

Detecting Drug Abuse and Misuse in Road Traffic

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Abstract: Every road user understands what driving under the influence (DUI) of alcohol means. Equally, many of those who use psychoactive substances and who are drivers know what driving under the influence of psychoactive substances implies. A small number of drivers across all categories who daily use drugs based on prescribed medication know what drug abuse means in traffic. The danger of drug misuse while driving is significantly higher when there is a traffic accident due to driving under the influence of drugs. In this paper, we have pointed out the importance of investigating a road traffic accident, primarily from the criminal aspect, when one of the parties involved in a traffic accident has driven a vehicle under the influence of drugs. The regulations from the Law on Traffic Safety from the Republic of Serbia can be of use to the officials of the police and judiciary of the Republic of Srpska, as well as Bosnia and Herzegovina. These regulations are very relevant for each local community or its relevant authorities.

Keywords: Law on Traffic Safety, Traffic Accident, Drugs, Medications, Criminal Procedure, Investigation.

INTRODUCTION

Traffic accidents happen on roads around the world on a daily basis with various, even the most severe consequences. It is the same in the Republic of Serbia, and in all parts of Bosnia and Herzegovina. Officials who are aware of these traffic accidents - most often members of the police, sometimes public prosecutors - after conducting an investigation into these traffic accidents as one of the mandatory steps, determine whether the drivers or certain categories of traffic accident participants were psychologically and physically capable of driving a vehicle. The human factor is the most important aspect in traffic safety [1] that can to a large extent be influenced to achieve better results, but at the same time this factor poses the greatest danger unless granted greater regulation.

Most often, police officials check the drivers of the vehicles after a traffic accident that have remained at the scene of the accident to eliminate whether they were driving a vehicle under the influence of alcohol. At the same time, it is rare to carry out a spot check if certain drivers were driving under the influence of psychoactive substances - narcotic drugs (hereinafter: PS) because most often they lack the necessary equipment to undertake this test at the scene. Officials, primarily police officers, but also public prosecutors lack knowledge of the possibilities of checking for the presence of PS through appropriate procedures and whether the individual drivers involved in a traffic accident were operating a vehicle under the influence of drugs. Thus, this issue should be given greater attention given the fact that almost every person in Serbia but also in all parts of the Republic of

Srpska and Bosnia and Herzegovina - regardless of age, gender, or any other feature - at some time or another has used prescribed medication after a health examination and sometimes has self-medicated when feeling unwell. In addition, few people think about this or even know - except for medical or pharmaceutical professionals - that certain types of medication can impair the psychological and physical abilities when driving.

In this paper, we will limit ourselves to presenting how psychological and physical conditions for driving in the Republic of Serbia and the Republic of Srpska are determined in accordance with the legal regulations. Special attention is given to the road users who have participated in traffic accidents under the influence of drugs as this is still very much a gray area. This is relevant for all local communities and police officers who, when dealing with road users, can recognize prohibited modes of driving and qualify them properly in case they are involved in a road traffic accident.

REGULATIONS CONCERNING PSYCHOLOGICAL AND PHYSICAL CONDITIONS FOR DRIVING

The Law on Traffic Safety on the Roads of the Republic of Serbia (hereinafter: ZBS) [3], which is applicable from December 11, 2009, contains, among other things, provisions related to the psychological and physical conditions for driving a vehicle.

Art. 187 of the ZBS which stipulates the psychological and physical conditions for driving a vehicle, states

that a driver must not drive a vehicle or start driving the vehicle if they are under the influence of alcohol and/or psychoactive substances. Unlike the former Law on Basic Safety of Road Traffic (hereinafter: ZOBSP) [2], which did not contain the meaning of the term “narcotic drugs” referred to in Art. 163 in the provisions relating to the meaning of certain expressions, the valid ZBS contains a precise definition of the term psychoactive substance.

Art. 7, para. 99 of the ZBS defines that a “**psychoactive substance**” is a type of drug or medication that has been prescribed but states that it should not be used before and during driving, and it also includes other chemical substances that may affect the psychological and physical ability of drivers (except alcohol).

Art. 187, para. 6 of the ZBS explicitly stipulates when a driver is considered to be under the influence of psychoactive substances – when an investigation using the appropriate means and methods (tests for determining the presence of psychoactive substances, etc.) establishes the presence of these substances in the organism. This is important for establishing a more severe form of offense - intent on the part of the driver, road user or the perpetrator of a traffic accident.

