

The Role of the Public Prosecutor in Criminal Proceedings Against Unsafe Road Traffic Control

Associate Professor Dragan Obradović, Ph.D.¹

Abstract

Traffic accidents occur around the world on a daily basis, the situation being the same in the Republic of Serbia. In most cases, the behavior in drivers in traffic and their omissions are the causes of traffic accidents. In this paper, we presented the criminal offense of unsafe road traffic control, and, although it exists in the Criminal Code provisions, it rarely occurs in practice, and even rarer are criminal proceedings against traffic controllers due to omissions in road traffic control, especially in terms of road traffic signalization. We focused on the role of the public prosecutor in carrying out the investigation of traffic accidents, and the need to recognize in these procedures the omissions of not only the drivers but also other traffic participants, as well as the omissions of the traffic controllers, so as to accordingly initiate and conduct criminal proceedings against traffic controllers.

Key words: *traffic accidents, investigation, public prosecutors, traffic signalization, traffic controller.*

1. Introduction

Traffic accidents occur around the world on a daily basis, the situation being the same in the Republic of Serbia. Most often, these are traffic accidents with pecuniary damage that, according to their features, are misdemeanors from the area of public transport safety. There are, however, traffic accidents which result in injuries or death which, according to their features, are criminal offenses, whereupon the participants in the traffic accident are mostly known. In addition, a number of traffic accidents occur with no known perpetrator, due to the driver leaving the crime scene.

After a traffic accident, the officials who perform the investigation, mostly the police, arrive at the scene, much less often the competent public prosecutors. In the pre-investigative procedure, in accordance with the provisions of the Criminal Procedure Code² (hereinafter: CPC), appropriate evidence is collected and a decision made whether criminal proceedings are to be initiated, and also, which type – a misdemeanor or criminal offense.

The criminal proceedings are initiated against one of the drivers, as in Serbia it is almost unthinkable that another traffic participant is responsible for the occurrence of a traffic accident, especially a traffic controller. There are rare examples of initiating

¹ High Court Judge in Valjevo, Serbia, Assistant Professor at the Faculty of Health, Legal and Business Studies, Singidunum University, E-mail: dr.gaga.obrad@gmail.com.

² Code of Criminal Procedure, Off. Gazette of the Republic of Serbia, nos. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014. – Article 43: Rights and duties.

criminal proceedings against traffic controllers after the investigation, due to committing a criminal offense of unsafe traffic control referred to in Art. 295 of the Criminal Code³ (hereinafter: CC). This is rare even in the course of an investigation conducted against one of the drivers, even if the results of a road traffic accident investigator report on the causes of traffic accidents (especially with regard to a criminal offense of endangering road traffic from Art. 289 of the CC and a grave criminal offense against the safety of road traffic referred to in Art. 297 of the CC) indicate that the omissions of road traffic controllers are causally linked to the occurrence of a traffic accident. Traffic controllers are persons in charge of maintaining roads or monitoring the work of professional drivers.

The reason for this stance is unremitting official data, both older and newer, which indicate that this criminal offense from the group of criminal offenses against public transport safety, whether in a basic or qualitative form, is an extremely rare judicial practice.⁴ The above data indicate that in court practice, the number of initiated and conducted criminal proceedings against traffic controllers is negligible, and the number of legally convicted persons for this criminal offense is practically on the level of statistical error, which some authors have analyzed.⁵ Also, the media has written about this.⁶

Therefore, it is justifiable to assume that the criminal offense of unsafe traffic control is has a negative rating, especially in relation to bus and freight traffic and road maintenance operations. This is where the issue of active measures carried out by a competent public prosecutors is relevant, who, at different stages of the criminal proceedings, from the pre-investigation procedure and during the investigation of a particular traffic accident should identify not only the omissions by drivers, but also those by different categories of traffic controllers, *i.e.* a particular company which has contributed substantially to the cause of a traffic accident. Consequently, we investigate

³ Criminal Code, Off. Gazette of the Republic of Serbia, nos. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/16.

⁴ Judicial statistics - adult criminal offenders no. 194 dated July 1, 2010, Republic Institute for Statistics and Informatics of the Republic of Serbia for the period 2005-2009: of 8,140 filed criminal charges for all criminal offenses in this group – 8,076 criminal charges referred to three criminal offenses – endangering traffic in the primary or qualified form, endangering traffic by dangerous acts and dangerous means and failing to assist persons injured in a traffic accident. Of a total of 6,552 indictments issued for all criminal offenses in this group – 6,502 indictments related to these three offenses. Of a total of 6,035 convicted persons during 2009, some 5,997 persons were convicted of all three criminal offenses in this group.

