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Vehicle technical malfunctions and their impact on traffic safety

Abstract

Traffic safety is closely interrelated to the technical condition of vehicles participating in road transport. The said condition should be understood comprehensively, not only in terms of technical fitness, equipment, loading methods, and safe passenger transport, but also from the perspective of passive safety aimed at minimising the impact of accidents. Unfortunately, the issues of providing passive safety, and its deficiencies, are often neglected, yet it is also crucial to penal liability. It is certain that the deficiencies identified are part of cause-and-effect relationships which are very often difficult to define in a straightforward way.

Key words: Safety rules, active safety, passive safety, wilful misconduct, wilful negligence, joint liability, causal relationship

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In observing and studying practices in the field of the assessment of the technical malfunctions of vehicles, and their impact on the rates of accidents and other incidents referred to in Article 173 or 174 of the Polish Penal Code, it can be said that the views expressed by A. Gaberle¹ are still current. He wrote that a tendency could be observed, both in and outside Poland, to consider humans as the primary factors contributing to road safety hazards. Moreover, the cited author made germane observations stating "This can be substantiated by the basic situation for car accidents to happen, which is the fact of starting a vehicle by a driver. No accident can occur without such an action. Therefore, the approach involving examining whether human behaviour has produced such results, and taking other factors into consideration only after eliminating the human factor, is understandable". Hence, safety is of paramount importance here². Such an approach puts the issue of perpetration first. It entails an assumption that the search for other causes can only begin after the possibility that the driver was in breach of the applicable road traffic rules has been eliminated. It seems reasonable to place a mandatory requirement on drivers to adapt their conduct to the existing

1 A. Gaberle, *Wypadki drogowe. Aspekty kryminologiczne*, Warszawa 1986, s. 172.

2 For detailed information on safety, see: M. Karpiuk, *Służba wojskowa żołnierzy zawodowych*, Olsztyn 2019; W. Kitler, M. Czuryk, M. Karpiuk (red.), *Aspekty prawne bezpieczeństwa narodowego RP. Część ogólna*, Warszawa 2013; M. Karpiuk, *Konstytucyjna właściwość Sejmu w zakresie bezpieczeństwa państwa*, „*Studia Iuridica Lublinensia*” 2017, nr 4; M. Czuryk, K. Drabik, A. Pieczywok, *Bezpieczeństwo człowieka w procesie zmian społecznych, kulturowych i edukacyjnych*, Olsztyn 2018; M. Karpiuk, *Ograniczenie wolności uzewnętrzniania wyznania ze względu na bezpieczeństwo państwa i porządek publiczny*, „*Przegląd Prawa Wyznaniowego*” 2017, t. 9; M. Karpiuk, N. Szczęch, *Bezpieczeństwo narodowe i międzynarodowe*, Olsztyn 2017; M. Karpiuk, *Miejsce samorządu terytorialnego w przestrzeni bezpieczeństwa narodowego*, Warszawa 2014; M. Karpiuk, *Activities of the local government units in the scope of telecommunication*, „*Cybersecurity and Law*” 2019, nr 1; M. Karpiuk, *Właściwość wojewody w zakresie zapewnienia bezpieczeństwa i porządku publicznego oraz zapobiegania zagrożeniu życia i zdrowia*, „*Zeszyty Naukowe KUL*” 2018, nr 2; M. Karpiuk, *Służba funkcjonariuszy Służby Kontrwywiadu Wojskowego i Służby Wywiadu Wojskowego oraz żołnierzy zawodowych wyznaczonych na stanowiska służbowe w tych formacjach*, Olsztyn 2017; M. Karpiuk, *Pomoc Sił Zbrojnych Rzeczypospolitej Polskiej udzielana Policji*, „*Wojskowy Przegląd Prawniczy*” 2018, nr 1; M. Karpiuk, *Position of the Local Government of Commune Level in the Space of Security and Public Order*, „*Studia Iuridica Lublinensia*” 2019, nr 2; M. Czuryk, *Bezpieczeństwo jako dobro wspólne*, „*Zeszyty Naukowe KUL*” 2018, nr 3; M. Karpiuk, *Zadania i kompetencje zespolonej administracji rządowej w sferze bezpieczeństwa narodowego Rzeczypospolitej Polskiej. Aspekty materialne i formalne*, Warszawa 2013; M. Czuryk, *Właściwość Rady Ministrów oraz Prezesa Rady Ministrów w zakresie obronności, bezpieczeństwa i porządku publicznego*, Olsztyn 2017; M. Karpiuk, *Position of County Government in the Security Space*, „*Internal Security*” 2019, nr 1; M. Karpiuk, *Safety as a legally protected value*, „*Zeszyty Naukowe KUL*” 2019, nr 3.

conditions, and also those dictated by the state of their vehicles, which leads to the conclusion that vehicles should be designed and equipped in such a way as to minimise driver errors and to protect human life and health to the greatest extent possible if an accident or a disaster occurs.

