

Features of criminal liability for offences against road safety and transport operation

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Abstract. The relevance of this study was conditioned by to the need to investigate and comparatively analyse international legislation on criminal liability for violations of road safety, since this issue is one of the key problems of law and order in Ukraine. Comparison of the approaches of different countries allows examining possible areas of improvement for Ukrainian criminal legislation considering the elevated fatality and injury rates on the roads. The purpose of this study was to identify the specific features of criminal liability for encroachments on road safety and operation of transport in the laws of such countries as Georgia, the Republic of Moldova, Lithuania, Poland, Spain, France, and Turkey. The methodology of the study included a comparative legal analysis of the criminal codes of these countries, considering the systematisation and structure of the rules relating to traffic offences. It was found that most countries use a two-tiered system of codification of criminal offences, with general provisions covering public safety issues and separate chapters dedicated to road safety. The study found that in some countries, such as Lithuania and Moldova, criminal liability for negligent acts is stricter than in Ukraine. The analysis showed that intentional acts that do not lead to real consequences but pose a potential threat, as is the case in Spain and Poland, are also criminalised. It was concluded that foreign legislation tends to impose harsher penalties for violations that pose a risk of grave consequences for life and health. The practical value of this study lies in the possibility

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of using its findings to improve Ukrainian criminal legislation, specifically, to increase liability for violations of traffic rules and operation of transport, which will help reduce road accidents and increase the level of law and order in the country

Keywords: traffic rules; offence; public safety; structure of legislation; basic elements of intentional and negligent acts; gravity of the act; type and term of punishment

Introduction

The relevance of analysing alternative approaches to criminal law remedies for the functioning of the transport system is increasing as the discussion of the provisions of the Draft Criminal Code of Ukraine continues, and thus the identification of potentially prudent areas for further reform of criminal legislation (Draft of the Criminal Code of Ukraine, 2024). Ukraine faces serious challenges in terms of road safety, which is one of the causes of high fatality and injury rates on the roads. Improving legal regulation in criminal liability for violations of traffic safety and transport operation is a critical task to reduce the level of road traffic accidents (RTAs) and improve law and order. A comparative legal analysis of the legislation of European countries may provide useful conclusions on how to effectively reform Ukrainian legislation, specifically, in terms of strengthening criminal liability for intentional and negligent actions leading to dangerous consequences.

Scientific studies relating to the problems of criminal liability for threats to road safety and the use of transport can be classified into three categories. The first category covers policy and legal regulation, analysing legislative aspects and their impact on road safety (Bak *et al.*, 2018; Dudek, 2018; Melcarne *et al.*, 2022). This group also includes the studies by D. Bergen-Cico *et al.* (2017), M.A. Barreales & A. Trappero (2019), and J. Castillo-Manzano *et al.* (2019), who focused on the legislative aspects of road safety in Spain, proposing models for reducing road accident risks, while G. Beconytė *et al.* (2021) analysed the sanctioning system in Lithuania, addressing the severity of penalties for negligent transport-related crimes. The second group of studies, a prominent representative of which is the research by E. Martínez-Gabaldón *et al.* (2020), focuses on the impact of legislation and measures on road safety, investigating the effectiveness of various preventive measures and penalty systems. The third group considers psychological and social aspects, analysing behavioural and psychological factors that affect road safety (Ozbaran & Tasgin, 2019; Endriulaitiene *et al.*, 2021). A representative of this group is the study by A. Klimkiewicz *et al.* (2014), which covers the psychological and social aspects of road safety. The study also highlights behavioural factors that influence the risk of road accidents in Poland.

The issue of criminal liability for violations of road safety has attracted the attention of many researchers in Ukraine. M. Khavroniuk (2022) performed a comparative analysis of Ukrainian and European legislation on violations of transport safety rules, emphasising the need to harmonise Ukrainian criminal law with European standards. V. Myslyvyy (2019), in his study on crimes against transport safety, noted the significance of strengthening criminal liability in the first years of the Criminal Code of Ukraine. The use of comparative analysis allows assessing the effectiveness of distinct approaches to criminal liability and suggesting ways to improve Ukrainian legislation.

Considering the above review of the literature on the subject, it is relevant to conduct a comparative legal study

of criminal liability for road safety threats in different countries and to identify possible ways to adapt the best practices to Ukrainian criminal legislation. For this, it was necessary to identify and compare key approaches and regulations in the field of criminal liability for offences against road safety and transport operation, identify and investigate problems in national legislation, and consider how they can be resolved by applying the identified best European practices.

Materials and methods

The study was based on the conceptual framework of comparative legal science and integration of the provisions of European criminal law into Ukrainian legislation. The primary method of the study was comparative legal analysis, which helped to systematise the approaches to criminal law protection of road traffic in different legal systems. The use of this methodology was substantiated by the need to compare approaches to liability for violations of transport safety in continental legal systems, specifically in European countries with a developed legal framework in this area. A major role in this study was played by the approaches and developments of other researchers, specifically, M. Khavroniuk (2022), who analysed the harmonisation of Ukrainian and European legislation in the context of integration processes, and I. Krasnytskyi (2008), who applied the methodology of comparative analysis to the criminal legislation of France and Ukraine, which helped to investigate the issue of intentional crimes in the field of transport. Furthermore, the study considered the studies by V.M. Burdin (2005) and O.O. Dudorov (2020).