Statement of the Statistical Office of the Republic of Serbia no. 192 dated July 15, 2015 - Judicial Statistics: adult criminal offenders in the Republic of Serbia, 2014: of 7,439 filed criminal charges for all criminal offenses in this group, only 18 criminal charges referred to the offense of unsafe traffic control. Of that number, only 3 persons were indicted, and 2 persons were convicted in 2014 for the criminal offense of unsafe traffic control in the all courts on the territory of the Republic of Serbia.

Statement of the Statistical Office of the Republic of Serbia no. 194 dated July 14, 2017 - Judicial Statistics: adult criminal offenders in the Republic of Serbia, 2016: of a total of 7,805 criminal charges filed for all criminal offenses in this group, only 7 criminal charges referred to the offense of unsafe traffic control. Of that number of criminal charges filed for this criminal offense, only 1 person was convicted in 2016 for the criminal offense of unsafe traffic control in all the courts on the territory of the Republic of Serbia.

⁵ Stojadin Jovanović, Jovica Vasiljević, The criminal offense of unsafe traffic control in the period 2005-2009, Collection, 14th International Scientific Congress Synergy, 2013, 341.

⁶ <http://www.novimagazin.rs/vesti/rulet-na-drumovima/0/medeljni79>, preuzeto dana 22.7.2016.

the possibility at their disposal of initiating and conducting criminal proceedings against traffic controllers as well as traffic participants for unsafe traffic control.

Due to a limited scope of work, special attention will be paid to the aspect of traffic signalization in view of the important novelties in the regulations related to this area - adopted first in December 2014, after the five-year application of the still valid Law on Traffic Safety, and then in September 2017.

Another motive for writing this paper is the recent tragic event in which two people died when a driver of a passenger vehicle with foreign registration plates misread traffic signalization and signs that led to him turning towards the unopened part of the motorway⁷ and hitting a concrete barrier on the 12th kilometer section after the termination of the motorway.

2. The main features of the criminal offense of unsafe road traffic control

We deem it necessary to present this criminal offense in the shortest time possible, as well as its special features.

The first special feature of this criminal offense is that it is a *delictum proprium* offense, i.e. the **perpetrator** can only be an official or a person entrusted with supervision. The concept of an official and responsible person is defined according to Art. 112, para. 3, or para. 5 of the CC. An official person is a legal executor of the basic form of this criminal offense from the beginning of the application of the Criminal Code. However, in judicial practice, different categories of persons responsible dominate as perpetrators of these crimes (managers, conductors, railway workers, etc.).⁸

The CC foresees two forms of misconduct. In the first case, the perpetrator of the criminal offense may be an official and authorized person, and in the second case only an authorized person. Regarding the authorized person as the perpetrator, the difference is only in the nature of the responsibility of the authorized person who acts irresponsibly within these two forms of misconduct.

The execution of the first form of offense (from para. 1) consists in unsafe traffic control in its different manifestations: in relation to the condition and maintenance of roads and facilities, means of transport or public transport, realization of the given driving conditions, or unsafe driving. The execution is of a blanket character, since the responsibility of control and the contents of that responsibility, as well as the authorized and official persons are stipulated by appropriate road traffic regulations (by-laws and internal regulations). Therefore, the official and authorized person, their supervisory powers and the failure to perform them are determined in each specific case. This offense can be committed in both ways: by non-acting or acting.

The execution of the second form of offense (from para. 2) consists in issuing a driving permit to a driver who, due to fatigue, the influence of alcohol or other reasons,

⁷ <http://www.blic.rs/vesti/hronika/automobilom-se-zakucalo-u-betonsku-barijeru-dve-osobe-poginule-na-neotvorenom-delu/yb3t3b9>, downloaded on Nov. 12, 2017: Two people were killed, while the driver of the car received multiple injuries in an accident that occurred around 4 a.m. on the unopened section of Corridor 11 from Lajkovac to Ub.

