

ROAD SAFETY IN THE REPUBLIC OF SERBIA

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Abstract

The term "road safety" is an Anglicism, that is incorporated in the German language and many other languages of the world; any translation of "road safety" may not have the mythical effect that emanates from the English term. Road safety is a global issue, road users do expect that in all states of the world efforts are undertaken in order to ensure a high level of safety for road users. It is therefore not surprising that global organizations are committed to road safety. This applies particularly to the World Health Organization (WHO) as a body of the United Nations (UN) and the Organization of the Organization for European Economic Cooperation (OECD). The WHO presented in its >Global Status Report on Road Safety 2013< important results referring to road safety in 182 countries and thus covers 99% of the world population⁵⁴. The WHO did grant Serbia in the year 2013 the sum of US \$ 100 million for the improvement of road infrastructure and road safety.

Keywords: Republic of Serbia, road safety, road safety obligation, roads, numerus clausus of roads, motorway, road classification, dedication, plan approval procedure, road administration, illegal access, protection zones, vulnerable road users

Introduction

While there are no uniform⁵⁵ standards for road safety but who would seriously argue that in central European countries such as Germany⁵⁶ in the core there shall be other conditions for road safety as in Eastern European

⁵⁴ Cfr. under http://www.who.int/violence_injury_prevention/road_safety_status/2013/en/

⁵⁵ Cfr. Directive 2008/96/EC of the European Parliament and of the Council of 19 November 2008 on road infrastructure safety management. But European directives need to be implemented by the member states; the member states have some discretion for the implementation.

⁵⁶ Franz-Rudolf Herber, German Road Law in its constitutional anchoring, in: Konrad Bauer/Franz-Rudolf Herber (ed.), Law and technology, Vol. II, Bonn, 2011, p. 15 – 47.

countries such as Poland⁵⁷ or in South East European countries such as Bulgaria⁵⁸ and Serbia? In this essay road safety in Serbia is treated: The states of former Yugoslavia⁵⁹ have undertaken considerable efforts to rebuild their countries after the devastating Balkan war. For this objective the establishment of a functioning road infrastructure is essential. However, it does not suffice, to ensure the planning conditions and the structural conditions. It is particularly important that the traffic on the roads does find safe conditions. The magic keyword is road safety, whose duty catalog does not begin with the opening-up of a road for traffic, but already with the road's design. This is regardless of the fact that the relevant road law and the relevant road traffic law do stipulate certain basic structures for road safety: This may include for example the obligatory measure according to the road law to build emergency lanes⁶⁰ immediately close to highways and the obligatory measure according to the road traffic law to feature punctual speed limits⁶¹ for dangerous zones like bridges. Serbia has undertaken in his road law and in his road traffic law certain regulations, that shall ensure particular road safety measures, which are discussed in this paper.

The WHO-project >Serbia road rehabilitation and safety project<

Serbia – as all other states of former Yugoslavia – do have financial problems and do need help from abroad. It is very gratifying that the WHO did grant Serbia in the year 2013 the sum of US \$ 100 million for the improvement of road infrastructure and road safety⁶²; in the following internet publication the WHO describes the aims of this project in Serbia⁶³:

“The development objective of the Road Rehabilitation and Safety Project for Serbia is to improve the condition and safety of the national road network for road users by supporting the Serbia in the implementation of the first phase of its national road network rehabilitation program. There are

⁵⁷ Piotr Swiatecki, Polish Road Law in its constitutional anchoring, in: Konrad Bauer/Franz-Rudolf Herber (ed.), Law and technology, Vol. II, Bonn, 2011, p. 71 – 98.

⁵⁸ Franz-Rudolf Herber/Diana Boteva, Bulgarian Road Law in its constitutional anchoring, in: Konrad Bauer/Franz-Rudolf Herber (ed.), Law and technology, Vol. II, Bonn, 2011, p. 341–355.

⁵⁹ Brian Hall, The Impossible Country: A Journey Through the Last Days of Yugoslavia, New York, 1994.

⁶⁰ Cfr. below under V.3.

⁶¹ Franz-Rudolf Herber/Sebastian Heidorn, Speed limit on motorways, in: Bavarian Administrative Law Journal 2009, 129 – 137.

⁶² The European Union establishes so-called twinning-projects; to such a project in the Arabian countries cfr. Franz-Rudolf Herber, EU-Twinning Project for Road Safety in Egypt, in: Bavarian Administrative Law Journal 2012, p. 298 – 300.

⁶³ Cfr. under <http://www.worldbank.org/projects/P127876/road-rehabilitation-safety-project?lang=en>.

three components to the project: The first component is road rehabilitation and safety investments, this component will finance periodic maintenance and rehabilitation works, partial pavement widening, works concerning traffic signalization. The second component is institutional strengthening, this component consists of (A) support to road safety, and this subcomponent covers road safety inspections and the implementation of low cost road safety measures such as signage, traffic calming measures and road furniture for an additional 1000 km of national roads beyond what is covered in the first phase of National Road Network Rehabilitation Program (NRNRP); (B) strengthen road rehabilitation and planning processes, and this subcomponent includes a road condition survey for the entire national road network, an update of the national road database, institutionalizing the development of multi-year maintenance plans based on clearly-defined economic, social and regional criteria; (C) strengthening maintenance management, and this subcomponent includes the development of a strategic plan for Performance-Based Maintenance Contract (PBMC), the preparation of model bidding documents for PBMC, training staff and contractors on PBMC, and the provision of implementation support. And the final third components is project detailed design, project supervision, management, monitoring and audit (...)”.

