




# Criminal Liability of Persons Committing Transport Crimes in a State of Intoxication: A Comparative Legal Study

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**Abstract:** The article analyzes the features which can be used as the signs of intoxication in the regulation of transport crimes. *The purpose of the work* is a comprehensive analysis of the options for using the distinguishing features of intoxication in transport crimes provided for by the legislation of the CIS countries, the study of doctrinal provisions on the criminal law significance of intoxication. To achieve *the goal*, the authors set tasks that are due to the peculiarities of the legal standards of criminal laws providing for the responsibility of persons committing transport crimes in a state of intoxication. Namely: identifying typical approaches to the use of intoxication signs in the regulation of transport crimes; considering the most common options for using this sign; studying the features of transport crimes corpus delicti, including the distinguishing features of intoxication of the subject. The use of comparative jurisprudence *method* in combination with general scientific methods made it possible to identify common features of legal regulation, as well as to find discrepancies in the legal positions of legislators of the CIS countries. In the course of the study, it was revealed that there are typical approaches to the use of the sign of intoxication in transport crimes. At the same time, quite specific approaches of legislators were found in terms of the scale of the use of this distinguishing feature, the peculiarities of the structures of traffic crimes, which include the distinguishing features of intoxication of the subject. The results of the study make it possible to expand knowledge of criminal law science, ensure the integration of scientific knowledge about the legal standards of foreign countries, and also contribute to the process of improving the criminal law, improving its quality and adequacy to modern realities.


## 1 INTRODUCTION


We cannot think of modern society without transport. A century ago, the average speed of movement of passenger traffic and cargo was very low. With the development of scientific and technological progress, the transport industry began to develop rapidly, primarily road transport. The speed of movement of people increased actively, the delivery of goods accelerated, and the service sector underwent certain changes. Transport invaded not only megalopolises, but also small settlements. However, with all the visible advantages, the active development of

transport has created a danger to the health and life of people who take part in road traffic.

Legislators began to create legal standards governing the liability of persons who violate traffic rules as long as they realized the need for legal regulation of public relations related to the safe operation of transport. The legislation of the CIS countries is also changing in accordance with changes in public relations, as evidenced by the active rule-making aimed at improving the criminal law and increasing the safety of transport operation. Common historical, cultural, political and legal roots within the framework of the USSR determined the choice of a

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group of precisely the CIS countries, in whose criminal codes the authors identified general legislative solutions, as well as particular features characteristic only for specific countries.

Recently, the topic of liability of persons who have committed crimes in a state of intoxication in a state of intoxication has been relevant (Bezugly, Bazarov, Kostennikova, Lesnikov, Mironuk, 2020; Liu L., Chui WH, Deng Y., 2021; Xiao, Ning, Schwebel, Hu, 2017), and its relevance increases significantly when it comes to drunkenness in transport crimes. In the literature, it is noted that even staying in a vehicle in a state of intoxication can be dangerous (Korobeev, Chuchaev, 2018), and driving while intoxicated is always objectively dangerous.

One can find a large number of works that are devoted specifically to the topic of liability of persons in a state of intoxication and transport managers (Fei, Li, Sun, Qian, Stallones, Xiang, Zhang, 2020; Wintemute, Wright, Castillo-Carniglia, 2018; Chan, Chen, Huang, Peng, 2017). There are also studies examining the effect of drunkenness on driving (Conway, Sokolovsky, White, Jackson, 2020; Larkin, DuPont, Madras, 2018); science is trying to understand exactly the effect of drunkenness on driving quality. Preventive measures aimed at reducing the risks of drunk driving are actively studied (Stelter, Kupersmidt, Brodar, 2019; Burtsev A.A., 2018)

Unless there are a lot of approaches to the study of the influence of intoxication on the commission of a crime, it should be stated that social relations are changing, and the legal standards of criminal law are changing, and this makes us conduct the scientific research that will find, adapt and use positive solutions to the most pressing issues in this area, developed by the foreign countries. For example, the development of medicine and pharmacology also necessitates constant study of intoxication caused by the use of both legal and illegal psychoactive substances and its effect on driving efficiency (Liebenberg, Du Toit-Prinsloo, Saayman, Steenkamp, 2019). Science has already accumulated quite a lot of material on the issues under consideration, but still there are unresolved issues related to the volume of criminalization of transport crimes committed in a state of intoxication, regulation of the distinguishing features of intoxication in transport crimes.