⁸ Bora Čejović, Criminal law in court practice – book two, special part, Yugoslav Institute for Work Productivity, Belgrade, 1986, 940.

is not in a position to operate a vehicle in a safe manner, or issuing a registration for a defective vehicle. The legal description also uses a general clause (other reasons for which the driver is not able to safely operate a vehicle), which means that the authorized person issued a driving permit or allowed a vehicle to be operated by an unfit driver, or a person who is in a depressed mental state or a particular affective state, or under the influence of certain drugs.⁹

There is also an unusual example from previous court practice in which a driver who allowed a bus conductor to operate the vehicle was found guilty and punished for the criminal offense referred to in Article 295, para.2 of the Criminal Code.

Example 1. “The defendant acting as a responsible person entrusted with the handling of the vehicle permitted the conductor to operate the bus, although being aware that he was not in a position to safely do so, since in addition to his driving license to drive a certain vehicle category, he was also to be subjected to a medical exam. In the established actions of the defendant, there all the features of the criminal offense of unsafe traffic control referred to in Art. 199, para. 2 in regards to para. 1 of the CPC.”¹⁰

The consequences of both forms of offenses are a danger to the life or the health of people or property on a large scale.¹¹

With regard to the **form of guilt**, the offense referred to in para. 1 can be executed with intent or from negligence, and only by intent in para. 2. In order to have intent directed at the execution of the offense from para. 2, it is necessary that the authorized person possessed knowledge that the driver or vehicle were not in a state to drive or be driven safely, and that, despite this knowledge, the operation was approved. This subjective element of the crime indicates an awareness of the perpetrator of the offense of these circumstances and his consent to cause danger to traffic, so that this form can be executed only with intent, which is very clearly pointed out in the above example when the driver allowed the conductor to drive even though he was unable to safely operate the vehicle.

If the authorized person had no knowledge that the driver was unable to drive safely or that the vehicle was not working properly, this form of criminal offense is not applicable, but there may be an offense from para. 1 whereupon the authorized person was required, before giving approval, to check the driver's suitability but failed to do so.¹² In addition, a negligent performing of a duty by the authorized person does not exclude the responsibility of another authorized person who has also acted improperly, when the offense appears as a consequence of their joint action, and thus, each of them is responsible for their actions.¹³ Therefore, court practice raised the issue of the responsibility of several persons for the alleged omission, and thereby it was considered

⁹ Nikola Srzentić, Stajić, A., Kraus, B., Lazarević, LJ., Đorđević, M., A commentary of the Criminal Code of the SR of Serbia, SAP Kosovo and SAP Vojvodina, Savremena Administracija, Belgrade, 1986, 622.

¹⁰ Verdict of the District Court in Belgrade, CC 1532/91 and the verdict of the Fifth Municipal Court in Belgrade K.1679/89, Intermeks court practice database.

¹¹ According to the legal understanding of the Criminal Department of the Supreme Court of Serbia on April 17, 2006, large-scale property is considered property whose value exceeds the amount of 1,200,000. dinars. This legal interpretation is still in place.

¹² Nikola Srzentić et al., op. cit., 622- 623.

¹³ Ljubiša Lazarević, CC Commentary, Savremena administracija, Belgrade, 2006, 741.

that it could be a matter of coincidental negligence,¹⁴ which is especially present when it comes to rail transport.

Para. 3 stipulates the negligent form but only in relation to the basic form of this criminal offense.

The criminal offense of unsafe traffic control refers to all types of traffic except air traffic, since these offenses are stipulated in the criminal offense of endangering the safety of air traffic (Art. 291 CC).

3. Certain regulations significant for traffic controller responsibility

The most important traffic regulations which mention a traffic controller, the obligations and responsibilities in certain situations are the Law on Road Traffic Safety¹⁵ (hereinafter: LRTS) and the Law on Public Roads¹⁶ (hereinafter: LPR). These regulations are important not only for criminal responsibility, but also for compensation claims, which as a rule follow after the termination of criminal proceedings in connection with traffic accidents.

The provisions of **Art. 156 (Chapter VIII) of the LRTS** stipulates the following: "Public roads must be designed, constructed, reconstructed and maintained so that traffic can be carried out smoothly and safely and fulfils the stipulated conditions (para. 1)." Also, it is stipulated that "The traffic controller is obliged to monitor road traffic safety, provide independent projects in order to identify hazardous sites at least once a year, as well as carry out independent risk mapping projects on road sections and identify the most dangerous sections, perform expert analyzes of high risk sections (black spots), make an individual project for the rehabilitation of risky sections and dangerous places and undertake measures for remediation of high-risk road sections and hazardous sites in accordance with projects (para. 6); in the case of a traffic accident with at least one fatality, the traffic controller is obliged, on the basis of an independent assessment to determine within a month the cause or contribution of the public road to the occurrence of the accident or the consequences of a traffic accident and take measures in order to improve the public road (para. 7)."