The study compared the criminal legislation of Georgia, the Republic of Moldova, the Republic of Lithuania, the Republic of Poland, the Kingdom of Spain, the French Republic, and the Republic of Turkey. This approach helped to investigate diverse strategies for criminal law protection of the transport system and assess the effectiveness of road safety measures. These countries were chosen because they represent distinct legal traditions and approaches to the regulation of transport crimes, which allows for a more comprehensive analysis. These materials helped to investigate approaches to criminalisation of acts related to violation of traffic rules and operation of transport. Specifically, the study analysed the legislative provisions on liability for driving under the influence of alcohol or drugs, as well as for violations that do not lead to real consequences but pose a potential threat.

The study was conducted in several stages. Firstly, the principal theoretical foundations of comparative legal analysis were identified, which allowed the research framework to be formed. The next step was to compare the codification of criminal offences in these countries. Particular attention was paid to systematising the provisions of the Special Part of the Criminal Codes regulating road safety and transport operation. The issues of codification and structure of the rules governing intentional and negligent crimes in the field of transport were investigated separately.

Results

According to the current criminal legislation of Ukraine, encroachments on road safety and transport operation are part of a rather considerable number of socially dangerous acts, the elements of which are defined in Section XI “Criminal offences against traffic safety and transport operation” of the Criminal Code of Ukraine (2001). The signs of these crimes are outlined in Articles 286, 286-1, 287-289, 290 of the Code, which define the grounds for criminal liability for non-compliance with road safety rules or use of transport by persons driving vehicles; commissioning of technically defective vehicles; violation of regulations governing road safety; illegal seizure of vehicles, etc. This category of actions is distinguished based on the type of object, and therefore, represents a more limited and specific area of social relations subject to criminal law protection – ensuring the safety of traffic and use of motor vehicles and other types of mechanical transport. Proceeding from the content of the objective and subjective features of these acts, conventionally, the danger of these criminal offences is assessed as acts committed through negligence, and therefore as those that entail liability only in the presence of actual harm to health, life, property, etc.

The statistics on road accidents, deaths, and injuries suggest a significant danger to citizens. A. Mehdizadeh *et al.* (2020) showed that the number of road accidents annually leads to considerable human and economic losses. Despite the development of technologies such as collision avoidance systems, the number of road accidents and their severity continue to increase, underscoring the gravity of the problem. Moreover, economic losses from road accidents in some countries reach up to 3% of GDP. The statistical rates of traffic violations are consistently high, and they often lead to grave consequences, such as injuries and disruption of transport systems. This poses serious risks to citizens and requires improved data collection systems and methods for assessing these violations to improve road safety (International Transport Forum, 2022).

Due to the low level of organisation of road safety measures, Ukraine has one of the highest fatality and injury rates as a result of road accidents in Europe. This is confirmed by data from the World Health Organisation and local analytical studies that point to substantial threats to public safety on Ukrainian roads (Road safety in Ukraine, 2022; Batyrgareieva *et al.*, 2023; Statistics of road accidents..., 2024). In this regard, the legislators’ attention should also be drawn to factors that indicate a real threat of such consequences. The legislators’ attention is not focused on cases of intentional activity of drivers that lead to such consequences, cause and provoke their occurrence.

Thus, the criminal legislation of Ukraine requires substantial reform in this area, changing approaches to the content and essence of the elements of the corpus delicti of the relevant criminal offences, and the grounds for liability not only for negligent damage, but also for various types of socially dangerous intentional behaviour affecting road safety and operation of motor vehicles. Accordingly, the significance of international legal experience in relation to the organisation and interconnection of elements of criminal law institutions relating to road safety, the specific features of the essence of the basic and qualified elements of the relevant criminal offences, determination of the gravity of the act, the expedient scope of criminal liability, the type and duration of punishment for these actions is increasing.

The comparative legal analysis of the criminal legislation of the above-mentioned countries began with the study of the specific features and typical differences in the legislation regarding the correlation of the structural components of the special part of the criminal code, as well as the presence (or absence) of a certain type of actions whose generic object is road safety and operation of various types of transport. In the Criminal Codes of Albania, Austria, Denmark and Germany, the provisions on road safety offences are mostly included in the chapters covering crimes against public safety. In the Criminal Code of the Republic of Turkey (2004), these provisions are contained in Chapter Three “Crimes against the community”, specifically in the first section, which covers “Crimes dangerous to the community”.

In some states, considering the name of the structural subdivision of criminal law (chapter, section), rather generalised categories are used, without distinguishing transport sectors. Thus, criminal law provisions apply to all types of transport. Thus, in the Criminal Code of Bulgaria (1968), they are concentrated in the chapter “Crimes on Transport and Other Means of Communication”; in the Criminal Code of the Republic of Lithuania (2017) – in the chapter “Criminal Acts against Traffic Safety”; in the Criminal Code of Switzerland (1937) – in the section “Crimes or misdemeanours against civil transport”; in the Criminal Code of Georgia (2000), Republic of Moldova (2009), Hungary (2012), Criminal Code of Finland (1989) – in the chapter “Transport offences”.

The Criminal Code of the Kingdom of Spain (1995) cannot be included in this group, where Section XVII “On Crimes against Collective Security” contains a separate Chapter IV “On Crimes Related to Traffic”. On the one hand, the legislators use the generalised term “transport” in the title of the section, but according to the content of the provisions, it refers only to road traffic, and therefore to violations of the rules of movement and operation of motor vehicles.

