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ALCOHOLISM AS A CRIMINOGENIC FACTOR IN CRIMINAL OFFENSES AGAINST PUBLIC TRAFFIC SAFETY

ABSTRACT: This paper analyzes alcoholism, that is, the consequences of alcoholism from health, social, and criminal law perspectives, bearing in mind that certain criminal offenses may be closely related to it. Accordingly, the paper presents the effects of alcohol as a criminogenic factor in criminal offenses against public traffic safety, providing an overview of the existing legal framework as well as judicial practice regarding the imposition of criminal sanctions for this offense. Criminal offenses against public traffic safety were selected for analysis due to their significance in the modern world, as well as the fact that today virtually everyone participates in traffic, either directly or indirectly, and may therefore appear as a perpetrator of such an offense or as its victim. Since the consequences of alcoholism can be multifaceted, it is necessary to examine and reassess this issue, particularly in judicial practice, while identifying potential problems encountered in its application.

Keywords: *alcohol, offenses against public traffic safety, criminal sanctions, judicial practice, legal framework.*

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1. Alcoholism as an addiction disease

Addiction diseases represent a serious global problem of modern society, with a particularly negative impact on the health of children and adolescents. Addiction has devastating effects on the consumer's physical and mental health, but also on his immediate and wider social environment. We can categorize the consequences into those that affect the consumer himself (personal), family and social. When we talk about personal consequences, we usually think of a wide range of effects that affect psychological and physical health. Psychological effects are primarily reflected in the realization of feelings of satisfaction and euphoria (Petrović, 2021, p. 117). The feeling of satisfaction requires occasional or regular intake of a substance in order to create a pleasant mood or to avoid an unpleasant mood (WHO). Physical dependence is characterized by "an adapted (changed) state of the organism, which, after the cessation of intake of the addictive substance, manifests itself in physical disorders" (WHO).

In 1951, the World Health Organization declared alcoholism a disease. According to the above definition, "Alcoholics are persons who consume alcoholic beverages excessively and whose dependence on alcohol is so great that they manifest either open mental disorders or manifestations that affect their physical and mental health, their relationships with other people and their good social and economic behavior or else only prodromes, which indicate disorders of this nature, and, therefore, such persons should undergo treatment" (WHO). The period in which an individual becomes an alcoholic is long and goes through several phases characterized by a slow and imperceptible transition from "normal" consumption to the stage of chronic alcoholism (Nikolić-Ristanović & Konstantinović-Vilić, 2018, p. 86). The initial phase is most often associated with the period of adolescence, while the last phase, chronic alcoholism, depends on the intermediate phases and the intensity and frequency of alcohol use in them. In the literature, a chronic alcoholic is considered a person with pronounced addiction, who consumes alcohol excessively and exhibits mental disorders in the form of loss of control, amnesia, delirium tremens or such manifestations that indicate damage to his physical and mental health and the presence of problems of a social and economic nature.

If we look at the development of alcoholism as a disease of addiction by age category, we can conclude that alcoholism (alcohol addiction) is relatively rare in the population of young people up to the age of 25, and especially up to adulthood. The reason for this is the natural course of development of alcohol addiction, which lasts an average of 10-15 years, although there are exceptions here as well. It should be emphasized that any alcohol

consumption by persons under the age of 18 represents a risky use and even abuse of alcohol, because alcohol consumption during adolescence can affect the development of the brain and there is a greater risk of damage to organs in the developing body. The situation is completely opposite for the elderly. Life changes associated with alcohol abuse in older people are emotional and social problems (bereavement, loss of friends and social status, loss of job, reduced self-esteem), medical problems (chronic pain, insomnia, reduced mobility, cognitive impairment), practical problems (reduced capabilities of self-care). It should be noted that older people have a lower tolerance to the effects of alcohol, which means that they get intoxicated faster and with smaller amounts of alcohol. Also, older people often have regular therapy for the treatment of various physical and psychological problems, which is why there is a great danger of complications from the interaction of drugs and alcohol (Petrović, Pijakić & Matović, 2024, p. 71).

