

# PUNITIVE POLICY FOR CRIMINAL OFFENSES AGAINST PUBLIC TRAFFIC SAFETY ACCORDING TO THE CRIMINAL CODE OF KOSOVO

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## Abstract

One of the main aims of every society and state is a regular and safe operation of public traffic.

At present, criminal offenses against public traffic safety have experienced an alarming increase both in our country and all around the world, so they are foreseen in the legislation of all democratic states, which aim at the rule of law and maintaining legal order.

Rapid technical and technological development has enabled the rapid growth of public traffic, with its negative and positive sides.

Unfortunately, the risks that these criminal offenses bring usually end in fatality, such as death, with minor and serious bodily injuries, as well as with countless material damages, so with this group of criminal offenses, human life, integrity, and property are attacked in traffic.

As a consequence of the dangerous nature of these criminal acts, the Criminal Code of Kosovo provides criminal sanctions for those who endanger public traffic.

Therefore, taking into consideration the increasing tendency of these criminal acts, it is necessary to fight and prevent these criminal acts, not with the sole purpose of punishment but also the education and re-socialization of these perpetrators, so that they do not repeat the behavior in the future their previous criminal record.

*Keywords:* public traffic, punitive policy, safety, criminal sanctions

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## 1. Introduction

Today, public traffic is considered one of the necessary activities of the modern world, without which the functioning of the life of human society cannot be imagined. Its rapid development has brought many advantages, facilitating the lives of citizens on the one hand, but on the other hand, it has also brought many risks. Such risks frequently result in accidents, which end up being harmful to people's health, for instance, physical and mental damage, material damage, and even death.

The Law on traffic safety and its provisions on misdemeanors and other provisions define the rules that must be respected by participants in public traffic in order to protect people's lives, their integrity, and their property. (Salihu I, 2021).

Our legislation has also regulated the issue of public traffic safety with the Criminal Code of Kosovo, foreseeing a separate chapter for these criminal offenses, namely by grouping them in chapter XXX of the same Code.

The protected object of these criminal offenses is safety in public traffic, namely the safety of people and their property. The criminal offenses of this chapter are committed in a public road, rail, water, and cable car traffic. Specific to these criminal offenses are the subject and the means

by which the offenses are committed. Most often, the perpetrators of these criminal offenses are the participants in public traffic, while vehicles are the means of commission. In terms of the form of guilt, most of these criminal offenses are committed intentionally and negligently. (Salihu I, 2021).

### **Special criminal offences**

Within the framework of criminal offenses against the safety of public traffic with the Criminal Code of Kosovo, the following criminal offenses are foreseen: endangering public traffic, driving while incapacitated or drunk, endangering public traffic with dangerous actions or means, unconscious supervision of public traffic, failure to assist an injured person in a public traffic accident and international traffic signals misuse. (Penal Code of Kosovo, 2019).

**Endangered public transport** – The protective object of this criminal offense is safety in public traffic. The basic form of this criminal offense is provided in article 370 paragraph 1 of the Criminal Code of Kosovo, where it is emphasized that anyone who violates the law on public traffic or road transport and endangers people's lives or property and thereby causes someone significant property damage, shall be punished by a fine or imprisonment up to three (3) years. (Penal Code of Kosovo, 2019). The main features of the basic form of the criminal offense are the action, the consequence, and the objective state of incrimination. Also, it is worth paying attention to the notion of the participant in traffic, as the subject of the criminal offense, that is, the perpetrator. A traffic participant is considered a person who participates in road traffic, while traffic endangerment means a way of behaving in traffic due to which there is an immediate risk of causing a traffic accident. (Law on Road Traffic Rules of Kosovo, 2016). In paragraph 2 of this same article, it is determined that anyone who violates any law on road traffic or road transport and thereby endangers railway, tram, trolleybus, bus, cable car, or water traffic and thus endangers people's lives, physical security or property, shall be punished by imprisonment of up to five (5) years. The sentence of 5 years is also provided in the 3rd paragraph, which stipulates that if the criminal offense from paragraph 1 or 2 of this article results in property damage in the amount of fifteen thousand (15,000) euros or more, the perpetrator is sentenced to imprisonment from six (6) months to five (5) years. Also, in paragraphs 4 and 5 of article 370 of the Criminal Code of Kosovo, other forms of committing this criminal offense are foreseen, which are considered to be committed in cases if the criminal offense from paragraph 1 or 2 of this article results in serious bodily injury of any person or property damage in the amount of twenty thousand (20,000) euros or more, the perpetrator is punished with imprisonment of one (1) to eight (8) years, and if the criminal offense from paragraph 1 or 2 of this article results in the death of one or more persons, the perpetrator is sentenced to imprisonment of three (3) to twelve (12) years. (Penal Code of Kosovo, 2019). In practice, endangering public road traffic is most often carried out, for example, by driving the vehicle at a higher speed than is allowed, by overtaking in violation of the provisions, by driving in an irregular state, in a drunken or tired state, stopping or parking illegally, not respecting the traffic signs. (Salihu I, 2009).