To date, these provisions, as well as everything else mentioned herewith, in the longest article of the LRTS, have remained a critical zone in terms of the application of the LRTS provisions, due to the fact that the relevant by-laws have not yet been adopted. As a result, the traffic controller has certain obligations, but only declaratively. In essence, there are no checks carried out in practice if there are road failures that are causally related to the occurrence of a traffic accident and the consequences thereof.

One of the problems that arise in practice in the case of traffic accidents are the potholes that are inadequately marked by traffic signs and in the manner stipulated by the provisions of the LRTS but also by the relevant by laws.

When it comes to traffic signs, the LRTS prescribes the following: "Traffic signs must also mark danger spots of a temporary character, especially those caused by road

¹⁴ Verdict of the Supreme Military Court of Croatia, Kž 1575/64, according to Bora Čejović, op. cit., 940 - 941.

¹⁵ Law on Road Traffic Safety, Off. Gazette of the Republic of Serbia, nos. 41/2009, 53/10, 101/11,32/13,55/2014.

¹⁶ Law on Public Roads, Off. Gazette of the Republic of Serbia, nos. 101/2005, 123/2007, 101/2011, 93/2012, 104/2013

damage or its disabling, as well as temporary restrictions and provisional traffic prohibitions, and these signs must be removed as soon as the reasons for which they were placed are removed (Art. 132, para. 2)."

However, the LRTS and the Rulebook of Traffic Signaling (hereinafter: RTS 2014)¹⁷ overlook stipulating a special traffic sign that would warn of potholes in the road, but at the same time, vertical signaling is not the only way to alert drivers to danger. Thus, if traffic controllers cannot react as soon as they gain knowledge of the existence of a pothole on the carriageway, they must set up temporary traffic signalization. However, the authorities often forget about the possibility of using vertical barriers or front barriers (railing) for temporary marking and warning.

In particular, there are only a few officials (public prosecutors above all, as well as police, judges and road traffic accident investigators) who are familiar with another by-law that is important for such situations (when potholes appear in the roads). This by-law is in the Rulebook on the Manner of Regulating Traffic on roads in a work zone.¹⁸ Furthermore, it has remained in force even after the implementation of the 2017 Rulebook on Traffic Signaling (hereinafter: RTS 2017).¹⁹

The LPR is also significant for this area, along with the LRTS.

In its provisions, the **LPR** gives a definition of, inter alia, traffic controllers. A traffic controller can be a public company, a commercial company, or other legal entity or entrepreneur registered for carrying out public-domain management activities (Art. 2, para. 1, item 50 of the LPR). It also defines a public road – i.e. all that a public road (Art. 4 of the Law on Public Roads) covers, as well as public road management, which is a matter of general interest (Art. 7 of the LPR), and those who can carry out road traffic management (Art. 8 of the LPR).

The provisions of Art. 15 of the LPR state the following: **"The road traffic controller is obliged to ensure permanent, continuous and quality maintenance and protection of the public road and to secure a smooth and safe traffic flow. The traffic controller shall be liable for the damage caused to the users of the public road due to failure to carry out a timely performing of certain works on the regular maintenance of the public road stipulated by this Law,** that is, due to the execution of works contrary to the stipulated technical conditions and the manner of their execution." The provisions of Art. 57 of the Public Procurement Act state that "The traffic controller is obliged to maintain public roads in a way that ensures unimpeded and safe traffic, and the provisions of Art. 58 of the LPR give a definition of the works on the regular maintenance of a public road. **This category of works includes, among other things, traffic signalization: installation, replacement, completion and renewal of traffic signalization. The provisions of Art. 2, item 40 of the LPR define traffic signalization as follows: traffic signalization** includes the means and devices for monitoring, control, regulation and management of traffic flow (road traffic signs). Art. 63 of the LPR defines the shared responsibility for the maintenance of a public road in a community between a public company in charge of the management of roads with the municipality or city and the traffic controller who bears a proportionate share of the

¹⁷ Rulebook on Traffic Signalization (Off. Gazette of the RS no. 134/2014, dated Dec. 11, 2014, enacted on Dec 19, 2014).