It is understood that the project for Serbia has three main components:

- The first component does refer to road rehabilitation and safety investments.
- The second component does refer to institutional strengthening, that applies particularly to the enforcement of law: If there is no institution that meets the aftercare, road safety cannot be implemented.
- The third component does refer to project design and several controlling measures particularly road safety audits.

That the WHO-project >Serbia road rehabilitation and safety project< is very important shows the following press release that was published on the 26th of April 2013 in the USA⁶⁴:

“WASHINGTON, April 26, 2013 — The World Bank’s Board of Executive Directors today approved a total of US \$100 million to help Serbia improve road infrastructure and road safety. Better national roads will enhance Serbia’s competitiveness and provide people with easier and safer access to jobs, markets, and social services. The new Road Rehabilitation and Safety Project will contribute to the financing of periodic maintenance and rehabilitation works, partial pavement widening, works concerning

⁶⁴ Cfr. under <http://www.worldbank.org/en/news/press-release/2013/04/26/world-bank-helps-serbia-improve-over-800-km-of-its-national-roads>.

traffic signalization improvement and structure renewal, as well ancillary road connections for 35 – 40 sections, totaling 800 – 810 km in length. In addition, it will provide signage, traffic calming measures, and road furniture for an additional 1,000 km of national roads, further raising the safety of Serbian roads. The project is also designed in a way to incentivize the implementation of maintenance management reforms. The project financed by the World Bank is part of a larger effort by the international financial institutions, including the European Investment Bank (EIB) and the European Bank for Reconstruction and Development (EBRD) to help Serbia implement a National Road Network Rehabilitation Program (NRNRP) to improve the quality and safety on priority national roads, thus improving connectivity of the entire road network. The first phase of NRNRP supported by the three IFIs will cover about 1,100 km”.

On the array function of road classification

Road classification is of crucial importance⁶⁵ for the legal performance of road administration as well as for the technical performance of road administration. Classification is inextricably connected to the following legal aspects of road law.

On advantages of legal definitions for road classes

The questions to be asked are naive only at first glance, on closer examination they relate to core problems of road law:

- What is essential for road types⁶⁶ described in road laws or defined in road laws?
- Is there some scope of planning for the administration?

A legal definition for the road type >motorway< is given in Art. 2 No. 4 of the Serbian Law on Public Roads:

“Motorway is a national road intended solely for motorized traffic with physically separated carriageways in each direction, grade separated intersections and full access control, with a minimum of two traffic lanes and one emergency lane in each direction and appropriate traffic signalling”.

The motorway (freeway) is the most important carriageway for long-distance traffic. The advantage is that motorways can be defined by technical standards that can be described relatively easily in the law itself:

- Motorways have no intersections in the same level.

⁶⁵ Franz-Rudolf Herber, Network Planning – Network Streamlining – Network Formation, in: Durner (ed.), Reports of the Federal Highway Research Institute, Bergisch-Gladbach, 2012.

⁶⁶ Franz-Rudolf Herber, in: Kodal, Handbook on road law in the Federal Republic of Germany. 7th edition. Munich, 2010, Chapter 10.

- For access to motorways and for the exit from motorways there are junctions with special technical equipment.
- Motorways have separate lanes for the direction of traffic.
- There shall be emergency lanes along motorways, which can be used by the maintenance service and by damaged cars.
- The text of every Public Roads Law shall make absolutely clear⁶⁷ that private persons or private juridical persons cannot attain privileged access to motorways because their land-property⁶⁸ is close to motorways. The above cited Serbian law is not so detailed as it should be: It is only said that full access control is guaranteed, but is not excluded, that private access to the motorway can be allowed – a solution that is seemingly not in the interest of terms of road safety.

- Motorways are dedicated exclusively for high-speed traffic⁶⁹.

Of high importance is the separation of high speed traffic⁷⁰ and slow traffic with implies access controlling measures. Therefore particular regulations might be ruled by the responsible Ministry of Transport by virtue of decree; the core of such a decree should be the following text that refers to the technical details for the safe design and construction of motorways and to the separation of high speed traffic and slow traffic⁷¹:

“(1) Motorways shall be planned as partially access controlled highways where access to the highway shall be provided only at pre-determined locations from service roads through properly designed entry/exit ramps and or from interchanges.

(2) All designs shall be safe to ensure that the motorway or any part thereof (for example embankment, pavement, retaining structures, bridges, culverts, etc) do not collapse (global stability) nor its serviceability/performance (for example settlement, roughness, undulations, deflections, etc) deteriorates below acceptable level as prescribed in technical regulations.

⁶⁷ Unfortunately facilities for rest areas are not mentioned in the Serbian law. Facilities for rest areas are of high importance, which in a legal sense are part of the motorways network. The areas are furthermore very important for the drivers of goods traffic, who have to observe the regulations for resting-periods. This rest-areas are only dedicated for the needs of the rapid traffic. The inhabitants of towns and villages nearby do not have direct access to the rest-areas, so that the aspect of road safety is taken into account.