**Driving while incapacitated or drunk-** It is one of the most widespread forms of endangering the life safety and property of people in traffic.

The consequences of alcohol influence on people appear with a lack of concentration, loss of control, and inciting aggression in traffic participants.

The most prominent mistakes that traffic participants under the influence of alcohol do are uncontrolled speeding, cutting corners, "zig-zag" driving of the vehicle, sudden braking,

disobeying traffic signs, and non-application of vehicle lights according to the rules for lighting at night. Drivers under the influence of alcohol are unaware of reduced driving skills and overestimate their personal skills. It takes 10-15 minutes for alcohol to penetrate the blood until the maximum concentration is reached after 40-60 minutes. It takes 6 hours for the body to get rid of the influence of alcohol. If alcohol is consumed after a meal, the concentration in the blood takes a little longer, about 120 minutes. (Halili Xh, 2011). To consider that this criminal offense has been committed, it is not required that bodily injury, death, or damage to property has been caused, it is enough to establish that the perpetrator drove the vehicle while intoxicated. (Salihu I, 2009). The presence of alcohol in the blood is determined by blood and urine tests, by measuring the amount of alcohol per liter, by medical control, and by other methods and devices. (Law on Road Traffic Rules of Kosovo, 2016). The Criminal Code of Kosovo, article 371 Paragraph 1 provides that anyone who drives a vehicle while incapacitated or under the influence of alcohol if there is alcohol in the blood over 0.5 g/kg respectively with the corresponding amount in milligrams per liter of exhaled air or other intoxicating substances, if an accident is caused, he is punished with a fine or imprisonment of up to three (3) years. Also, in the following paragraphs, other forms of committing this criminal offense are defined, such as if the criminal offense from paragraph 1 of this article results in slight bodily injury to any person or property damage in the amount of five thousand (5,000) euros or more, the perpetrator shall be punished with a fine or imprisonment of six (6) months to five (5) years, if the criminal offense from paragraph 1 of this article results in serious bodily injury to any person or property damage in the amount of twenty thousand (20,000) euros or more, the perpetrator is punished with imprisonment from one (1) to eight (8) years and if the criminal offense from paragraph 1 of this article results in the death of one or more persons, the perpetrator is punished with imprisonment from three (3) to twelve (12) years. (Penal Code of Kosovo, 2019).

**Endangering public traffic with dangerous actions or means-** is foreseen in Article 372 of the Criminal Code of Kosovo. In a paragraph of this article, the main form of this criminal offense is provided by which it is determined that anyone who destroys, removes, or severely damages installations, equipment, signs, or signals that serve for traffic safety, or gives erroneous signs or signals or places obstacles on public roads or in any other way endangers human life or physical safety, shall be punished with imprisonment of up to three (3) years. (Penal Code of Kosovo, 2019).