¹⁸ Rulebook on the Manner of Regulating Traffic on roads in a work zone (Off. Gazette of the RS no. 134/2014, dated Dec. 11, 2014, enacted on Dec. 19, 2014).

¹⁹ Rulebook on Traffic Signaling (Off. Gazette of the RS no. 85/2017, dated Sept. 21, 2017, enacted on Sept. 29, 2017).

costs for maintaining the public road. This means that the public company JP Putevi Srbije is authorized for the roads of the first and second category, and the competent municipal or city public companies that perform the tasks of traffic controller are responsible for the local roads and streets.

This paper will focus only on the first form of the criminal offense, in the part relating to the condition and maintenance of roads and the structures near them. Bearing in mind the blanket character of carrying out of the criminal offense referred to in Art. 295 of the CC, and that the responsibility of supervision and contents of the work as well as the responsible and official persons are stipulated by appropriate regulations regarding road traffic (by-laws and internal regulations), herein we will point out some significant regulations, of which little or almost nothing is known.

4. Unsafe supervision of public traffic in regards to traffic signalization

Until December 18, 2014, traffic participants were more or less familiar with the old Rulebook on Traffic Signalization (hereinafter: the old RTS)²⁰ which was used to regulate the public roads in Serbia.

Following that, the implementation of RTS 2014 took place from December 19, 2014 to September 28, 2017, which brought numerous and extremely important novelties in the field of traffic signalization, which were not well-known by, first and foremost, legal experts. Bearing in mind the significant novelties that this by-law brought, there are justified issues not only of criminal liability – primarily criminal in certain situations on the part of the authorized persons in the company in charge of road maintenance, *i.e.* the traffic controllers, but also damages liability. One of the most important novelties was the provision referring to transverse markings in **Art. 59, para. 4, item 2** in RTS 2014 that stipulates the following: **“A pedestrian crossing must not be marked on roads with several traffic lanes in one direction if the crossing is not regulated by traffic-light signaling, except in the case of roundabouts.”** This solution, in the period of the application of the RTS, has caused major practical problems, both from the criminal legal aspect and from the aspect of the responsibility of the traffic controller for the resulting damage.

Namely, **all traffic participants, due to inadequate marking of the pedestrian crossing in accordance with the new PSS 2014, were, starting from the beginning of application, misled by the traffic controller.** Thus, **the pedestrians were misled** in being on a pedestrian crossing at the moment of the commencement of the carriageway with several traffic lanes **if the passage is not regulated by traffic signals, except in the case of crossroads.** **On the other hand, drivers were misled that they were entering a marked pedestrian crossing due to transversal markings.**

In the situation where a traffic accident occurs in an inadequately marked place owing to a misconception by some participants due to an omission of a traffic controller who failed to provide adequate signaling (that is, the passage is not regulated by traffic-light signaling), we consider that the criminal liability, but also the liability for damage compensation falls primarily on the traffic controller.

In that case, the traffic controller would, in our opinion, could only prove that he is not the sole bearer of responsibility for the traffic accident, but rather, that there is a

²⁰ Rulebook on Traffic Signalization (Off. Gazette of the RS no. 26/2010).

criminal responsibility of other participants in the traffic accident as in the same traffic accident, court practice has so far unambiguously demonstrated that more participants may be covered by an indictment in the event of their omissions and charged if the omission of each of these individual participants is causally linked to a particular traffic accident. In the proceedings for damage compensation, the traffic controller in these situations may claim shared responsibility for damages. It is unknown whether there have been any such claims for damages against certain traffic controllers, such as the company JP Putevi Srbije or traffic controllers from certain municipalities or cities. However, there have been many traffic accidents from December 19, 2014, which is the date of the beginning of the application of RTS 2014, that occurred on the roads with several traffic lanes, and some of these traffic accidents and the measures applied by public prosecutors in these cases will be described in this paper as well.

5. The rights and capacities of the public prosecutor in a criminal procedure

Pursuant to the provisions of the applicable CPC, the fundamental right and the basic duty of the public prosecutor is the prosecution of perpetrators of criminal offenses. For offenses prosecuted *ex officio*, which includes the criminal offense of unsafe road traffic control referred to in Art. 295 of the CC, of particular importance is the jurisdiction of the public prosecutor referring to the fact that the public prosecutor manages the pre-trial procedure and conducts an investigation.

