

# Current Issues of Criminal Law Protection of Transport Security

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**Abstract**—The issues of traffic legislation improvement were analyzed. The purpose is to suggest measures aimed at improving legislation on liability for crimes violating traffic safety rules. It was concluded that modern criminal legislation does not ensure traffic safety and needs to be improved. It was proposed to amend the criminal law by enhancing punishment for traffic offenses, enhance criminal liability for traffic violations causing deaths and crimes committed while intoxicated. Traffic safety violations should be referred to acts that impinge on public safety.

**Keywords**—*traffic safety, criminal liability for traffic safety violations, decriminalization of traffic crimes, human and state safety policy, sanctions for traffic crimes.*

## I. INTRODUCTION

Modern transport communication lines connect regions, countries and continents. Therefore, traffic safety is one of the most important international problems. Modern transport is technologically complex, powerful, has a large passenger capacity and other qualities. Therefore, in case of its failure for technical or man-made reasons (accidents and catastrophes), vehicles can cause enormous material damage and numerous human deaths.

Traffic safety is a subject of various legal branches (administrative, criminal, civil, etc.). There are specific rules aimed at ensuring traffic safety in various legal acts (federal laws, transport charters and codes, by-laws, etc.). Violation of these rules entails civil, administrative, or disciplinary liability. Legal responsibility performs various functions, including punitive preventive. The implementation of responsibility functions is not isolated from each other, but systemically, when one function complements another, uses similar methods and methods of implementation [1].

The criminal law establishing responsibility for traffic crimes plays an important role in ensuring traffic safety. The

peculiarity of criminal liability for traffic violations is due to the fact that only the most dangerous ones are crimes. The history of Russian legislation on liability for traffic crimes shows that approaches used to determine the range of criminal offenses, establish responsibility for them and solve other important issues were different in different historical periods. The problem of crime prevention and combating it in transport is of wide interest among foreign researchers [2-10].

One can compare the Criminal Code of the RSFSR of 1960 [11] (hereinafter referred to as the Criminal Code of the RSFSR) and the current Criminal Code of the Russian Federation [12] (hereinafter referred to as the Criminal Code of the Russian Federation). The differences between them are associated with a number of fundamental points in the approaches used to establish responsibility for transport crimes. First of all, this concerns the place of these crimes in the structure of the Special Part of the Criminal Code.

The Special part of the Criminal Code is based on the grouping of crimes by their degree of danger. In the current Criminal Code of the Russian Federation, all these crimes are located in Chapter 27 - "Crimes against traffic safety and vehicle operation". These crimes include violations of traffic safety rules and rules of railway, air, sea and inland waterway transport and underground operation (Article 263 of the Criminal Code of the Russian Federation), violations of traffic rules and operation of vehicles (Article 264 of the Criminal Code of the Russian Federation), improper repair of vehicles and operation of vehicles with technical faults (Article 266 of the Criminal Code of the Russian Federation) threatening safe operation of vehicles (Article 267.1. of the Criminal Code of the Russian Federation), etc.

In contrast to the Criminal Code of the Russian Federation, in the Criminal Code of the RSFSR, responsibility for traffic crimes depending on their public danger was established in the chapters on crimes against the State or public safety, public order and public health. Article 85 of the Criminal Code of the

RSFSR of 1960 provided for liability for violations of railway, water or air traffic safety rules and operation of vehicles causing deaths and injuries, accidents or other serious consequences, as well as improper repair of vehicles, ways, signaling and communication systems entailing the same consequences.

Moreover, this behavior was referred to other public crimes (Section II of chapter I of the Criminal Code of the RSFSR, 1960). In addition, this group of crimes included deliberate destruction of communication lines, structures, rolling stocks or ships, communication or signaling systems which caused or could cause train and ship wrecks, disruption in the normal operation of transport and communication systems (Article 86 of the Criminal Code of the RSFSR).