The hypothesis of the study is that in the CIS countries there are different approaches to the use of the distinguishing features of intoxication of a subject in transport crimes, the scale of its use, the peculiarities of its inclusion in certain corpus delicti of transport crimes.

The purpose of the study is to analyze the options comprehensively for using distinguishing features of intoxication in transport crimes provided for by the legislation of the CIS countries, to study doctrinal provisions on the criminal law significance of intoxication.

In accordance with the legal standards of criminal laws regulating the responsibility of persons committing transport crimes in a state of intoxication, the authors set the following tasks: identification of typical approaches to the use of the distinguishing features of intoxication in the regulation of transport crimes, consideration of the most common options for using this sign, study of the structural features of traffic offenses, in which included a sign of the subject's intoxication.

The authors made an attempt to systematize the positive (according to the authors) legislative positions, explain them and thereby provide science with their judgments, which, possibly, will be perceived in related studies.

## 2 MATERIALS AND METHODS

The study was based on a dialectical approach to the disclosure of legal phenomena and processes using general scientific (systemic, logical, analysis and synthesis) and specific scientific methods. Among the latter are formal legal, linguistic and legal, comparative legal, which were used cumulatively to study the texts of criminal laws of 10 post-Soviet countries in order to identify the distinguishing features of the use of the intoxication sign in the criminal legislation of the CIS countries. The choice of this group is due to the commonality of the previous historical development of criminal legislation within the USSR and the equal period of post-Soviet development. This makes it possible to predict, on the one hand, the presence of one-size-fits-all approach to the use of the sign of intoxication in transport crimes, on the other hand, the diversity in the positions of legislators regarding the scale of the use of the intoxication sign, the specifics of the regulation of the offenses of transport crimes that include this sign.

## 3 RESULTS AND DISCUSSION

In the criminal laws of the CIS countries, the legal standards that establish responsibility for the commission of transport crimes by persons in a state

of intoxication are widespread. It should be pointed out that in some codes the sign of intoxication is described not only in *corpus delicti* where cars, trolleybuses and other mechanical vehicles are the target of crime, but also in *corpus delicti* that provide for other types of transport as the target of crime. Thus, in the Criminal Code of the Republic of Belarus, the condition of intoxication or the condition caused by the consumption of narcotic drugs, psychotropic substances, their analogues, toxic or other intoxicating substances is a qualifying feature in violation of traffic safety rules or the operation of small craft. The Criminal Code of the Republic of Kazakhstan fixes the feature of intoxication in crimes where the target is air, sea and other vessels, and also indicates this sign as criminally forming in the legal standard for driving combat vehicles, warships, and controlling military aircraft. We can get the impression that the legislator wanted to cover the most complete list of acts that are related to transport, including military equipment. Taking into account the fact that the new Criminal Code of the Republic of Kazakhstan was adopted in 2014, the legislator had certain ideas about the need to criminalize some of the compositions regulating the liability of persons in a state of intoxication. We believe that this is due to certain resonant precedents, forcing to expand the scope of criminal law regulation.

In the last decade, the sign of intoxication has begun to be used quite actively as a constructive sign of an independent *corpus delicti*. Considering this issue, it is necessary to indicate the prejudicial *corpus delicti*.