In Poland, road safety is a common object of attack. For example, Chapter XXI “Offences against road safety” in Articles 173-180 of the Criminal Code of the Republic of Poland (1997) presents the elements of the relevant offences. In other countries, other concrete modes of transport are distinguished. Thus, the Criminal Code of the Netherlands (1881) contains criminal law provisions in the chapter “Crimes related to maritime and air traffic”. There are countries where structural subdivisions are not named at all, and therefore the sphere of criminal law protection is not distinguished. Chapter XXXIX of the Criminal Code of the Republic of Lithuania (2017) (without specifying the title of the chapter) contains a relatively small number of criminal law provisions relating to transport-related crimes – Articles 278-282 of the Code.

Finally, in countries such as Greece, France, and Sweden, there are regulations separate from criminal codes (road codes, laws on road traffic offences). In Sweden, the criminal law provisions on road traffic offences are regulated by the special Law No. 1951:649 “Road Traffic Offence Act” (1951). This law mandates punishment for violations of traffic rules, including driving under the influence of alcohol, and other violations that threaten the safety of citizens. The most recent amendments to this law were made in 2019, reflecting the ongoing adaptation to modern conditions.

The existence of additional regulations leaves its mark on the structure and content of criminal legislation. The specific feature of the Criminal Code of the French

Republic (1994) is that the law does not single out the sphere of traffic safety and transport operation as a generic (or specific) object. Consequently, the Code does not contain any structural subdivision that would cover a specific group of criminal law provisions. Even in those criminal law provisions where various categories of transport are the direct subject of actions, the main object is human freedom and justice, while the additional object is the life and health of a person. Specifically, the Criminal Code of the French Republic (1994), in Book Two “On Crimes and Misdemeanours Committed Against the Person”, Chapter IV “On Offences Against Human Liberty” contains Section 2 “On the Hijacking of an Aircraft, Ship or Any Vehicle” (Articles 224-6). Seizing control by means of violence or threat of violence of an aircraft, watercraft, or any vehicle (hence, it should be understood that this includes mechanical vehicles) is punishable by imprisonment for up to twenty years. Therefore, the basis for quite severe liability is the manner in which the act was committed: the use of violence or the threat of its use. Failure to stop driving a land, river, or sea vehicle by a driver aware that they have just caused an accident to avoid criminal or civil liability is classified as a criminal act against justice (Article 434-10).

Thus, the approach to codification of the rules on liability for transport criminal offences (crimes) is distinct. The codification of criminal law provisions in some countries is based on a two-tier systematisation – the acts in question are part of a broader sphere of criminal law protection; others have a relevant section or chapter that is distinguished based on a generic object; finally, there are states where relevant structural components of the Special Part of criminal law are absent.

The next aspect of the analysis relates to the internal structure of those sections (chapters) of the special part of criminal legislation of the countries under study which contain a certain type of criminal law provisions united by the same generic object – the sphere of safe functioning of the country’s transport system. Therefore, they contain elements of criminal offences that infringe on the safety of the transport system as such. Considering the need to determine the specific features of criminal law regulation of road traffic safety and operation of the respective types of transport, this criterion can be used for further classification of criminal law provisions included in these sections and chapters. It is possible to analyse the correlation between general and special criminal law provisions based on the criminal legislation of the above countries.

The generalised nature of the content of certain criminal law provisions is conditioned by the fact that the content of these provisions relates to violations of traffic safety rules and operation of any type of transport; the special nature relates to concrete types of transport. Furthermore, this area of research can be expanded by focusing on the following: the characteristics of determining the list of actions directly related to road traffic and the use of motor vehicles; the formulation of the signs of their basic and qualified composition; the legislator’s assessment of the degree of danger of driving under the influence of toxic, narcotic, psychotropic substances and in a state of alcohol intoxication as a sufficient basis for criminalising actions; the correlation and specificity of signs of actions committed intentionally and with a negligent form of guilt.

Thus, Chapter XXXIV “Transport Offences” of the Criminal Code of Georgia (2000) (Articles 275-283) contains signs

of acts that encroach on the order of functioning and safety of movement of various types of transport (railway, air, water, suspended, motor, and other mechanical transport). From the standpoint of criminal law, road safety and the operation of relevant transport are protected both by general criminal law provisions that establish the grounds for liability for violation of specific rules in various areas of the transport system, and by a single special provision relating exclusively to road traffic. Thus, the first group of criminal law provisions includes Article 277 “Poor quality repair of vehicles, putting into operation technically defective vehicles”, Article 278 “Bringing vehicles into an unfit state for operation”, which define the grounds for liability for committing the above actions in relation to any type of vehicle. And Article 281 “Violation of the rules of safe traffic”, which defines the grounds and scope of liability of passengers, pedestrians, and other road users for violating the rules of safe traffic. Only one special criminal law provision is singled out – Article 276 “Violation of the rules of traffic safety and operation of transport”, which directly provides a list of objects of the act (automobile, tram, trolleybus, tractor, other mechanical transport). This means that this is a provision that directly relates to road traffic. Thus, the criminal legislation of this country gives preference to general provisions, where the grounds for criminal liability are defined without regard to the specification of transport sectors.

