

A traffic disaster and the suddenness of the incident, commentary to the Supreme Court judgement of 4th December, 2019, V KK 143/19, OSNKW 2020, no. 4, item 13

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Summary

The judgment I am going to comment on is particularly valuable for practice, especially as regards proving crimes that consist in causing traffic disasters or its immediate danger, and bringing about traffic accidents. This is because it refers to, so-called chain collisions that are more and more frequently encountered on motorways, expressways and in urban traffic. These accidents, also known as pile-ups, involve multiple vehicles. The judgement concerned the issue of a car crash unintentionally caused by the perpetrator who had fallen asleep while driving the vehicle. Particular attention was paid to the issue of the suddenness of the incident, its duration, location, as well as the concept of the unity of the act, which was treated from the legislative point of view, although that caused disputes. Unfortunately, the judgment ignores important evidential issues, such as: reasons for falling asleep and whether they were the driver's fault: i.e. fatigue, health condition, medications taken, and does not take into account the violation of safety regulations by other participants of the pile-up. Thus, it introduces an element of randomness of the effect, and transfers its consequences to the driver who fell asleep; although it was him who caused the threat but its effects could not have been foreseen by him, and he cannot be burdened with such an obligation.

Key words: disaster, bringing the danger of a disaster, traffic accident, chain-collision, suddenness, the concept of legal unity of an act, safety regulations, falling asleep, causal relationship

“The suddenness of an incident may be an immanent feature of the disaster referred to in Art. 173 § 1 of the Criminal Code. Then, however, it should be analysed not only from the perspective of the perpetrator's behaviour, but also in the light of the development of the course of events, and the projection of each participant of such an incident should be taken into consideration. The suddenness is not important in itself, but it can be significant in terms of the predictability of the danger. In the event of a traffic disaster, it should be assessed through the prism of the circumstances of the case, with particular emphasis on the place of the crash, the speed allowed in this place, traffic volume, as well as the unpredictability of the disaster itself”.

The judgement being commented upon, which is important for practice, deserves full approval, especially as it may be universal and concern the risk of causing a traffic disaster, as well as a traffic accident in general, which may, for example, have a character of a, so-called, chain collision. It was issued on the basis of the following facts, presented briefly presented, as follows:

S.P.K. was presented with the following charge:
“on [...], on the A2 motorway, near the town of T. [...],

he inadvertently caused a crash in land traffic by unintentionally violating traffic safety regulations in such a way that while driving a car [...] on the motorway, as a result of falling asleep at the wheel, he began to change lanes from left to right in an uncontrolled manner, without signalling this move beforehand, and then, after suddenly waking up, he made a sudden turn [...], which resulted in the loss of vehicle control and hitting the protective barrier on the right side of the road and then bouncing off it, a collision with a car [...], as a result of which the car [...] made several turns around the road axis and stood transversely to the road in the vicinity of the right lane, then the car [...] standing transversely to the road was hit by another vehicle [...] after having been hit [...] the car [...] hit the rear part of a truck trailer [...], which had earlier managed to avoid [...] the vehicles participating in the collision, then a car approaching in the right-hand lane [...] crashed into the back of the standing car [...] and the other car [...], as a result of which the driver and passenger were killed [...], and moreover, there an immediate danger of loss of life and health of several people occurred [...], i.e. the act under Art. 173 § 1 in connection with Art. 173 § 2 of

the Criminal Code in connection with Art. 173 § 4 of the Criminal Code.“

The District Court upon analysis of the case found the defendant S.P.K. guilty of committing an offense under Art. 173 § 4 of the Criminal Code and sentenced him to 2 years' imprisonment, not omitting penal and compensatory measures. This judgment was appealed against by the defender of the accused and the representative of the auxiliary prosecutor.

The Court of Appeal examining the above-mentioned cases changed the judgment under appeal. He accepted that S.P.K. unintentionally failed to exercise due caution and caused a threat to traffic safety as a result of falling asleep at the wheel, which caused him to change lane from right to left in a non-signalled and uncontrolled way, and then to make a sharp right turn, which resulted in the loss of vehicle control, the impact on the protective barrier on the right side, and after rebounding from it, the collision with another car in the left lane, as a result of which the vehicle made several turns around its axis and stood transversely to the road. The Court attributed to S.P.K. an act under Art. 86 § 1 of the Criminal Code.

The Court of Appeal admitted that there were no marks of a traffic disaster, although the situation was widely spread in space. There was no time spread of the incident and thus no indication of the extent of the effect. Thus, the Court did not accept the concept of the legal unity of the act, which the District Court had had no doubts about. It was assumed that a few or even a dozen or so seconds elapsed between the incident initiated by the inappropriate behaviour of S.P.K. and the arrival of other vehicles, including the car, the driver and the passenger of which were killed, so one can talk about two separate events. It follows from the above that S.P.K. caused only the, so-called chain collision often occurring on motorways, expressways or in mass city traffic. The Court therefore found that the conduct of S.P.K. was defective up to the point of hitting the crash barrier. Other events on the road were beyond his will and consciousness.