The object of the criminal offense is traffic equipment, vehicles, traffic signs, or signaling devices. It is about facilities whose existence and operation are a prerequisite for traffic safety. Protected objects of this criminal offense are all types of road traffic vehicles, railways, ships, trams, trolleybuses, and cable cars. Annihilation is any action by which any of the above-mentioned objects become permanently and completely non-functional. Removal is removal from the place where the equipment was located, while damage is the action by which such changes are caused to the installation, tool, or sign that these objects are temporarily unusable or only partially usable for the purpose for which they are intended. Giving wrong signs is an action by which traffic participants are given important traffic safety information or warnings, which do not match the existing traffic situation. The existence of this criminal offense and damage to the property that has been put at risk is not required. In paragraphs 2, 3, and 4, the qualified forms of the basic criminal offense are provided (para 1) light injury or substantial property damage (2), serious bodily injury to any person, or substantial property damage (3), death of one or more persons (4). (Salihu I, Zhitija H, Hasani F 2014).

**Failure to provide assistance to an injured person in a public traffic accident** - In the first paragraph of Article 374 of the Criminal Code of Kosovo, it is determined that if the driver of the vehicle or other means of transport, does not offer help to the injured person is punished with imprisonment up to one (1) year. (Penal Code of Kosovo, 2019). The driver, or the other participant involved in a traffic accident in which someone lost their life, was injured, or caused grave material damage, has the duty to: stop the vehicle, if it is a vehicle, and stay in the place of the traffic accident. Exceptions are the cases when the participant in the accident offers help to an injured person, if he himself needs medical help, or if he has left to notify the police, provided that he returns to the scene of the accident as soon as possible, to undertake everything possible to avoid new risks, to enable the normal flow of traffic, to make efforts not to change the situation at the scene of the accident and to preserve the existing tracks, provided that the undertaking of those measures do not endanger traffic safety, notify the police about the traffic accident, and wait for the arrival of authorized persons who examine the accident site. As for the obligations of the health care institution, they consist of the fact that as soon as it has been informed about the traffic accident or has admitted the injured in the accident, it is responsible to notify the police immediately. If the person injured in a traffic accident dies from the injuries received, the health institution has the responsibility to notify the police. The health institution transports the corpse from the scene of the accident to the morgue of the health institution. (Lenjani B, Arslani N, Dogjani A, Uysal E 2020). There are two other forms of committing this criminal offense, if such offenses result in serious bodily injury, the perpetrator is punished with imprisonment of three (3) months to five (5) years and with the death of the injured person. Sometimes the perpetrator is sentenced to imprisonment from six (6) months to five (5) years. (Penal Code of Kosovo, 2019).

**Unconscious surveillance of public traffic** - it is one of the criminal acts, as a result of which, unfortunately, many accidents are caused. The supervision and regulation of traffic, vehicles, drivers, and other participants in road traffic are carried out by members of the police. Authorizations for traffic supervision and regulation are also carried out by the institutions according to their scope, defined by the Law on road traffic rules. (Law on Road Traffic Rules of Kosovo, 2016). The basic form of committing this criminal offense is provided that if the responsible person, who is entrusted with the supervision of the condition and maintenance of the roads and the facilities on them, of the means of transport, meets the defined working conditions for the driver, or the responsible person who is entrusted with the driving management, who by the unconscious exercise of his duty endangers human life, physical safety or causes property damage, shall be punished with a fine or imprisonment of up to five (5) years. (Penal Code of Kosovo, 2019). The act of committing this criminal offense is defined as the unconscious exercise of surveillance. It can be manifested as action, (undertaking of action that is not in accordance with the adequate exercise of supervision), or as inaction, (negligence in performing mandatory supervision). According to its content, the unconscious supervision of the task is failing to act according to the law and the rules of the exercise of public traffic supervision. In the 2nd paragraph, it is determined that anyone responsible for giving driving orders or who allows another to drive even though he knows that the driver due to fatigue, illness, alcohol intoxication, or other causes is not able to drive safely, or the vehicle is not in proper condition and thereby endangers human life, physical safety or causes property damage shall be punished with the same punishment as in the 1st paragraph of this article. (Penal Code of Kosovo, 2019). In the 2nd paragraph, it is incriminated that a form of exercising unconscious supervision in relation to traffic, such as allowing driving even though the driver is not able to

