

LÁSZLÓ VISKI

ROAD TRAFFIC OFFENDERS AND CRIME POLICY

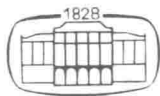
Akadémiai Kiadó, Budapest



ROAD TRAFFIC OFFENDERS AND CRIME POLICY

By

LÁSZLÓ VISKI



Akadémiai Kiadó, Budapest 1982

The original
Közlekedési büntetőjog
published by Közgazdasági és Jogi Kiadó, Budapest

Translated by *J. Decsényi*
Translation edited by *Denis Szabó*,
Int. Centre for Comp. Crim., Univ. of Montréal

English edition arranged for publication
by
Á. Erdei, Eötvös Loránd University, Budapest

ISBN 963 05 2841 X

© Akadémiai Kiadó, Budapest 1982

Printed in Hungary
Akadémiai Nyomda, Budapest

CONTENTS

Foreword	7
Chapter One	
Road traffic as a problem of criminal law	9
Chapter Two	
Motor vehicle driving and criminal punishment	33
1. On motor vehicle driving and sanctioning in general	33
2. Influencing the driver by sanctions	37
3. Traffic offence and criminal sanction	63
a) Traffic offences and morality	64
b) Traffic offences and unlawfulness in administrative law	75
c) Instead of decriminalization: correct categorization	81
Chapter Three	
Traffic offences and crime policy	91
A) Ends and means	91
1. The aims of punishment and the violations of traffic regulations	91
2. The kinds of sanctions	98
a) The nature of sanctions	98
b) Loss of freedom	101
c) Fines	105
d) Other sanctions	107
e) Measures	112
B) Violations of traffic regulations and loss of freedom	113
1. Causing grave consequences through negligence	113
2. The endangerment conception	131
a) Direct danger as a result: negligent and intentional endangerment	131
b) Abstract endangerment	138

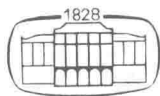
3. Personality traits and the violation of regulations	143
a) Accident-prone types?	143
b) 'Conspicuous' personalities; psychopaths	146
4. Types of violators	153
C) Summary and recommendations	161
Abbreviations	173
Literature	175
Additional literature	201
Index	203

**ROAD TRAFFIC OFFENDERS
AND CRIME POLICY**

ROAD TRAFFIC OFFENDERS AND CRIME POLICY

By

LÁSZLÓ VISKI



Akadémiai Kiadó, Budapest 1982

The original
Közlekedési büntetőjog
published by Közgazdasági és Jogi Kiadó, Budapest

Translated by *J. Decsényi*
Translation edited by *Denis Szabó*,
Int. Centre for Comp. Crim., Univ. of Montréal

English edition arranged for publication
by
Á. Erdei, Eötvös Loránd University, Budapest

ISBN 963 05 2841 X

© Akadémiai Kiadó, Budapest 1982

Printed in Hungary
Akadémiai Nyomda, Budapest

CONTENTS

Foreword	7
Chapter One	
Road traffic as a problem of criminal law	9
Chapter Two	
Motor vehicle driving and criminal punishment	33
1. On motor vehicle driving and sanctioning in general	33
2. Influencing the driver by sanctions	37
3. Traffic offence and criminal sanction	63
a) Traffic offences and morality	64
b) Traffic offences and unlawfulness in administrative law	75
c) Instead of decriminalization: correct categorization	81
Chapter Three	
Traffic offences and crime policy	91
A) Ends and means	91
1. The aims of punishment and the violations of traffic regulations	91
2. The kinds of sanctions	98
a) The nature of sanctions	98
b) Loss of freedom	101
c) Fines	105
d) Other sanctions	107
e) Measures	112
B) Violations of traffic regulations and loss of freedom	113
1. Causing grave consequences through negligence	113
2. The endangerment conception	131
a) Direct danger as a result: negligent and intentional endangerment	131
b) Abstract endangerment	138

3. Personality traits and the violation of regulations	143
a) Accident-prone types?	143
b) 'Conspicuous' personalities; psychopaths	146
4. Types of violators	153
C) Summary and recommendations	161
Abbreviations	173
Literature	175
Additional literature	201
Index	203

FOREWORD

Traffic criminal law had very much occupied László Viski's academic interest for many years before he died. The purpose of this book is to present his views on traffic criminal law and crime policy based on studies, empirical and theoretical, covering more than ten years. His earlier work, published in Hungarian, forms the basis of this book, which has been specially revised for the English-speaking reader.