⁶⁸ Franz-Rudolf Herber, On the importance of expropriation in the Roman Empire and in modern Europe, in: European Scientific Journal 2015, Volume 11, No. 1, p 1. – 22.

⁶⁹ For details Franz-Rudolf Herber/Sebastian Heidorn, Speed limit on motorways, in: Bavarian Administrative Law Journal 2009, 129 – 137.

⁷⁰ The traffic flow function is very important.

⁷¹ Cfr. Franz-Rudolf Herber, Egyptian Road Act Proposal, in: Without Editor: The EU twinning expertise for Enhancing Road Safety on Egypt, 2nd edition, Cairo 2012 disc, under Annex, No. 53, p. 1 – 86.

(3) For safe operation, high speed traffic and slow traffic/local traffic shall be separated by constructing. Motorways shall be achieved through measures such as service road with physical separation for local traffic, grade separated intersections, acceleration/deceleration lanes, vehicular and pedestrian underpasses/overpasses.

(4) The objective of planning shall be to ensure that long distance through traffic is able to operate at a speed dictated only by the flow on the motorway and not by any other factors, such as interference from local traffic, access traffic, or cross traffic. The traffic having short distance, access traffic and cross traffic shall be separated from the long distance through traffic.

(5) No at-grade cross movement on the motorway shall be allowed and shall be taken care of by allowing such movements through a system of parallel service roads interconnected through underpasses, overpasses or grade separators. All merging and diverging movements on the freeway shall be through acceleration and deceleration lanes.

(6) All entry to the motorway and exit from it shall be through well designed entry/exit ramps at locations”.

This type of road is rather easy to handle for the legislator⁷² and the executive power, provided that the definition in the law and the decree of the ministry are based on constructional criteria and the particular function of motorways for high-speed traffic; thus the rather sometimes artificial separation between road law and road traffic law is overcome⁷³. Both areas – civil engineering and road traffic law – are determined in terms of measure and number, so this makes legal and administrative treatment much more easy. Back to Serbian law: In Art. 7 paragraph 1 No. 2 of the Serbian Law of Road Traffic Safety there is given a legal definition for the motorway:

“A motorway is a state road designated only for the traffic of motorcycles, passenger vehicles, freight vehicles and motorbuses, with or without trailers appended, with two physically separated roadways for opposite traffic directions, with at least two traffic lanes and one lay-by for each direction, with no crossroads or railway crossings, with complete

⁷² In many states there are two chambers for legislation.

⁷³ This also helps to make a clear distinction to a type of road that is defined in German Road Traffic Law and is called >Kraftfahrstraße<: Like motorways >Kraftfahrstraßen< are designed for high-speed traffic, but not exclusively. >Kraftfahrstraßen< have in some respect a similar constructional feature as motorways. No point of comparison, however, is crossing: >Kraftfahrstraßen< may have intersections in the same level.

access control, junctions separated by grade, and marked as a motorway by the stipulated traffic sign”.

Unfortunately, this definition differs from the legal definition in Art. 2 No. 4 of the Serbian Law on Public Roads:

“Motorway is a national road intended solely for motorized traffic with physically separated carriageways in each direction, grade separated intersections and full access control, with a minimum of two traffic lanes and one emergency lane in each direction and appropriate signalling”.

The crucial point >full access control< is entirely lacking in the Serbian Law of Road Traffic Safety; it is necessary that both legal definitions should be harmonized by next legislation act.

On the so called >numerus clausus< of road classes and planning of roads

Before a plan approval procedure⁷⁴ is started, there should be clear what classification the road to be planned shall have. Classification refers to several technical standards: If there is a clear and operable legal classification system it is easier to define the necessary technical standards for construction and maintenance. Grouping roads with similar functions can improve transportation planning, road infrastructure design and maintenance, and traffic and road operations⁷⁵. Once the functional classification of a particular roadway has been established, so has the allowable range of design speed. With the allowable range of design speed defined, the principal limiting design parameters associated with horizontal and vertical alignment are also defined. Similarly, a determination of functional classification establishes the basic roadway cross section in terms of lane width, shoulder width, type and width of median area, and other major design features⁷⁶. The network configuration is crucial for traffic safety on roads. Legal requirements determinate which road types are to be maintained. The numerus clausus of road types restricts the scope of planning for the administration.

⁷⁴ Ronellenfitsch, in: Marschall, FStrG, Commentary. 6th edition, Cologne, 2012, § 17.

⁷⁵ The AASHTO Green Book explicitly recognizes the relationship between highway functional classification and design criteria; cfr. http://nacto.org/docs/usdg/geometric_design_highways_and_streets_aashto.pdf

⁷⁶ Technical standards need to be developed systematically Gerlach, Network Planning and Road Hierarchy, University of Wuppertal, Institute for Road Traffic Planning and Engineering, 2009, p. 22.

