

## **Criminal offenses against the safety of public traffic in the comparative plan with countries of Western Balkan**

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### **Abstract**

This paper gives vital, important explanations for the notion of criminal offense averse to the safety in public traffic, types of offenses and particularly, the research paper analyzes the comparative aspect of Western Balkan countries legislation with the legislation of the Republic of Kosovo. The paper aims to attain these objectives:

- Make a detailed elaboration of the Criminal Code of Kosovo with a notable view of the part concerning with criminal offenses against the safety of public traffic, so that through a comparative method of this section, to bring a clear picture of these offenses and sanctions that this code determines for the perpetrator.
- To make a detailed elaboration of the Criminal Codes in Albania, Bosnia, Montenegro, Croatia and Serbia, comparing their legislation with our legislation and with notable emphasis we have stopped at the criminal offenses against the safety of public traffic.

As conclusion of this research, it was found that the criminal offenses against the safety of public traffic in Kosovo have marked a high presence and this was determined by the large number of accidents and other violations of the road traffic rules and regulations. It is recommended that the Basic Courts in Kosovo's territory, throughout handling criminal cases in the field of public safety and the issuance of judgments, shall focus on aggravating circumstances and to consider the human, economic and social damage that these criminal offenses cause to citizens of the Republic of Kosovo.

**Keywords:** Traffic, Court, Criminal Offenses, Public, Safety, Territory, Roads, Legislation.

### **Introduction**

The fast development of road traffic or traffic as a whole requires many measures that are taken with the objective of reinforcing traffic safety. But despite this, accidents happen every day in traffic, which not only are causing great material damage, but also human being injuries, including many deaths. Due to the theoretical aspect of this issue it can be said that the investigation of criminal offenses against the safety of public traffic in the post-war period and at the time in Kosovo is undergoing a sensitive stage of transition of particular importance because the cases of these criminal offenses are numerous and the phenomenon is widespread.

Therefore, this study is thought to have a precious and multiple theoretical value as to the expansion and deepening of knowledge about the general and special factors affecting the criminal offenses against the safety of public traffic. In this paper I will analyze how the Western Balkan countries deal with offenses against traffic safety, the Albanian Legislation, the Macedonian Legislation, the Montenegrin Legislation, Bosnia's Legislation, Croatia's Legislation, Serbia's Legislation, with emphasis on specific criminal offenses against traffic safety which will be elaborated, analyzed, and be treated in a comparative manner with Kosovo's legislation.

## Research Methodology

During the work of this topic we will use and apply various scientific methods such as: the method of theoretical treatment of criminal law, the method of observation through which we will monitor developments in the field of prevention and combating criminal offenses against the safety of public traffic, the method of analysis through which we will analyze legislation of different countries on criminal sanctions for criminal offenses against the safety of public traffic and the degree of its enforceability, the comparative method where in details I have compared the Kosovo criminal law in this field with the criminal legislation of the countries of the region such as Albania, Macedonia, Montenegro, etc.

### **The notion and meaning of criminal offenses against the safety of public traffic**

According to the Criminal Code of Kosovo, criminal offenses against public safety are considered to have been committed when due to non-compliance with the provisions of public traffic the life, the human body or property is endangered and when slight bodily injury or material injury has been caused. Hence, it is about the concrete danger to the life and physical integrity of people or the wealth of large proportions. Thus e.g. the criminal offense against the safety of public traffic contains all the general features of the offense (act and consequences, social risk, lawlessness and definition of offense by law), but at the same time this offense also contains the specific characteristics with which the act is concretized (the general risk) and the consequences (material damages or consequences in humans up to the death of any person) (Korajliq, 2007, 57).