Before his untimely death the author had revised the Hungarian edition as a preparation for the English one, leaving out certain parts and rewriting and updating others. For the English edition he did not wish to publish certain chapters of the original, considering them to be conceptually almost impossible to translate into a legal linguistic framework that would make sense outside the areas where it applied; in those chapters he had discussed traditional theoretical issues of criminal law, following traditional methods, seeking to apply them to traffic criminal law. Nevertheless, some elements of those chapters are included that the author had considered absolutely necessary to describe the foundations of his ideas. At the same time, all the ideas presented in the earlier work as well as the summary of the theoretical accomplishments serving as a foundation for his ideas, have been retained and developed for the English edition. These are ideas which may be of interest to readers generally, as they are independent of legal systems and of those specific features of traffic criminal law that vary from one country to another. The book clearly reflects Viski's belief that a scholarly view should be firm but not rigid and must be amenable to change and development if demanded by theory or empirical fact. The firmness of his views is ensured by scholarly thoroughness, for in developing his ideas Viski made use of all relevant achievements in appropriate disciplines and checked the validity of his conclusions; flexibility is guaranteed by his respect for reason and scholarly discipline; he was always ready to reconsider his views where new theories or empirical findings cast doubt on earlier conclusions. Traffic, and, consequently, disciplines concerned with traffic, develop at a relatively rapid pace and traffic criminal law does follow these changes, though somewhat more slowly, and the course of its changes is defined by criminal policy. Even so, sound scholarly conclusions drawn after careful consideration are not immediately made obsolete even by rapid changes and this is especially true of Viski's book. All this is not achieved by stating generalities which could be

interpreted as abstract, eternally valid truths; on the contrary, it is achieved by specific relevant proposals. These deserve the close attention of the makers of criminal policy for a long time to come.

The author's long illness and subsequent death prevented him from completing the preparation of the English edition. This was the principal reason for the book not going to press as quickly as he and the publishers would have wished.

It was an honour for me to have been asked to bring this work to completion on behalf of László Viski, yet it was at the same time a task full of sadness.—I have not added anything to his manuscript. I have merely supplied a few explanatory notes to clarify concepts that might be unfamiliar to English-speaking readers and have included some works in the bibliography that the author would have added—judging by his notes; these are mainly authors he had referred to earlier. Thus, I have limited my contribution to technical tasks in order that the merit of László Viski's work may be fully appreciated.

Árpád Erdei

ROAD TRAFFIC AS A PROBLEM OF CRIMINAL LAW

Barely three quarters of a century has elapsed since the first noisy, evil-smelling, primitive and slow-moving motorized vehicles made their appearance on the public highways. Pedestrians, terror-stricken at the sight of the drivers and the 'monsters' they drove, could hardly foresee that motoring growing at a tempestuous speed out of modest beginnings to a world-phenomenon, would not only change the physiognomy of modern society fundamentally as one of the most characteristic components of the scientific-technological revolution, but would also become a hitherto unknown problem of the administration of justice, and, last but not least, of criminal law. And it is precisely this that has happened.

The 'entry' of the motor car problem into law, like that of other factors, was neither unwonted nor spectacular. Law, in its slow but reliable way, responded in almost a wholly natural manner to the phenomenon newly entering the scene of social human coexistence, i.e. the motor car, or more accurately, to its undesirable or supposedly undesirable social effects. The first forms of regulation were restrictive ones: the authorities thought to retard a development that could not be arrested by warning-signs. If we keep the revolutionary novelty of the appearance of the automobile in mind, the almost immediate proliferation of prohibitions and warnings seems self-explanatory. Society responded in a characteristic manner to the novelty: with terror, indignation and protest. These manifestations of the public were often but the camouflaging of the envy of people who did not own a car. 'Many preached an unrelenting warfare against the motor cars and their drivers: they threw stones at the cars, punctured the tyres, and the driver and his passengers were lucky when only water was poured on them . . .'¹ Irrespective of the causes that prompted it, the protest was a moving force to the extent that it triggered off a number of restrictive regulations which the legislation and judicial practice instituted against the users of motor vehicles. In the wake of the panic provoked by the first appearance of the automobile, the regulations governing horse-drawn carriages and other non-motorized vehicles, i.e., regulations substantially codifying established customs, came to be