At the same time, responsibility for violations of traffic and vehicle operation rules by drivers of cars, tractors and other self-propelled vehicles, trams and trolleybuses and motorcyclists was provided for in Article 211 of the Criminal Code of the RSFSR which (Chapter 10 of the Criminal Code of the RSFSR "Crimes against public safety, public order and public health").

This approach is quite understandable, since danger caused by traffic safety and vehicle operation crimes is incomparable. If a traffic violation (e.g., speeding) threatens road users (drivers, passengers, pedestrians), an aircraft can fall on residential buildings, industrial facilities, etc. which may cause deaths of passengers and crew members as well as deaths of many other people, radiation, environmental or other large-scale disasters. Therefore, the public danger of violations of air, railway, sea traffic rules is incomparable with violations of road traffic rules.

It is obvious that the most dangerous traffic crimes are acts causing deaths of humans. Accordingly, this should be reflected in sanctions for their commission. It is logical to assume that an increased level of public danger should be a basis for establishing stricter responsibility for the most dangerous crimes. However, in fact, the current legislation does not follow this logic, and sanctions for these crimes do not correspond to their real public danger.

In accordance with Part 3 of Article 263 of the Criminal Code of the Russian Federation, the punishment for violation of traffic safety and vehicle operation rules causing two or more deaths is five-year forced works or a seven-year imprisonment. At the same time, the punishment for violations of road traffic rules causing two or more deaths is a 4-9-year imprisonment (Part 6 of Article 264 of the Criminal Code of the Russian Federation). Meanwhile, it is obvious that plane crashes or wrecks of ocean liners caused by violations of operation rules are not comparable with car accidents in terms of a number of human victims, material and moral damage.

Therefore, crimes provided for by Article 263 of the Criminal Code encroach on the life and health and public safety. Therefore, danger caused by these crimes is not limited to traffic safety violations. It is more appropriate to refer these crimes to the category of crimes against public safety. Sanctions for these crimes should be stricter than for road traffic offenses. In accordance with the previously existing

Russian legislation (Part 1 of Article 85 of the Criminal Code of the RSFSR), the violation of traffic safety and railway, water and air vehicle operation causing deaths and injuries, crashes, accidents or other serious consequences were punishable with a 3-15-year imprisonment.

Offenses under Article 263 of the Criminal Code are reckless. However, deliberate acts that encroach on traffic safety are of greater public danger.

Article 86 of the Criminal Code of the RSFSR of 1960 provided for liability for deliberate destruction or damage to communication systems, structures, rolling stocks or ships, communication or alarm systems which caused or could cause train or ship wrecks, transport and communication disruptions. These actions include putting various items on rail tracks, disconnecting track joints and similar actions that could cause train wrecks. The high public danger of these crimes is obvious. Therefore, the Criminal Code of the RSFSR provided for a 3-15-year imprisonment for these offences.

The Criminal Code of the Russian Federation adopted in 1996 did not contain rules on liability for such crimes. Thus, if the destruction of communication systems and other similar actions were promptly identified and did not cause a catastrophe, the perpetrator avoided criminal responsibility. This position of the legislator is in contradiction with the public policy aimed at ensuring personal and public security.

Twenty years after the adoption of the 1996 Criminal Code of the Russian Federation, Federal Law No. 60-FZ of April 3, 201 "On Amendments to the Criminal Code of the Russian Federation and Article 151 of the Criminal Procedure Code of the Russian Federation" established criminal liability for acts threatening safe operation of vehicles. Article 267-1 was added to the Criminal Code of the Russian Federation.

However, compared with the Criminal Code of the RSFSR, in the Criminal Code of the Russian Federation, responsibility for such crimes is not so strict. The disposition of Article 267-1 of the Criminal Code of the Russian Federation is as follows: "committing of actions threatening safe operation of vehicles from molester motives" [13].

However, there can be other motives. For example, destruction of railway tracks or putting items on the rails from mercenary motives (for remuneration received or promised) or out of revenge to a railway employee responsible for safety in this area in order to create "trouble", etc. It is obvious that commission of any deliberate actions aimed at endangering safe operation of vehicles represents an increased risk and should incur criminal liability regardless of motives.