As a first step a stringent evaluation must be done, if the networks are categorized according to the given cluster and nomenclatura⁷⁷. It is necessary that as a second step there should be worked out particular registers of roads according to the given cluster. There is unanimous agreement that the concrete classification is a basic necessity. The administrative processes – as far as routine operations are referred to and as far as difficult individual cases are referred to – must be strictly and continuously handled. Nevertheless as a third step the criteria should be worked out and should be transparently adhibited. In this reference – as a fourth step – must be decided, if the administration shall have a margin of appreciation, what some experts in Europe postulate, whereas the German jurisdiction is strictly denying a margin of appreciation as far as classification of roads is referred to⁷⁸.

On road classification and dedication of roads

Road classification is insolvable connected to the act of dedication⁷⁹. If a road is dedicated, it should be clear for what category the dedication is done. The range of dedication decides inter alia, if a road can be used by high speed traffic only and if slow traffic is admitted or not.

On reclassification of roads and on stopping-up of roads

The change of transport importance and other circumstances can make it necessary to reclassify a road. The first classification and reclassification do not only refer to dedication, but are constitutional for each dedication as such. If the function of a road has changed their must be either immediate up-grading or down-grading. If this subject matter is not handled just in time the problems to come can hardly be solved. Reclassification of roads is necessary to have clear jurisdictions. For it is a matter of fact that the function of roads change there should be handled consequent up-grading and down-grading.

⁷⁷ In regard to the function of roads for classification Herber, Handbook on road law in the Federal Republic of Germany. 7th edition. Munich, 2010, Chapter 9.

⁷⁸ Cfr. Federal Administrative Court 22.8.1978, in: German Administrative Law Journal 1979, 907; 11.11.1983, in: German Administrative Law Magazine 1984, 338; 8.10.1999, in: Bavarian Administrative Law Journal 2000, 249; Bavarian Constitutional Court 23.10.1990, in: New Journal for German Administrative Law 1991, 590; 8.8.2001, in: Bavarian Administrative Law Journal 2002, 495; Bavarian Constitutional Court 12.10.2007, in: German Administrative Law Journal 2008, 736.

⁷⁹ According to German law the classification is null and void, if the dedication is not conducted. This has the legal consequence that the road remains a private road and does not become a part of the public network (Higher Regional Court for North Rhine-Westphalia 9.12.1992, in: New Journal for German Administrative Law – Report of court decisions 1993, 28, 1).

The complete loss of transport importance for public traffic can make it necessary to stop up the function as a public road⁸⁰.

On supervising of road administration

The classification of roads refers in some respect to the supervising of road administration⁸¹. If there is a centralised structure the responsible authority should have the supervising power over its road administration, in many cases the jurisdiction of Ministry of Transport or the jurisdiction of a State Office for Road Administration should be given.

On protection zones and ownership limitations

In regard to road safety and in regard to appropriate planning it is very important that activities that refer to building should be concentrated in towns and in villages and not close to federal trunk roads that shall give the long-distance traffic free passage particularly outside towns and villages. Outside villages and towns in general it should not be allowed to build construction areas that shall be opened up by entrance or by (road) access to highways and main roads. It has to be procured that long-distance traffic finds sound and safe conditions; therefore it cannot be tolerated that there is private access.

Advertising on and near roads

Advertising on and near roads is the most crucial kind of special use: Advertising has to be understood in a very broad sense and refers not only to billboards, but also to other methods of advertising for example such as signs, paintings and columns. Advertising is a very crucial factor in regard to road safety, because advertising is apt to decline the attention of drivers in such a crude way that serious accidents may happen. Furthermore, it must be guaranteed that the sight of drivers is not affected in a negative way. As far as bridges are concerned advertising should not be allowed if the bridge is outside a town or village. Road protection zones shall guarantee that the area near the roads is not used for purposes that might endanger road safety. For example Article 28 of Serbian Law on Public Roads gives a description of the several functions, that road protection zones do have:

“In the road protection zone along a public road outside an urban area development of any building construction, structures, or placing of installations or devices shall be forbidden except for a new pavement construction needed for traffic on a public road and

⁸⁰ On reclassification and stopping-up of roads Herber, Handbook on road law in the Federal Republic of Germany. 7th edition. Munich, 2010, Chapter 10 and 11.

⁸¹ Rinke, in Kodal: Handbook on road law in the Federal Republic of Germany. 7th edition. Munich, 2010, Chapter 18.

facilities, devices and installations serving the public road and traffic. In the road protection zone, under paragraph 1 of this article assembly and laying of water pipes, sewers, distance heating, railway track and other structures as well as telecommunication and electrical ductwork, installations, facilities and other may be undertaken provided the public road manager's approval containing traffic and technical requirements has been obtained. The public road manager shall monitor the works under paragraph 2 of this Article”.

On the areal scope of protection zones

Article 29 of Serbian Law on Public Roads gives the width of road protection zones for the specific types of roads:

“The width of the road protection zone shall be:

- 1) Class I national roads – motorways 40 m*
- 2) Other national roads, class I 20 m*
- 3) Class II national roads, 10 m*
- 4) Municipal roads 5 m*

The provision under paragraph 1 of this Article relating to the width of the road protection zone shall apply to urban areas unless otherwise stipulated in the physical and urban development plans”.