In this regard, it is also the duty of all bodies participating in the pre-trial procedure to inform the competent public prosecutor about any measures undertaken with a view to uncovering a criminal offense or finding a suspect. Also, the police and other state authorities authorized for the detection of criminal offenses are obliged to act upon every request of the competent public prosecutor.

In regards to traffic accidents with features of criminal offenses, it is extremely important, at least for certain types of traffic accidents (those with fatal consequences, serious bodily injuries, when a child is injured, when one of the participants in the accident with the vehicle fled from the crime scene, a traffic accident involving police vehicles), that the competent public prosecutor arrives at the crime scene and carries out an investigation. Among other things, when conducting an investigation, the public prosecutor needs to pay attention to the traffic signalization on site, as the existence or absence of traffic signaling is often the key to determining the cause of the traffic accident. Therefore, attention needs to be focused on who is responsible for the occurrence of a traffic accident, or whether there were any omissions by the traffic controller in regards to a lack of adequate traffic signalization.

In practice, the competent public prosecutor most often entrusts the conducting of an investigation to members of the police force, thus risking omissions in the part relating to traffic signalization – that it is not fully included in the investigation report. In situations where, due to the absence of corresponding traffic signalization, a traffic accident occurs which, according to its features, constitutes a criminal offense, whether it was noticed by the public prosecutor immediately when conducting an on-site investigation, i.e. it was noticed and noted in police records who, under the authorization of the public prosecutor conducted the investigation or it was pointed out by a road traffic accident investigator during the investigation, there is or there should be the issue of the traffic controller's responsibility.

In this regard, it is necessary for the competent public prosecutor to take certain official measures either personally or by entrusting them to the members of the police force, particularly the following:

- To unambiguously determine who is responsible for maintaining the section of the road at which a traffic accident occurred: for the roads of the first and second category, the traffic controller is the company JP Putevi Srbije, and the municipal or city authorities are authorized for the local roads and streets.

- To check whether there is a traffic signal on site or not. In addition, it is necessary to determine whether it is adequately set up in accordance with the provisions of the current Rulebook of Traffic Signaling at the time of the accident and whether there are signs of damage on the traffic signalization. This can be checked, in addition to a direct inspection on site, by the competent authorities (the Republic of Serbia, individual city, municipality) that keep records on traffic signals in their traffic register.

- Nowadays, modern technology can provide considerable assistance in this respect, *e.g.* Google Earth, which provides satellite images of every road section in Serbia. This kind of modern technology is a reliable way of obtaining evidence for court proceedings and its usage can undoubtedly determine whether there was at the moment of the accident an appropriate traffic sign on site or not, regardless of when this inspection is made in relation to the day of the traffic accident. Furthermore, this has already been applied by courts in Serbia.

- In regards to inadequately positioned traffic signalization, it is necessary to obtain information regarding the person authorized at the moment of the accident, which can be determined by acquiring the applicable Rules on job classification of certain public companies in charge of road maintenance, whether they are republic, city, or municipal public enterprises. The said Regulations contain or should contain a job description for each post in that public enterprise, based on which description the public prosecutor decides against which person (possibly one or more) criminal proceedings will be initiated.

- Also, if there are road works in progress, it is necessary to obtain the status of that road – whether it is a road that is open for traffic or road works are being carried out, which should be marked by the type of traffic signal in accordance with the aforementioned Rulebook on Traffic Signaling in a work zone. In addition, it could be a construction path that has not yet been approved by the contracting authority due to the fact that the necessary supervision of the works has not been completed and the appropriate permits have not been issued for the use of that road, which is marked or should be marked by another type of traffic signalization.

Of course, these are just some of the data related to traffic signals that the public prosecutors should focus on.

An additional reason to write this paper is the two criminal proceedings that are currently before the competent Basic Court in Valjevo. Although the situations are seemingly similar, there are some differences, and thus we will briefly mention both. An additional reason why both cases are mentioned is that the two traffic accidents happened in 2015 – at the time of the validity of RTS 2014, on the road section with several lanes where in both cases there was a pedestrian crossing not marked by traffic-light signaling. On this occasion, we also point to the measures undertaken by the public prosecutor in these cases.