Previous research and available professional literature show that the percentage of men who have the problem of alcoholism as an addiction disease, is significantly higher than that of women who have developed such an addiction (Milošević, Zarić & Mihajlović, 2020, p. 55). However, perhaps a special analysis and research of this problem in women with alcoholism is more necessary, due to the specificity of the role she plays in society, and above all in the family, which is the foundation and basis of a healthy society. Therefore, alcoholism in a woman represents a special social and medical problem considering her biological role and the role she plays in the family, because drinking alcohol does not only have a harmful effect on the woman's body, but is also dangerous for her offspring and family (Konstantinović-Vilić, 2013, p. 97). However, the development of modern society has contributed to the prevalence of this phenomenon, regardless of the gender of the addict. Thanks to changed sociocultural conditions, the position of women in modern society has also changed, which, among other things, has resulted in the fact that an increasing number of women abuse alcohol, i.e. becomes dependent on alcohol, although it is still a smaller percentage (National Guide to Good Clinical Practice for the Diagnosis and Treatment of Alcoholism, 2013, p. 33).

Alcohol consumption is widespread in the Republic of Serbia. It is deeply rooted in our society and is an inseparable part of most customary norms and cultural patterns, which are passed down from generation to generation (Ilić, 2017, p. 17). In this way, the complex systemic process of emergence and development of alcohol abuse and alcoholism is additionally activated and initiated, in which individuals are involved as well as their social environment, and above all the family. The situation in the family is extremely unstable.

The psychological atmosphere is unstable and unpredictable, colored by constant conflicts and emotional upheavals. There is a constant feeling of general insecurity, even formal relationships are being called into question at any moment. Children, as well as parents, can become too prone to conflicts, they can react in mutual relationships in a destructive way. Although the negative sides of alcohol abuse are numerous, the analysis of the problem of endangering public traffic by persons participating in traffic while intoxicated is of particular importance (Merdović & Živaljević, 2021, p. 70).

2. Endangering public traffic in the Criminal Legislation of the Republic of Serbia

The criminal act of endangering public traffic in the Republic of Serbia is regulated by the Criminal Code (2005) and belongs to the group of criminal acts against the safety of public traffic. A road traffic participant who does not comply with traffic regulations and thus endangers public traffic to the point of endangering the life or body of people or property of a larger scale, and as a result of which another person suffers minor bodily injury or causes property damage that exceeds the amount of two hundred thousand dinars, shall be punished by imprisonment for up to three years.

This criminal act, regulated in this way, includes two objects of protection, namely: the safety of public traffic and the other: the life or body of people, that is, property of a larger scale (Risimović, 2007, pp. 83–96).

The action of the criminal act consists of non-observance of traffic regulations. Judging by the title, one could conclude that this is about inaction, but non-observance of the regulations is something else. Namely, it is about acting contrary to traffic regulations, that is, about the active action of the perpetrator (Milošević, 2022, p. 43). He acts, but not in the way that is provided by the regulations. Therefore, he participates in public traffic, but not in the way that is provided by the traffic regulations.

The consequence of the criminal act consists in jeopardizing public traffic to such an extent that it endangers the life or body of people, that is, large-scale property. However, here we also encounter the phenomenon of gradation of specific danger. In order to make it easier to determine when that level of danger has been achieved, that is, to make it easier to practically distinguish this criminal act from the corresponding traffic violation, the legislator has provided a criterion that eliminates all dilemmas regarding this distinction. The condition for the existence of a criminal act is that a slight physical injury to another person was caused, or property damage exceeding the amount of

two hundred thousand dinars. If there is no specific danger, it will not be a criminal act but a misdemeanor (Božić, 2023, p. 195).

The perpetrator of a criminal act can only be a person who drives a means of transport in public traffic. Which traffic is considered public is regulated by special regulations.

If the criminal act was committed with intent, a prison sentence of up to three years is provided. For criminal acts committed out of negligence, a fine or a prison sentence of up to one year is provided. For serious criminal acts of public traffic safety, in addition to the prison sentence, the imposition of the safety measure of banning the operation of a motor vehicle is mandatory.

In terms of the attitude of the perpetrator towards the criminal act committed while intoxicated in the criminal act of endangering public traffic, there are conflicting opinions in practice. In judicial practice, the prevailing opinion is that intoxication is equated with premeditation. According to the aforementioned understanding, the awareness that one is operating a motor vehicle in an alcoholic state always indicates that the perpetrator has agreed to the occurrence of specific danger as a consequence of this criminal act. This attitude was also taken in cases where the concentration of alcohol in the blood was within the permissible limits. Thus, the Appellate Court in Kragujevac considered that a concentration of alcohol in the blood of 0.42 grams is sufficient for the assessment that there is a possible premeditation even though the current law allowed driving with a concentration of up to 0.50 grams per thousand.¹ Stojanović (2018) points out that this kind of reasoning is very controversial, because the person who operates a motor vehicle in that condition often takes it for granted that the consequence will not occur or that he will be able to prevent it. For this reason, he believes that it would be reasonable to conclude that it was intentional if the intoxication was accompanied by a violation of other traffic regulations, and that a conclusion of a high degree of recklessness could be reached (p. 118).