When analyzing the current and old criminal legislation on liability for actions that encroach on safe operation of vehicles, it is necessary to pay attention to the following fact. The responsibility for such crimes is not differentiated depending on transport means. It is obvious that commission of actions that could entail train wrecks (for example, by putting sleepers on rail tracks) is incomparable with similar actions committed on roads (for example, putting logs on roads).

The underestimation of public danger of these crimes in the current Criminal Code is obvious. The sanction of Article 267-1 of the Criminal Code provides for a fine in the amount of 150-300 thousand rubles or 2-year incomes, a 2-year custodial restraint or imprisonment. This punishment does not correspond to the real danger of such crimes. If Article 86 of the Criminal Code of the RSFSR provided for a 3-15-year imprisonment, in the current Code, the punishment is the same as for a theft (Part 1 of Article 158 of the Criminal Code of the Russian Federation).

In this regard, it is necessary to differentiate responsibility for actions that threaten safe operation of vehicles depending on the type of transport, establishing enhanced responsibility for these actions in the transport industry. At the same time, criminal responsibility should be established for committing these crimes from molester and other motives (revenge, self-interest, etc.).

Among the crimes infringing on safe operation of vehicles, the most common are the acts provided for by Article 264 of the Criminal Code of the Russian Federation: violations of driving rules by drivers of cars, trams or other motor vehicles. In 2016, the Russian courts convicted 10406 people and in 2017, they convicted 10356 people for violation of vehicle operation rules. The body of this crime is material, i.e., violations of the traffic rules entail criminal liability only if they cause severe damage to people or material objects. If there is no severe damage, the perpetrator bears administrative responsibility for violation of these rules.

Any crime causes damage to humans, society, or the state. In accordance with Article 42 of the Criminal Procedure Code, a victim is a natural person who suffered physical, material or moral damage caused by the crime. Traffic safety violations can cause deaths, light, moderate or severe injuries, property damage. Therefore, to establish criminal responsibility, the most fundamental question is a type of consequences which should be a basis for criminal or administrative responsibility. The approaches of the Russian legislator to the solution of this issue have changed dramatically.

In the original edition of the Criminal Code of the RSFSR (1960), the infliction of injuries of any severity and substantial material damage entailed criminal liability (Article 211 of the Criminal Code of the RSFSR). In 1992, amendments to the Criminal Code of the RSFSR were made [14].

The infliction of light injury and material damage by traffic offenses was decriminalized. As a result of these amendments to the Criminal Code of the RSFSR, criminal liability for violation of traffic rules was established only for serious or moderate injuries.

The Criminal Code of the Russian Federation adopted in 1996 provided for criminal liability for traffic violations causing serious or moderate injuries and major material damage. However, in 1998, major material damage was excluded from the disposition of Part 1 of Article 264 of the Criminal Code of the Russian Federation. In 2003, moderate injuries were excluded as well [15].

As a result of these changes, violation of traffic rules entails criminal liability only in case of serious injuries.

Moreover, even light and moderate injuries caused by intoxicated drivers, to several persons, or repeatedly do not entail criminal liability. The offender bears only administrative liability.

Meanwhile, moderate injuries are a serious damage which can cause a long-term health disorder and a significant permanent loss of general working capacity. It is obvious that this damage is very significant, and application of administrative measures instead of criminal punishment is not consistent with the principle of justice [16]. Moreover, this approach of the Russian legislator contradicts the constitutional provision on a person as the highest value (Article 2 of the Constitution of the Russian Federation [17]).

The decriminalization of road traffic crimes causing light and moderate injuries is in conflict with the rules of criminal liability for other traffic violations. In 2014, the Criminal Code of the Russian Federation was supplemented by Article 264-1 [18] which established criminal liability for violation of traffic rules by a person who was subjected to administrative punishment for driving while intoxicated, violating a legal claim of an authorized official to undergo a medical intoxication test, or having a criminal record for committing crimes provided for by Parts 2, 4 or 6 of Article 264 of the Criminal Code of the Russian Federation.

