

Theoretical and Practical Problems of Legal Regulation of Registration and Implementation of Transport Passenger Taxi and Taxi Ordering Service

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Abstract. This article analyzes the issues of legal regulation of activities and registration of a passenger taxi. Considering the provisions of the law draft, the authors conclude that quite a lot of gaps in the law draft, in particular, the law draft does not grant the right to self-employed be carrier, there is no possibility of re-filing a notice by a taxi service about the beginning of its activity in the event of cancellation of an entry in the regional register of a passenger taxi for guilty reasons, not settled the so-called transport traffic under order, not resolved the question of establishing of tariffs for carriage, not developed effective mechanism monitor for physical condition of the taxi driver.

The research, based on an analysis of the views of scientists and of existing legislation governing the activities of entities engaged in transport services, as well as the jurisprudence of the Supreme Court of the Russian Federation, the authors make a number of proposals for improve the law draft, in particular, the offer to allow the self-employed to be a carrier, in case of cancellation of the entry in regional register passenger taxi on guilty grounds include the possibility of taxi service to submit notification of the beginning of its activity, but not earlier than one year, introduce compulsory insurance of civil liability of the carrier for damage to life, health, property of passengers etc.

1. Introduction

The problem of the implementation of the transport of passenger taxi affect everyone. Consumers need affordable, cheap and safe taxi transportation services, taxi drivers and taxi services need a stable and sufficient income from this activity, as well as a minimum of administrative barriers, regions-stable tax revenue from transport. Problems the industry is the increase of accidents involving cars, working in the mode of "taxi", the expansion of the shadow sector of the market, as well as the impossibility of regions contribute fully regional healthcare services. Another problem is the presence of a gaps in the legal regulation activities "aggregators" on taxi market, carrying out communication of carriers and through IT-platform. Taxi services are now governed by the FZ-69 from 2011 onwards, in which no legal provision aggregators taxi operating in Russian territory from 2011 onwards. The law "On protecting consumers rights", introduced the concept of "aggregator", but it is insufficiently disclosed these relationships. Therefore, the problem of taxi transportation activities are relevant, and therefore

required any legislative initiatives that can set the balance between the interests of the consumer and carrier aggregator.

The Government of the Russian Federation introduced a law draft on State regulation of relations in the field of the organization and implementation of transport by taxi and taxi ordering service activities." (hereinafter referred to as the law draft), which had been under consideration for more than a year and has a number of gaps and weaknesses.

2. Problem registering activities of taxi services and carriers

In foreign countries the State supervises the activities of taxi transport by establishing licensing systems, criteria for admission to the market of taxi services, such as the availability of professional skills of taxi drivers, some technical condition of motor transport, performing taxi transport. In most countries the State regulates tariffs for taxi transport as well as there is control of taxi activities on the part of the State, and self-regulatory organizations-associations of taxi drivers of taxi transportations system [1].

Under the law draft, to permit the transport of passenger taxi will issue the authorized bodies of the Russian Federation. While there is no requirement in the law draft to a legal entity or an individual entrepreneur (hereinafter IE) were registered with the tax authorities in those subject of the Russian Federation in which they plan to carry out the activities. In addition, contains deficiency of law draft on self-employed. It seems that they too must be given the right to transport by taxi, it is necessary to amend the p. 5 h 1 art. 2, par. 1 art.3 the law draft, after the words "legal entity" to add "self-employed".

The law draft provides for the possibility of suspension of the permit, but no locked up during this period to carry out taxi activities. In this regard, should agree with the authors of the need to complement h. 1 art. 3 of the law draft the words "... shall be suspended for one month"[2].

Taxi ordering service sends to the authorized agency notice of beginning or ending of their activity on the territory of the Russian Federation. Taxi ordering service does not expect notification by the authorized body for the inclusion in the relevant register. Thus, an authorized entity performs registration of the subject of the activities mentioned in fact after the fact. In this case, you can see the similarities with Roman law, when State ex post facto participates directly in (register) legal facts. Registration in this case is a notification nature [3].

In the cases specified in clause 8 of art. 17 of the law draft provides for the possibility of judicially nullify entry in regional register of taxi and the adoption of measures to restrict access to the site in the field of information and telecommunications in the Internet network, used service order taxi for posting information about ordering taxi, as blocking network address, allowing to identify such a site in the field of information and telecommunications network "Internet".

This official permission is effective in relation to the aggregators, however, it would be ineffective against taxi services, receiving orders via the telephone network. Probably, by mobile or fixed-line operators to lock phone numbers or taxi service, and this law draft is not provided. Such a situation can use dishonest taxi service delivery entity. It is therefore necessary to amend the p. 8 art. 17 of the law draft blocking phone number used by ordering a taxi.

The question of whether subsequently unlock network address taxi service, the law draft has not been resolved. In this regard, it is necessary to enter p. 9 in article 17 of the law draft, stating that in case of cancellation of the entry in regional register taxi on guilty grounds taxi service may again submit notification of the beginning of its activity, but not earlier than a year later.