3. Endangerment of public traffic as a consequence of alcohol consumption in the Republic of Serbia

Traffic is an activity in which even the slightest carelessness can cause serious consequences for the safety of people and property. Research has shown a significant connection between the phenomenon of alcohol consumption and the ability to operate a motor vehicle while intoxicated, in terms of compromising the same as a result of the degradation of many physiological

¹ Kz1 891/2014 dated 19.06.2014.

and psychological functions, which are extremely important in the function of operating a motor vehicle (Dimitrijević-Vavan & Stevković, 2012, p. 254). In an intoxicated state, in addition to the known changes, there are also disturbances in the domains of: psychomotor skills, perception, functions of the senses of sight and hearing, as well as changes in the area of psychic seconds, which is of particular importance in traffic (Krstić, 1977, p. 5).

Under the influence of alcohol is the driver, i.e. the person for whom the analysis of the appropriate blood sample has determined an alcohol content greater than 0.20 mg/ml.

According to the determined content of alcohol in the blood, the degrees of intoxication of the driver are:

- 1) up to 0.20 mg/ml – mild intoxication;
- 2) more than 0.20 mg/ml to 0.50 mg/ml – moderate intoxication;
- 3) more than 0.50 mg/ml to 0.80 mg/ml – moderate intoxication;
- 4) more than 0.80 mg/ml to 1.20 mg/ml – high intoxication;
- 5) more than 1.20 mg/ml to 1.60 mg/ml – severe intoxication. (Merdović, Živaljević, 2021, pp. 63–78);
- 6) more than 1.60 mg/ml to 2.00 mg/ml – very severe intoxication;
- 7) more than 2.00 mg/ml – complete intoxication (Law on Road Traffic Safety, 2009).

However, statistical reports indicate an increase in the commission of these criminal acts, which creates the impression that perhaps the penal policy for these criminal acts is still inadequate. If we take into account the year 2010, from the statistical reports of convicted adults, it can be seen that the court on the territory of the Republic of Serbia imposed a criminal sanction in 6035 cases, which makes this criminal act one of the most common criminal acts, right after criminal acts against property. In as many as 3,648 cases, the courts imposed suspended sentences. In 2017, the number of criminal sanctions imposed on adult perpetrators of this criminal act was lower, and criminal sanctions were imposed in 2,250 cases, of which suspended sentences were imposed in 1,542 cases (Statistical Annual Report, 2018). However, in 2024, there will be an increase in the imposition of criminal sanctions against adult perpetrators of criminal acts of endangering public traffic, so the court imposed 2,547 criminal sanctions, of which suspended sentences were imposed in 1,544 cases. The aforementioned statistical reports do not provide us with insight into how many convicted perpetrators were under the influence of alcohol at the time of committing the criminal acts. However, the Traffic Safety Agency together with the Ministry of Internal Affairs investigates alcohol-related traffic safety indicators every year. In the following table, it can be

seen that in Serbia, in the free flow of traffic, every 150th driver drives a vehicle under the influence of alcohol (0.65%).

Table 1. % of drivers in traffic under the influence of alcohol

Year	2013	2014	2015	2016	2017	2018
% of drivers	0.95%	-	0.75%	0.71%	0.53%	0.65%

Source: Traffic Safety Agency, 2019., p. 4.

Until 2018, the permitted amount of alcohol in a driver's blood was 0.3 mg/ml, and from 2018 it was 0.2 mg/ml, so the reduction of the alcohol limit led to an increase in the number of intoxicated drivers in the traffic flow in 2018, after the previously established trend of decrease of the percentage of intoxicated drivers. Conducted research by the Traffic Safety Agency determined that alcohol is most present in the summer period, as a factor in causing traffic accidents, that is, during the weekend, i.e. on Saturdays and Sundays. The drivers who died who were driving under the influence of alcohol at the time of the accident are mostly over 55 years old, while compared to women drivers, men who caused traffic accidents under the influence of alcohol were represented in as many as 92% of cases.