The Criminal Code of the Russian Federation contains Art. 264.1, which provides for liability for driving a power-driven vehicle in a state of intoxication by a person who has been subjected to administrative punishment for driving in a state of intoxication or has a conviction for certain crimes committed in a state of intoxication. In our opinion, there is certain fairness in this approach. By bringing a person to administrative responsibility, the state does not apply the repressive apparatus that criminal legislation presupposes. We can say that a person is warned about the inadmissibility of such behavior. However, if by repetition of the act he confirms the impossibility of his correction by other means (often by administrative law), then it is necessary to use the potential of criminal law. Repeated deliberate commission of an offense by a person who has been subjected to administrative punishment or who has an unexpunged or outstanding conviction is characterized by an increased degree of danger to society and should be recognized as a crime

(Yelizarova, Sharipova, 2020). Although at present the government commission on legislative activity has approved a bill to add part two to Article 264.1, where the sanction for re-committing the main *corpus delicti* will presumably be toughened. In 2020, the share of persons who committed repeated violations of Article 264.1 was 20 percent, in 2019 - 15, and in 2018, of all convicts, only one in ten got drunk, having already been convicted of such a crime.

The legislator of the Republic of Belarus also used *res judicata* in the construction of Art. 3171, which stipulates responsibility for "driving a vehicle by a person in a state of intoxication, transferring control of a vehicle to such a person, or refusing to undergo an inspection (survey)". It is important to note that in this legal standard there is an aggravation that provides for increased punishment for persons who have previously committed this crime. We believe that the legislator of the Republic of Belarus acted more far-sighted, providing for the repetition of such crimes.

The Criminal Code of the Republic of Kazakhstan in Article 346 provides for a rule that is built on the sign of "intoxication", namely: "driving a vehicle by a person deprived of the right to drive vehicles and being in a state of alcohol, narcotic and (or) toxic intoxication, as well as transfer driving a vehicle to such a person or admitting such a person to drive a vehicle". Here it is necessary to have two conditions at once: the person must be deprived of the right to drive vehicles; the person must be intoxicated. In accordance with the Code of the Republic of Kazakhstan on Administrative Offenses, a person may be deprived of the right to drive vehicles not only for driving while intoxicated, but also for a number of other offenses. From this we can conclude that the approach used in Art. 346 are more universal and broader than approaches using only administrative precedence for specific offenses. In our opinion, this can be recognized as a positive experience. Any offense sanctioned by deprivation of the right to drive a vehicle poses a significant public danger, and therefore driving in a state of intoxication after the deprivation of rights becomes even more dangerous and requires a criminal response.

The legislator of the Azerbaijan Republic used "intoxication" as an alternative criminogenic feature in an independent *corpus delicti*: "violation of traffic rules or operation of vehicles by a person who is intoxicated or does not have the right to drive vehicles", provided for in Art. 263-1. It should be noted that this *corpus delicti* is special in relation to the *corpus delicti* that regulates liability for "violation of traffic rules and vehicle operation".

In the criminal legislation of the CIS countries, there are also approaches to the criminalization of transport crimes, depending on the degree and nature of intoxication. The Criminal Code of the Republic of Moldova contains article 264-1, which stipulates responsibility for "driving a vehicle under the influence of alcohol or intoxicated by other substances". The recognition of an act as a crime directly depends on the degree and nature of intoxication. So, driving in a state of light alcohol intoxication (the condition of a person with a blood alcohol concentration of 0.3 to 0.5 g/l or an alcohol vapor concentration in exhaled air from 0.15 to 0.3 mg/l) does not entail criminal liability. But driving in a state of strong alcohol intoxication (the condition of a person with an alcohol concentration in the blood of 0.5 g/l and above or the concentration of alcohol vapors in the exhaled air from 0.3 mg/l and above) or a state of intoxication caused by drugs and/or other substances causing intoxication immediately entails criminal liability. In such a legislative approach, one can immediately notice the differentiation of the social danger of various states of intoxication. In our opinion, this is absolutely fair and correct, as evidenced by scientific studies that show a direct link between an increase in the concentration of alcohol in the blood of drivers and an increased risk of a car accident (Ballin, 1986). Analyzing Article 264-1 of the Criminal Code of the Republic of Moldova, it is important to note that it provides for increased liability for persons driving a vehicle under the influence of alcohol or intoxication caused by other substances and who do not have a driver's license or are deprived of the right to drive vehicles.

