РОЗДІЛ 3
ПРАВООХОРОННА ДІЯЛЬНІСТЬ ЯК ФУНКЦІЯ ДЕРЖАВИ: ПРАВОВЕ ТА ОСВІТНЬО-ПРОФЕСІЙНЕ ЗАБЕЗПЕЧЕННЯ

Правоохоронна діяльність як функція держави, її правове та освітньо-професійне забезпечення насьогодні є одним із пріоритетних завдань держави. Це зумовлено активними євроінтеграційними процесами, які вимагають від України швидкого та докорінного реформування правоохоронної сфери у відповідності до міжнародних стандартів.

Активна міжнародна співпраця правоохоронних органів зумовлює необхідність розробки сучасних та комплексних підходів до забезпечення охорони прав громадян, суспільства та держави засобами кримінального права і процесу. З одного боку, сучасні правоохоронні органи стають більш демократичними та відкритими до співпраці з інституціями громадянського суспільства. З іншого боку, суспільні відносини ускладнюються, стають більш спеціалізованими, що висуває підвищені вимоги до новітньої освіти майбутніх правоохоронців.

Враховуючи викладене, обмін науковими здобутками та новими ідеями в галузі правоохоронної діяльності сприятиме як захисту прав та інтересів громадян і юридичних осіб, так і підвищенню суспільного добробуту та розвитку України як держави.

Наразі перед сучасними науковцями стоїть завдання пошуку інноваційних методик протидії сучасній злочинності, яка також еволюціонує разом із суспільством. Тому представлені наукові позиції, розроблені з урахуванням сучасних підходів до теорії і актуальної правоохоронної практики, є значущими для подальшого розвитку як теорії правоохоронної діяльності, так і практичної підготовки фахівців у галузі правоохоронної діяльності.

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EXAGGERATED RECKLESSNES IN ROAD TRAFFIC IS MURDER

Throughout the world, including Slovenia we face highly reckless and simultaneously life threatening behavior in road traffic. There is a significant trend, in last couple of decades, which indicates, that the number of such life threatening behaviors is rising, also outside the concept of road traffic terrorism

(intentional mass killings by car or truck on public roads).

In Slovenia research is currently being conducted on misuse of public roads for illegal drag races, conducted by two or more perpetrators. In this research, potential and actual obvious inconsistencies and insufficiencies of the Slovenian road-traffic criminal law are analyzed, mainly with the help of comparative criminal law and above all modern German road-traffic criminal law. Here a recent, let's say comparatively rather spectacular court decision of the federal supreme court (BGH Bundesgerichtshof) case, the so called Berlin drag race road accident« is worth mentioning in some details. The German BGH in this court ruling offers a new and theoretically very intriguing set of bullet point criteria for arguing the racer's intent for murder. The state of the case (Judgement BGH 4 StR 482/19 dated 18.6.2020) was as follows: two young males (in their twenties) misused their personal cars for mutually agreed illegal drag race. In the process of the race, they were breaking several road traffic rules such as speeding over speed limit and even driving through red lights. In the last crossroad before the finish line, one of the two accused speeded even more, so that he would win the race. The winning of the race would highly contribute to his standing in the micro social circle, which valued such winnings of illegal drag races highly. In the process of breaking the red light rule, he crashed into a car crossing the crossroad at the same time as he. The other racer turned his car ferociously, but was not able to prevent a crash of his car as well, which did not crash in the victim's car but rather in the stoplight positioned near the prime crash. The crash of the firstly accused resulted in death of the victim driving the car in accordance with all the road traffic regulation.

The described happening, which shook broader German as well as broader European public, resulted in the criminal case with enormous comparative-criminal legal potential. It has to be treated as a breaking point for criminal legal theory, as well as a modern criminological response to most exaggerated rule-breaking in road traffic.

The theoretic barycenter of the case lies especially in the element of guilt, as the fourth element of the general notion of crime, and the decision-making bullet points are also transferrable to jurisdictions which accept a two-element general notion of crime (common law jurisdictions), so in their system the measures are applicable in the element of mens rea. The theoretical epicenter of the case was for the German BGH the construction of legal intent (dolus eventualis) based on two factors, which were the base of the charge against the perpetrator. The court found arguments that the volitional component was proven, mostly from the nature of perpetrators self-risking behavior and his motives to win the race, which were in the eyes of the court valued as discarding. The fact of perpetrator's obsession with his self-worth in his microsocial environment was crucial from the point of fulfilling extenuating circumstance of discarding motives for the act of murder (german: niedrige

Beweggründe in Mord). In the scientific research conducted in Slovenia we compared this new German approach with the common domestic criminal legal theory and jurisprudence in similar legal cases, and found no political willingness of declaring and proving extenuating circumstances of murder with legal intent (dolus eventualis) in Slovenian road-traffic criminal law. But the research showed at the same time, that according to our law certain extenuating circumstances can be fulfilled with legal intent, following newest German jurisprudence (BGH).