The Criminal Code of the Republic of Turkey (2004), against the background of a rather small number of criminal law provisions relating to traffic safety and transport operation, again contains more general provisions. Specifically, the general provisions include Article 179(1) “Creating a threat to traffic safety” of the first section of the Code “Crimes dangerous to society”, which defines the liability of a general subject – any person who alters, destroys, removes types of signs placed to ensure the safe movement of land, sea, air, and rail transport, interferes with the system of technical operation, which causes a threat to the life, health, or property of other people. The use of the term “land transport” suggests that these norms also apply to road traffic, and therefore there are grounds to consider this provision as general. Article 223(1) “Hijacking and confiscation of vehicles” of the Section Six “Crimes against vehicles and fixed platforms”, which prescribes liability for unlawful obstruction of the movement of a land vehicle by threats or violent acts, stopping the vehicle, moving the vehicle from one place to another; if the object is a sea or railway carrier; if the object is an aircraft, etc. Considering the above-mentioned types of transport as the subject of the offence, this provision can be classified as general. The special ones include Article 178(1) “Failure to follow the requirements for the placement of signs and blocks”, which defines the grounds for liability of a special subject – a person who fails to perform their obligation to install signs or blocks during the performance of certain works on public roads, removes existing signs, changes their location. These signs suggest that the provision refers to road traffic. A special provision is Article 180(1) “Endangering the safety of traffic through negligence”, which defines the grounds for criminal liability for any person who endangers the life, health, or property of others through negligence on sea, air, or rail transport. Thus, this provision specifies certain types of transport and uses an evaluative and broad term “endangering”. However, it does not apply to road traffic (Criminal Code of the Turkish Republic, 2004).

The legislators of the Republic of Moldova have an entirely different approach. The Criminal Code of the Republic of Moldova (2009) differs in the number of relevant criminal law provisions, the criteria for distinguishing provisions of a special nature, and the specific features of the structure of the main body of acts committed directly in the field of road traffic. In the Republic of Moldova, liability for socially dangerous acts in the field of transport system functioning is mandated by a fairly large number of criminal law provisions (Articles 262-277), which are placed in Chapter XII "Transport Crimes". Based on the number of articles, the smallest group (only three articles) consists of criminal law provisions that are of a general nature and apply to all types of transport (Articles 268, 271, 272). The fact that Article 268 "Intentional damage or destruction of means of communication and vehicles" applies to all types of transport is confirmed by the fact that the article contains an indication that liability arises in case of the consequences specified in Article 263 (relating to rail, water, air transport) and Article 264 (relating to mechanical transport). Whereas Article 271 defines the elements of intentional blocking of transport routes by creating obstacles, without specifying which types of transport this applies to, Article 272, in the very title of the criminal law provision – "Coercion of an employee of railway, water, air, or road transport to fail to perform their official duties" – clarifies this issue. The next largest group comprises criminal law provisions relating to rail, water, and air transport, where the title of the article directly defines these concrete modes of transport (Articles 262, 263, 267, 270, 275). Thus, the group of special purpose norms is relatively numerous, with all other modes of transport (except for mechanical) being the criterion for its selection. Notably, this category includes actions that combine encroachments on a wide variety of objects (property rights; traffic and transport safety). An example of the latter is Article 275 "Hijacking or seizure of railway rolling stock, aircraft, marine, or river vessel". Certain questions arise as to the content of certain provisions. Thus, the legislators, specifying the relevant branch of law in Article 267 "Poor quality repair of communication routes, railway, water, air transport...", leave the state of repair works on road transport routes (motor vehicles, other mechanical transport) outside the scope of criminal law regulation (Criminal Code of the Republic of Belarus, 1999; Criminal Code of the Republic of Moldova, 2009).

However, the most numerous in the Criminal Code of the Republic of Moldova (2009) is a group of special criminal law provisions that relate directly to road traffic (Articles 264, 264-1, 265, 266, 269, 276). A comprehensive analysis and comparison of the various provisions of these provisions gives grounds to pay attention to the specific features of their structure and the content of the disposition of the provision. Thus, in Article 264 "Violation of the rules of traffic safety or operation of vehicles by a person driving a vehicle", Article 264-1 "Driving a vehicle in a state of severe alcohol intoxication or in a state of intoxication caused by other substances (narcotic, psychotropic, other substances)", the type of transport is not specified, and therefore there are grounds for analysing these provisions, which should be applied in the case of acts committed in any type of transport (not only automobile and other mechanical transport). However, a more in-depth interpretation of their content, comparison with the provisions of the following provisions, namely, Article 265, testifies in favour

