



Traffic Crimes under Bulgarian Criminal Law

Ralitsa KOSTADINOVA¹

Abstract: In the present paper the problems related to the general description of traffic crimes under Bulgarian criminal law are subject of analysis. This is an attempt to explain the systematic place, the classification and the subject of this type of crime. Moreover, the paper aims to give a definition of traffic crimes. They are understood as constituting acts of public danger, which endanger or damage transport safety to a significant degree. Public relationships, related to transport safety, serve as their direct subject that is in particular the state of protecting road users (such as drivers, passengers, pedestrians as well as road workers) from the cause of damage to their life and health. Public relationships, which guarantee safety in the sphere of all types of mechanic transport, constitute the subject of traffic crimes. The specific features of these crimes stem from the understanding that transport is both useful and especially important activity for any society and at the same time it is a source of increased danger for the life, health and property of citizens. **Objectives:** the purpose of this paper is to explain in a clear and concise manner the concept of transport crime according to Bulgarian criminal law. **Prior work:** the findings in this paper form part of the authors Ph.D. thesis, which subject matter covers transport crimes under Bulgarian criminal law. The present paper reveals in a general manner some of the major characteristics of transport safety-related crimes. **Approach:** the paper provides an analysis of the criminal legislation currently in force in Bulgaria related to transport crimes. **Results:** provision of definition of transport crimes under Bulgarian criminal law and carrying out an analysis of their objective and subjective characteristics. **Implications:** since traffic crimes constitute acts of common danger, which affect public relationships related to the safety in transport and which are the source of increased danger, the legal provisions with regard to these crimes guarantee the life and health of individuals in the process of carrying out of any transport activity. Therefore the notion about these crimes has significant implications to the life and safety of any individual. **Value:** this survey constitutes a first attempt in Bulgarian criminal law theory to study in details transport safety by the object of traffic crime. In it for the first time that crimes related to transport are distinguished from traffic crimes in accordance with the findings out resulting from this study.

Keywords: traffic safety; transport offences; criminal liability; legal qualification; Criminal code

¹ Assistant Professor, Department of Law, New Bulgarian University, 21 Montevideo Street, Sofia, Bulgaria, postal code: 1618. Tel.: +359 (2) 811 0222, fax: +359 (2) 811 0260. Corresponding author: rpetkova@nbu.bg.

1. Introduction

The subject matter of the present paper is traffic crimes under Bulgarian criminal law. The research interest in this subject matter is provoked from the deepening problems in the area of transport safety. The issue becomes even more important because of the annual number in our country of thousands of victims or individuals who have been mutilated for life as a result of road transport offences. The study aims to explain the role of legal science and in particular the role of criminal law in the counteraction to transport traumatism. These problems provoke the necessity of adequate legal regulation in order to prevent wrongdoers or to stimulate a positive conduct on their part for the future in the cases where damage occurs. In any case the counteraction to transport-related crime activity includes several activities: that of providing for criminal legal provisions as regards traffic crimes; that of their adequate legal qualification and that of providing for just punishment of wrongdoers. The present study aims to facilitate the former two activities by giving explanation of the concept of traffic crimes.

2. General Description of Traffic Crimes

2.1. Transport as an Object of Legal Offences

Transport is an activity related to the transfer of persons and goods from one place to another by land, air or water. Besides being a branch that is useful and important in modern life it is also a source of increased danger, where it is carried out by mechanic means of transport. Thus even the smallest negligence or incorrect use of these means may result in damage to the life, health or the property of individuals. Therefore this has resulted in the elaboration of an adequate legal regulation, which establishes common mandatory rules of conduct, the respect of which should guarantee transport safety. The disrespect of the established regulation results accordingly in consequences in the form of sanctions which constitute the most severe type of legal liability – that is criminal liability which is provided for in the legal provisions as regards traffic crimes. Thus traffic crimes pose danger to the general public because of the fact that activities with regard to road traffic and utilisation of mechanic means of transport is a source of an increased danger.

2.2. Systematic Place of Traffic Crimes

Traffic crimes are those acts of public danger by which transport safety is endangered or damaged. They are regulated in Section II of Chapter XI of the Criminal code¹ of the Republic of Bulgaria, however not all of the provisions therein fall within the scope of the above-mentioned crimes. Thus for example certain so called crimes against transport do not affect transport safety that is why they could systematically be provided for in other respective chapters of the Criminal code². As concerns the title of the section – it may well be entitled „traffic crimes” and may comprise only those crimes that affect transport safety.

Thus in my opinion provisions with regard to crimes against communications should be provided for in Chapter XI of the Criminal code. To sum it up the system of traffic crimes includes the provisions under articles 340, 341, 341a, 341b, 343, 343a, 342 b, 343c and 344 of the Criminal code.

