

Первоначально УК РФ содержал норму об ответственности за оставление места дорожно-транспортного происшествия (ст. 265), однако в 2003 г. она была исключена из Кодекса.

Глава о преступлениях против безопасности движения и эксплуатации транспорта УК РФ в 2010 и 2011 гг. дополнена двумя нормами, предусматривающими ответственность за неисполнение требований по обеспечению транспортной безопасности на объектах транспортной инфраструктуры и транспортных средств (ст. 263¹) и за нарушение правил использования воздушного пространства Российской Федерации (ст. 271¹). Оба этих преступления признаны транспортными без достаточных к тому оснований. Первое посягает на общую безопасность, второе – на порядок управления.

Таким образом, по УК РФ собственно транспортными преступлениями являются: 1) нарушение правил безопасности движения и эксплуатации железнодорожного, воздушного, морского и внутреннего водного транспорта и метрополитена (ст. 263); 2) нарушение правил дорожного движения и эксплуатации транспортных средств (ст. 264); недоброкачественный ремонт транспортных средств и выпуск их в эксплуатацию с техническими неисправностями (ст. 266); приведение в негодность транспортных средств или путей сообщения (ст. 267); нарушение правил, обеспечивающих безопасную работу транспорта (ст. 268); нарушение правил безопасности при строительстве, эксплуатации или ремонте магистральных трубопроводов (ст. 269).

Остальные преступления лишь совершаются в сфере функционирования транспорта, но собственно транспортными, как указывалось, не являются.

UDC 343.3/.7

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CAUSING A TRAFFIC ACCIDENT THROUGH NEGLIGENCE

A criminal offence named Causing a Traffic Accident through Negligence under Article 323 of the Criminal Code is one of the four criminal offences committed out of negligence in the Criminal Code of the Republic of Slovenia (hereinafter CC-1).

Offences of negligence constitute a specific type of criminal offences that differ in terms of their construction and structure from the typical intention-

al criminal offences whereby negligence can constitute only a special form of culpability, punishable only if it is specially stipulated by the code.

These criminal offences have certain characteristics, which deserve special attention. Act of commission in offences of negligence is manifested as a breach of the duty to exercise due care, which is an essential element of these criminal offences, because it represents the ethical foundation for the punishability of this conduct. The next characteristics of offences of negligence is that they result in a damage (damage caused to the protected good), which is equally considered as a crucial part in the structure of these criminal offences.ⁱ What is further particular for these offences is their causation, because a causal relationship between a breach of the duty to exercise due care and the resulting prohibited consequence is assessed differently from typical intentional criminal offences. Culpability in offences of negligence is treated according to the rules used to establish evidence in ordinary negligence.ⁱⁱ The above mentioned characteristics will be helpful in the analysis of the provision of Article 323 of the CC-1.ⁱⁱⁱ

A perpetrator of this criminal offence can only be a road user. It is a person who is in whatever way involved in road traffic.^{iv}

A due care or a breach of the duty to exercise due care is the central concept of the criminal offences of negligence, since it is possible precisely by the means of the breach of due care to establish the existence of causal relationship between a perpetrator's conduct and the entailed prohibited consequence, as well as the perpetrator's culpability for the offence committed.

This criminal offence can be accomplished only by the violation of road safety regulations, which represent in this case a duty of due care. Without a breach of the duty to exercise due care (i.e. a violation of road safety regulations) criminal offence does not exist, regardless of how serious the resulting damage is. A breach of the duty to exercise due care is a basic prerequisite for establishing a causal connection between a perpetrator's conduct in road traffic and the entailed resulting damage, but the violation that was established does not yet mean that the causal relationship exists automatically.

The question whether a violation is a cause of the resulting consequence or not, should be carefully examined in each particular case, because a too rapid conclusion that a given breach of due care represents also a cause for the resulting consequence can lead to a wrong conclusion and by that also to the punishment of a person who in spite of a breach of the duty to exercise due care is not at all a perpetrator of a criminal offence.

Most problems and different views concern the issue of prohibited consequence of this criminal offence. Problems already begin with the definition

of traffic accident as an element or a consequence of a criminal offence. It precisely depends upon this definition, whether it is a question of criminal offence resulting in damage, as it is considered by the majority of theorists, or rather a matter of concealed act of endangering as it is thought by some other theorists.^v

I think that the notion of traffic accident as described in the criminal offence of Causing a Traffic Accident through Negligence causes more problems than benefits and no harm would be done to omit it from the description. Serious bodily harm should be defined as a prohibited consequence, in which it is always necessary to establish and prove a perpetrator's guilty mind. In this way it would be also logical that a death of one or more persons, defined in the second paragraph of Article 232 of the CC-1 should be treated as a grave consequence, resulting from the basic act.