According to scientific research, it is considered that accidents are unforeseen events occurring in environments when vehicles and people move and that, as a result of rapid development and immediate changes, are associated with damage to the vehicles, life or health of persons; damage to public and private property. In Kosovo, before and after the war, every year, about 160 people are killed in road accidents, while the number of people who suffer injuries is higher (Salihu, 2014, 559). For Kosovo and other countries in the region, road safety is an important issue that preoccupies society in general. The performance of road accidents in Kosovo, in terms of the number of deaths from road accidents, is very close to the Western Balkan countries. The two main differences with the Western Balkan countries are that there has been a significant increase in fatalities in the last decade and that the number of pedestrians killed in road accidents is very high.<sup>1</sup>

### **Types of criminal offenses against the safety of public traffic according to the Criminal Code of Kosovo**

Kosovo's Criminal Code has clearly classified all criminal offenses against the safety of public traffic, the types of criminal offenses against the safety of public traffic:

<sup>1</sup> Kosovo Ministry of Infrastructure, "Strategjia e Sigurisë Rrugore dhe Plani i Veprimit në Kosovë", Pristina, 2015, 7.

- Endangering public traffic (Article 378);
- Driving while impaired or intoxicated (Article 379);
- Endangering public traffic by dangerous acts or means (Article 380);
- Irresponsible supervision of public traffic (Article 381);
- Refraining from providing help to persons injured in traffic accidents (Article 382);
- Misusing international communication signals (Article 383);<sup>2</sup>

Causing the risk may be concrete, as is the case with the criminal offense of endangering public traffic due driving while impaired or intoxicated (Article 378, 379), or criminal offense of endangering public traffic by dangerous acts or means (Article 380). But the danger may be abstract, as is the case, for example, in the criminal offense of misusing international communication signals (Article 383) (Petroviq, 2006). The consequences of the criminal offenses of this chapter are the endangering, namely the causing of danger to people's lives, bodily integrity or wealth of large proportions.

These consequences are closely linked to each other in the sense that when public traffic is endangered, the life or integrity of people or wealth of large proportions is jeopardized. By the form of guiltiness, most of these criminal offenses of this chapter are committed intentionally and negligently. However, due to their nature these works in everyday life are most often carried out by negligence.

### **Criminal Offenses Against the Safety of Public Traffic under Albania's Criminal Legislation**

The Criminal Code of the Republic of Albania (CCRA),<sup>3</sup> unlike other regional practices, is divided into the general part and the special section. In the special section, chapter VIII "Crime against State authority", in section III are collected all criminal offenses against public order and security.

Characteristic of this Code is the distribution of criminal offenses against the safety of public traffic throughout this section since Article 273 begins with the criminal offense "Leaving the scene of an accident" to continue with Article 290 "Violation of road traffic regulations", Article 291 "Driving vehicles inappropriately", Article 292 "Violation of working standards in transportation" and Article 293 "Obstructing the movement of transport vehicles".

Analyzing the CCRA, we conclude that in terms of criminal offenses against the public traffic safety, the CCK is more comprehensive, more explicit and more concrete as 5 articles and many paragraphs sanction these crimes unlike the CCRA that has only 4 articles and does not define clearly e.g. sanctions when these offenses are committed negligently or intentionally, sanctions when death, serious bodily injury or major material damage, sanctions when international traffic signals are abused.

The widespread proliferation of criminal offenses against the safety of public traffic in Albania, the crime and its consequences to the detriment of road users or even the general population (damage to property from accidents) require a reform and supplementation of the Criminal Code of the Republic of Albania according to the best practices of the countries of the region and the EU as well as a tougher stance of

<sup>2</sup> Penal law of the Republic of Kosovo No. 04/L-082.

<sup>3</sup> Criminal Code, Tiranë, 2010, p. 76-86.

the prosecution body before the court.

