Current Issues of Czech Road Traffic Law in the Context of Jurisprudence and Road Safety

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This paper focuses on the road traffic legislation of the Czech Republic from the perspective of the road safety. It will demonstrate how the road safety is approached by the Czech legislator, the administrative authorities and by the Czech courts. Correct and effective legal regulation of sanctions for traffic offences, the possibility of individualization by the administrative authorities and judicial control, those are the factors that influence the preventive effect (general and individual) of the punishment can help to improve road safety. This paper will bring up selected recent legal questions of Czech road traffic law, such as consequences of material aspect of the offence; constitutionality of the owners/drivers liability and legal relevance of the case-law.

Keywords: *Administrative offence; Administrative sanction; General prevention; Road safety; Traffic law; Regulation; Proportionality; Human rights; Administrative punishment; Czech law.*

Introduction

The main aim of the following pages is partly descriptive and partly analytic. We would like to demonstrate some of the current issues of Czech road traffic law and contribute into general discussion about the issues of road traffic law on interstate level. With the use of relevant case law, we would also like to analyse the importance of the road safety within the Czech road traffic law. We will also examine question of the legal relevance of the case law in Czech Republic as it has a direct connection to our topic.

Road safety is complex global issue and as such, it should concern the society as a whole. Every road accident may cause considerable socio-economic losses in addition to the impact on the lives and health of its direct victims. In Czech Republic according to the calculation for the year 2016 the socio-economic losses caused by road accidents were approximately 2.7 billion euro and cost of human life was calculated on 750 000 euro[1]. Those data can be used to support the argument about clear social demand for improvement of road safety.

Considering the measures for improvement of road safety the attention should be focused on all three key elements, which are usually defined as *infrastructure*, *vehicle* and *road user*[2]. Technical and safety standards of roads and vehicles will

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[1]Calculation for the year 2017 is not yet available. Original amount is in CZK. Press release is available in Czech language on the website of Transport Research Centre (2016).
[2]*Global Status Report on Road Safety 2015*.

not be dealt in this paper. We will focus solely on the road user because the law represents one of the most significant measures that can influence road user's safe behaviour on the public roads. Set of rules can be preventive depending on the variety of sanctions which can be imposed for the unlawful behaviour. However, in order to achieve the maximum level of road user's acceptance the legislation should be accompanied by effective enforcement of road traffic rules.

Level of enforcement is the result of both - the legislation and application of its provisions in practice.

General Relation between Czech Road Traffic Law and Road Safety

The rules of road traffic in Czech Republic are set by a group of principal legal statutes, but mainly by the Road Traffic Code (Act No. 361/2000 Coll.) which came into effect on 1st January 2001. It regulates general conditions under which *anyone* can become a user of the public road and some specific conditions for certain types of road users (drivers, cyclists, etc.). It also contains a set of rules for safe and smooth road traffic. Its last part deals with punishments for infringements of the rules.

If we search for the source of some sort which deals with road safety it is important to point out, that in many countries, where the care for road safety is among the priorities, usually the main strategic material which addresses road safety exists[3]. It is not uncommon that these documents incorporate the leading philosophical idea of "Vision Zero"[4], which states that the ultimate goal is to reduce the number of deaths and serious injuries caused by road accidents to zero. In Czech Republic the National Road Safety Strategy[5] which was revised and updated in 2017 can be considered as a main strategic material of government for the domain of road safety. In its analytic part there is a description of statistics and long-term development of road safety in Czech Republic, and this is followed by a strategic part. Concerning legislation National Road Safety Strategy mentions few general points should be addressed including better enforcement and legislative amendments like more effective sanctions. Those parts are accompanied by Action Plan that formulates more specific measures which should be taken in the legislative area.

From the description given it is possible to assume that explicit general relation between road safety and road traffic legislation exists at least *on the strategic level*. Moreover, some of the specific measures in Action Plan have purely legislative nature (e.g. examination of the possibility of enactment of probation driving period; examination of the possibility of extension of the obligation to wear a helmet; enacting stricter approach to unexperienced drivers; enacting alcohol interlock) some of them are of the socio-legal nature (evaluation of effectiveness of the Road Traffic Code in the context of specific targets of the National Road Safety Strategy). If we look closer at the Road Traffic Code we can

[3]Specific national road safety strategies can be on mobility and transport road safety.
[4]Belin, Johansson, Lindberg & Tingvall (1997).
[5]Available online in Czech language: http://bit.ly/2G5zxhk.

see that since it came into effect it has been amended more than 45 times, sometimes with the intent just to improve insufficient enforcement of road traffic rules or the rules themselves. Often those amendments were introduced because of the specific demand for their adoption from the road safety position – because it appeared in the previous versions of Action Plan (this was, for example, the case of introduction of demerit point system in Czech Republic or introduction of owner's liability regime).