3. Classification of Traffic Crimes

According to legal criminal theory the establishment of a system of a given type of crimes is of particular importance in order to successfully combat them. The system of the special part of the Criminal code, which comprises all types of crimes, is established with regard to the characteristics of the subject of offence and this principle is also used in the case of the so-called “traffic crimes” provided for in Section II of Chapter XI of the Criminal code. (Nenov, 1992, p. 223) (Girginov, 2009, p.113)

The systematization of the above-mentioned crimes is built upon the concept for unification of homogenous legal provisions, which damage or endanger all types of transport, but only where they have as their common subject the same public relationships.

¹ SG No 26 of 2 April 1968, in force as of 1 May 1968.

² Thus for example as regards crimes where someone makes damage to the established transport order, just as in the case of similar types of crimes, the dispositions concerning those crimes should be provided for in Chapter VIII, section I of the Criminal code, in that part of the Code where the crimes against the order of driving are provided for, whereas those crimes that affect the right to use a vehicle should respectively be provided for in Chapter V of the Criminal code. See (Kostadinova, 2008).

Traffic crimes which are provided for in Section II of Chapter XI of the Criminal code may be grouped together in several groups depending on the criteria used. With regard to the characteristics of the offence within the meaning of traffic crimes fall as follows:

3.1. Acts of Common Danger that Affect Transport Safety

General Traffic Crimes of Common Danger

General traffic crimes of common danger (under articles 340 and 341 of the Criminal code) may affect all types of transport. In the event of such crimes the special rules applicable to road traffic, utilisation or repair are not violated. The general ban not to make damage to others is violated in the event of such crimes. It is considered that constitutes an offence to damage any means of transport or transport facility (under article 340, paragraphs 1 and 3 and article 341 of the Criminal code) pertaining to the motor, waterway, railway, air or electro transport. There are provisions envisaging criminal liability for such damage which endangers life or health of individuals.

Impact in Commonly Dangerous Manner on the Civil Aviation Safety

Within this group fall the cases where an aircraft is endangered under article 341a, paragraph 1 of the Criminal code, where an aircraft in flight is endangered under article 341a of the Criminal code as well as the case of an illegal occupation of an aircraft under article 341b of the Criminal code. There is a special hypothesis in the case of air piracy which reflects the characteristics of that type of transport and the respective international instruments in that area.

3.2. Criminal Violation of Rules Concerning Transport Safety

These crimes may be grouped together in several subgroups with regard to the characteristics of the consequences of public danger:

Effective Traffic Crimes

In the case of effective traffic crimes the violation of the rules related to transport safety results in intrinsic result, namely in danger for the life, health and property of individuals (under articles 342 and 344 of the Criminal code) or death, bodily injuries or significant damages (under articles 343 and 343a of the Criminal code).

Within that group fall any violation of the rules with regard to road traffic, utilisation or requirements with regard to the good quality of the repair works, which create danger (under article 342 of the Criminal code) and the cause of death, (grave or medium) bodily injury or significant damages as a result of the violation of rules of road traffic safety, utilisation or transport (under articles 343 and 343a of the Criminal code). In addition, the criminal removal or replacement of a traffic sign or a signal that guarantee road traffic safety, which may create danger (under article 344 of the Criminal code) should also be mentioned.

Ineffective Traffic Crimes

It is typical for this second group that violation of given rules is sufficient so that criminal liability may arise because there is no description of any intrinsic consequences in the disposition part of the legal norm. Within this group fall two types of crimes: driving in a state of drunkenness or after committing narcotic drugs offence (under article 343b of the Criminal code) as well as driving disqualification (under article 343c of the Criminal code).

4. Crimes against the Established Order for the Transport Activity

Within this group of crimes fall offences related to transport but which do not have impact on transport safety (under articles 345 to 346b of the Criminal code). Within this group fall: the illegal use of control signs that do not pertain to the same vehicle (under article 345 of the Criminal code), the falsification of the identification plate of a vehicle (under article 345a of the Criminal code), the illegal deprivation of a vehicle (under article 346 of the Criminal code) and illegal intrusion in a vehicle (under article 346b of the Criminal code). It can be seen from the analysis of these crimes that they affect the established order of driving as well as ownership rights that is why it is necessary to change their systematic place in the Criminal code.

5. Subject of Traffic Crimes

5.1. Gender Subject

Traffic crimes are acts of common danger, which affect the rights and interests of unlimited number of individuals. Within their gender subject fall public relationships, related to the state of common danger, which is characteristic of crimes under Chapter XI of the Criminal code. In this particular case the common

danger is defined by the nature of the subject of offence, that is transport and its components which are the source of increased danger. In most of the cases (as regards the actual traffic crime under article 343 and article 343a of the Criminal code and also in the cases under article 343b and article 343c of the Criminal code) the means of the crime is the respective means of transport, the driving of which affects the state of safety in transport. The fact that danger may arise with regard to unlimited number of individuals – in cases where there is incorrect use of mechanic means of transport - justifies their systematic place in Chapter XI of the special part of the Criminal code.