of perceiving them as directly related to road traffic. Thus, the following provisions, with reference to the consequences defined in Article 264, refer to drivers of transport, leaving the scene of an accident by a person driving transport, etc. However, a clearer specification of the type of object of the act is desirable. An innovation in the Criminal Code of the Republic of Moldova (2009) is Article 264-1 "Driving a vehicle in a state of severe alcohol intoxication or in a state of intoxication caused by other substances" (psychotropic, narcotic, and other substances). The following are criminal offences: driving a vehicle while under the influence of alcohol; deliberately transferring control of the vehicle to such a person; refusal or evasion of the driver of the vehicle to undergo alcohol testing, etc. Article 265 "Putting into operation of knowingly technically defective vehicles" defines the grounds for liability for distinct types of gross violations of the rules of transport operation. On the one hand, the provision does not specify the type of transport, but there is a certain clarification that allows this provision to be classified as a special provision relating directly to road traffic. When it comes to the responsibility of officials for the technical condition and operation of transport, it is clarified that this applies to drivers and mechanics. Article 266 "Leaving the scene of a road traffic accident" sets out the conditions for criminal liability and sanctions against a person who is guilty of leaving the scene of a road traffic accident while being the driver of a vehicle. Article 269 "Violation of the rules of traffic safety and order" defines the grounds for liability of passengers, pedestrians, and other road users, as it clarifies the consequences defined in Article 264. Finally, this group includes Article 276 "Falsification of identification elements of a motor vehicle", which defines liability for erasing, replacing, changing the serial numbers of the chassis, body, engine. Thus, the said chapter of the Criminal Code of the Republic of Moldova (2009) contains signs of acts committed both intentionally and negligently, which are the content of the objective side of socially dangerous behaviour directly aimed against road safety and operation of motor vehicles.

An integral part of the issue under study is the specificity and distinct approaches of the European legislators to the formulation of the very features of the main elements of these acts. In this regard, Spanish criminal legislation deserves attention. The Criminal Code of the Kingdom of Spain (1995) in Section XVII "On Crimes against Collective Security" contains a separate Chapter IV "On Crimes Related to Traffic". This chapter defines the signs of eight socially dangerous acts related to the safety of transport (Articles 379-385-1 of the Criminal Code). Articles do not have titles, and therefore it is possible to determine the specifics of the content of the norms, according to the direct object, genus, and species objects, only based on their comprehensive analysis. The key point is that the subject of all criminal offences is a car, motorcycle, or moped. Therefore, this section establishes the grounds for criminal liability exclusively in the context of violation of road safety standards. Thus, all the rules are united by one common subject – violations of traffic rules and the use of motor vehicles. The criminal law provisions in this category use specific terminology, such as "driving a car or motorcycle with clear recklessness". This concept is interpreted as committing actions related to negligence (endangering the life and health of people while driving), as well as intentional actions – driving under the influence of toxic, narcotic, or psychotropic

substances or in a state of alcohol intoxication (alcohol content must exceed 0.60 mg/L). Therefore, no real dangerous consequences are required. As for the punishability of acts committed intentionally, the list of such acts is rather considerable. According to the signs of the principal elements of a criminal offence, the following are punishable by criminal sanctions: exceeding the permitted speed in settlements by sixty kilometres, outside settlements – by eighty kilometres (Article 379); driving under the influence of toxic, narcotic, or psychotropic substances, as well as in a state of alcohol intoxication with an alcohol content exceeding 0.60 mg/L (Article 379); driving without a permit, licence, or if their term has expired; in case of expiry of a driver's licence (Article 383); alteration, removal, cancellation of road signs (Article 385). The main corpus delicti of negligent criminal offences include those acts that are considered criminal only if a certain state of danger is created: driving a car or motorcycle with clear recklessness out of danger to human health and life (Article 380); driving a motor vehicle or motorcycle with manifest recklessness, with disregard for the lives of others (Article 381); causing grave danger by spilling slippery or flammable substances (Article 385) (Criminal Code of the Kingdom of Spain, 1995). It is worth agreeing with M. Khavroniuk (2006), who emphasises that against the background of a relatively developed system of crimes related to transport safety, none of the relevant articles characterised by the creation of danger includes either constructive or aggravating features of liability that would indicate the infliction of concrete damage to life, health, or property.

If one analyses the specific structure of the criminal law provision directly related to road traffic, it is necessary to provide examples from the criminal laws of Lithuania and Poland. The analysis of the structure and content of Article 281 of the Criminal Code of the Republic of Lithuania (2017), which directly relates to road safety (Article 281 "Violation of traffic rules or operation of vehicles"), allows noting certain substantial aspects of the content of its main body. Specifically, in Article 281, two parts of the provision can be considered as the main part: Part 2 of this article, which defines liability for causing grave damage. Thus, such damage is the least necessary condition for holding a person liable for violation of traffic rules; Part 6 clarifies the scope of liability for the mere fact of driving a vehicle while intoxicated. Part 7 focuses on the form of fault – negligence. Part 8 specifies the permissible level of alcohol in the blood (up to 0.4 ‰). Part 9 contains a list of objects of the offence (all types of cars, tractors, other self-propelled machines, trolleybuses, motorcycles, and other motor vehicles). Other parts define qualifying circumstances for both sober and intoxicated acts. Thus, this provision provides the maximum possible information on the grounds for criminal liability for these actions and the scope of liability. M. Khavroniuk (2006), studying the characteristics of the content of the relevant criminal law provisions of Lithuania, addressed the fact that all articles are structured more concisely and clearly than in the Criminal Code of Ukraine (2001), without excessive duplication; liability for violation of traffic rules or operation of transport is differentiated depending on the presence or absence of alcohol intoxication, as well as on the type and gravity of damage.