Here it is worth taking up the important issue of the active and passive safety of the vehicle. Active safety, also referred to as primary safety, should ensure: 1) driving safety, entailing all the means which facilitate keeping vehicles in the right driving direction, 2) support for effective operation, and 3) reliability of perception. The factors of primary significance for safe driving include: vehicle efficiency, suspension, tyres, brakes, steering, and electronic support systems designed to warn about hazards, i.e. systems which help to prevent vehicles from skidding, to keep the right distance from other vehicles, intelligent speed assistance, etc.

In turn, operating safety includes the means to ensure sufficient driving safety, meaning technologies reducing unnecessary strain on the driver and helping to eliminate potential errors during vehicle operation. Passive safety entails technical equipment which prevents the occurrence of negative outcomes of accidents or other road incidents affecting vehicle drivers and passengers. These are, for example, design solutions which facilitate the reduction of kinetic energy from collisions with obstacles, devices designed to secure against falling out of vehicles, minimising the risk of injuries, and fire prevention solutions³. It can be assumed that drivers do not have any influence on a number of technical factors, aside from any technical failures which they can identify or failures which they are aware of. It is essential that drivers are conscious of the need to have the car serviced periodically according to instruction manual recommendations. It should be noted that specific fluids, for example brake fluid, tend to lose their properties after a certain period of operation, which can increase the risk of road traffic hazards. This issue is neglected, although it can be significant from the perspective of road safety.

Driving a vehicle which has technical malfunctions without doubt constitutes a violation of road safety rules. It can be intentional or unintentional⁴. This is closely related to offences referred to in Articles 173, 174, 177, and additionally in Article 179, of the Penal Code. As regards the penal outcomes of such an action, they usually take the unintentional form (negligence), unless

3 A. Gaberle, *Wypadki...*, s. 184.

4 Postanowienie SN z dnia 8 marca 2017 r., III KK 345/16, LEX nr 2242366.

extraordinary circumstances occur in which the perpetrator can be found guilty of wilful misconduct with indirect intention, but only in relation to offences against Articles 173 and 174 of the Penal Code⁵. No penal liability may be imposed on a driver if a sudden and unexpected failure occurs, resulting in a road accident, disaster, or an immediate threat of an accident. This should be differentiated from the situation in which, for example, a driver knows about low air pressure in one of the tyres, and that he or she should not exceed a speed limit defined in a notice, or continue driving for more than a specified number of kilometres and disregards the warning and drives the car with excessive speed. This would mean that such a driver has wilfully violated road safety rules, and there are grounds for imposing liability for such actions.

The Road Traffic Act also includes procedural provisions which do not have a lot in common with safety rules. The breach of such provisions should not be linked with penal liability, even if it results in the committing of an offence under Articles 173, 174, and 177 of the Penal Code. Without doubt, traffic offences and misdemeanours are linked to the driver, and it is the driver who is obliged to adapt his or her driving to the road conditions and the technical state of the car. If significant technical deficiencies occur, this means negligence related to the technical state of the vehicle, which in certain circumstances is not necessarily incriminating, in particular where the driver involved, aware of the malfunction, takes reasonable steps to increase safety, by driving the vehicle in a special way, with reduced speed, greater caution, and by reasonably predicting the possible consequences of the existing malfunction⁶. The Supreme Court stressed “the obligation to predict the consequences of driving a vehicle with a defective assembly or component, affecting safe driving, may only be imposed if the driver could have predicted such a malfunction based on his/her work experience or knowledge of the technical properties of the vehicle in his/her possession⁷”. Furthermore, in another judgement, the Supreme Court put forward the following thesis. “Driving a vehicle with a defective braking system is a violation of road safety rules, and consequently one of the substantive elements of the offence(...)” – a road accident⁸.

5 More details in: K. Pawelec, *Sprawadzenie niebezpieczeństwa w ruchu drogowym*, Warszawa 2017, s. 25–48 together with the cited references and case law.