6. Court practice analysis and the measures undertaken by the public prosecutor

1. On April 23, 2015 at 8.35 p.m. in Vladike Nikolaja Street in Valjevo, near the premises of the Gorić Council, a traffic accident occurred in which a pedestrian (a minor) was injured, who, according to the information obtained, received light bodily injuries. The other participant was a FIAT passenger vehicle driven by a Pančevo resident.

After the investigation carried out by the public prosecutor, the investigation stated report stated the following: "... that part of the Vladike Nikolaja Street has two lanes, while the right carriageway, from the direction of the movement of the passenger vehicle, that is, from the direction from Valjevo towards Belgrade, has three traffic lanes – the left lane, which is used by vehicles that turn left towards the Poljoplod building and the center and right lanes for vehicles moving on the right side. There is a traffic island between the right and left carriageways. At that point, the carriageway is made of asphalt, without impact holes, with horizontal and vertical signalization. The carriageway was dry, there was street lighting, so the site was lit up. Visibility conditions were nocturnal.

There were no traffic signs in the immediate vicinity, from the direction of the movement of the vehicle, but there was a 70 km/h speed limit road sign near the accident site...."²¹

After the investigation and collected documentation by the Valjevo police force who were on site during the investigation, making sketches and documenting the investigation, the Valjevo Municipal Public Prosecutor's office initiated criminal proceedings against the driver of the FIAT vehicle for the criminal offense of endangering public road traffic referred to in Art. 299, para.3 in regards to para. 1 of the CC. During the course of the procedure, road traffic accident investigators were appointed.

In his written forensic expert report, the investigator stated the following:

"Based on the stated, I am of the following opinion:

➤ Mal. N. created an unsafe traffic situation on the carriageway by believing he could cross the pedestrian crossing safely in spite of the considerable width of the pavement (9.8 m) consisting of three traffic lanes, and especially a part of the carriageway with no marked pedestrian crossing (via the right traffic lane), in which way he made an omission causally related to the occurrence of this accident.

➤ The defendant was not made aware of the pedestrian crossing by a traffic sign nor could he notice Mal. N. in the nocturnal driving conditions due to the presence of the vehicle on the left and part of the marked pedestrian crossing on the middle and left traffic lane, so that he made an omission which caused the accident in the event that vehicles in the middle and left traffic lanes stopped in front of the pedestrian crossing (which would correspond to the statements of Mal. N. and witnesses D.B. and Đ.M.), whereupon, in my opinion, the defendant would have a reason to anticipate the appearance of a pedestrian on the carriageway and reduce the speed of his vehicle.

➤ **The nonexistence of a traffic sign with the notice 'marked pedestrian crossing' (III-6), and an unmarked pedestrian crossing on a part of the carriageway via the right traffic lane, would be an omission by**

²¹ Investigation report by the Valjevo Municipal Public Prosecutor's office, Kt.br. 1177/15 dated April 23, 2015.

the traffic controller, in this case the company JP Putevi Srbije Belgrade, which is in a causal connection with the occurrence of a dangerous traffic situation on the carriageway, due to the fact that the participants in this accident were misled – the plaintiff for crossing a marked pedestrian crossing, and the defendant for operating a vehicle along a road with no pedestrian crossing.²²

2. On October 16, 2015, around 11 a.m. in Valjevo, Vladike Nikolaja Street, a traffic accident took place in which the driver of a Mercedes-Vito commercial van, moving from the aforementioned street from the direction of the city center to the suburb of Gorić, according to the indictment document against him taken after the conducted investigation and the reports by the Valjevo police force, acted contrary to the provisions of Art. 23, para. 2 of the CPS by driving along the left lane of the right carriageway. When approaching the pedestrian crossing opposite from street number 125, the afore mentioned driver failed to adjust the speed of the vehicle to such an extent that he could not stop the vehicle safely in front of the pedestrian crossing. At the moment when a city bus stopped in the right traffic lane in the immediate vicinity of the pedestrian crossing, plaintiff L. M. from Valjevo started crossing by the front part of the aforementioned bus, and the defendant failed to let her pass by, but rather, hit the plaintiff with the front right of the vehicle.²³

The same road traffic accident investigator who testified in the first mentioned case, stated his opinion as the following:

“Based on the stated, I am of the following opinion:

➤ This incident occurred due to the fault of defendant M. I. for driving at unadjusted and excessive speed while approaching a marked pedestrian crossing, as in this situation in which, in my opinion, he had reason to anticipate pedestrians on a pedestrian crossing, especially in the incidence of a stopped bus at a bus stop, he ought to have driven at a speed less than 41.4 km/h, or less than 30 km/h, whereupon he could safely stop his vehicle in front of a pedestrian crossing.