The concrete analysis and comparison of the provisions of Articles 173-180 of Chapter XXI "Crimes against road safety" of the Criminal Code of the Republic of Poland (1997)

also allow identifying certain features of criminal legislation in this regard. The specificity of the structure of these criminal law provisions lies in the fact that one provision may contain liability for the relevant act both intentionally and negligently (with different sanctions); the conditions are defined for exclusion of liability or mitigation of punishment; and vice versa – circumstances that increase the severity and scope of liability and punishment. Criminal offences are considered cases of driving land, water, or air vehicles under the influence of alcohol or narcotic substances, as well as performing duties directly related to ensuring the safety of traffic while under the influence of alcoholic or narcotic intoxication (Criminal Code of the Republic of Poland, 1997). Thus, in most of the countries analysed, there is a criminal law interpretation of the state of intoxication of a person driving a motor vehicle. In some countries, the intoxication of persons engaged in organisational and managerial functions in the field of road traffic is also assessed. However, the definition of the grounds for punishment varies: the mere fact of driving while intoxicated, a repeat of such behaviour, and causing minor health damage in this state are considered criminal offences.

The legislative experience regarding the structure of the provision is noteworthy, as it may consist of a considerable number of parts containing grounds for criminal liability for both intentional and negligent conduct; it may contain elements of both the basic and qualified elements; it may contain circumstances mitigating liability; it may contain a concrete list of the subject matter of the act, etc. This approach is a means of avoiding duplication and certain repetition of certain criminal provisions. The specific features of the structure of the provision may also depend on the legislator's attempt to consider the impact of aggravating circumstances on the scope of liability, type, and term of punishment at two levels in one provision. The first relates to the severity of the consequences – grave consequences, the death of one or more people. The second level should reflect a substantial increase in the severity of liability for causing analogous consequences, but in a state of intoxication.

Based on the systemic legal analysis of the sanctions of the above criminal law provisions containing the elements of criminal offences that directly encroach on road traffic safety and transport operation, it is possible to determine the specific features of European legislation in terms of the ratio of maximum sentences and, consequently, the assessment of the gravity of the act (using the terminology of Ukrainian legislation). Such concrete offences are contained in the Criminal Code of Georgia (2000) (Article 276 "Violation of traffic safety and operation of transport"), the Criminal Code of Moldova (1999) (Article 264 "Violation of traffic safety or operation of transport by a person driving a vehicle"), and the Criminal Code of Lithuania (2017) (Article 281 "Violation of traffic or operation of transport").

Thus, in Article 276 of the Criminal Code of Georgia (2000) "Violation of traffic safety and transport operation rules", the specificity lies in the fact that the qualifying and especially qualifying circumstances that increase the severity of liability for this act are structured on two levels. The first level reflects the interdependence between the gravity of the act and the maximum extent of liability: for grievous harm – up to 5 years in prison; for causing the death of one person – up to 7 years in prison; for causing the death of two or more people – up to 10 years in prison; the term

of additional punishment of deprivation of the right to hold office or engage in activities is the same in all cases – up to 3 years. The second level is that after each subsequent part that defines the amount of damage as a qualifying feature, it is a matter of increasing the severity of liability for the same actions, but in a state of intoxication (usually the penalty in the form of imprisonment is increased by two or one year).

Analogously, Article 264 of the Criminal Code of Moldova (2009) “Violation of the rules of traffic safety or operation of vehicles by a person driving a vehicle” also increases the severity of liability for graver consequences at two levels: for the fact of causing the relevant consequences and doing so while intoxicated (causing moderate injury – up to 3 years in prison, while intoxicated – up to 4 years, respectively; grievous bodily injury or death of a person – from 3 to 7 years in prison, while intoxicated – from 4 to 8 years, respectively; death of two or more persons – from 6 to 10 years in prison while intoxicated, while intoxicated – from 7 to 12 years, respectively). The fact of driving a car in a state of severe alcohol intoxication, deliberately transferring control of transport to such a person, as well as refusal or evasion of an alcohol test by the driver according to Article 264-1 of the Criminal Code of Moldova (2009) may result in the application of such penalties as a fine, community service, or deprivation of the right to drive. The liability of a person who drives a car and leaves the scene of a road traffic accident is more severe – the fine ranges within 200-500 conventional units, unpaid community service for 200-240 hours, and possible imprisonment for up to 2 years.

The analysis of Article 281 of the Criminal Code of the Republic of Lithuania (2017) confirms that this provision contains information on the degree of punishment in different circumstances of the offence, as well as in different states of the perpetrator, such as sober or under the influence of alcohol, narcotics, psychotropic or other psychoactive substances. Thus, a comprehensive analysis and comparison of the individual parts of this article demonstrate that the fact of driving a vehicle while intoxicated qualifies as a misdemeanour punishable by a fine or arrest. At the same time, causing minor injury to health by a person driving a vehicle under the influence of alcohol or narcotics, or under the influence of psychotropic or other substances, is already considered (in terms of national legislation) a minor crime for which the maximum penalty is up to 3 years in prison. In the case of causing serious harm by a person in a state of intoxication, the penalty is up to 8 years in prison, and in the case of death, the penalty can reach 10 years in prison. Causing grave consequences by a person who was in a sober state is considered a minor crime and entails a maximum penalty of up to 5 years’ imprisonment; in case of death of a person – up to 8 years’ imprisonment.