### **Criminal Offenses against the Safety of Public Traffic under Macedonia's Criminal Legislation**

The 1996 Criminal Code of the Republic of Macedonia<sup>4</sup> in its 27th chapter deals with matters pertaining to criminal offenses against public safety. The chapter is more detailed than the Criminal Code of Kosovo, but in substance it is almost the same. In this flow, Article 297 of this Code sanctions the criminal offense of endangering the traffic safety that in CCK is sanctioned in Article 279. Then in this chapter are also sanctioned: Endangering public traffic by dangerous acts or means (Article 298) which is the same as Article 380 of the CC of Kosovo with regard to the inclusion of dangerous acts and assets and also in terms of the amount of punishment or fine to be imposed. The Irresponsible supervision of public traffic (Article 299) of the CC of Macedonia is also in line with Article 381 of the CC of Kosovo. The only difference is that the cases when these offenses have caused injuries, deaths or major material damage are not included in these three treatise articles but this is done with the special Article - Article 300 "Severe crimes against safety of people and property in traffic" that includes all cases where the criminal offense committed under Articles 298, 299 and 300 resulted in bodily injury, death or material damage.

Failure to help a person injured in a traffic accident sanctioned by Article 301 of the CC of Macedonia is identical with Article 382 of the CC of Kosovo. The Criminal Code of Macedonia has gone even further by sanctioning the criminal offenses<sup>5</sup>: Kidnapping an aircraft or ship in Article 302, Endangering air traffic safety in Article 303 and Destruction or removal of a sign that serves for air traffic safety in Article 304, acts that are not included at all in Kosovo's Criminal Code.

Finally, it can be concluded that with regard to the sanctioning of criminal offenses against the safety of public traffic, the Criminal Code of the Republic of Macedonia has managed to include and sanction these criminal offenses in a more advanced and comprehensive manner than the CC of Kosovo.

### **Criminal Offenses against the Safety of Public Traffic under Serbia's Criminal Legislation**

The designation of offenses against traffic safety in the 2006 Criminal Code of the Republic of Serbia provides protection for the general safety of people and property in the field of public transport, considering all means of transport (Road, Rail, Maritime, Air, tram, trolleybus, bus and cableway traffic) (Ignjatović, 2007, 398).

According to the Criminal Code of the Republic of Serbia,<sup>6</sup> these acts are defined under Chapter XXVI entitled "Criminal offenses against road traffic safety" (Kambovski, Krstanovski, 2009, 435) as follows: Endangering Road Traffic (Article

<sup>4</sup> "Criminal Code of Republic of Macedonia", Shkup, Nëntor, 1996, p. 110-113.

<sup>5</sup> IBID.

<sup>6</sup> The Criminal Code of the Republic of Serbia, Official Gazette of the Republic of Serbia "No. 85/2005, 88/2005 - corr., 107/2005 - corr., 72/2009, 111/2009, 121/2012, 104/2013.

289), Endangering Traffic by Dangerous Acts or Means (Article 290), Endangering Air Traffic Safety (Article 291), Endangering Air Traffic Safety by Violence (Article 292), Hijacking an Aircraft, Ship or Other Means of Transport (Article 293), Piracy (Article 294), Dereliction of Duty in Supervising Public Traffic (Article 295), Failure to Render Aid to Person Injured in Traffic Accident (Article 296) and Grave Offences Against Traffic Safety (Article 297).

From the analysis of the Criminal Code of Serbia regarding the criminal offenses against the safety of public traffic we see that the cases when the offense of endangering air traffic with violence or without violence are very clearly specified, the hijacking of aircraft, ships and other means of transport are also not included as criminal offenses in the field of public safety in the CCK but are part of the XV<sup>th</sup> chapter of the CCK where "Criminal offenses against humanity and values protected by international law" are sanctioned.

It can finally be concluded that, with regard to the sanctioning of criminal offenses against the safety of public traffic, the Criminal Code of the Republic of Serbia is at the same level as that of the Republic of Macedonia and has managed to include and sanction these criminal offenses in a more advanced and comprehensive than the Kosovo's CC.