6 Cf.: K. Pawelec, *Na drodze*, Warszawa 1983, s. 69.

7 Wyrok SN z dnia 29 stycznia 1973 r., Rw 1421/72, WPP 1974, nr 1, s. 83.

8 Wyrok SN z dnia 27 lipca 1976 r., VI KRN 113/76, OSNKW 1976, nr 10–11, poz. 129.

It should be noted here that, as evidenced by practice, data on the number of road traffic offences resulting from technical malfunctions in vehicles can be highly unreliable. This can be attributable to the fact that it is easier and more convenient to assume that it was the driver who violated safety rules, usually by failing to keep at a safe speed or a safe distance from the vehicle in front of him/her, or by failing to give way, or to monitor the situation on the road properly, than to assess whether the vehicle was unfit for operation before the incident or the malfunction invoked or exacerbated improper behaviour⁹.

The adoption of such reasoning without in-depth studies and analyses of non-thorough criminal proceedings can create a fiction which can prove dangerous, as can anything that blurs the actual course of events, or hinders the search for the real causes of road incidents, and thus their prevention. The author of the above statement wishes to place emphasis on the fact that computer systems currently in operation, which can be found in an increasing number of vehicles, help identify the actual technical state of the car, and inform the driver in a clear way that a malfunction or a defect has occurred, and whether it is safe to continue driving. Reading information encoded in controls, a one-off action which cannot be repeated in other circumstances, is not something of interest to law enforcement bodies, unless a VIP has taken part in a given accident. The reading of specified records would facilitate the assessment of the driver's conduct, including their relationship to the tool they were using and the tasks they were to perform, as A. Badrach pointed out, referring to the car¹⁰.

It is necessary to think about whether the driver can be subject to penal liability for an offence involving putting other persons in danger because of defects or flaws identified in their vehicle, or vehicle defects in the field of active or passive safety, and the existence of a causal connection with injuries sustained by passengers which they would not have suffered if the passive safety systems had been in good working order. The aforementioned issues are significant, as they affect road safety directly, and encourage readers to generally reflect on the liability of other persons. Moving onto the discussion of issues related to the potential penal liability of drivers under Article 160 of the Penal Code, it is worth referring to the resolution of the Supreme

9 Cf.: A. Gaberle, *Wypadki...*, s. 182.

10 A. Bachrach, *Przestępstwa i wykroczenia drogowe w prawie polskim*, Warszawa 1980, s. 153–154; K. Pawelec, *Zarys metodyki pracy obrońcy i pełnomocnika w sprawach przestępstw i wykroczeń drogowych*, Warszawa 2016, s. 82–84.

Court, entered onto the rules-of-law register, in which the following opinion can be found. "Motor vehicle drivers who, by violating road traffic safety, put other individuals at risk of losing their life, or sustaining a severe injury or health impairment, shall not be held liable under Article 160 of the Penal Code". However, in the statement of reasons, tempering the tenor of the aforementioned thesis, the Court stressed that the result entailing the potential occurrence of the said threats must be specifically proven or predictable with probability bordering on certainty¹¹. For liability to be imposed, it is necessary to prove the occurrence of the result in the form of a potential threat to life or health, while such a threat must be specified and direct¹².

The last issue to discuss is essentially not noticeable in legal practice. It is the liability of a driver for the effects of his or her actions who has without doubt violated safety rules, but the vehicle driven by another traffic participant did not have functioning passive safety systems, of which the said driver had not been aware, and which he or she could not have controlled. He or she could not be held liable for the effects of an accident if, for example, the vehicle collided with did not have any air bags or safety belts, or the belts had not been fastened. The fact that the aforementioned devices were not in working order is not in causal relationship with the effects of the incident, because if they had been in working order, nothing bearing the traits of an offence would have occurred. Of course, no responsible expert witness would state a definite opinion on the issue, and for that reason unresolvable doubts would appear in such a matter which would have to be settled to the benefit of the perpetrator, and as a result the most favourable version would have to be accepted.

In one of the examined cases, a driver was accused of causing a road accident by failing to give way, and colliding with another vehicle, as a result of which the passenger of the other vehicle suffered rib fractures. The defendant agreed to voluntarily accept a penalty, following advice given by a police officer during the interrogation. the defendant's submission to accept the penalty was approved by a public prosecutor, but the court had doubts. It was determined that the passenger in the front seat next to the other driver had been holding a crutch in front of him. As a result of air bag activation, the crutch fractured the passenger's ribs. The passenger was not following the recommendations, and the driver agreed to that. The Court found that the perpetrator could not be

11 Uchwała SN z dnia 15 lutego 1977 r., VII KZP 22/76, OSNKW 1977, nr 3, poz. 17; glosa E. Szwedek, OSP 1978, z. 1, poz. 17.