¹ Bálint, Sándor: Az első autók a pesti utcán (The first cars in the streets of Pest), *Élet és Tudomány* 1971, No. 32, pp. 1518–1523.

applied also to motor cars. In this way, for the purpose of the primitive traffic rules, the words 'carriage' and 'vehicle' came to be identified with the motor car and the words 'coachman' or 'waggoner' with the 'driver'. Although this identification obviously could not continue to serve, the recognition that special regulations were needed for the peculiarities of automobile driving only came about slowly. Legislation lagged far behind the pace of life. Soon it became clear that the regulations 'tailored' to hand- or horse-drawn vehicles were by themselves inadequate; first of all, because of their nature, these rules could not take into account the two fundamental properties of the motor car which mainly elicited the anger of the public, viz., the high speed and the even greater noise. The annual report for 1900 of the Chief of Police of Budapest included the following passage: 'Although the number of motor cars has increased considerably during the past year, there is not yet need for authoritative measures. However, owing to their high speed, sooner or later they will have to be brought under regulation. Incidentally, complaints have been made against motor cars on highways crowded with carriages or roads used for pleasure drives.'²

The first restrictive regulations specially meant for motor cars therefore defined the highest permitted speed and characteristically, almost without exception, incorporated the 'horse-shying' clauses. In the beginning the authorized highest speed was far from being realistic³ and the restrictions, of course, were not observed.⁴ The spirit of the initial years, so hostile to automobiles, however, produced even odder clauses.⁵

As for administrative regulation, technical progress in Hungary found a firm framework. Act I of 1890 on public highways and tolls, not actually going beyond the notions of horse-traction, yet with prudent foresight speaking of 'vehicle' traffic, provided for skeleton regulations adaptable to motorized traffic. The earliest drivers of motor cars within the downtown districts of towns and communities had to content themselves with recourse to yet earlier statutory regulations 'in accordance with their meaning'. According to § 124 of the Act, 'in towns or in other communities, for petty

² Quoted by Bálint, loc. cit.

³ The first speed limiting provisions in the United States, in the State of Connecticut, in 1901 authorized a maximum speed of 12 mph in the urban areas and 15 mph, on the highways. In Hungary the first speed regulations were issued in 1901. According to that cars could not be driven at a speed higher than that of bicycles. According to §§ 44 and 50 of decree No. 57000/1910 of the Minister of the Interior, the speed of motor cars had to be lowered to that of horse-drawn carts at walking pace at 'street crossings and on crowded roads'.

⁴ Although the Criminal Court of Budapest, in a judgment of 1923, mentioned a car driven at a speed of 35 to 40 kilometres per hour instead of the authorized 25 kilometres as one driven at an 'enormous speed', and in another judgment of 1926 as one running at a 'terrific speed', already in the same year the highest instance of the judiciary had to admit that the regulations setting the speed limit were out-of-date and even the police authorities did not enforce them too rigorously. Cf. Sándorfi, p. 36.

⁵ In particular, the union states of the United States of America could be proud of regulations imbued with a hostile spirit: in Cleveland, a fine of 5 dollars could be imposed on the motorist for each drop of oil left on the road on the plea of the protection of public highways. The State of Utah decreed that when using the public highway the driver of a car had to give the right of way to the birds. Cf. Fisher, p. 42.

offences likely to occur upon the infringement of rules relating to the obstruction or hampering of free traffic, further to driving, riding, joy-riding, sleigh-riding and the prevention of the escape of horses, the provisions of §§ 119 and 120 of Act XL of 1879 shall be observed'. And this provision, within a fairly wide sphere threatened the punishment of those acting contrary to the regulations: 'Whosoever in towns or in other communities, through speedy or careless driving or riding, endangers the person or property of others . . . shall be liable to incarceration not exceeding three days, or in the event of recidivism, one month.' (§ 120 of the Code of Petty Offences.) In addition to the regulations governing 'pleasure drives', other provisions applicable to the driving of a motorized vehicle were also soon consolidated in a single regulation, first as decree No. 57,000/1910 of the Minister of the Interior. Later, decree No. 250,000/1929 of the Minister of the Interior provided facilities for filling the still extant skeleton rules with content.