The width of road protection zone for motorway and other national roads (class I/class II) is rather small and should be subject matter of careful evaluation. In the law itself there should be a regulation that in each case the distance is measured from the outer edge of the carriageway pavement. Furthermore, it should be ruled that land that belongs to the road protection zone shall not be used for any purpose other than agriculture⁸².

On illegal buildings, illegal accesses and other illegal uses

Article 30 of Serbian Law on Public Roads allows structural changes of the road protection zones:

“Any new development in the controlled development zone will be permitted if it is foreseen in the physical and urban development plan relevant for the zone. No mines, quarries or dump sites may be opened/built in the zone under paragraph 1”.

The law itself does not give traffic-criteria for the permission, but makes reference to the planning allowance. A particular regulation for illegal buildings, illegal accesses and other illegal uses should be introduced in the law, the aspect of road safety should be taken into consideration:

⁸² On protection zones Aust, Handbook on road law in the Federal Republic of Germany. 7th edition. Munich, 2010, chapter 29.

“(1) It is prohibited, without a permission issued by the road administration, to implement any work in the aforementioned lands, particularly

- (a) buildings above and below the surface,*
- (b) accesses to the road, and*
- (c) supply equipment of the electricity suppliers.*

(2) The experts of the road administration are entitled to enter these lands and inspect this illegal work.

(3) The experts of the road administration have to oblige the violator to stop the work and to remove this work in a suitable time frame, otherwise the road administration is entitled to remove it administratively at the violator’s expense. Official authorizations, permits and inspections by parties other than the road authorities shall not be required.

(4) A permission for activities named in paragraph (1) can only be granted if endangerment of road safety is excluded. To the permission according paragraph (1) Art. 13 applies accordingly”.

In the case that private accesses already do exist, it must be strict controlling. In terms of road safety it is justifiable to have this accesses closed. In the end it cannot be tolerated that private accesses do interfere infrastructural measures for high speed traffic. It should be taken into consideration if the private access may be used for the placement of rest areas and other facilities. If this is not possible it should be examined if it is possible to make an access to the secondary network. Art. 37 of Serbian Law on Public Roads allows access junctions:

“An access junction to a public road may be constructed with the consent of the public road manager. An intersection or a crossing of a municipal road, unclassified road and street with a national road, and an access junction to a national road may be constructed solely upon the approval of the Public Enterprise. The approval under paragraph 2 hereof shall specify technical conditions for construction, traffic signalling, equipment. If the special conditions under paragraph 2 hereof call for new traffic lanes, islands separating lanes, light signals and lighting on a national road, a permit for the construction of the intersection, crossing or an access junction under paragraph 2 hereof shall be given by the Ministry. The permit under paragraph 4 hereof for the construction of an intersection, crossing or access junction issued without the prior consent under paragraph 2 hereof will be void. The Public Enterprise shall issue the consent under paragraph 2 hereof if they find that all requirements have been met and if

1) it is not possible to link a municipal, unclassified road or a street with the municipal, unclassified road or street which already has an intersection, crossing or access junction to a national road

2) *the intersection, crossing or access junction under paragraph 2 hereof does not restrict the capacity and flow of traffic on a national road, and*

3) *the intersection, crossing or access junction under paragraph 2 of this article is not detrimental to smooth and safe traffic running on a national road.*

The costs of construction and erection of road signs and equipment on a newly constructed intersection, crossing or access junction, para.2 hereof, shall be borne by the investor of such construction and erection of road signs and equipment on a newly constructed intersection, crossing or access junction. Technical inspection of a completed intersection, crossing or access junction to a national road shall be attended by an authorized representative of the Public Enterprise”.

It is important that among the aforesaid criteria for access junctions the criterium of road safety should be taken into consideration. The passus in the quoted legal regulation “*not detrimental to smooth and safe traffic running on a national road*” should be given a wide legal interpretation that implies road safety.

Special use of public roads

In particular people that are working in the field of merchandise are expecting to get access to roads to sell their goods⁸³; in their subjective perspective the aspects of road safety are negligible. Street vendors move that are moving in the flowing traffic are a permanent danger. This subject matter should not remain unregulated, it belongs to the responsibility of the Road Transport Administration. Article 44 of Serbian Law on Public Roads forbids particular special use of public roads, but does not refer to selling goods on roads:

“On a public road it is strictly forbidden to:

- 1) occupy the road in a temporary or permanent manner,*
- 2) execute any works not related to new construction, rehabilitation, maintenance and protection of the road,*
- 3) execute any works by the holders of easement and other right on the road that will damage the public road or imperil smooth and safe traffic running,*
- 4) discharge water, waste waters or other liquids on the road,*
- 5) stop road runoff particularly from a road ditch and a culvert in the road bed and stop water flowing towards respective recipients,*

⁸³ Cfr. Sauthoff, Public Roads, 2nd edition, Munich, 2010, pp. 152 sqq.