safely drive the vehicle or the vehicle is not in order. As a reason for the driver's incapacity for safe driving, the law expressly counts fatigue or the influence of alcohol, but there may be other causes, which bring the driver to such a state that he is not capable of safe driving, (e.g. illness, depression, special affective state, taking certain drugs, and so on). In this way, it is possible to violate the traffic rules, according to which the driver driving the vehicle in traffic must be mentally and physically able to do so. The perpetrator of this criminal offense can only be the responsible person who is entrusted with traffic supervision, namely the person who is authorized to issue driving orders and permit it, in each specific case it must be assessed which person was forced to supervise public traffic. The criminal offenses provided for in paragraphs 1 and 2 can be committed intentionally and negligently. (Salihu I, Zhitija H, Hasani, F 2014). While other forms of this criminal offense are foreseen in paragraphs 4 and 5 of this same article, if as a result of the commission of this criminal offense, from paragraphs 1 and 2 of the same, serious bodily injury or property damage results, the perpetrator is punished with imprisonment of one (1) to eight (8) years, while as a more serious form it is foreseen that if the criminal offense from paragraph 1 or 2 of this article results in the death of one or more persons, the perpetrator is punished with imprisonment of three (3) up to twelve (12) years. (Penal Code of Kosovo, 2019).

**Misuse of international traffic signals** - First, the act of committing this criminal offense is sending maliciously, with malice, and without being necessary, the internationally used signal for any disaster or the signal that danger is imminent, which means that the signal is not sent for the intended purpose to serve, but for a bad purpose. The act of committing is also undertaken to deceive the population that there is no danger, while there is a danger. The consequence of this criminal offense is the abstract danger to the safety of people or property. The perpetrator of this criminal offense can be any person, and in terms of the form of criminal liability, this criminal offense can be committed intentionally. (Salihu I, 2009).

For this criminal offense, a prison sentence of three (3) months to three (3) years is foreseen. (Penal Code of Kosovo, 2019).

## **2. Research method**

The study methods of this paper are based on research, comparative and statistical method, as the most adequate method for reflecting this phenomenon in the territory of the Republic of Kosovo. The study is based on the collection and analysis of data on criminal offenses against public traffic safety, according to local literature and the foreign one.

## **3. Result and discussion**

### **The factors that influence the infliction of accidents**

Traffic accidents are caused as a result of many factors. Skill level, inexperience, and risk taking behaviors have been implicated in the collisions of young drivers compared to drivers in other age ranges. Investigations of vehicle collision records have also implicated excessive speed, driving recklessly, and traffic violations as well as drugs and alcohol in the collisions of young drivers. In contrast with young drivers, the collisions of older drivers more often involve driver error at intersections and when making turns. Failure to yield right of way, failure to comply with signs and signals, failure to see objects, and improper turns and lane changes were commonly

reported in road accident records for collisions of older drivers. (Rolison J.J, Regev Sh, Moutari S, Feeney A 2018).Of the total number of traffic accidents, more than 60% occur during the day. According to some data, most disasters during the week occur on Saturdays, while the number of disasters falls on Mondays and Tuesdays. During the year, most traffic jams occur during the months of June, July, and August due to the greatest influx of people in the tourist season. (Halili Xh, 2011).

The effectiveness of the measures to ensure the protection of transport security by criminal law can be understood through the analysis of three relatively independent but closely related issues: 1) the establishment and application of criminal liability for offenses that pose a serious threat to traffic safety; 2) the liability for violating the traffic safety or vehicle driving rules, resulting in causing damage to the life or health of a person; 3) the proper regulation of circumstances surrounding a crime, to ensure the right of law enforcement officers to stop a vehicle that poses a real threat to the life or health of a human. (Gutorova N, Rudnyeva O 2019).

In the context of the research paper, an analysis was made regarding the number of adults convicted, according to gender, for criminal offenses against public traffic safety in the Basic Courts of Kosovo during the period 2016, 2017, 2018, and 2019.

**Table 1:**

<b>Criminal offenses against public traffic safety</b>			
<b>Year</b>	<b>No. of convicts</b>	<b>Gender of convicts</b>	
		<b>M</b>	<b>F</b>
<b>2016</b>	3109	2931	178
<b>2017</b>	4054	3774	280
<b>2018</b>	4767	4464	303
<b>2019</b>	2277	2109	168

**Table 1** Jurisprudence Statistics for Adults for Criminal Offenses against public traffic safety for 2016, 2017, 2018, and 2019, Kosovo Statistics Agency.