### **Criminal Offenses against the Safety of Public Traffic under Bosnia and Herzegovina's Criminal Legislation**

As known, because of the war this country has been under international administration and from this I can say that the Federation of Bosnia and Herzegovina has also undergone a transition situation similar to Kosovo. It is therefore important to see how the treatment of criminal offenses against the safety of public traffic is defined by the BiH Criminal Code. The Criminal Code of BiH specifically sanctions these offenses in the twenty-eighth chapter - Criminal Offenses against Traffic Safety, ranging from<sup>7</sup>: Endangering Public Traffic (Article 332), Endangering Public Traffic Due to Intoxication (Article 333), Endangering Public Traffic by the Dangerous Activity (Article 334), Careless Supervision over Public Traffic (Article 335), Serious Criminal Offences against the Safety of Traffic (Article 337), and Failure to Render Aid to a Person Hurt in a Traffic Accident (Article 338). Also this Penal Code in the seventeenth chapter - Crimes against humanity and values protected by international law has included some offenses that we have encountered in the Criminal Code of Macedonia and Serbia in the chapter dealing with offenses against public security such as<sup>8</sup> : Piracy (Article 196), Hijacking an Aircraft or a Ship or Seizing a Fixed Platform (197), Endangering the Safety of Air Traffic and Maritime Navigation or Fixed Platforms (Article 198) and Destruction and Removal of Signal Devices Utilized for Safety of the Air Traffic (Article 199). As we can see from the treatment of these offenses in the BiH Criminal Code, most of these criminal offenses are almost as compiled as in the Criminal Code of Kosovo because the Criminal Code of the Federation of Bosnia of Herzegovina has served as the initiating model for drafting the Criminal Code of

<sup>7</sup> Penal law of BiH, Articles 332 – 338.

<sup>8</sup> IBID.

Kosovo (Salihu, Zhitija, hasani, 2014, 7). However, during the multi-year work, the Criminal Code of the Federation of Bosnia and Herzegovina has largely remained a structure, as the Kosovo Criminal Code in the following work was compiled according to the concepts, models and concrete solutions of the criminal.

### **Criminal Offenses against the Safety of Public Traffic under Croatia's Criminal Legislation**

The Criminal Code of the Republic of Croatia deals with criminal offenses against the security of public traffic in its 20th chapter - Criminal Offenses against Public Safety of Persons and Property and Safety in Traffic.<sup>9</sup> This chapter contains a total of 12 articles respectively from Article 263 to 275. In this chapter are sanctioned these offenses against public traffic safety: Endangering Road Traffic (Article 272), Endangering Traffic by a Dangerous Act or means (272a), Failure to Render Aid to a Person Who Suffers Serious Bodily Injury in a Traffic Accident (Article 273). Even the Criminal Code of Croatia has placed some of the offenses related to public safety of traffic in the thirteenth chapter - Criminal offenses against the values protected by international law such as<sup>10</sup>: Hijacking an Aircraft or a Ship (Article 179), Piracy on the Sea and in the Air (Article 180), Endangering the Safety of International Air Traffic and Maritime Navigation (Article 181), Failure to Render Aid at Sea and Inner Waters (Article 182).

From the analysis we made to the Criminal Code of Croatia we see that there is a smaller number of criminal offenses against the safety of public traffic compared to the Criminal Code of Kosovo since there is no sanction of the criminal offense of Driving while impaired or intoxicated, misuse of traffic signs and irresponsible supervision of public traffic.

The CC of the Republic of Croatia in many articles is similar to that of Macedonia, Serbia and the Kosovo's CC although it is completer and more advanced given that it is a country of the European Union and has fully harmonized legislation with the *Acquis Communautaire* of the EU.