5.2. Group Subject

Traffic crimes constitute acts of public danger, which endanger or damage transport safety in significant degree. Their direct subject are public relationships, related to transport safety, meaning the state of protection of road users (such as drivers, passengers, pedestrians as well as road workers) from causing damage to their life and health¹. Public relationships, which guarantee safety in the sphere of all types of mechanic transport, are the subject of traffic crimes. The specific features of these crimes stem from the fact that transport is both useful and especially important activity for any society and at the same time it is a source of increased danger for the life, health and property of citizens. The relationships securing road traffic safety and transport utilisation serve as an important component of the complex of relationships that realize and secure public safety as may be seen from the system of the law, which defines them among the different types of crimes that are of common danger.

The high degree of public danger of these crimes follows from the fact that transportation by mechanic means of transport is an activity that is a source of increased danger, where even the smallest deviation from the established rules may result into serious consequences. That is why in historic perspective the first legal provisions concerning traffic crimes, under which they constitute offences, are provided for in criminal law only when society has realized the risk accompanying the use of certain means of transport (namely mechanic). Only then the necessity of legal protection of transport safety arises and it is achieved by means of a detailed

¹ With regard to different findings out by transport crime object see: (Buzov, 1956, p. 29; Alekseev, 1957, p. 26; Nenov, 1959, pp. 383-384; Mihailov, 2008, p. 489; Kichigina, 1966, pp. 26-27; Kurinov, 1970, p. 20; Filchev, 1984, p. 10; Filchev, 1981, p. 394; Mihailov, 1982, p. 346).

regulation of the rules with regard to road safety and safe utilisation of the means of transport. As a result of the intensive technology development in the area of transport the legal regulation regarding safety in transport is often subject of amendments. Thus the stability of criminal law imposes in these cases the referral to blanket approach when describing the disposition part of actual traffic crimes¹.

6. Conclusions

With regard to the above mentioned considerations it may be concluded that traffic crimes are those crimes that are provided for in Section II of Chapter XI of the special part of the Criminal code as acts of common danger, which affect public relationships related to the safety in transport, which are source of increased danger and which legal provisions guarantee life and health of individuals in the process of carrying out transport activity. Described in such manner the concept of traffic crimes comprises the modern model for legal criminal protection of transport safety in Bulgarian legal system. This is the result of a long period of development and improvement that has begun after the National Liberation (in 1878) and that process still continues nowadays. Thus the establishment of the modern model of traffic crime is the result of the socio-economic development of society and in particular that of transport.

7. References

Alekseev, N. (1957). *Транспортные преступления. Ответственность за преступления, посягающие на правильную работу советского транспорта / Transport crimes. Liability for crimes against the correct operation of Soviet transport.* Leningrad.

Buzov, V. (1956). *Престъпления по транспорта / Crime with regard to transport.* Sofia.

Girginov, A. (2009). *Наказателно право на Република България. Обща част. Курс лекции. Второ основно преработено и допълнено издание / Criminal law of the Republic of Bulgaria. General Part.* Sofia: Sofi-R.

Gruev, L. (1997). *Бланкетни наказателноправни норми / Blanket rules of Criminal law.* Sofia: St. Kliment Ohridski.

Kichigina, E. (1966). *Ответственность за нарушение безопасности движения городского транспорта / Liability for offences of transport safety in urban transport.* Moskva.

¹ As regards the necessity of blanket rules in criminal acts in the age of scientific and technical progress see in details: Gruev, 1997, p. 117 and the next.

Kostadinova, R. (2008). Наказателноправна защита на регистрационния и идентификационния режим на моторните превозни средства / Criminal protection of the registration and identification regime of motor vehicles/ *Law Journal of NBU*, 2008, no 4. Web page: http://www.nbu.bg/PUBLIC/IMAGES/File/departments/law/Spisanie/4_2008/5_ralitzva%20kostadinova.pdf.

Kurinov, B. (1970). *Автотранспортные преступления/Crimes against motor transport*. Moskva.

Mihajlov, D. (2008). Проблеми на престъпленията против автомобилния транспорт/*Problems of crimes against motor transport. In: Problems of Criminal law*. Special part. Sofia: Ciela.

Mihajlov, D (1982). Автотранспортни престъпления. Обща характеристика и форма на изпълнителното деяние/*Crimes against motor transport/General characteristic and form of enforcement act in Lectures for postgraduate qualification*, volume XXI. Sofia.

Nenov, Iv. (1992). *Наказателно право на НРБ/Criminal law of the Republic of Bulgaria. General Part*. Sofia Book 1. Sofia: Sofi –R.

Nenov, Iv. (1959). *Наказателно право на НРБ/Criminal law of the Republic of Bulgaria.Special Part*. Volume 2. Sofia: Sofi –R.

Filchev, Iv. (1984). *Престъпления по транспорта / Crimes with regard to transport*. Sofia.

Filchev, Iv. (1981). Наказателна отговорност за престъпления по автотранспорт/*Criminal liability for crimes with regard to motor transport in Lectures for postgraduate qualification*, volume XX. Sofia.