There are quite substantial differences in the types and terms of punishment for road safety offences under the Criminal Code of the Republic of Poland (1997), as the system of relevant provisions contains sanctions for both intentional and negligent causing of the relevant consequences. Driving a vehicle while intoxicated, as well as performing duties directly related to road safety in the same state (intentional guilt), is considered a minor crime according to the national classification. This can result in a sentence of up to 2 years’ imprisonment in the first case (up to 5 years’ imprisonment in case of recidivism) or up to 5 years’ imprisonment in the second case. Unintentionally causing a disaster can lead to

a maximum penalty of up to 3 years’ imprisonment. Causing a disaster in land, water, or air traffic that threatens the life or health of several persons or causes significant material damage is punishable by imprisonment for a term of 3 months to 5 years. In case of death or grievous bodily harm, the penalty is imprisonment for a term of 6 months to 8 years. If the consequences are caused by alcohol intoxication or by fleeing the scene, the penalty should be doubled (Criminal Code of the Republic of Poland, 1997). Notably, the sanctions are quite broad, and therefore the factual sentence will depend largely on the judge’s discretion.

As already mentioned, the criminal law provisions contained in Chapter IV “On Offences Related to Traffic” of the Criminal Code of the Kingdom of Spain (1995) do not contain aggravating circumstances related to factual damage. Therefore, according to the sanctions, the above-mentioned acts under Articles 379-385-1 should be treated either as misdemeanours or as minor crimes (according to the Ukrainian classification). Most intentional offences, such as speeding, driving under the influence of alcohol or without the necessary permit, carry a maximum penalty of imprisonment for a term of three to six months and deprivation of the right to drive vehicles for a term of one to three years. If a person drives a car or motorcycle with clear negligence that endangers human life and health, they may be sentenced to imprisonment for a term of six months to two years and deprivation of the right to drive for a term of one to six years. In cases where the actions pose a real threat to the lives of other people, the penalty is imprisonment for two to five years with deprivation of the right to drive a car or motorcycle for a period of six to ten years. Considering the specifics of the codification of criminal law provisions regulating road safety, it is necessary to streamline the legislator’s approaches to assessing the severity of offences in this area, as well as the operation of vehicles. This should be done based on an in-depth analysis of several sections of the criminal legislation to determine the suitable level of punishment. This approach allows highlighting the following. Failure to follow the requirements for the placement of signs and blocks on public roads is considered a misdemeanour punishable by imprisonment from two to six months or a fine (Article 178). Unlawful obstruction of the movement of a land vehicle by threats or violent acts, stopping the vehicle, moving the vehicle from one place to another, etc., is a minor offence, as it is punishable by imprisonment from 1 to 3 years (Article 223 (1) “Creating a threat to traffic safety (including road traffic), which endangers the life, health, or property of other people” is already a grave crime, as it is punishable by imprisonment from 1 to 6 years (Article 179-1).

If another person is injured or killed as a result of a traffic violation, such actions are classified as a reckless encroachment on the life and health of a person. This is punishable by imprisonment: in the case of death – from twelve to twenty years, and in the case of bodily harm – from three months to one year. Infliction of grievous bodily harm by negligence (speech impediment, facial disfigurement, premature birth of a child, loss of physical function, to more than one person, etc.) may result in a sentence of up to 3 years’ imprisonment (Criminal Code of the Republic of Turkey, 2004).

The approach of the French legislators is special. Considering the fact that the Criminal Code of France (1994) does not single out the sphere of traffic safety and operation of transport as such, especially mechanical transport, as a

generic (or specific) object, liability for negligently creating situations dangerous for other persons, exposing the life and health of another person to danger as a result of intentional failure to perform a certain safety duty is imposed; unintentional attempt on life, causing death to another person as a result of negligence, inattention or failure to perform a duty of safety is mandated by the generalised provisions contained in Book Two of the Criminal Code of Ukraine "On Crimes and Misdemeanours Committed Against a Person". Therefore, when it comes to assessing the degree of danger of the behaviour of a person who, while driving a vehicle, violates the requirements of the legislation (regulations) on road safety and operation of transport, creates a state of danger or causes concrete damage, a systematic and comparative analysis of the general criminal law provisions on liability (punishment) for creating situations dangerous to other persons and unintentional encroachment on the life of another person provides some insight. In Book Two, which is devoted to "Crimes and Misdemeanours against the Person", Chapter III "Crimes endangering human life", Section 1 "On creating dangerous situations for other persons" (Article 223-1), states that crimes endangering the life of another person, causing bodily harm that may lead to disfigurement or chronic illness (creating a potential threat) committed through intentional failure to perform safety duties or negligence as provided for by law or regulation, shall be punishable by imprisonment for a term of one year and a fine of EUR 15,000. Individuals may also face additional penalties, including deprivation of driving licences for up to five years or revocation of licences with a ban on re-obtaining them for the same period. Therefore, considering the maximum term of imprisonment, this act is considered a minor crime. In the same Book, Chapter I "On Attacks on Human Life", Section 2 "On Unintentional Attacks on Life" (Article 221-6) already states that causing the death of another person as a result of negligence, inattention, or failure to perform a duty of care prescribed by law or regulation constitutes manslaughter and is punishable by 3 years' imprisonment and a fine of €300,000. Individuals may be subject to additional penalties (among other types) in the form of temporary deprivation of a driving licence for up to five years or its cancellation with a ban on applying for a new licence for up to five years. According to the Criminal Code of Switzerland (1937) and the Criminal Code of Austria (1998), traffic violations, if there are relevant grounds, also fall under the articles establishing liability for crimes against life, health, and other rights.

Thus, the results of the study demonstrate a variety of approaches to legal regulation of road safety and transport operation and show the practice of two-level codification. The comparative analysis confirms the expediency of using international experience to reform Ukrainian criminal legislation in this area, specifically, based on the more stringent approaches of France and Turkey, where the consequences of violations of traffic and transport rules are regarded as an attack on life or health committed through negligence.