Both systems are interconnected because the rules of Road Traffic Code should have certain impact on the reality which is usually examined with the help of using statistics. Evaluation of those statistics gives an insight on the state of road safety in the country and on the impact of Road Traffic Code. If the results are not satisfactory enough, the legislative amendment or strengthening of enforcement should be one of the measures considered by the government.

We will demonstrate a few practical examples of the approach of jurisprudence to the traffic law and we will try to analyse its theoretical effect on road safety.[6]

Current Issues of Road Traffic Law in Czech Republic

Material Aspect of Traffic Offence

In this subsection we would like to demonstrate the implications of the current interpretation of "material aspect of traffic offence" on the road safety.

Criminal or administrative liability is basically one's liability for fulfilling the conditions of the definitions of crimes or administrative/minor offences. Structure of those definitions is composed from formal aspects which are the 1) characteristics of the offender; 2) thread or disturbance of protected interest; 3) characteristics of the act itself; 4) characteristics of the culpability (intention, negligence). Material aspect of the administrative offence (crime) represents the social dangerousness of the infringement.

Law in some cases does not consider "formal" unlawful behaviour illegal. It is the case when the circumstances excluding illegality are present (for example when victim of an attack protect him/herself and hurts the attacker – it would be the case of necessary defence and victim should not be liable). It is possible to assume that the reason why the law excludes criminal or administrative liability in certain cases is the lack of material aspect.[7] Legislator stipulates that he does not find these cases dangerous for society.

In Czech Republic the Supreme Administrative Court (SAC) ruled in a case of a driver who exceeded the speed limit by 2 km/h (after the correction of measured speed +/- 3 km/h) that he should not be held liable because his action

[6]This paper is not based on empirical research.

[7]*"Retreating into formalistic administrative-law based reasoning in such cases is not the answer to this challenge. The resolution is also not a simple matter of preferring substance over form, since baseless and one-sided substantive reasoning is as devoid of justification as sterile formalism"* in Quinot (2010) at 114.

lacked material aspect (social dangerousness)[8]. Generally, the reasoning of the SAC has been that the act which fulfils the formal aspects of administrative offence also fulfils material aspect in most of the cases because it usually violates certain protected public interest. But if there are other certain facts present, they can exclude this violation. The SAC stated that it was not a correct opinion to assume that every (minor) excess over the speed limit would be automatically administrative offence. On the other hand, it is not possible to give an exact speed limit when the excessive speed becomes also an administrative offence. In this case it was concluded that the driver did not commit a traffic offence because there were other circumstances such as low traffic density area, it was near the exit from the village and others, and based on those circumstances the court said that he could not violate public interest on safe and smooth road traffic. Similar conclusions were made for example in other judgement of SAC[9] where the court considered the situation of driving without driving license.

In our opinion this interpretation has certain defects in the context of jurisprudence and it also has a few negative implications for the road safety.

In the first place we consider the above mentioned opinion as problematic because so-called speed offenses in road traffic law are typically *formal* offenses so there should not be relevant whether there has been any a specific harmful consequence. Exceeding the *formal* legal limit allowed speed should be considered as an offence. While *material* offences require that the conduct will manifest some harmful effect in a reality, formal offenses on the other hand are considered to be harmful in the conduct itself.

There is also a question of perceiving the concept of division of power. If we recognise the existence of formal or absolute offenses, we also recognise the legislator's competence to *really effectively determine* what is socially harmful; if we deny that competence in favour of the executive power (in Czech Republic the administrative liability is realised by administrative authorities) or judicial power (criminal liability), then we basically deny the existence of formal offenses.

In our opinion, formal offenses are justified elements in legal order. Their introduction into the legal systems of a modern democratic states is most probably a reaction of the state policy to certain acts which are (from the point of view of the legislator) generally socially dangerous and therefore it is not necessary to deal with the specific details of each case separately and examine whether the violation of protected interest was present in the specific case. They might be also understood as a manifestation of the principle of process economics. In other words, if the interest in safe and smooth road traffic is considered to be worthy of protection and specific speed limits are *set for its protection*, they should be respected on their own. This applies even more when inappropriate (excessive) speed is a frequent cause of traffic accidents with grave consequences for health and life[10]. Our question is why it should be necessary to consider every particular case from all perspectives and "re-search" social dangerousness once again after it was already established by the legislator?