- 6) *spill, leave or dump materials, objects and garbage onto the road,*
- 7) *stain the road surface with oil or any other matter,*
- 8) *erect and use lights or other lighting devices on or along the road that might endanger traffic running,*
- 9) *plough the land or perform any other farming activities on the shoulders, slopes and in the land strip,*
- 10) *drag logs, material, implements or other types of load on the road (beams, logs, branches, stone blocks, ploughs, harrows etc.),*
- 11) *slide timber, fuel wood, stone and other materials down the slopes in cut-and-fills, cuttings and embankments,*
- 12) *burn grass and other vegetation on the road or waste materials,*
- 13) *carry mud from an access road onto the public road,*
- 14) *let unsupervised livestock onto the road, graze or water livestock,*
- 15) *turn around horse drawn carts, tractors, ploughs and other farm implements and machinery on the road,*
- 16) *brake horse drawn carts using braked wheels,*
- 17) *enter or exit from the road outside an access junction or crossing and bring mud onto road pavement,*
- 18) *stop or leave a vehicle that will interfere with road use,*
- 19) *do any act that will damage or may damage the road or interfere with traffic running”.*

That this regulation is focussing on particular case scenarios that are forbidden is at first glance of great advantage, on the other hand it allows the legal implication that every case scenario that is enlisted is forbidden. If this text shall be used the legal basis for special use of roads in future, the text should at least be amended in its very beginning:

On a public road the following is e s p e c i a l l y forbidden:

- (1)
- (...).....
- (19)

The law being amended in this way administration and jurisdiction have the opportunity to give this article a wider legal interpretation and the ban-regulation can be extended, if is necessary in terms of road safety.

In general, the following rule may apply: Any use of the public roads that goes beyond public use shall be deemed to be special use. For special kind of use it is typical that an object is placed on the road (or in the road) so that the traffic may be hampered or endangered. Special use shall only practised with permission of the road administration, i.e. the authority that is responsible for the construction and maintenance:

- This permission is a kind of regulatory adjustment and renders constant controlling possible⁸⁴.
- It is clear that nobody has a claim to special uses, road administration therefore should have a margin of appreciation⁸⁵.
- Permission shall only be granted on a temporary basis or subject to revocation; conditions may be attached to it.
- Permission shall not be granted if the special use would have a significant adverse impact on disabled people in exercising their right of public use.
- The permission shall not entitle to compensation from the authority responsible for road construction and maintenance in the event of revocation or in the case of reclassification or stopping-up of the road⁸⁶.

On road safety obligation

At first glance it may be disappointing that there does not exist a legal definition of the road safety obligation; but this cannot surprise because road construction, maintenance of roads and road safety have so many different aspects⁸⁷.

On conditions of road safety obligation

The German Federal High Court of Justice describes road safety obligation in the following way and gives a very useful summary⁸⁸, that can be adhibited by road administration:

“It includes all necessary measures to keep a road in a condition that is sufficiently safe as far as the usage of the road is concerned. In principle, the user of the road has to adapt himself to the prevailing conditions of the road and accept the road in that kind in which the road is obviously presenting herself to the user. The authority has to remove in an appropriate as well as a reasonable manner all dangers, but only those dangers that either cannot be realized or cannot be realized just in time and to which the user of the road cannot adapt or cannot adapt just in time”.

From the above cited definition we can establish the following outlines:

- Dedication: The dedication of a road determines to which extent the road safety obligation has to be regarded. In that case that already the

⁸⁴ Cfr. Michael Sauthoff, Public Roads, 2nd edition, Munich, 2010, pp. 152 sqq.

⁸⁵ Cfr. Michael Sauthoff, Public Roads, 2nd edition, Munich, 2010, pp. 152 sqq.

⁸⁶ Cfr. Grupp, in Marschall, FStrG, Commentary, 6th edition, Cologne, 2012, § 8 FStrG.

⁸⁷ On case scenarios of road safety obligation Herber, in: Handbook on road law in the Federal Republic of Germany. 7th edition. Munich, 2010, chapter 42.

⁸⁸ Federal Court of Justice 12.7.1979, in: New Weekly Journal for Law 1979, 2043, 2044.

impression of the road makes clear to road users that the dedication of the road is limited, a higher level cannot be expected by road users⁸⁹; therefore road users have to be cautious.

– Danger: The authority that has to fulfil road safety obligation - i.e. the authority that is responsible for construction and maintenance. This authority has not to take care of every kind of danger that may occur. A danger is relevant in a legal sense only in that case when according to reasonable judgement the danger may approximately cause damage to the rights of other people⁹⁰. The average road user may expect particular measures only in that case that dangers may occur surprising⁹¹.

– Reasonableness of avoiding dangers: The authority that has to fulfil the road safety obligation may take economical aspects into consideration, if the authority has to decide which realized dangers shall be avoided. The consideration has to take into account the following: What kind of danger is given? Whom is the danger explicitly looming for? In this regard it is of importance, if warning as such is appropriate measure to fulfil the road safety obligation⁹². In this context the authority that has to fulfil the road safety obligation has to check, if there is given a choice of appropriate measures and how long warning as such can be an appropriate measure⁹³.

– Claims and liability: A claim for damage in regard to the legal duty of road safety obligation can only be successful, if the duty does concern not only to the protection of the general public, but concerns also to the protection of individuals. This is rather difficult legal devise and in many cases this point may protect authorities from claims.

Case scenarios

The German jurisdiction has worked out different case scenarios unless the law itself cannot rule all this cases; here there is given a survey on the main groups:

- Banquets⁹⁴.
- Construction areas⁹⁵.
- Manhole covers⁹⁶.