### **Criminal Offenses against the Safety of Public Traffic under Montenegro's Criminal Legislation**

The Criminal Code of the Republic of Montenegro<sup>11</sup> was last amended in 2008 and is published in the Official Gazette of the Republic of Montenegro at number 40/2008 and this Criminal Code treats the criminal offenses against the safety of public traffic in his 27th chapter. This chapter contains a total of 10 articles respectively from article 339 to 348. Even in this Criminal Code we find similarity either by classifying

<sup>9</sup> Retrieved from [http://www.vsrh.hr/custompages/static/HRV/Files/Legislation\\_criminal-code.pdf](http://www.vsrh.hr/custompages/static/HRV/Files/Legislation_criminal-code.pdf)

<sup>10</sup> Criminal Code: The Official Gazette of the Republic of Croatia "Narodnenovine" (hereinafter: NN) No. 110 of October 21, 1997 (entered into force on January 1, 1998).

<sup>11</sup> Criminal Code of Republic of Montenegro. Retrieved from [http://minoritycentre.org/sites/default/files/criminal\\_code\\_montenegro.pdf](http://minoritycentre.org/sites/default/files/criminal_code_montenegro.pdf)

a criminal offense against the safety of public traffic or sanctioning this offense with the Criminal Codes of the countries of the region that we have treated above. Thus, in this Code we have the criminal offense "Endangering Public Traffic" (article 339) as in all other codes of the countries of the region. Then in Article 340 is sanctioned the criminal offense "Endangering Traffic Safety by Dangerous Acts or Means", Article 341 sanctions criminal offense "Endangering Air Traffic Safety" and in Article 342 is sanctioned the criminal offense "Endangering Security of Air and Maritime Traffic or of Fixed Platform" to continue similarly to most of the codes of the countries of the region by sanctioning the offense "Hijack of Aircraft, Ship or Other Means of Transport" in Article 343.

Unlike all the codes in the region, the Criminal Code of Montenegro has sanctioned in Article 344 the criminal offense "Omission to Provide Assistance to Ship or Other Vessel or to Persons in Danger at Sea or in Inland Waters", offense which we do not encounter in the CC of the countries of the region nor in the CC of Kosovo, except in the CC of Croatia in Article 182. Article 345 sanctions criminal offense "Piracy" as we see in some of the Criminal Codes of countries of region and article 346 criminal offense "Malpractice in Supervision of Public Traffic" is sanctioned and in Article 347 we have the offense "Omission to Provide Assistance to a Person Injured in Traffic Accident" as in all other above-mentioned criminal codes. The Criminal Code of Montenegro in Article 348 sanctioned the criminal offense "Grave Offences against Public Traffic Security", which includes serious criminal offenses under Articles 339 to 347 and specifies the punitive measures that can be taken by the court.

## Conclusions

In Kosovo, before and after the war, approximately 160 people are killed in road accidents every year, while thousands suffer from bodily injuries. Due to these very damaging consequences, the law on public traffic safety and other provisions set out the rules that must be respected by participants in public traffic in order to protect life, bodily integrity and the wealth of people. This research paper elaborates our legislation and, at the same time, the legislation of the Western Balkan countries, considering the approximation of these legislations with EU standards, with more approximations between the legislation of Croatia and Macedonia that have inherited or borrowed their norms while respecting EU standards. It should be mentioned that our legislation has also tried to respect and uphold the EU standards and system, but it needs more engagement and work in this regard.

While central and local authorities remain working towards improving repressive and preventive measures as recommended below:

- Improve the safety strategy of public traffic in general as well as road traffic in particular. The starting point of this strategy begins with the reforms that will be made on road transport safety, which, to a certain extent, should be adapted to European standards and contemporary security systems;

- Harmonize road infrastructure safety with road safety in the European Union;

This also implies a radical change in the approach to preventing criminality against the safety of public traffic and on its own strategic documents and policies addressing

(among other things) this phenomenon, in line with the world's successful practices and the European Union institutions'. The results of this research show that respecting road traffic rules will serve to reduce traffic accidents and reduce other consequences for road traffic participants. Finally, summarizing this data on the criminal offenses against the safety of public traffic, it is worth pointing out that this study is also an attempt for more information that could serve the state and local institutions and society in general who in one way or another engage in higher safety in public traffic and healthier society in general.

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