Art. 187, para. 7 of the ZBS stipulates that a driver is incapable of driving the vehicle safely when a specific test has established that they are tired, ill or in such a psychological and physical state that they are unable to drive the vehicle safely.

The **2018 Law on Amendments and Supplements to the ZBS** [4] stipulates a change in the provisions relating to psychological and physical conditions in Art. 187 in the part referring to the presence of alcohol in the blood across certain categories of road users. It establishes a set limit of 0.20 mg/ml of alcohol in the blood for road users, while it was 0.30 mg/ml according to the 2009 Law. There were no changes or amendments in the rest of this provision relating to psychoactive substances or medications.

Regulations related to psychological and physical conditions for road users in the **Law on Basic Safety of Road Traffic in Bosnia and Herzegovina** (hereinafter: ZOBSP of B-H) [5], applied on the territory of this country in all its constituent parts, are very similar. The only difference that can be seen at first sight is that the provisions relating to psychological and physical conditions are set out in two articles of this law.

Art. 173 of the ZOBSP of B-H stipulates the following: “A driver who is so tired or ill or is in such a state of physical condition that they are incapable of driving the vehicle safely, as well as a driver under the influence of narcotic drugs or other illicit drugs or **prescribed medications that state they must not be used before and during driving**, must not drive a vehicle on the road.”

Art. 174 of the ZOBSP of B-H stipulates the following: “The driver must not drive a vehicle on the road or start to drive if they are under the influence of alcohol or when it is considered that they are under the influence of

alcohol.” However, Art. 9 of the ZOBSP B-H that refers to the meaning of the term fails to define a psychoactive substance, as does the **Criminal Code of the Republic of Srpska** [6].

When making a comparison between these two laws - the ZBS and ZOBSP B-H in the part relating to the provisions regarding the psychological and physical conditions for driving and in the part related to the issues of this paper, we can consider that the provisions of the ZOBSP B-H are clearer about the type of medicines only insofar as the provision is separated into a separate article of the law in relation to the ZBS where all the circumstances of importance for the psychological and physical conditions for driving are stated in an objectively large - bulky article.

THE RELEVANCE OF AN INVESTIGATION FOR COURT PROCEDURES (FROM THE ASPECT OF PSYCHOLOGICAL AND PHYSICAL CONDITIONS)

Investigations of traffic accidents are not only relevant for criminal proceedings (criminal and misdemeanor), they also have a great significance for the procedures that are not being considered at the moment of conducting the investigation in regard to some criminal proceedings, these being the procedures in which the investigation after the accident cannot be performed objectively. In fact, these are out-of-court or civil proceedings for damages [7].

It is important for extra-judicial proceedings that the quality of the investigation carried out has an impact on the decision whether the agreement on the compensation of damage will be performed out of court between the insurer and the insured or if there needs to be a lawsuit for compensation regarding damages. The procedure to award compensation for damages caused which, as a rule, follows after the termination of the criminal procedure, can depend on the quality of the investigation carried out, and in other cases, the same is valid for establishing the existence or lack of fault of the drivers involved in a traffic accident - now parties in the civil proceedings – and the supposed shared responsibility to define damage compensation in litigation. In addition, when it comes to litigation procedures for damage compensation, the quality of the investigation carried out has an impact on the decision even when there is a legally binding conviction in criminal proceedings, and also when establishing the person responsible for the traffic accident in a damage compensation case, as well as the fault of one of the parties for the traffic accident and the percentage of the contribution.

During the investigation of a traffic accident, the traffic police, in addition to other undertakings, and depending on the type of traffic accident and the resulting

consequences – the material damage, injuries or fatalities, also control the psychological and physical conditions across certain categories of persons or drivers participating at the time of the traffic accident.

Evidently, this is most commonly done by way of appropriate devices used by traffic police to check whether drivers or certain categories of participants were under the influence of alcohol, and depending on the established level of alcohol on the spot, the police officers have the power to decide on their own or in consultation with the competent public prosecutor whether it is necessary to carry out a blood test on the drivers to analyze the alcohol level content in the blood, and define the number of tests to establish the alcohol level of the driver in a traffic accident.

Significantly rarer are the cases of checking at the scene by means of appropriate devices if one of the drivers in a traffic accident was driving the vehicle or as a participant was under the influence of psychoactive controlled substances (narcotics). The main reason for this is that both the Republic of Serbia and Bosnia and Herzegovina lack the resources for its traffic police officers to be equipped with the appropriate devices to determine the presence of PS in the body, although this is necessary as some official data indicates that a large number of drivers are driving vehicles under the influence of PS. European traffic safety studies conducted in 2006 have shown that the proportion of drivers under the influence of alcohol and marijuana is approximately equal and ranges between four and five percent [8]. According to various studies, the proportion of allowed drug use (mainly benzodiazepam) among drivers is greater than the amount of illicit drug use - mainly marijuana and opiates [9].