By the conducted research in the practice of the Basic Court in Nis, for the purposes of this scientific paper, in the period from 2010-2018., the intoxication of the drivers was analyzed when committing the criminal act of endangering public traffic. The aforementioned research determined that the percentage of drivers who were intoxicated at the time of committing the criminal act was as follows:

Table 2. % of drivers in traffic under the influence of alcohol

Year	2010	2011	2012	2013	2014	2015	2016	2017	2018
% of drivers	25%	11.1	11.5%	18.1%	16.6%	53%	33.3%	33.3%	25%

Source: Author's research²

² The author's research for the purposes of this scientific work includes the analysis of convictions for the criminal offense of endangering public traffic provided for in Article 289 of the Criminal Code of the Republic of Serbia, in the practice of the Basic Court in Niš in the period from 2010-2018. year. The observed period is adequate for the needs of the mentioned research because it represents a long enough interval to look at the existing problems in court practice using scientific methods, especially the court's penal policy for this crime. Bearing in mind that changes to the legal regulations in this area are underway, this gives the conducted research a special scientific and justified importance.

Based on the data from the table, it can be seen that the largest number of criminal acts of endangering public traffic under the influence of alcohol in the period from 2010 to 2018., were committed in 2015, in as many as 53% of analyzed cases. In 2010, the perpetrators of criminal acts were mostly in a state of severe and moderate intoxication, in 2011, in the majority of cases, it was a matter of moderate intoxication, as in 2012, in 2013, the majority of drivers committed the aforementioned criminal act in a state of very severe intoxication, in 2014 and 2015, the state of moderate intoxication prevailed in the perpetrators of the criminal act of endangerment of public traffic, in 2016, the state of high intoxication, in 2017, moderate and severe intoxication were equally represented, and in 2018, high intoxication was also represented. An inspection of the court decision established that in 2012,³ 2016,⁴ and 2017⁵ there were persons who were previously convicted for the same criminal act, but the court, in addition to that, imposed suspended sentences in the mentioned cases for this criminal act. In the mentioned cases, the court also in earlier verdicts imposed a suspended sentence, except in 2012. when the person was released from the punishment and imposed a safety measure of banning him from operating a motor vehicle, so the question arises of the possibility of achieving the purpose of punishment based on this court practice.

4. Endangerment of public transport in comparative legislation

Observing the comparative practice of this criminal act, it can be observed that in the legislation of certain countries, alcohol itself as a criminogenic factor is included in the nature of the criminal act. The criminal legislation of Germany specifically states “Whoever drives in road traffic although: due to the consumption of alcohol or other intoxicants; or due to a mental or physical deficiency is unable to drive safely; or seriously violates traffic regulations and recklessly does not take into account the side he is driving on; inappropriately overtakes and inappropriately drives while overtaking; inappropriately drives across pedestrian crossings; drives too fast at places with poor visibility, at intersections or railway crossings; does not keep to the right side of the road in places with poor visibility; turns, drives in reverse or in the opposite direction of traffic, or attempts to do so on the road or highway; fails to mark vehicles that have stopped or are broken down on the road although it is required for traffic

³ Verdict 14K. no. 3274/12 dated 11.04.2013.

⁴ Verdict 1K.no.214/16 dated 06.05.2016.

⁵ Verdict 8K. 741/17 dated 21.11.2017.

safety reasons; and thereby endangers the lives or bodies of people or property of greater value, shall be punished by imprisonment for up to five years or by a fine.⁶ In this way, the responsibility of drivers as well as other traffic participants has been increased, but also toughened, which can be taken as a good example of foreign practice, especially since in the last 150 years our criminal law has been developing in imitation of the German one (Milanović, 2005, pp. 237–250). This is not an isolated example, say the criminal legislation of Sweden, while in some cases, as with the Criminal Law of Louisiana, operating a vehicle while intoxicated and endangering traffic, represents a more serious form of this criminal act (Louisiana Criminal Code, 1942).

Criminal Code of Poland⁷ (1997) the criminal offense of endangering public traffic is regulated in Chapter XXI, as criminal offenses against traffic safety. Article 178a paragraph 1 states that “anyone who drives a motor vehicle on land, water or in the air under the influence of alcohol or opiates shall be punished by a fine or a prison sentence of up to two years.” Paragraph 4 of the same article stipulates that “if a person has already been legally convicted for the crime referred to in paragraph 1 or has been banned from driving a motor vehicle, and has repeated the crime while intoxicated or under the influence of opiates, he will be punished by a prison sentence of three months to five years.” Such a legal solution can have a positive effect in terms of preventive policy in the execution of this criminal act, which can also represent a good example of foreign practice, especially considering the data from the research, where there was also a return among the perpetrators.