⁸⁹ Federal Court of Justice 15.12.1988, in: New Journal for German Administrative Law – Report of Court Decisions 1989, 456.

⁹⁰ Federal Court of Justice 12.1.1968, in: Monthly Journal of German Law 1968, 395.

⁹¹ Higher Regional Court Hamm 9.6.1978, in: Insurance Law Journal 1979, 1055.

⁹² Federal Court of Justice 10.7.1980, in: Monthly Journal of German Law 1980, 2194.

⁹³ Federal Court of Justice 14.10.1982, in: New Journal for German Administrative Law 1984, 133.

⁹⁴ Federal Court of Justice 27.1.2005, in: Monthly Journal of German Law 2005, 809.

⁹⁵ Higher Regional Court Brandenburg 16.1.2008 – 13 U 18/07 –.

⁹⁶ Higher Regional Court Hamm 11.5.2005, in: New Journal for German Administrative Law 2005, 473.

- Inline skating⁹⁷.
- Guardrails⁹⁸.
- Mowing work that is done by the road administration⁹⁹.
- Parking spaces¹⁰⁰.
- Bollard systems¹⁰¹.
- Curbs¹⁰².
- Potholes¹⁰³.
- Side panels¹⁰⁴.
- Restricted areas¹⁰⁵.
- Ruts¹⁰⁶.
- Danger of falling rocks¹⁰⁷.
- Roadside trees¹⁰⁸.
- Road bumps¹⁰⁹.
- Warning by traffic signs¹¹⁰.
- Game fencing¹¹¹.
- Cleaning and gritting¹¹².

Protection of vulnerable users

The protection of so called vulnerable users is of very great importance for an intelligent management of road safety¹¹³. High speed

⁹⁷ Regional Court Koblenz 18.12.2002, in: Insurance Law Journal 2003, 1592.

⁹⁸ Higher Regional Court Munich 1.3.2001, in: Insurance Law Journal 2002, 454.

⁹⁹ Federal Court of Justice 18.1.2005, in: Insurance Law Journal 2005, 566.

¹⁰⁰ Regional Court Mainz 28.8.2003 – 4 O 668/02 –.

¹⁰¹ Higher Regional Court Munich 19.5.2006 – 1 U 2535/06 –.

¹⁰² Higher Regional Court Hamm 25.5.2004, in: New Journal of Traffic Law 2005, 258.

¹⁰³ Higher Regional Court Koblenz 3.3.2008, in: New Journal for German Administrative Law – Report of Court Decisions 2008, 651.

¹⁰⁴ Higher Regional Court Brandenburg 13. 2. 2007 – 2 U 12/06 –.

¹⁰⁵ Higher Regional Court Frankfurt 18.10.2007, in: New Journal for German Administrative Law – Report of Court Decisions 2008, 441.

¹⁰⁶ Higher Regional Court Hamm 24.1.2005, in: New Journal of Traffic Law 2006, 197.

¹⁰⁷ Higher Regional Court Koblenz 4.8.2003, in: New Weekly Journal for Law – Report of Court Decisions 2003, 1330.

¹⁰⁸ Federal Court of Justice 4.3.2004, in: New Weekly Journal for Law 2004, 1381.

¹⁰⁹ Higher Regional Court Celle 23.12.1997, in: Monthly Journal of German Law 1998, 1031.

¹¹⁰ Federal Court of Justice 15.12.1988, in: New Journal of Traffic Law 1989, 847.

¹¹¹ Regional Court 25.1.2008 – 2 O 465/07 –.

¹¹² Federal Court of Justice 5.7.1990, in: Official Records 112, 74.

¹¹³ In developing countries such as for example Egypt so-called U-turns are a very dangerous technical device: U-turns are provisional (tentative) contrivances as crossroads for diminution of costs shall be avoided. It is reasonable that crossroads are in respect to road safety the much better solution than U-turns. While there are U-turns used, there should be taken technical measures that reduce the given dangerousness of U-turns:

traffic is very dangerous for road users; for the safe management of high speed traffic on motorways, that are extraordinarily used, emergency lanes should be installed. Tow trucks may only drive in emergency stopping lanes on motorways for the following purposes:

- To gain access to a road accident scene or incident on freeways.
- To remove or tow damaged/disabled vehicles from that road accident scene or incident when driving in other lanes is not possible due to congestion or obstructions when accessing a road accident scene or incident.

When travelling in an emergency stopping lane tow truck drivers must activate the vehicle's yellow flashing or rotating warning. No parking or standing shall be permitted at any time on any emergency lane and no parking or standing shall be permitted at any location that would prevent access to any emergency lane by any emergency response vehicles or equipment.

Any Public Road Law should take a leading position in the forwarding of the following targets, that should be put down in the revised Public Roads Law Act:

- Sufficient and secure bus-stops are absolutely necessary: The missing of bus stops causes severe dangers: Busses do dismiss their passengers on the track of public roads and do handle the picking-up of new passengers on the track of public roads. As a minimum target in respect to road safety bus-stops shall be established by traffic signs.