It is uncommon for traffic police officers in the Republic of Serbia to consider that any of the drivers involved in a traffic accident has been driving a vehicle under the influence of drugs and that such driving was or could have been the cause for the traffic accident and in addition, to take the appropriate measures to check and possibly establish this fact. We believe that in this respect, the situation is similar or identical in all parts of Bosnia and Herzegovina regarding traffic police officers.

Therefore, the issue of drug misuse while driving and its impact on the road traffic accidents is a great unknown in criminal or misdemeanor procedures.

The issue of proving the presence of drugs containing psychoactive substances in the organism of the driver is relevant for discerning between intent and negligence in a criminal sense, which is of importance to the type of criminal offense perpetrated. Also, this is of importance in the appropriate procedure for damage compensation in order to establish an obligation for the driver to recompense the insurance company in the recourse action that has already made full or partial payment to those injured.

For this reason, the importance of a thorough investigation of a traffic accident in criminal offenses is of

utmost importance, as only at this stage can the presence of certain types of drugs used in driving be detected by finding the packaging of the medication in the vehicles that have participated in a traffic accident.

THE ISSUE OF DRUG MISUSE AND THEIR IMPACT ON INVESTIGATIONS ACROSS THE WORLD

A number of studies have been carried out by experts or teams of experts in the world regarding the impact of drugs on those driving in the last two decades. Most of the studies concerned the research of the effects of specific medications on the ability to drive a vehicle. These are medications used for pain relief, insomnia and anxiety (bromazepam, diazepam, lorazepam), which can cause drowsiness, confusion and motor coordination difficulties [10], [11], [12].

More significant research was carried out at the European Union level through the DRUID (Driving Under the Influence of Drugs, Alcohol and Medicines) project [13]. This was a significantly more comprehensive study aimed at examining the effects of medication, drugs and alcohol on the ability to drive a vehicle. A total of 3,054 medications were examined and, on that basis, medications were classified into 4 categories.

The greatest number of drugs was classified as category 0 - about 57% of all drugs. These are medications that have none or have a very negligible effect on driving, and therefore no special warning is required for these medications. Category 1 includes about 26% of drugs, while 17% of the drugs analyzed were included in category 2 and 3. According to this study, category 1 drugs have very little impact on the ability to drive a vehicle, which is why caution is recommended and the need to read the instructions from the package before starting to drive. Category 2 drugs have an average impact on the ability to drive a vehicle, which is why special care is recommended and not driving before consulting the doctor or pharmacist. Category 3 drugs have a major impact on the ability to drive a vehicle and contain the warning of "Attention: dangerous! Do not drive! Seek medical advice before you drive again."

All medications from category 1, 2, 3 must have appropriate pictograms on the packaging that warn drivers about the effect of the medication on the ability to drive.

THE ISSUE OF DRUG MISUSE IN REGULATIONS OF THE REPUBLIC OF SERBIA

The Republic of Serbia has also taken appropriate steps in the area of labeling certain types of drugs and their effect on driving motor vehicles. This was neces-

sary given the meaning of the concept of psychoactive substances, which is more comprehensive than the notion of narcotic drugs, which includes medications that indicate they are not to be used before and while driving.

In the Republic of Serbia, the labeling of certain types of medicines is regulated by the Ordinance on the content and manner of marking the outer and inner packaging of the medicinal product, additional labeling, as well as the content of the instructions for the medicinal product (hereinafter: the Regulations) [14]. This by-law includes provisions on psychoactive substances that can be equally dangerous to other road users as alcohol. Art. 83 of the Ordinance stipulates the following: "The packaging of the medicinal product and the instructions for a medicinal product containing psychoactive controlled substances must contain the following precautionary measures and warnings:

- a warning triangle: a relative prohibition on driving motor vehicles or machinery;
- a solid red triangle: an absolute prohibition on driving motor vehicles or machinery and
- the symbol of the paragraph (§) for psychoactive controlled substances.

Although it is not fully in line with the labeling as defined at EU level, we consider this to be effective labeling of certain types of drugs that can effect safe driving in a sufficiently clear and recognizable way. Of course, this applies to the drivers who read the instructions for use of the medication before driving and consult their chosen doctor or pharmacist when they obtain the medications regarding the effect of this medication on driving.