The decision of the Court of Appeal was appealed against with an annulment by the Public Prosecutor General. Despite an incorrectly formulated objection, the Supreme Court, admitted the extraordinary appeal measure. It was observed that the problem lay not only in the assessment of the perpetrator's behaviour in the perspective of the suddenness of the incident and the exclusion from the scope of liability of further effects of the defendant's behaviour, which included the collision of more vehicles and the death of two persons. The Court of Appeal emphasised that it was necessary to consider whether the issue had been only the spatial or also the time extent, which was important in the context of S.P.K. guilt.

The feature of effect extensiveness also indicated the necessity to take into account the time span of

the incident. In terms of the perpetrator's liability, the extensiveness referred both to a single consequence of his behaviour, i.e. violation of traffic safety regulations, and the consequences of such behaviour, including those stretching in time, which was typical for the so-called chain collisions of several vehicles. The perpetrator's behaviour, despite often lying on the foreground of the effects, here was irrelevant from the point of view of the generality and extent. The question was whether the effect was caused at the same time or "in instalments", and even whether its creation, initiated by the perpetrator, was not of a serial nature. And further, the generality of the event needn't have to be influenced by its suddenness. It should be assessed not only from the perspective of perpetrator's behaviour at the time in question but also his overall activities should have been taken into account. Therefore, although it is not an unequivocal circumstance, suddenness can sometimes be an imminent feature of a disaster. This suddenness should be analysed both from the perspective of the perpetrator's behaviour and the development of the course of events, taking into account the projection of each participant. Suddenness, as emphasised by the Supreme Court, is therefore not important in itself, although it may be extremely important from the point of view of the ability to counteract the threat. It should be assessed by taking into account the circumstances of the case, including the location of the disaster, speed limit, traffic volume, visibility and others – but it should not be forgotten that its characteristic feature is unpredictability.

Then, the Supreme Court focused on assigning a traffic "collision" as a single act classified under Art. 173 § 1–4 of the Criminal Code using the concept of the legal unity of the act. He rightly pointed out that the criminal law does not provide for criteria that should be used when assessing whether we are dealing with one act or many. This fragment of activity or passivity is nothing more than a separate fragment of human behaviour distinguished on the basis of the features of a given crime. In order to assess the identity of an act, a reference to a natural act should be used, treated as a segment of a specific continuum, and then analysed in the legal (functional) perspective. The assessment may be based on all criteria formulated in the literature as well as in jurisprudence. It is captured, *inter alia*, through the prism of time-space content, or to put it differently – it refers to the unity of place and time, or the attitude of the perpetrator who aims to achieve the same goal relevant from the point of view of criminal law or to distinguish integrated groups of his activities¹.

The presented discussion directly relates to the range of the perpetrator's actions and the effects caused by them. There can be no objections to the

¹ cf. Supreme Court judgement of 12.10.2011, III KK 145/11, OSNKW 2012, zz. 2, poz. 13; Supreme Court judgement of 26.01.2015, II KK 80/14, unpublished.

views presented, unlike to the assumption that the perpetrator was responsible for the result of the death of two people who deliberately violated the safety rules, by travelling in the car with no seat belts fastened and with an improperly located load. The Supreme Court in some way legalized the incorporation to in the scope of criminal liability causing not only a traffic accident, but also a road accident made of random elements, the occurrence of which the perpetrator had exerted no influence on, had not been able to predict them, and it had been impossible to impose such an obligation on him (more extensive: Pawelec, 2021, pp. 98–101, 484–487 and the literature and jurisprudence provided). This type of problem requires separate pondering upon and going beyond the scope of the commentary. Undoubtedly, however, the existence of the indicated randomness and its inclusion in the sphere of criminal liability compels us to consider the need to change the practice which should impose an obligation on the authorities to determine whether, in the event the mandatory use of specific systems increasing passive safety, a given effect would have occurred.

Another issue is the problem of the defendant falling asleep at the wheel. The Supreme Court treated it marginally despite the fact it was extremely important for criminal liability. The Court observed it seemed unlikely that the defendant would have not realised (had he been able to and should have been able to – note by K.P.) what consequences falling asleep at the wheel of a vehicle may have when driving in high-speed motorway traffic at night. But was the driver's falling

asleep his fault? Can you be guilty of a person who has lost consciousness due to reasons beyond him? We find no answers to such questions, although they may be relevant from the point of view of the possibility of no fault in the light of the content of Art. 31 § 1 of the Criminal Code or the existence of premises under Art. 31 § 2 of the Criminal Code. Unfortunately, no determinations were made in this line although they should have been (more: Pawelec, Krzemień, 2020, pp. 130–141 and the literature and judgments provided).

Finally, the Supreme Court, overturning the judgment under appeal and referring the case to the Court of Appeal for reconsideration, noted that by assuming the incorrect conduct of S.P.K. caused a threat to traffic safety indicated in art. 86 § 1 of the Criminal Code the appellate court had omitted the possibility of analysing the defendant's behaviour also as an exhaustive disposition of an offense under Art. 174 of the Criminal Code. In this matter, the Court of Appeal did not submit any considerations.

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