- Sufficient and secure pedestrian crossings are absolutely necessary: For the protection of vulnerable people the pedestrian crossings are of crucial importance which is subject matter of road law as the establishment of pedestrian crossings is referred to.

- Speed limits¹¹⁴: Vehicles are obliged to slow down their speed when they come close to a pedestrian crossing. Vehicles are obliged to stop and give pedestrians free passage. The instrument of speed limit should be used in particular close to bus-stops and pedestrians.

Concrete controlling measures

Counting of traffic

In order to have appropriate controlling there should be installed technical systems for the counting of traffic. Transport planning at all levels requires understanding of actual conditions. This involves determination of vehicle or pedestrian numbers, vehicle types, vehicle speeds, vehicle weights, as well as more substantial information such as trip length and trip

Therefore U-turns should have an acceleration and a deceleration lane, so that quick traffic and slow traffic is divided.

¹¹⁴ Franz-Rudolf Herber/Sebastian Heidorn, Speed limit on motorways, in: Bavarian Administrative Law Journal 2009, 129 – 137.

purpose and trip frequency. The group of data dealing with the characteristics of vehicle or people movement is obtained by undertaking traffic counts¹¹⁵. Those related to measuring trips involving knowledge of origin and destination require more detailed surveys; there is a wide range of counting methods available.

Oversight and inspection of public road activities

The oversight and the roads inspectorate should be done by the Ministry of Transport or at least by a central state office for road construction¹¹⁶; the jobs to be done shall refer to the following:

- Inspection of the planning, survey, design and construction.
- Inspection of the standards to ensure road safety in public road activities.
- Inspection of environmental protection in public road activities. It is absolutely necessary that the road administration itself attends to the subject matter of environmental protection although this refers to the jurisdiction to the environmental authorities.
- Inspection of compliance with technical and financial standards in public road activities.
- Inspection of the bidding, contracts, project owners and contractors in public road activities. In this regard anti-corruption guidelines should be taken into regard.
- Inspection of the use, maintenance and repair of public roads.

The Ministry of Transport or the central state office for road construction should use the different types of inspection of public road activities, i.e. regular inspections, inspections by advance notice and emergency case inspections. A supervising centralised entity needs particular and strong powers. The supervising entity has the task of controlling whether particular duties have been fulfilled particularly in regard to building and maintenance. For effective supervising it is provided that the supervising entity is allowed to set a time-limit (deadline) and in that case that the duty is not fulfilled just in time the supervising-entity is allowed for own name transaction and charge the responsible authority with the costs.

On the responsibility of drivers

It is very interesting and very positive that Art. 42 of the Serbian Law of Road Traffic Safety makes the individual responsibility of drivers

¹¹⁵ In Germany this job is done by Federal Highway Research Institute (BAST); cfr. under http://www.bast.de/DE/FB-V/Fachthemen/v2-verkehrszahlung/Aktuell/zaehl_aktuell_node.html

¹¹⁶ Franz-Rudolf Herber, Recent developments in the law of the road traffic safety duty, in: New Journal of Traffic Law 2011, 161 – 167.

clear; in particular they have to adjust the vehicle speed to the condition of any road they are using:

“(1) Driver shall adjust the speed of their vehicle to the qualities an the condition of the road, visibility, clearness of view, weather, the state of the vehicle and its load, traffic density and other traffic conditions, so as to be able to stop the vehicle in due time in front of any obstacle which is either visible or expectable under given circumstances and to drive the vehicle in a manner that does not jeopardize the traffic safety.

(2) If a driver drives the vehicle at a speed so low that it hinders the ordinary flow of traffic, shall enable another vehicle to overtake or pass them at the nearest suitable position.

(3) All provisions of this Law which refer to speed are applied to both the currently measured speed and the average speed”.

On the responsibility of automobile industry

It is very interesting and positive as well that Art. 4 of the Serbian Law of Road Traffic Safety refers to the responsibility of the automobile industry:

“(1) Every legal entity or entrepreneur which operates in the areas of production, maintenance, trading, repairing or modification of vehicles, related devices, spare parts and vehicle equipment, shall conduct such business in accordance with regulation and the rules of trade so that the vehicles can safely participate in traffic.

(2) A company, any other legal entity or an entrepreneur which conducts design, construction, maintenance or management of roads shall do so in a manner which enables safe traffic conduct.

(3) Legal entities and entrepreneurs which are referred to in the Paragraph 1 of this Article may conduct aforementioned activities provided they are granted a license by the ministry in charge of trade and services”.

Insofar Serbian Law of Road Traffic Safety might be exemplary for some other states – even in the European Union.

Summary

It is very welcome that the WHO provides Serbia project money for the enhancement of road safety. It is hoped that this budget will find appropriate use and that road safety on Serbian roads will be improved. Today there cannot made valid evaluation of the project; an evaluation will be possible at the earliest in a few years. In any case, it is clear that the Serbian Roads Law Act should be improved in some regulations; that is concretely demonstrated in this paper. Furthermore, attention should be paid

on the occasion of legislative reform that the Roads Law Act and the Road Traffic Act should be harmonized in the terminology used, for it is clear that road law and road traffic law are two sides of one coin that are not only tightly connected to each other, but both of which are inextricably linked.

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