3. Problems of legal regulation of activities

3.1. The problem of legal regulation of compensation for harm caused to life and health of passengers

At present, aggregators use multiple schemes for avoiding responsibility. One option is the use of leasing schemes. Aggregators receive on their own name permission to taxi for their vehicles. Then cars along with the permissions are transferred in rent to individuals, including illegal migrants, or to

persons having the patent, but on a different kind of work. When this give out smartphone or tablet with a program where do request come from passengers in the rental contracts indicate that work in a taxi on these machines is forbidden, and the whole responsibility for the accident and personal injury to people falls only on the driver [4].

Law draft closed the opportunity to use this scheme, establishing that permission is registered a document certifying the right of realization of activity on the transport by taxi the person in whose name the permit is issued. If the carrier a legal person, it shall comply with the requirements for driving experience, passing a pre-shift medical examination to their driver-workers. IE itself will carry out the specified activities and comply with the requirements of the car owner. The law draft stated that the law, validated write permission cannot be transferred (alienated) to third parties. This makes it impossible for existing schema about leasing a car for rent along with a license.

Nevertheless, the law draft leaves the possibility for aggregators to transfer orders to those carriers that are not decorated as a taxi, but as transportation on request. This gap in the legislation is used by illegal carriers on bus routes to save on meeting the requirements of safety and quality of transportation (medical examination, inspection, passenger insurance, a single color taxi, the age of the car). In this regard, it is necessary to extend to the specified carriers the same requirements, as well as to taxi drivers.

Another option of avoiding the responsibility aggregator is a reference to the fact that the aggregator provides only information services. The person responsible for the quality and safety of the carriage is the person who carries it out. In this regard, until 2018, a significant number of court decisions were issued, in which the injured passengers were denied satisfaction of the claims.

However, in 2018, the Supreme Court of the Russian Federation in case No. 5-KG17-220 of 09.01.2018 it is indicated that the taxi unit provides passenger search services, orders and transfers it to the performer. In this regard, it is subject to the application of paragraph 1 of art. 1005 of the Civil code of the Russian Federation, that on the transaction made by the agent with a third party on its own behalf and at the expense of the principal, the agent becomes obligated, at least the principal was named in the transaction or entered into a direct relationship with a third party for the execution of the transaction.

The law draft provides for a different position regarding the responsibility of the aggregator. All responsibility for the harm caused by the transport of passenger taxis to the life or health of the passenger and (or) his baggage, hand luggage, is assigned to the carrier. The charterer shall be released from liability for damage caused during transportation by a passenger taxi, if he proves that the damage arose as a result of force majeure, intent of the victim or disposal of the vehicle from its possession as a result of illegal actions of other persons.

The passenger taxi booking service is responsible to the charterer only in case of transfer of the passenger taxi order (providing access to information about the order of a passenger taxi) to a person who does not own a permit to carry out activities for the carriage of a passenger taxi. At the same time, it is exempt from liability if it was the result of a violation by the charterer of its obligations to inform the passenger taxi service of the suspension or cancellation of the permit for carrying out activities for the carriage of passenger taxis.

The solution to this problem could be the spread to carriers FZ-67 “On compulsory insurance of the carrier’s civil liability for damage to life, health, and property of passengers and on the procedure for compensation for such damage caused by the carriage of passengers by metro”. For this you need from Part 3 of Art. 1 FZ-67, delete the phrase “... does not apply to the carriage of passengers by passenger taxi”, and in clause 4 of article 9 of paragraph 4 of the law draft, add “a copy of the carrier’s liability insurance contract”.

Some authors propose to introduce the obligation of charterers to join self-regulatory organizations in order to impose liability on the entire professional community for each of its members [5]. This measure seems unnecessary, since in the case of the introduction of compulsory insurance of civil liability of the carrier, the insurance indemnity under FZ-67 is sufficient to meet the requirements of passengers.

In practice, there are situations when the charterer is an individual entrepreneur who has permission, but in violation of the law transfers his account to another person. Thus, in St. Petersburg, two passengers were killed due to the fault of a taxi driver who does not have a driver's license - a foreign citizen who received an order on someone else's account [6]. It turns out that the individual entrepreneur performed the role of a taxi service, handing the order to a third party. In this situation, it can be assumed that there is an Agency relationship between the IE and the contractor, and the IP should bear subsidiary responsibility. In St. Petersburg, they proposed to suspend the activities of taxi aggregators and their partners, who do not provide data on drivers taking the shift [7].

To solve this problem, it is necessary to make additions to paragraph 1 of Art. 18 of the draft law, specifying that in the case of a transfer by the charterer of the order to another person, the charterer and the contractor are jointly and severally liable for harm caused to the life or health of the passenger, his baggage, and carry-on baggage.