In general, the use of the distinguishing feature of intoxication in the criminal legislation of the CIS countries in the design of transport crimes has many variations. Liability for the transfer of a vehicle to a person in a state of intoxication is quite widespread in the criminal legislation of the CIS. The compositions describing this act are diverse in their characteristics and the most optimal (in our opinion) legislative decisions should be indicated. First of all, we have to mention the Criminal Code of the Republic of Moldova, which stipulates responsibility for "deliberate transfer of driving a vehicle to a person who is knowingly intoxicated, if this entailed consequences ..." It is very appropriate, in our opinion, to indicate the deliberate transfer of transport control, which emphasizes the directionality of the person's intent. An important feature is the sign of "knowingness", which avoids objective imputation. In general, such a legal standard meets the requirements of a modern fair criminal law, which

allows taking into account all the nuances of a committed act, recognizing it as criminal or not recognizing it. Quite often, in such crimes, legislators mention officials (the Criminal Code of the Republic of Kazakhstan), persons responsible for the operation of a vehicle (the Criminal Code of the Republic of Uzbekistan). It should be pointed out that the use of such rules is very reasonable. The fight against drunk driving should be carried out not only in the framework of the influence on the persons directly driving the transport, but also measures are needed to influence the persons who create the conditions for such behavior. When criminalizing such crimes, legislators, as it were, warn directly a dangerous form of behavior - driving in a state of intoxication.

The classic approach to the use of the sign of "intoxication" in the legislation of the CIS countries is to consolidate it as an aggravating circumstance in comparison with the main corpus delicti of a transport crime. This approach is used in the Criminal Codes of the Russian Federation, the Republic of Tajikistan and other codes.

Modern studies illustrate the detrimental effect of alcohol intoxication on the spatial distribution of visual attention (Do Canto-Pereira, De PA David., Machado-Pinheiro, Ranvaud, 2007), its effect on the impairment of control of body movements (Modig, Fransson, Magnusson, Patel, 2012) At the same time, various psychoactive substances (both legal and illegal) can negatively affect driving efficiency and increase the likelihood of a road traffic accident.

## 4 CONCLUSIONS

To sum up the results of this study, it should be said that all the criminal laws of the CIS countries use the sign of "intoxication" in crimes related to transport. However, the scale of the use of this feature is different in all codes. Some legislators try to include the sign of "intoxication" in the vast majority of rules related to transport management (the Criminal Code of the Republic of Kazakhstan), and in some laws this sign is used only in one norm (the Criminal Code of the Republic of Uzbekistan).

The analysis of the criminal laws' texts of the CIS countries made it possible to identify the most common variants of the use of the sign "intoxication". It is very often used as a criminogenic feature. In turn, the rather long period of the sovereign development of the CIS countries determined the differences in the regulation of transport crimes, including the sign of intoxication. So, driving in a state of intoxication can be considered a crime if such behavior is repeated

(Criminal Code of the Russian Federation), provided that a person is deprived of the right to drive transport and drives it in a state of intoxication (Criminal Code of the Republic of Kazakhstan), when driving in a state of intoxication of a certain degree and character (Criminal Code of the Republic of Moldova).

In the course of the study, it was revealed that a number of criminal laws of the CIS countries criminalized the transfer of a vehicle (transfer of control of transport) to a person in a state of intoxication. In such compositions, special subjects are often indicated. We believe that the use of such norms is very justified in view of the fact that the fight against drunk driving should be carried out not only within the framework of influencing the persons directly driving the transport, but also measures are needed to influence the persons who create the conditions for such behavior. Based on the fact that it is not always possible to determine whether a person is intoxicated, such norms should be described in detail, pointing out the subjective signs of a crime.

In the considered group of countries, intoxication is often encountered in the material composition of transport crimes. Sometimes the sign of the subject's intoxication is used as an aggravating circumstance in comparison with the main corpus delicti of a transport crime, and sometimes it is used as an independent corpus delicti.

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