➤ In my opinion, plaintiff M. L. has also contributed to the occurrence of the accident, as she started crossing a part of the pedestrian crossing on the left lane without checking beforehand for a safe crossing, as there was no visibility on the pedestrian crossing in the right lane due to the fact that it was obscured by the stopped bus at the bus station.²⁴

Not taking into consideration at this opportunity the criminal aspect of these traffic accidents, we focused on analyzing the knowledge of traffic regulations of the officials who dealt with these cases, as knowledge of these regulations is the basis for conducting an appropriate procedure in accordance with the law.

Thus, we have established that in both cases, the traffic accidents occurred on roads with several lanes in the direction where the pedestrian crossing is unregulated by traffic-light signaling.

²² The report of the road traffic accident investigator given in the Valjevo Municipal Public Prosecutor's office case, Kt.br. 612/15 dated April 4, 2016 (excerpt from the report).

²³ Parts of the disposition of the indictment proposal of the Valjevo Municipal Public Prosecutor's office, Kt.br. 1268/15 dated April 19, 2016.

²⁴ The report of the road traffic accident investigator given in the Valjevo Municipal Public Prosecutor's office case, Kt.br. 1268/15 dated March 28, 2016 (excerpt from report).

In neither of the two cases for which he made an expert report under the order of the Valjevo Public Prosecutor's office did the road traffic accident investigator, who, according to the nature of his profession should be the best informed about traffic regulations, indicate in his findings and report that a traffic accident occurred at a road section where the pedestrian crossing is not properly marked in accordance with the provision of Art. 59, para. 4, item 2 of the new RTS.

Also, the deputy Valjevo Public Prosecutor who conducted the investigation in the first case failed to report that there was a traffic sign marked 'pedestrian crossing' (III-6) and an unmarked pedestrian crossing on the part of the carriageway on the right traffic lane, as noted by members of the Valjevo police force and by the road traffic accident investigator.

Finally, we noted that even after the written findings and reports, the Public Prosecutor's office failed in both cases, at least at the time of writing this paper, to initiate the appropriate criminal proceedings against the traffic controller, even though the road traffic accident investigator explicitly stated in one of these cases that the omission was made by the traffic controller, in this case, the company JP Putevi Srbije Belgrade, and is in a causal connection with the occurrence of a dangerous traffic situation on a carriageway because both participants in the traffic accident were misled by a specific omission, and the result is a traffic accident in which a minor was injured.

7. Conclusion

Within the group of criminal offenses against public road safety, the offense of unsafe traffic control is a crime that, in our opinion, deserves far more attention than it has had thus far.

In most situations where there are road traffic accidents, there are omissions by individual participants (one or more) in each specific accident.

However, not every traffic accident is the result of an omission by the participants in the traffic accident. Furthermore, a large number of traffic accidents on the roads in the Republic of Serbia occur due to omissions by traffic controllers, who are protected in terms of criminal responsibility so that appropriate criminal proceedings are not conducted against traffic controllers.

Therefore, the public prosecutor has a special role to play from the moment of conducting the investigation of a traffic accident in a situation when he is present on site and carries out an investigation, and on that occasion he can witness some of the omissions by the traffic controller in the part related to the traffic signals that are of a significance primarily for the issue of causative responsibility for the occurrence of a traffic accident, and therefore for the issue of criminal offenses, primarily the criminal responsibility of traffic controllers. In addition, the omissions which the public prosecutor detects in the course of the investigation or at the later stages of the procedure refer to certain new traffic situations and omissions by the traffic controller for failure to comply with applicable by-laws that are not yet sufficiently identifiable in judicial practice.

A brief analysis of the specific criminal cases mentioned in this paper points to the need of continuously monitoring the work of officials, primarily public prosecutors, in view of their role in criminal proceedings, to abide by the regulations. This is also valid for traffic road accident investigators as well as judges who make decisions not only in criminal proceedings but also in the compensation proceedings.