Conclusions

In summary, the analysis of European legislation shows a typical practice of two-tier codification. Road traffic regulations often protect broader areas, such as public safety, and are contained in separate chapters. In countries with special laws on road traffic offences, transport offences are not distinguished but are assessed as part of an offence against the

person, depending on the consequences. The analysis of the structural features of concrete sections (chapters) of the special part of the criminal codes of the countries under study, which contain the features of criminal offences against traffic safety and operation of transport as such, proved the tendency to formulate generalised criminal law provisions, and to determine the list of socially dangerous acts which pose a threat to traffic and operation of any type of transport. The legislators, without specifying the subject matter of the offence (mode of transport), thereby emphasise the fact that the objective features are universal.

Against the background of the established approach to negligent acts, it is a positive experience that in many countries of the world intentional actions that create a potential threat of grave consequences in case of violation of traffic rules are recognised as criminal offences. Such offences are formal in nature and do not require the factual occurrence of consequences or the threat of their occurrence to be prosecuted.

The specific feature of formulating the main elements of criminal offences with a reckless form of fault is that it is quite typical for legislative practice to formulate criminal recklessness (as a subtype of reckless form of fault) in relation to the creation of potential danger rather than to concrete consequences. Accordingly, the terms "state of danger", "state of grave danger", "state of danger to life and health of a person", etc., are used. If the basis for criminal liability for a negligent act is the occurrence of real damage, its scope is determined differently: minor damage (Lithuania); moderate damage (Moldova); grave damage (Georgia).

When examining the sanctions for various types of actions against traffic safety and transport operation, it is possible to note the fact that the same behaviour (in terms of nature, consequences, form of guilt) can be assessed differently. The list of intentional acts, when the grounds for liability are the very fact of their commission, regardless of the consequences, is considered a misdemeanour in some countries, if guided by the Ukrainian classification of criminal offences (Moldova, Spain), and a minor crime in others (Poland).

Notably, the sanction of the main corpus delicti of an act committed by negligence, even if different consequences occur (minor, moderate, or grievous harm), contains such a severe punishment as imprisonment (up to 2-3 years), which classifies the act as a minor crime. In Ukraine, Article 286, Part 1 of the Criminal Code (applicable to moderate bodily harm) contains elements of a misdemeanour, not a crime. Thus, it can be assumed that in other countries, the onset of consequences is viewed more strictly. Separately, it is worth highlighting the countries where the consequences of violations of traffic and transport rules are regarded as an attack on life or health committed through negligence (Turkey, France).

The findings of the study showed that criminal liability for negligent road safety offences varies depending on the severity of the consequences in different countries. In Lithuania, the penalty is liability for minor damage, in Moldova – for moderate damage, and in Georgia – for grave damage. In Turkey and France, analogous offences are classified as reckless endangerment of life and health. This indicates a more rigorous approach to impact assessment in these countries compared to Ukraine.

Further research into the social danger of different types of road traffic offences could help to clarify the classification of crimes and introduce proportionate sanctions for different types of offences.

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Conflict of interest

The author of this study declares no conflict of interest.

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Особливості кримінальної відповідальності за посягання на безпеку дорожнього руху та експлуатації транспорту

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Анотація. Актуальність роботи зумовлена необхідністю вивчення та порівняльного аналізу міжнародного законодавства щодо кримінальної відповідальності за порушення безпеки дорожнього руху, оскільки це питання залишається однією з ключових проблем правопорядку в Україні. Порівняння підходів різних країн дозволяє розглянути можливі напрямки вдосконалення українського кримінального законодавства з огляду на високий рівень смертності та травматизму на дорогах. Метою дослідження було виявлення особливостей кримінальної відповідальності за посягання на безпеку дорожнього руху та експлуатації транспорту в законодавствах таких країн, як Грузія, Республіка Молдова, Литва, Польща, Іспанія, Франція та Туреччина. Методологія дослідження включала порівняльно-правовий аналіз кримінальних кодексів зазначених країн з урахуванням систематизації та структурованості норм, які стосуються порушень правил дорожнього руху. Було досліджено, що в більшості країн використовуються дворівневі системи кодифікації кримінальних правопорушень, де загальні положення охоплюють питання громадської безпеки, а окремі глави присвячені безпеці дорожнього руху. Було встановлено, що в деяких країнах, таких як Литва та Молдова, кримінальна відповідальність за діяння з необережності є суворішою, ніж в Україні. Аналіз показав, що кримінально караними є також умисні діяння, які не призводять до реальних наслідків, але створюють потенційну загрозу, як це спостерігається в Іспанії та Польщі. Було зроблено висновок, що іноземне законодавство має тенденцію до суворішого покарання за порушення, які містять ризик тяжких наслідків для життя та здоров'я. Практична цінність роботи полягає в можливості використання її результатів для удосконалення українського кримінального законодавства, зокрема для посилення відповідальності за порушення правил дорожнього руху та експлуатації транспорту, що сприятиме зниженню аварійності на дорогах та підвищенню рівня правопорядку в країні.

Ключові слова: правила дорожнього руху; правопорушення; суспільна безпека; структура законодавства; основний склад умисного та необережного діяння; тяжкість діяння; вид та термін покарання