As a result, we can observe an absurd situation when the driver who violated traffic rules being intoxicated, hitting a person at a pedestrian crossing and causing moderate injuries is not criminally responsible for his offences. Only administrative liability is provided for by the Russian legislation. At the same time, according to Article 264-1 of the Criminal Code of the Russian Federation, the fact of driving in a state of intoxication, which was an administrative offense, is considered a crime.

The question arises why the perpetrator causing injuries bears responsibility provided for by the Administrative Code while the offender driving the vehicle while intoxicated is punished according to the Criminal Code. It is obvious that violation of traffic rules causing injuries is more dangerous than violation which did not cause injuries.

On May 30, 2019, the State Duma adopted Federal Law No. 685843-7 amending the Criminal Code of the Russian Federation [19]. The amendments are aimed at enhancing criminal liability for traffic crimes. However, this legal act solves only some problems of liability for traffic crimes. It enhances criminal liability for violation of traffic safety and vehicle operation rules. In this case, enhanced liability applies only to persons who committed this crime while intoxicated.

A crime committed by a person in a state of intoxication and causing a death is punishable with a 5-12-year imprisonment. The crime causing two or more deaths under the specified circumstances is punishable with an 8-15-year imprisonment.

These changes are quite logical. However, they cannot be applied to Article 263 of the Criminal Code, since causes of aircraft crashes, ship and train wrecks are gross violations of operation rules rather than intoxication of persons responsible for operation of vehicles (e.g., dispatch services). Meanwhile,

in this legal act, penalty enhancement for actions provided for by Article 263 of the Criminal Code of the Russian Federation applies only to persons who violated traffic safety and vehicle operation rules. As for the crimes provided for by Article 264 of the Criminal Code of the Russian Federation, this qualifying feature is not typical and redundant. Penalties for these offences should be enhanced taking into account severity of their consequences.

Researchers have already paid attention to the discrepancy between penalties for traffic crimes and their real danger [20-22].

## II. METHODS AND MATERIALS

The study used general scientific (modeling, analysis, synthesis, etc.) and theoretical methods (comparison, generalization, classification, specification, induction, deduction, idealization, analogy, etc.)

The philosophical methods (dialectics, metaphysics, phenomenology) were used as well. Methods of interdisciplinary research as a combination of a number of synthetic, integrative methods were applied.

## III. RESULTS

Thus, amendments to the criminal legislation are required.

## IV. CONCLUSION

In order to bring the rules of criminal legislation in line with real public danger of traffic safety violations, it is necessary

1. to establish a stricter liability for crimes infringing on railway, air, sea and inland waterway transport and underground safety than that provided for by Article 263 of the Criminal Code of the Russian Federation (1996). The punishment for crimes causing two or more deaths should be a 15-year imprisonment. These punitive measures should be applied to all offenders, not just to intoxicated drivers.

2. A criminal liability for violation of road traffic safety and vehicle operation rules provided for by Article 264 of the Criminal Code of the Russian Federation should be enhanced by raising the upper limit of penalties for crimes causing two or more deaths. In this case, the upper limit of punishment should be a 15-year imprisonment. As for individuals who committed the crime while intoxicated, their liability may be increased by increasing the lower limit of sanctions, increasing the imprisonment term, prohibiting the use of probation, establishing more stringent conditions for the parole, etc.

3. Considering that vehicle operation while intoxicated entails criminal liability in accordance with Article 264-1 of the Criminal Code of the Russian Federation, it is necessary to establish criminal liability for violation of traffic safety and vehicle operation rules by intoxicated drivers causing light or moderate injuries to the health of other people.

4. Crimes violating railway, air, sea and inland waterway transport and underground safety rules should be referred to acts that infringe on public safety.

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