 and declaring some decrees of the President of the Republic of Kazakhstan to be no longer in force» dated from March 19, 2010 № 958. With the independence of the Republic of Kazakhstan the process of improving transport legislation is continuously carried out. As a result a uniform system of national transport legislation is formed. Transport legislation establishes legal rules governing transport relations in accordance with the market economy of the state.

Transport law sources include international agreements ratified by the State, national legislation and good business custom.

In accordance with Article 2 of the Law on transport in the Republic of Kazakhstan legislation of the Republic of Kazakhstan on transport is based on the Constitution of the Republic of Kazakhstan and consists of current Law and other regulatory legal acts of the Republic of Kazakhstan. Therefore, the system of transport legislation include: legislation on transport; general legislation; bylaws issued according to laws.

The transport legislation can be classified by legal force as follows: the Constitution of the Republic of Kazakhstan as the Fundamental law is a source of transport law and is a legal basis for its development.

The important source of transport law is the Civil Code of the Republic of Kazakhstan. The basic rules regulating the transportation agreement and the freight forwarding agreement and an order of obligation fulfillment arising from the abovementioned agreements in the Civil Code of the Republic of Kazakhstan (special part) (Chapters 34–35) are approved. The Civil Code regulates private law relations. However, the approved regulations in general legislation (tax, administrative, financial, procedural, land law) regulate general transportation rules.

Public legal relations are regulated by other legislation accordingly. They are called transport legislation. Transport legislation includes laws, decrees of the President of the Republic of Kazakhstan, regulation of the Government of the Republic of Kazakhstan and other bylaws.

The basic legal act defining bases of legal, economic and organizational activity of transport of the Republic of Kazakhstan is the Law «On transport of the Republic of Kazakhstan» dated from September 21, 1994 №. 156. The law regulates the most important problems of transport activities: modes of transport, ownership, government regulation of transport activity, rates for transportation services, protection of goods and objects on transport, ensuring compliance with environmental safety standards in transport. One of the main solved tasks of the Law on transport is the liquidation of the monopoly on transport and the establishment of various forms of ownership on transport. However, such means of transport as (backbone railway network, international sea port, etc.) that are given in the Article 3 of the Law can not be privatized. The organization engaged in transport activities and ensuring the activity of subjects establishes free (conditional) rates for transportation of goods, passengers, baggage and are not related to this kind of services. Free (contractual) rates are established on transportation of goods, passengers, baggage and services related to transportations that provide the activities of economic entities engaged in transport activities.

According to Article 1 of the Law on transport, transport legislation of RK makes laws and regulations on rail, road, sea, inland waterway, air and trunk pipeline transport.

According to legal acts on transport and other legal acts, rules of transportation of goods, passengers, baggage and bylaws that promote implementation of transportations are adopted. In general, now in the Republic of Kazakhstan the legislative foundation that defines legal and organizational basis of transport activities is formed. The traditional approach to the development of laws of specific industry sector is formed in domestic legal practice. However, legislation on multimodal transport and forwarding activity is still not adopted.

Speaking of the transport legislation of RK development prospects, it should be noted that in legal literature the problem of codification of the transport legislation was repeatedly discussed. According to the scientist G. I. Tulegaliyev, codification of regulations has been and still remains a primary means of systematization of the transport legislation, i.e. the creation of large consolidated acts on transport industry bringing together the circle of complex rules regulating a particular mode of transport. Codification of the transport legislation of Kazakhstan Republic involves the creation of a system of codification of legislative acts in two forms: covering the regulation of common processes and relations arising in a transport sector (such as the Law «On Transport») and complex legislative acts unifying regulations of various branches of law (for example, can serve as transport codes). The last said above will be necessarily considered as special acts towards the general codification acts (for example, Civil Code of RK, etc.) [6; 490].

In order to codify the current legislation of Kazakhstan in the field of transport, the Ministry of Transport and Communications of Kazakhstan has developed and submitted Transport Code draft of RK to the Mazhilis of the Parliament. However, the developed draft of the Transport Code has been withdrawn from the Parliament of RK on the basis of the resolution of Kazakhstan Government dated from June 5, 2008 No. 538. Expressing disagreement with the adoption of the Transport Code Moroz S. P. has emphasized that the idea of development of the Transport Code is a utopia. Here the specific features of various modes of transport should be taken into account which are so significant that its union is hardly feasible and justified within a single codified law [7; 545].

There is no experience of the codification of national transport legislation in world practice that brings together all modes of transport in a single legislative act. In a number of the countries there are codes which

regulate separate transport modes, for example, Air code, Merchant Shipping Code, Code of Inland Water transport. We consider it impossible as in each type of transport there are features, definition of the general regulation in structure of the code which rules would be applied to all modes of transport. Therefore, nowadays the important areas of improvement of transport legislation in the Republic of Kazakhstan are the unification according to the international transport conventions and agreements as well as the harmonization of national and international transport legislation [8; 208].

Thus, nowadays legislative framework that defines legal and organizational basis of transport activities in the Republic of Kazakhstan is formed. Transport legislation of the Republic of Kazakhstan is the most important industry in the system of the Republic of Kazakhstan legislation. Transport legislation of the Republic of Kazakhstan consists of the laws and regulations of various industrial branches and it can be considered that transport legislation is a complex industry of the Republic of Kazakhstan legislation.

The analysis of current transport legislation has allowed to determine some problems, in particular, contradiction of laws and regulations, its insufficiency, gaps in the law enshrined in the legislation and regulating certain types of transport activity. Legal regulation of transport industry in the modern period has to be one of the priority directions of improving the legislative system of Kazakhstan. The efficiency of the transport legislation is closely connected with intensive development of our country's economy and with integration into the world transport system. Therefore, this process has not ended yet and it is still in the process of development.

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## Қазақстан Республикасы көліктік заңнамасының қалыптасуы және дамуы

Мақалада Қазақстан Республикасы көліктік заңнамасының қалыптасу тарихы мен дамуы қарастырылды. Автормен Қазақстан көліктік заңнамасының қалыптасуының әр түрлі мезгілдерін қамтитын төрт кезең көрсетілген. Сондай-ақ Қазақстан Республикасының көліктік заңнамасының даму келешегі талданып, көліктік заңнаманы жетілдірудің қазіргі мәселелері, көліктік заңнаманың Қазақстан Республикасы заңнамасының кешенді саласы ретінде даму тенденциялары зерттелген.

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## Становление и развитие транспортного законодательства Республики Казахстан

В статье рассмотрена история становления и развития транспортного законодательства Республики Казахстан. Автором выделены четыре этапа, охватывающие разные периоды становления транспортного законодательства Казахстана. Также проанализированы перспективы развития транспортного законодательства Республики Казахстан. Изучены современные проблемы совершенствования транспортного законодательства, тенденции развития транспортного законодательства как комплексной отрасли законодательства Республики Казахстан.

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