Due care or a breach of the duty to exercise due care is the central notion of criminal offences of negligence. A breach of the duty to exercise due care is the ethical basis for the punishability of these conducts and the attitude towards the breach of due care constitutes a ground for a blame addressed to a perpetrator. Due to the aleatory character of the resulting damage, caused by the breach of due care, it would be necessary to give more importance to the attitude towards this breach, because it discloses a perpetrator's attitude towards a protected good, providing thus a ground for the blame, i.e. for the justification of culpability.

I am convinced that the attitude towards a breach of the duty to exercise due care is so important that not only should it be taken into consideration in sentencing, but in the very formulation of statutory definition of the criminal offence. It is not at all insignificant whether a person participating in public traffic violates road safety regulations intentionally (for example by "cutting in" after overtaking another vehicle or by intentional driving through the red light) or out of negligence. It is a difference which is so important, that it would be reasonable to formulate for intentional and negligent violations a special statutory definition of this criminal offence and also different sentencing framework.

On the ground of the mentioned views, a statutory description of the criminal offence treated in the present analysis would read as follows:

Causing a Serious Bodily Harm in Road Traffic

A person participating in public traffic who, by intentional violation of the regulations on road safety, causes with this by negligence a serious bodily harm to another person, shall be punished by a fine or sentenced to imprisonment for not more than... years.

A person participating in public traffic who, by negligent violation of the

regulations on road safety, causes with this by negligence a serious bodily harm to another person, shall be punished by a fine or sentenced to imprisonment for not more than... years.

If the offence under the first or the second paragraph of this article entails the death of one or more persons, the perpetrator shall be sentenced for the offence under the first paragraph to imprisonment for not less than ... and not more than ... years and for the offence under the second paragraph of this article to imprisonment for not less than ... and not more than ... years.

Literature

1. Bavcon L.: *Malomarnostna kazniva dejanja v cestnem prometu: zamisel, struktura in problemi*, Uveljavljanje novih institutov kazenskega materialnega in procesnega prava, Ljubljana, Uradni list Republike Slovenije, 2000, strani 149 – 158.

2. Bavcon L., Jbelih A. in sodel.: *Kazensko pravo*, Splošni del, Ljubljana, Uradni list Republike Slovenije, 2009.

3. Deisinger M.: *Kazenski zakonik s komentarjem*, Posebni del, Ljubljana, GV Založba, 2002.

4. Novoselec P.: *Uveljavitev novega kaznivega dejanja povzrojitve prometne nesreče iz malomarnosti*, Uveljavljanje novih institutov kazenskega materialnega in procesnega prava, Ljubljana, Uradni list Republike Slovenije, 2000, strani 159 – 192.

ⁱ Official Gazette of the Republic of Slovenia, nos. 55/2008, 66/2008, 39/2009 – KZ-1A and 91/2011-KZ-1B.

ⁱⁱ L. Bavcon: *Malomarnostna kazniva dejanja v cestnem prometu: zamisel, struktura in problemi*, p. 152-154; L. Bavcon, A. Jbelih et al.: *Kazensko pravo, splošni del*, p. 283-284.

ⁱⁱⁱ Causing a Traffic Accident through Negligence – Article 323 of the Criminal Code-1

(1) A person participating in public traffic who, by negligent violation of the regulations on road safety, causes a traffic accident whereby another person is seriously injured, shall be punished by a fine or sentenced to imprisonment for not more than three years.

(2) If the offence under the preceding paragraph entails the death of one or more persons, the perpetrator shall be sentenced to imprisonment for not more than eight years and banned from driving a motor vehicle.

(3) To a perpetrator, who was not entitled to drive a motor vehicle by which the criminal offence under the first or the second paragraph of this article was committed, this vehicle shall be seized. A motor vehicle, which is a property of another person, shall be seized, if this person rendered possible, allowed or permitted a drive to a perpetrator for whom he knew or could have known that he is not entitled to drive.

^{iv} For more detail about a perpetrator see: M. Deisinger: *Kazenski zakonik s komentarjem, posebni del*, p. 817-818.

^v P. Novoselec: *Uveljavitev novega kaznivega dejanja povzrojitve prometne nesreče iz malomarnosti*, p. 167-176.