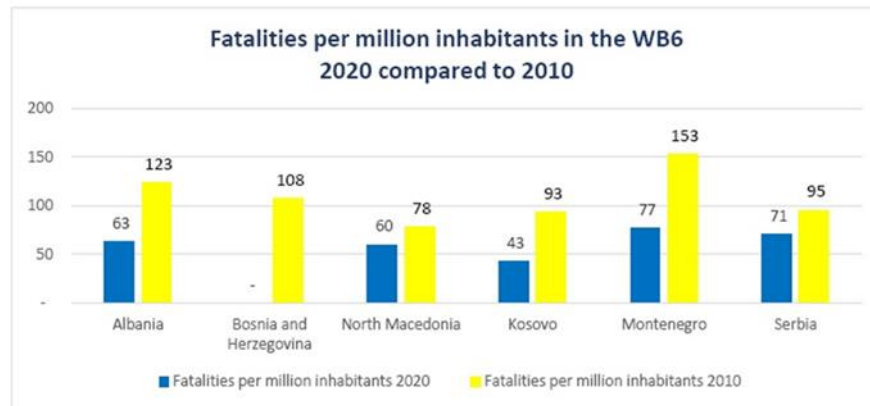
In table number 1 are reflected results in years as in the following: 2018 is the year with the highest number of convicts for public traffic safety offenses compared to other years. While 2019 is the year with the lowest number of convicts. The participation of men in the total commission of these criminal offenses in the aforementioned period, i.e. in the years 2016-2019, is significantly greater than that of women. This difference can be explained by the fact that the majority of drivers in Kosovo are men.

**Table 2** shows the report "Deaths for the year 2020 - Annual statistics for the Western Balkans", presented by the Kosovo Police, in which accident statistics with the countries of the Western Balkans are analyzed, in which accident statistics with the countries of the Western Balkans are analyzed related to deaths in road accidents for 2020 and comparison 2010-2020 for 1 million

inhabitants, it is observed that Kosovo compared to the countries of the Western Balkans, there are fewer deaths for 1 million inhabitants. (Kosovo Police, 2021).

**Table 2**

**Figure 2: Fatalities per million inhabitants in the Western Balkans, 2020 compared to 2010**



Note: Note: The official data for Bosnia and Herzegovina are not yet available

#### 4. Conclusion

Nowadays, public traffic occupies an irreplaceable place in our lives as one of the most important economic activities. The modern world cannot function without transportation. The development of transport has brought many opportunities, such as the possibility of the movement of citizens, the exchange of goods, and so forth. On the other hand, it constitutes a serious threat to human life, that is, every person at any time is exposed to the risk of an accident, so as such it constitutes one of the challenges, the main concern that our country is also facing. The law on road traffic rules is the chief legal basis by which traffic safety is regulated in Kosovo. Unfortunately, today we have an increase in the number of accidents, which are caused by various factors.

Such causes are primarily related to the human factor, then to the condition of the roads and the technical condition of the vehicles. To avoid the number of accidents, it is necessary to firstly identify the factors, the drafting of real security policies, the laws that regulate this activity, as well as the awareness of citizens about the traffic rules in force, that is, the organization of awareness campaigns. It is also necessary for all traffic participants, drivers, and pedestrians, to respect the traffic rules, learn to respect each other, have patience, and above all help the victims of accidents, so that our roads are safer, which field is regulated by legal rules.

Based on the analysis of data related to the participation of adults in criminal offenses against public traffic safety during the period 2016-2019 in the Republic of Kosovo, a considerable number of persons convicted for this group of criminal offenses is observed, where men make up the largest number, and that unfortunately in the coming years there is supposed to be an increase in these criminal offenses due to the increase in the number of vehicles in our country.

A positive element for Kosovo is the one based on the report Fatalities for 2020 - Annual Statistics for the Western Balkans, where Kosovo emerged as the country with the lowest number of fatal accidents in the region. So traffic safety is the duty and responsibility of every state, which function the state realizes only through the cooperation of the responsible

institutions, and the implementation of criminal sanctions for the perpetrators of these criminal acts. Such commitment is necessary for the successful achievement of accident prevention in public traffic.

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