3.2. The problem of legal regulation of taxi fare

The aggregator can assign a fare significantly lower than that offered for similar services taxi parks. So, "Uber" itself sets tariffs, and "Yandex", allegedly, gives the opportunity to establish tariffs to carriers, but their tariffs are the same [8]. The aggregator is not spent on liability insurance, fleet maintaining a car park and driver control (including medical). The law draft does not resolve the issue of establishing tariffs for transportation.

In this regard, opinions were divided. Representatives of taxi parks, referring to the principle of the law draft "creating a competitive environment in the field of passenger taxi transport and passenger taxi ordering services", propose by law to prohibit aggregators from regulating passenger fares. They consider that taxi companies and individual entrepreneurs should send their tariffs to aggregators, and those, in turn, should place them in free access. In their opinion, the passenger should be able to choose the fare for the transportation or the company.

Given the fact that the prices of aggregators are significantly lower than those of taxi companies, consumers are unprofitable such a proposal.

The State Duma Committee on Transport and Construction proposed with a view to eliminating abuses in determining the cost of carriage by the carrier (driver), to consider including in the law draft provisions on the mandatory use of carriers (drivers) entering into a charter contract without the participation of passenger taxi ordering services, equipment intended for calculating the cost of transportation using tariffs set by the authorized executive authorities of the constituent entities of the Russian Federation.

It should be noted that in some foreign countries, for example, Japan, Finland, tariffs for taxi transportation are approved by the Ministry of Transport and controlled by its services. Violation of rates threatens with penalties, up to deprivation of a license for this type of transportation [1].

3.3. The problem of legal regulation of passenger safety

Many accidents happen because of the health of the taxi driver. An able to work and safe for driving a taxi driver's health condition is ensured by a pre-trip medical examination and work and rest regimen. The use of Internet platforms is not conducive to compliance with the rules of medical examinations of drivers, especially pre-trip medical examinations, since the aggregator is not responsible for the health of the driver who is given the order.

The law draft has the obligation of the carrier "to organize the conduct of mandatory medical examinations of the drivers of the passenger taxi." If the carrier is a legal entity, then it can provide it. More difficult is the case with IE. He may be in violation of the law doing not do that and it is not possible to establish control over each taxi driver.

Even if the taxi driver passes the pre-trip medical check-up, the overwork of the taxi drivers cannot be controlled. The aggregator does not control the observance of the limit of hours worked by the taxi driver. Theoretically, taxi drivers can receive orders continuously for an unlimited period of time, which is a gross violation of the working time mode and can threaten the life and health of the driver

and passengers. Even in taxi parks, taxi drivers are often given an already stamped blank form in which they can put the right time on their own [9]. Experts believe that the aggregator must ensure that the driver respects the mode of work and rest [10]. Currently, for this, aggregators have developed a test program for controlling the time of stay of drivers on the line [11]. Then the driver can be disconnected from receiving orders. However, it should be noted that even if the aggregator controls this by restricting the submission of orders to it per day, nothing prevents the driver from working with two or three aggregators at once.

In this connection, the proposal of scientists on spread the action of the Order of the Ministry of Transport of the Russian Federation of August 21, 2013 No. 273 “On approval of the procedure for equipping vehicles with tachographs” looks more convincing. They believe that this will help limit the number of orders per day per driver, but may lead to two problems: the use of another driver’s tachograph card (in USA - ELD Mandate), and the traffic police’s lack of authority to check the driver’s card [12]. However, this does not solve the problem of overall overwork ability of a taxi driver in the case when, after a full day at the main place of work, in the evening or even at night, he also works as a taxi driver.

4. Conclusion

In foreign countries there is no single model of legal regulation of the market for taxi traffic. The adoption of the law draft on taxis will solve some of the theoretical and practical problems in the industry, such as monitoring the compliance of the law by legal carriers and taxi ordering services, as well as leakage of personal data abroad, since the aggregators are obliged to process information about the order of a passenger taxi using databases and technical means of information systems located on the territory of the Russian Federation. Nevertheless, there are still a number of unsolved problems concerning the regulation of tariffs for taxi services, the control of the physical condition of taxi drivers, etc.

If the legislator adheres to a too rigid regulatory model, this will lead to an increase in the shadow market for a taxi. Modern applications for smartphone and other devices allow drivers to negotiate with the client directly, and carriers will use this in case of stricter requirements for aggregators. In addition, the activity of drivers and passengers in social networks, instant messengers, right on the streets, where they themselves will agree on trips, may increase.

The problem of illegal taxi drivers, whose cars are not equipped with taxi identification marks, remains unresolved. In this case, it is almost impossible to prove that they are carrying passengers. Effectively combating illegal carriers is possible only through the creation of favorable conditions for the legal implementation of this activity, in particular, the provision of tax benefits to legal carriers, preferences for access to transport infrastructure (railway stations, airports, etc.).

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