[8]Case 104/2008-45.
[9]Case 137/2011-52.
[10]*Speed and Crash Risk*. IRTAD, 29 March 2018.

Other argument to support our thesis would be that the legislator represents the will of the people (of the society) through the institute of direct elections, so the determination of what is and what is not socially dangerous should be logically in his competence. Additionally, the legislator is only "one" body opposite to administrative authorities (or judges) so the legal certainty of what is socially dangerous would be achieved also through the competence of legislator. If we deny that competence, we might face the fragmentation of legal certainty. In above mentioned case of excessive speed – every administrative body (judge) might have a different opinion if the material aspect is present and which speed is "socially dangerous" in particular situation.

Formalistic approach might be accompanied with a risk of injustice but in our opinion, it should be avoided by a precise assessment of legal circumstances excluding illegality. It should also be noted that the legislator should not be absolutely uncontrolled in his competence to constitute *formal* definitions of acts which are socially dangerous (crimes, administrative offences). If the legislator abused his power and created *formal offence* which would forbid behaviour generally considered as socially beneficial, the constitutional control of legal norms performed by Czech Constitutional Court[11] should apply (which is in accordance with the principle of division of powers and the concept of checks and balances).

If we consider the above mention opinion of Czech Supreme Administrative Court in the context of road safety, we can point out at some negative implications. Assessment of material aspect in every particular case on one hand comes with more comfort for the offenders of formal offences but on the other hand it also comes with legal uncertainty. If we allow the speed over the legal maximum the driver cannot be sure whether his speed is already illegal or still within the formal wrong-doing but without material aspect. Moreover, the assessment of material aspect is rather subjective matter, from the point of road safety it can create absurd and lawless road traffic where every driver will drive his vehicle in a (subjectively) safe way.

Another implication would be that the preventive effect of the rules of road traffic would be eliminated. If the personal conviction of unlawful behaviour is missing (driver knows that he can exceed speed limit) the legal rules does not fulfil its role.

Other arguments against this interpretation would be based solely on the arguments of road safety. Every increase in km/h means also an increase of safe breaking distance it narrows the field of view of the driver etc. Even though the road seems "safe" at the particular moment and "nothing happens" the offence was committed in our opinion. Only the indicated approach helps to better enforcement of road traffic rules, fulfils the preventive role and educates the road users to behave safely on the public roads.

[11]In Czech Republic there is specific proceedings which reviews constitutionality (or legality) of legal norms. As an outcome Constitutional Court can derogate the contested provision. These proceedings can be launched only on a proposal of certain entities. Act No. 182/1993 Coll.

Conclusion from above mentioned case-law would be that "slightly" excessive speed (e. g. speed slightly above legal limit) is not always administrative offence. Influence of this case-law on road safety is noticeable because the objection "absence of material aspect" is regularly used by speeding offenders as a part of their defence – it is a proof that preventive effect of speed limit is relativised. The courts may have discretion regarding the punishment but no discretion regarding the offence.

Also, we must highlight that sometimes judicial power excludes the use of material aspect in certain type of cases – as it was for example for the drink-driving offences. SAP ruled[12] that it does not matter what was the level of influence of alcohol of the driver because the very presence of alcohol is enough for committing an administrative offence. This case-law clearly stated the position of the judicial power which supports *zero tolerance* policy in Czech Republic. In our opinion the more tolerant approach to speeding offences is not justified by road safety arguments. Specific rate of speeding should be considered in order to impose reasonable sanction.

Owners/drivers Liability Regime

Another current road safety issue in Czech Republic is the question of constitutionality of the owner's liability regime which was introduced in the year 2013. It stipulates the strict owner's liability for the actions of the driver of the vehicle if the driver commits road traffic offence which was recorded by automatic enforcement measure without human operator (or it is the case of unlawful parking). The owner of the vehicle has a possibility to identify the actual driver (and driver himself would be prosecuted for the actual road traffic offence) and if not, he will be held liable for different offence which rests in allowance to use his vehicle in unlawful way.

This mechanism has been criticised from the constitutional point of view[13] and that was the reason for addressing the Constitutional court with the proposition to derogate this legal mechanism.

Constitutional court after more than two years gave his verdict[14] and declared that owner's liability regime is not unconstitutional. This judgement has a very significant effect on the road safety as the owner's liability regime is one of the measures introduced in order to improve insufficient enforcement of road traffic rules. We will describe some parts of the reasoning of the court which will demonstrate that road safety was considered as the important public interest.