This kind of legal development was characteristic not only of administrative regulation. Penal law, too, confronted the woeful concomitant phenomenon of motoring, viz., 'the novel mode of injury' to human life and bodily integrity, by recourse to the available skeleton regulations. The first punitive judgments inflicted punishments on motor car drivers mainly for causing 'public scandal', and this, too, on grounds fraught with contradictions. In the years at the turn of the century, when within ten years in the USA the number of motor cars rose from eight thousand to half a million, the courts established the liability of motor car users sometimes declaring: 'it is well known that automobiles generate a terrifying noise and the frightened animals in their flight cause the injury or death of innocent people', and sometimes stating that 'automobiles move noiselessly and their drivers have to permanently pay special attention to avoiding collision with pedestrians who cannot realize that a vehicle approaches them'. Also it was in this early phase of development that the recognition of motoring as a 'hazardous activity' gained more or less general acceptance, and also that the first drivers causing accidents were convicted of manslaughter or bodily injury.⁶

In Hungary, too, traffic accidents became one of the things regulated by penal law, as it was all over the world. Nor was it a change harbingering the opening of a new era in the history of Hungarian criminal law, and even less some sort of new invention, when with the appearance of the motor vehicle, this miracle of technology, the 'drivers' of steam-operated, then of petrol-operated vehicles had to answer for 'careless driving' before the criminal court. Here, too, technological progress found ready-made forms. For centuries criminal law had been able to rely on established categories, and the well-polished notions of negligence could be applied without any difficulty to the drivers of motorized vehicles in the same way as they were to make the predecessors of the motorists exercise special care in driving their more primitive vehicles. Thus in Hungary, too, the statutory definitions of homicide or bodily injury by negligence offered themselves for application in the domain of traffic. All that had to be done

⁶ Cf. Fisher, pp. 6–7 and 15–18.

was to become acquainted with the new concepts of technology and integrate them into the existing framework. It did not take too long. As early as in 1905 the supreme organ of the Hungarian judiciary, the Royal Curia, already held that 'it weighs heavily when the driver is drunk or exhausted, for in such a state he must not undertake driving'.⁷ A few years later, in a decision dealing with the increased liability of the driver of a vehicle, the Curia held that 'in view of the great danger easily to be foreseen and caused by the speedy progress of the motor car and the unusual harshness or power of the warning horn signals used on it, through shying animals harnessed to other vehicles, the persons driving a motor car are obligated to exercise the utmost care in slowing down the car and in the sure handling of the horn signals'.⁸ It was before long, too, that the notion of qualified negligence, or so-called industrial culpa came to be extended to the profession of motor car drivers: after a period of initial uncertainty, barely fifteen years later the Curia unambiguously held that 'the negligence of the motor car driver is industrial culpa even in the case that he did not practice motor car driving permanently or by profession, provided, however, that he was a trained driver and in possession of a driver's licence'.⁹

It would, however, be a grave error to believe that only some sort of a mechanism immanent in the application of criminal law or the lack of imagination on the part of the legislator—his ignorance of the possibilities of other means of social control—accounted for the genesis of the 'traffic penal law'. The lay public and representing it, the press, were vociferous for judgment and prison, when they became aware of the increasing risks encountered on the highways. The tenor of an article published in a periodical in 1930 is characteristic of the attitude of the public and press: 'Of all services violently putting an end to the lives of their fellow-men, undoubtedly the motorists have the lead. It is easy for them to act in a devil-may-care manner, because the statutory provisions are mild to a degree that the consequences of a motor car massacre may be got over at the expense of a few thousand pengoes or a few weeks' prohibition of driving. When these statutory provisions had been formulated, in all likelihood nobody believed that before long the motorists in Budapest would every day dispatch a person to the other world. The situation has since become critical, the street has since become a lethal danger . . .'.¹⁰ Is it in any way surprising that already half a century ago, no book could be written on 'modern criminality' without making mention of traffic offences? The pessimism of the tenor of the passage taken from a contemporaneous work perhaps deserves being quoted: 'Bodily injury and homicide by negligence occur mostly in manufacturing plants and also owing to the use of the means of transport The number of traffic accidents grows in a direct ratio with the growth of the number of vehicles. The greater the traffic, the greater the number of

⁷ Policy-making decision No. 292, 1840/1905; quoted by Bán, Kálmán p. 11.

⁸ Judgment No. C. 3352/1910

⁹ Judgment No. C. 9001/1926

¹⁰ 'Krónikás': Autóanarkia (Chronicle: Motor anarchy), *Új Idők* November 2, 1930, Vol. 36, No. 45, p. 570.