5. Conclusion

The question of amending the Criminal Code and toughening the penalties, when it comes to the criminal act of endangering public traffic, is very often raised by the public, as well as the Law on Road Traffic Safety, precisely because of the large number of these criminal acts committed in practice. Practice also indicates that a large number of these criminal acts are committed as a result of alcohol consumption. However, our legislator in the Criminal Code (2005) does not provide for the execution of this criminal act under the influence of alcohol, not even in the case of one of the

⁶ California Penal Code. Downloaded 2025, August 15 from <https://law.justia.com/codes/california/code-pen/>

⁷ The Criminal Code of Poland was adopted in 1997. Downloaded 2025, August 15, from [https://www.unodc.org/cld/uploads/res/uncac/LegalLibrary/Poland/Laws/Criminal%20Code%20\(Poland\).pdf](https://www.unodc.org/cld/uploads/res/uncac/LegalLibrary/Poland/Laws/Criminal%20Code%20(Poland).pdf)

criminal acts against public traffic safety. So the future changes could move in the aforementioned direction, bearing in mind that by this regulation the legislator left to the courts to take into account the said circumstance and evaluate it when imposing sanctions, and this can be a double-edged sword and lead to uneven judicial practice. Having in mind the research carried out in the judicial practice of the Basic Court in Nis, a series of illogicalities and different sentencing of perpetrators of criminal acts while intoxicated can be observed. In one of the analyzed cases, the court even considered intoxication as a mitigating circumstance, because the perpetrator had a low alcohol level of 0.89 per thousand at the time of the criminal act. In the aforementioned case, the medical expert determined that this degree of intoxication led to the occurrence of certain psychophysical disorders, which led to a reduced ability to operate a motor vehicle and assessed him as responsible for causing the traffic accident.⁸ This kind of practice requires that future amendments to the Criminal Code (2005) move in the aforementioned direction, based on comparative legislation, because it is not enough for the intoxication of drivers while driving to be regulated only by a separate law.

Certainly, the question of the practice of imposing criminal sanctions by the courts also arises. Therefore, the focus should not be only on changing the legal regulations, but it should include the problem of mild and seemingly inadequate sanctioning by the courts. Bearing in mind the data of the Traffic Safety Agency, which determined that as many as 80 people lose their lives annually due to driving under the influence of alcohol, contributes to the fact that the problem of imposing criminal sanctions by the courts must not be ignored. Of course, changing the legal regulations and finding more adequate legal solutions should be a priority, but first of all it is necessary to determine the problems faced by judicial practices, so that the changes in the law will enable their solution.

Conflict of Interest

The authors declare no conflict of interest.

Author Contributions

Conceptualization, I.A.A., and L.M.; methodology, L.A.A., and L.M.; resources, I.A.A., and L.M.; formal analysis, I.A.A., and L.M.; writing – original draft preparation, I.A.A., and L.M.; writing – review and editing, I.A.A., and L.M. All authors have read and agreed to the published version of the manuscript.

⁸ In the aforementioned case, the injured party suffered a serious physical injury (Verdict 12 Kno. 2042/13 dated 28.01.2014.)

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ALKOHOLIZAM KAO KRIMINOGEN FAKTOR KOD KRIVIČNIH DELA UGROŽAVANJA JAVNOG SAOBRAĆAJA

ABSTRACT: U ovom radu analiziran je alkoholizam, odnosno posledice alkoholizma sa zdravstvenog, društvenog, ali i krivičnog aspekta, imajući u vidu da neka krivična dela mogu biti usko povezana sa njim. Samim tim rad je prikaz dejstva alkohola kao kriminogenog faktora i krivičnih dela ugrožavanja javnog saobraćaja, dajući osvrt na postojeću zakonsku regulativu, ali i praksu sudova, kada je reč o izricanju krivičnih sankcija za ovo krivično delo. Za analizu i istraživanja izabrana su krivična dela ugrožavanja javnog saobraćaja, upravo iz razloga njegovog značaja u savremenom svetu, ali i činjenice da su danas svi uključeni u saobraćaj na direktan ili indirektan način, pa se samim tim mogu javiti

kao izvršiooci ovog dela ili njegove žrtve. Kako posledice alkoholizma mogu biti višestruke, nužno je i proučavanje i preispitivanje, naročito u praksi sudova, uz ukazivanje na eventualne probleme sa kojima se praksa suočava.

Ključne reči: alkohol, ugrožavanje javnog saobraćaja, krivične sankcije, sudska praksa, zakonska regulativa.

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