Constitutional court recognised that the owner's liability regime has a clear purpose to act preventively and discourage from the actions which can lead to severe damages on health or lives. Therefore, it represents reasonable limitation to property rights. Another argument that Constitutional court

[12] Case 173/2015-32.
[13]The main arguments were based on the right to deny denunciation and presumption of innocence.
[14]Case Pl. ÚS 15/16.

recognised was that before introduction of owner's liability there was large number of offences (committed "by car") without any punishment because the evidence (usually photograph) did not identified specific driver. This situation clearly lacked preventive effect for road users to follow road traffic rules. Moreover, government in its statement provided statistics from National Road Safety Strategy which lead to the conclusion that after the introduction of this measure there was a decrease in severe damages caused by speeding

This case-law clearly demonstrates the importance of road safety arguments for constitutionality of measures which should strengthen enforcement of road traffic rules.

The Importance of Case Law in the Lack of Legislation of Minor Offences

We have demonstrated that the case law can have clear (but in-direct) effect on the road safety (improving/impairing). In this following chapter we will explore the more general question about the legal relevance of the case law in Czech Republic.

Czech law comes from the traditional continental system, where law making is the domain of legislation. It furthermore applies that public authorities (executive power) decide on imposing penalties, and their decision may then be reviewed in judicial proceedings (judicial power) in terms of their legality.[15] The lack of procedural rules for punishing administrative torts has remained a persistent issue since 1989. The current state is unsatisfactory and requires reform. It is possible, inter alia, to criticise existing legislation of procedural aspects of hearing administrative torts for the fact that it is very austere and chaotic. This appears in the legislation having a haphazard and fragmented effect, and not even respecting the basic link to criminal liability, especially in terms of (not) covering the imposing of penalties. *"The role of the courts in the review of administrative rulemaking raises profound questions as to the legitimate interference of courts in the exercise of administrative activities, which are often carried out in the pursuance of a legislative mandate."*[16]

Today one may state that Czech law contains comprehensive procedural rules for hearing only one type of administrative torts - offences. Hearing the remaining types of administrative torts stipulates a procedure following special regulations, and in the rest, subsidiary application of the Code of Administrative Procedure (CAP). One example (probably the most egregious) is illustrated below, whereas the CAP is not a regulation determined (or even adequate) for hearing administrative torts. So practice has only ever had (and still does have) available a procedural regulation which is not prepared for the specifics of administrative torts, and the procedures of administrative authorities thus frequently reminded

[15]There should be interesting to focus on a famous adage: *"To judge the administration is still administer. It recognizes the difficulty, if not impossibility of separating the process of legal control from the underlying process of administration."* In Rose-Ackerman, Lindseth & Emerson (2017) at 13.
[16]Türk (2013) at 126.

one (and still do) of the method of "trial and error", within which administrative authorities "tried" to apply their interpretation to individual cases, whereas the "continuity" of the outlined solution was not always found to be legal in proceedings before administrative courts. Thus to a certain extent, administrative authorities anticipated that the court would complete the imperfect legislation. Exasperating the deficiency of procedural rules in hearing administrative torts is the fact that Article 6 of the European Convention for the Protection of Fundamental Rights and Freedoms relates to administrative tort proceedings, including relating entitlement to justification of decisions. Administrative authorities do not always fully reflect this fact; nonetheless, it is now anchored in case law of the SAC. For introduction, premises may therefore arise that case law of both Czech and European courts held significant meaning for the procedure of administrative courts in administrative tort proceedings. On the other hand, one may not attribute the failures in judicial proceedings exclusively to administrative authorities, because mainly deficiencies in the work of lawmakers caused the current situation.

Justification of individual meaningful decisions thus became a key communication means between administrative authorities and the courts on their ideas for closing gaps in procedural regulations, so in this situation, justification of the decisions of judicial bodies and administrative authorities became very important.[17] As described below, especially justification of certain verdicts nearly became a source of law in the formal sense of the word. Since however the constitutional order of the Czech Republic does not stipulate that courts could pass legislation, the question arises of whether or not the procedure of the SAC outlined below has disrupted the balance between individual state powers.

Regarding the very anchoring of the institution of justification, one can say that along with the statement and instructions, it is an essential part of every administrative and judicial decision (excluding certain legal exceptions). The justification is the focus of persuasiveness, so high demands are placed on its formality and content.