12 Wyrok SN z dnia 15 listopada 2017 r., IV KK 293/17, LEX nr 2395394.

held liable for the accident because he had no influence on the aggrieved party's conduct, and could not have predicted that, and no such obligations could have been imposed on him. The defendant was indicted for a misdemeanour under Article 86(1) of the Misdemeanour Code, which was time-barred. The persons subject to joint liability for road traffic offences bearing specific results, i.e. acts under Articles 173, 174, and 177 of the Penal Code, may include not only other traffic participants, but also an extended number of persons, including those who are not participating in traffic but are responsible for its safety¹³. They are referred to in the judgement of the Appeals Court in Wrocław, in which the court applied the constructs of extended liability for a road accident¹⁴ and wilful negligence¹⁵ to a person responsible for occupational health and safety (Article 220(1) of the Penal Code) and certifying the roadworthiness of vehicles (Article 179 of the Penal Code). The application of the aforementioned constructs should not be accepted without any reservations in relation to penal liability towards a diagnostic technician, especially the liability for his or her failing to declare deficiencies in the vehicle's passive safety systems, as there are no legal instruments which would oblige the said diagnostic technician to reveal such deficiencies and take the appropriate legal steps. Therefore, appropriate legislative changes are necessary¹⁶. Practical measures will not provide a solution for the deficiencies, even if the construct of extended liability is applied similarly to the Appeals Court in Wrocław, which stated "The person responsible for the accident is not only the driver, but also every person who, in any form, expresses the view that the driver could operate the vehicle in violation of traffic safety rules, resulting in the circumstances referred to in Article 177(2) of the Penal Code. The liability of such persons is based on the construct of so-called 'extended perpetration'"¹⁷.

13 Wyrok SA w Katowicach z dnia 26 stycznia 2018 r., II Aka 194/18, LEX nr 2645350; wyrok SN z dnia 15 listopada 2013 r., II KK 6/12, OSNKW 2013, nr 5, poz. 39; K. Pawelec, *Realizacja znamion przestępstwa dopuszczenia do ruchu pojazdu bezpośrednio zagrażającego bezpieczeństwu ruchu*, „Monitor Prawniczy” 2018, nr 21, s. 1166–1168.

14 Wyrok Sądu Apelacyjnego we Wrocławiu z dnia 24 sierpnia 2016 r., II Aka 201/16, LEX nr 2115443. More details in: K. Pawelec, *Czynności niepowtarzalne w sprawach o wypadki drogowe*, Warszawa 2018, s. 214–219

15 More details in: K. Pawelec, *Czynności...*, s. 219–224.

16 See: D. Klewek, *Dopuszczenie pojazdów mechanicznych do ruchu i jego znaczenie dla bezpieczeństwa komunikacji drogowej*, Siedlce 2019, s. 27–28.

17 Wyrok Sądu Apelacyjnego we Wrocławiu z dnia 24 sierpnia 2016 r., II Aka 201/16, LEX nr 2115443. More details in: K. Pawelec, *Sprawdzenie...*, s. 272–276.

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Rulings

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Wyrok SN z dnia 15 listopada 2017 r., IV KK 293/17, LEX nr 2395394.

Wyrok SN z dnia 27 lipca 1976 r., VI KRN 113/76, OSNKW 1976, nr 10–11, poz. 129.

Wyrok SN z dnia 29 stycznia 1973 r., Rw 1421/72, WPP 1974, nr 1.

Niesprawność techniczna pojazdu i jej wpływ na bezpieczeństwo ruchu

Streszczenie

Z zapewnieniem bezpieczeństwa ruchu ściśle wiąże się sprawność techniczna pojazdów uczestniczących w komunikacji drogowej. Ową sprawność powinniśmy rozumieć szeroko, nie tylko przez sprawność techniczną, wyposażenie, sposób załadunku, przewożenia pasażerów, ale również z punktu widzenia bezpieczeństwa biernego zapewniającego zmniejszanie skutków wypadku. Niestety, problem zapewnienia bezpieczeństwa biernego, jego niedostatków umyka uwadze, a jest on niezwykle istotny również dla odpowiedzialności karnej. Wskazane niedostatki muszą się bowiem łączyć związkiem przyczynowym ze skutkiem, a powyższe wielokrotnie wcale nie należy do jednoznacznych.

Słowa kluczowe: zasady bezpieczeństwa, bezpieczeństwo czynne, bezpieczeństwo bierne, umyślność, świadoma nieumyślność, współodpowiedzialność, związek przyczynowy