In the process of the case being valued through the German judiciary there were also tendencies to rule both racers for complicity in murder. Here some critical views from selected German theorists on the latest GBH ruling, which were mostly pointed to biological and neuropsychologycal aspects of the case, are of grave comparative legal importance. Some of them are skeptical of Court's findings regarding the veracity of the fact that the processes in the perpetrator's mind were in fact the way that the court found them. They argue that the sheer fact of their age and gender influenced their thinking processes and especially their ability to acknowledge risky situations as potentially harmful for bodily integrity of themselves and of other people, taking part in public road traffic.

The authors of the German-Slovenian comparative legal study on road traffic recklessness as potential murder further conducted a small-scale comparative research between criminal law codes of Germany (StGB) and Slovenia (KZ-1). The road-traffic part of the Slovenian penal code is in large parts, so to say, an exact copy of the actual German StGB, for instance the incrimination of endangering public road traffic (German original: Gefährdung des Strassenverkehrs). In some parts the German legislation shows itself as much more diversified than the Slovenian, especially regarding incriminations of driving in intoxicated state (German: Trunkentheit im Verkehr). Some deficit of the Slovenian Penal Code in relation to the German StGB can also be seen in the incrimination of murder. The German version includes among other variants of murder as an extenuating circumstance also «acting with commonly dangerous means» (German: «mit gemeingefährlichen Mitteln»), hence German legislation is more suitable and repressive towards perpetrators that cause death with commonly dangerous means, than is the Slovenian legislation which does not have this circumstance incriminated in its incrimination of murder.

The presented German criminal case is to be treated as a potentially crucial phase in the evolution of criminal laws valuing exaggerated recklessness in relation to human life in road traffic. It is a bold repressive step of the interpretation of dolus eventualis, and in our opinion is obviously wort a thorough comparative legal analysis. There is unfortunately no country in modern day world that is immune to recklessness in road traffic, Slovenia with its statistics of deaths in road traffic accidents included. That fact alone makes this new German criminal legal case about recklessness as murder especially

relevant for broader criminal law perspectives, including for law enforcement activities and judicial processing of criminal law cases in road traffic.

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CRIMINAL OFFENCES AGAINST THE JUDICIARY IN THE CRIMINAL CODE OF THE REPUBLIC OF SLOVENIA

Criminal offences against the judiciary are listed in Chapter Twenty-Eight of the Criminal Code (hereinafter: the CC-1). These criminal offences are intended to protect the judiciary as a separate branch of power with its specific tasks. Protection is intended for criminal justice and partly also for other branches of the judiciary. The common feature of all criminal offences listed in that Chapter is that they prevent, inhibit or even threaten the work of judicial authorities and the performance of their tasks or the implementation of the measures and decisions of judicial authorities. The purpose of the criminal law protection is to ensure the smooth work of judicial authorities and the correct and lawful functioning of the judiciary. It used to be considered that the incriminations listed in this Chapter were intended to protect the work of domestic judicial authorities. Now, due to the integration processes in Europe (and worldwide), the distrust of foreign countries and decisions of their judicial authorities is being replaced by an increasing cooperation between countries and by the recognition of foreign court decisions. In the changed circumstances, the subject of protection is no longer only the domestic judiciary, but also the operation of international courts, of which one of the constituent parties is the Republic of Slovenia, and foreign judicial authorities (particularly of the countries with which the Republic of Slovenia maintains closer ties (such as the EU and the Council of Europe).

The criminal offences referred to in the aforementioned Chapter take the following forms:

1) obstruction of judicial authorities in the prevention of criminal offences – by means of a criminal offence of failure to inform authorities of preparations for a crime pursuant to Article 280 of the CC-1;

2) obstruction of judicial authorities in the detection of a committed criminal offence and the perpetrator – by means of a criminal offence of failure to provide information of crime or perpetrator pursuant to Article 282 of the CC-1 and partly by means of a criminal offence of false reporting of crime pursuant to Article 283 of the CC-1;

3) activation of judicial authorities in the wrong place or diversion of activities in the wrong direction – by means of a criminal offence of false