However, the issue of misuse of medications containing psychoactive controlled substances and driving under the influence of these drugs by drivers who are ill, although referred to in Art. 187 of the ZBS, is almost completely unknown in case-law. This question is also of importance for determining the psychological correlation between the intent and the cause of the traffic accident.

In addition, the question arises of the effects of drugs that contain no psychoactive substances and can be dangerous for drivers. These are medications that are bought over the counter and which are recognizable throughout the territory of the former SFRY, as well as on the territory of Serbia. One of these medicines is the well-known Fervex, which is especially purchased during the flu and cold season. The same applies to Coldrex in powder form, in a sachet. The above medications have none of the three signs mentioned in the aforementioned Rulebook, but the instructions for use state that caution should be advised when driving due to possible drowsiness. This also applies to another well-known medicine that we often self-medicate with - the cough medicine Sinecod. These problems are being increasingly reported in Serbia via media coverage [15], [16].

In addition, the problems of misuse of certain types of drugs in combination with alcohol and DUI are also mentioned more in the Serbian media [17].

This further entails a greater level of responsibility - the sale of only prescribed medications that affect psychological abilities, but this is not the subject of this paper.

THE PROPER PROCEDURE USED BY POLICE OFFICERS DURING INVESTIGATION OF DRUG MISUSE BY ROAD USERS

Traffic police officers who in most cases perform an on-site investigation at a traffic accident also have the greatest responsibility for checking the psychological and physical conditions of individual drivers or participants in a traffic accident. During an investigation, attention is rarely given to other features of drivers or certain participants in a traffic accident other than alcohol abuse. This also applies to driving under PS. As a rule, traffic police officers in general pay little attention to the behavior of the road users whose driving is influenced by the effects of the medications that they used before or during driving, and which contain PS. In regard to drugs containing psychoactive substances and their effect, or in other words, how they affect the speed of reaction and concentration, is not observed by traffic police officers mainly because they have no training for it. Therefore, for them, but also for the relevant public prosecutors when carrying out an investigation in the most severe traffic accidents, this is a new and still insufficiently understood occurrence.

Therefore, after conducting an on-site investigation with completion of the relevant measurement data, diagrams and photos of the accident, police officers should pay attention to empty medication packaging with or without instructions when examining the vehicle. If in addition to other objects of interest found inside the vehicle for example, a cell phone, shoes under the driver's seat, etc., officers also notice packaging of medication especially around the driver's seat or around the front passenger's seat in the front right-hand seat, it is first necessary to photograph the items before they are removed from the vehicle. It is then necessary to determine whether this involves medication that is marked on the packaging as not to be used before or during driving, provisionally confiscating them with the correct procedure to establish the users of the drugs. Depending on the location of the packaging of these particularly marked types of drugs, whether around the driver's or the passenger seat, traffic police officers can order a blood test from the driver as well as from any passengers in the vehicle in order to determine the effect of the medications on their psychological and physical abilities. This is especially necessary in situations where the driver died and medication packaging with these warnings was found around the passenger's seat. The reason for this is that due to a lack of witnesses, a traffic accident which is a result of a deliberate act can be excluded.

When the public prosecutor is carrying out an investigation, traffic police officers are obliged to look for any medication packaging marked with warnings at the scene or immediately after the investigation, at the same time as certain procedures are still being taken, for example, an inspection of the vehicles of the road users involved in a traffic accident, and inform the public prosecutor who in this situation should call for a blood test for the driver involved in the accident in whose vehicle such medication packaging was found, thereby verifying the potential effect on the driver's ability to drive.

If an officer makes an oversight and fails to inspect the vehicle during the investigation or immediately after its completion, but the filled or empty medication packaging is subsequently found when the vehicle is still under police supervision, which has occurred in practice, it is realistic that such a driver will manage to circumvent criminal responsibility for driving a vehicle under the influence of medication that should not be used before or during driving and causing a traffic accident. This continues to have significance in the procedure for compensation, as this driver may claim that he needed such medication due to the nature of his illness but failed to take it before or during driving. In this situation, it is difficult to prove the presence of such prohibited medication in the driver's blood if a test was not carried out to establish the presence of such drugs in the blood at the time of the accident.

CONCLUSION

Traffic accidents are a worldwide problem which cannot be resolved totally, but proactive action can reduce the number of traffic accidents and their consequences in all countries.

