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ROAD SAFETY CRIMES AND EXTREME NECESSITY

The article deals with criminal and legal questions of interrelation between crimes in the sphere of road traffic safety with extreme necessity as a circumstance excluding the crime of action. The author has noted that in Ukraine, criminal violations of road safety are on the fourth position in the general structure of crime, therefore a substantiated legal assessment of these acts from the positions of the institute of extreme necessity is important.

In order to properly use extreme necessity as circumstances excluding criminal activity in road safety situations the author has studied the development of this institute in domestic legislation, in particular the criminal codes of 1922, 1927 and 1960, as well as the contents of extreme necessity in Art.39 "Extreme necessity" of the current Criminal Code of Ukraine. The analysis shows that extreme necessity has always been considered as a collision of several interests protected by law, and the protection of one interest is achieved by causing harm to another. At the end of the 20-th century the scientific and technological progress and in particular the field of traffic, in which everyday violations of road safety rules became a source of dangers requiring their consideration from the point of view of extreme necessity, play a special role in this.

In this regard the author has examined provisions of extreme necessity in the theory of criminal law and their application in judicial practice when considering road safety crimes, as well as doctrinal interpretation in scientific and educational

publications. He has identified and considered mistakes in determining the state of extreme necessity in these offences associated with the formation of the distorted idea of extreme necessity as typical examples of preventing vehicles collisions or avoiding hitting pedestrians who suddenly find themselves in the traffic lane do not always make a state of extreme necessity.

It has been noted that a person behavior in a state of extreme necessity must always be realized since in one or another condition he/she assesses the situation, chooses the means and makes appropriate decisions to eliminate the harm. On this basis it is impossible to consider the driver's state in an emergency situation as being characterized by extreme necessity. In an emergency the driver's behavior while outwardly aimed at preventing socially dangerous consequences is not associated with extreme necessity, since it has subconscious, reflexive nature. Such behavior is not subject to legal assessment.

From the same positions the author has marked certain contradictions in the resolution of the Plenary Session of the Supreme Court of Ukraine "On the Practice of the Use by the Courts of Ukraine of Legislation on Cases Concerning Certain Road Safety and Vehicle Operation Crimes, and also on Vehicles Administrative Offenses" concerning the occurrence of socially dangerous consequences due to violation of road safety or vehicle operation rules by two or more drivers of vehicles in an emergency situation.

The author proposed appropriate amendments to the above-mentioned resolution in order to avoid conflicting assessments and mistakes by law enforcement and judicial authorities in the analysis of extreme necessity in the field of road traffic.

Key words: road safety, criminal liability, extreme necessity.

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