The issues of detecting and proving drug misuse while driving and its impact on the occurrence of road traffic accidents are still widely unknown in most criminal proceedings in Serbia and in the Republic of Srpska, in either criminal or misdemeanor proceedings. We also pointed out the importance of detecting and proving the misuse of certain medications while driving in the procedures that follow the criminal proceedings - in extra-judicial proceedings or civil litigation.

The data in this paper is intended to increase traffic safety not only in the Republic of Serbia, but also in the Republic of Srpska and all parts of Bosnia and Herzegovina. By correctly training traffic police officers regarding the detecting of drug misuse in driving and the proper qualification of criminal offenses and their perpetrators by the relevant public prosecutors can serve to increase traffic safety at the level of local government.

Therefore, it is necessary to constantly strengthen the capacities of the relevant police and judicial authorities in the Republic of Serbia as well as in the Republic

of Srpska and all the parts of Bosnia and Herzegovina, in order to improve the safety of road traffic within the area of these authorities.

REFERENCES

- [1] Lipovac, K. Traffic safety, Off. Gazette of the SRY, Belgrade, 2008.
- [2] Law on the Basic Safety of Road Traffic (1988), Off. Gazette of the SFRY, nos. 50/88, 63/88, 80/89, 29/90, 11/91, Off. Gazette of the SRY, nos. 34/92, 13/93, 24/94, 41/94, 28/96, 3/2002, Off. Gazette of the RS, no. 101/2005.
- [3] Law on the Basic Safety of Road Traffic (2009), Off. Gazette of the RS, nos. 41/09, 53/10, 101/11, 32/13, 55/14, 96/15, 9/16.
- [4] Law on Changes and Amendments to the Law on Road Traffic Safety (2018), Off. Gazette of the RS, nos. 24/18 dated March 26, 2018 enacted on April 3, 2018.
- [5] Law on the Basis of the Traffic Safety System on the Roads in Bosnia and Herzegovina, Off. Gazette of the B-H, nos. 06/06, 75/06, 44/07, 84/09, 48/10, 18/13, 8/17.
- [6] The Criminal Code of the Republic of Srpska (2017), Off. Gazette of the Republic of Srpska, no. 64/17.
- [7] Obradović, D. (2011). The importance of the investigation of a traffic accident in litigation for damages compensation, Association for Compensation Law, the 14th international scientific gathering: Compulsory insurance, damage compensation and the new civil procedures, Intermex, Belgrade, 216-243.
- [8] <http://www.politika.rs>, Drivers under the influence of alcohol and marijuana in a 'dead heat', downloaded on November 23, 2010.
- [9] <http://www.emcdda.europa.eu/html.cfm/>, Legal approaches to drugs and driving, downloaded on October 30, 2011.
- [10] Thomas, R.E. (1998). Benzodiazepine use and motor vehicle accidents. Systematic review of reported associations. Canadian Family Physician 44, 799-808.
- [11] Orriols, L., Philip, P., Moore, N., Gadegbeku, B., Delorme, B., Mallaret, M., Lagarde, E. (2009). The impact of medicinal drugs on traffic safety: a systematic review of epidemiological studies. Pharmacoepidemiology and Drug Safety, 18, 647-658
- [12] Rapoport, M.J., Lanctôt, K.L., Streiner, D.L., Bédard, M., Vingilis, E., Murray, B., Schaffer, A., Shulman, K.I., Herrmann, N. (2009). Benzodiazepine use and driving: a meta-analysis, Journal of Clinical Psychiatry 70, 663-673.
- [13] <http://www.druid-project.eu/Druid/EN/about-DRUID/about-DRUID-node.html>, downloaded on December 10, 2014.
- [14] Ordinance on the content and manner of labeling of the external and internal packaging of the medicinal product, additional labeling, as well as the content of the instructions for the medicinal product (2011), Off. Gazette of the RS, no. 41/2011.
- [15] <http://mondo.rs/a906878/Magazin/Lifestyle/Lekovi-koji-uticu-na-voznju.html>, May 29, 2016: downloaded on July 18, 2018.
- [16] <http://www.politika.rs/sr/clanak/369930/Poremecaj-paznje-ivrtoglavicu-izavijaju-i-neki-lekovi>, December 13, 2016: downloaded July, 2018.
- [17] <http://www.021.rs/story/Zivot/Zdravlje/26751/Lekovi-koji-ne-smeju-da-se-uzimaju-sa-alkoholom.html>, downloaded on July 18, 2018.