However, the general and primary task of justification of a judicial and administrative decision is not to be a source of law. On the contrary, justification should be a part of an individual decision in specific cases and is not primarily determined for regulating a large number of cases (with the exception of the specific institution of measures of a general nature). Justification should thus serve primary for controlling the decision-making process and protecting the rights of the parties. In consequence of inconsistent work however, justification (in Czech law) has assumed unanticipated functions.

That is because due to its imperfection, current legislation on administrative torts was often complemented or even changed by case law. The most meaningful case when the SAC intervened directly into legislation stated in the CAP and completely changed the procedural rules mentioned here by its own interpretation is the case where the SAC explicitly stated that the provisions of Sec 82(4) of the CAP were not to be applied in administrative torts proceedings. This provision states the general principle that in administrative proceedings (thus also in

[17]Similar situation is also in Germany. See Halberstam (2017) at 149-152.

administrative torts proceedings, since there is no special legislation here), concentration of proceedings applies, thus it is not possible to state any new facts in appeal proceedings if they were already applied in first-instance proceedings. However, the SAC determined that this rule (despite the explicit wording of the law) does not apply in administrative tort proceedings. So once the SAC chose a solution that can be considered correct and just (and coming from the principle of punishment), we believe that it interfered inadmissibly in the explicit text of the law and decided on its general lack of applicability in administrative tort proceedings, to which it is not entitled in light of constitutional order. Its primary task, as already emphasised, is provision of protection to public subjective rights of parties in specific proceedings. However, in consequence of the lack of procedural rules, the SAC chose a procedure which (though appearing correct and just) made this decision a binding rule for the future, because the SAC will consider possible breach of the opinion stated in this decision as illegality of the decision. Though the SAC referred in the given decision to principles of punishment, from which it deduced justifiability of its procedure and in which one may see the material source of "legal regulation", the mentioned decision became something of a "formal source of law", because just here the mentioned rule was anchored, though inferred from general principals, and administrative authorities started applying it during hearings in administrative tort cases, because this decision has been referred to often. On the other hand, the question may emerge of how the SAC could be so sure that the legislature truly had no intentions of disallowing innovations in appeals proceedings, and whether by its procedure, the SAC replaced the will of the legislature with judicial "will". Despite all this, the SAC should not bear the primary brunt of criticism for this interference in the balance of individual powers in the state. This situation arose in consequence of the haphazard work by lawmakers, and the SAC thus did everything to produce a just outcome of the case, though it apparently did so outside of its authority. It is then rather a rhetorical question as to why the legislature reacted to this decision of the SAC so much later and resigned to the wording of the CAP, especially if in the newly enacted Act No. 250/2016 Coll. on responsibility for administrative torts and their procedure of 01 July 2017, it enables introduction of innovation in appeals proceedings, and in the justification report it explicitly points out that this concerns one of the fundamental rules for administrative punishment. May we therefore infer that the legislature is willing to respect interferences in legislation even by a general (and not a constitutional) court? There is no clear answer to this question.

It was already mentioned that the legislature adopted new legislation, but the path to it was not an easy one. The beginnings of work on a new government bill on minor offences designed to remedy the given situation date back to the 1990s. Preparatory work did not occur in ideal fashion, but the aforementioned Act No. 250/2016 Coll. was ultimately enacted, which, effective 01 July 2017, will introduce unified procedural rules for the vast majority of administrative torts. The legislation contained in this act then shows the other important aspect of mutual powers and influencing of legislation and the judiciary, thus the positive or negative reactions of the legislature on judicial decision-making. This aspect is

desirable in a democratic legal state and is a due expression of how influencing of one power in the state by the other should possibly occur, in other words consideration of whether the legislature will follow the interpretation assumed by the courts or will possibly shift the legislation in a different direction intended by the legislature. In drafting the new legislation, the legislature partially respected case law and partially selected different solutions from conclusions of case law as well. One must stress however that these very questions are key to defining the relationship between the judiciary and legislation, because it concerns procedural institutions not entirely explicitly stated in the current legislation, and still regulated to a certain extent by case law alone. Nevertheless, in these further indicted cases, the courts did not interpret the CAP explicitly against the wording of the act as it was with the example of concentration of proceedings. However, the legislature did not approach its role within the framework of this "debate" on new legislation altogether thoroughly and may therefore reap criticism that certain procedural aspects in the new act are also absent, so the question arises of how public administration and the courts are to proceed under the new legislation. Neither does the justification report lend any sufficient answer to this question. One may therefore ask whether it will be possible to use original case law, or if the aim of the legislature not to regulate certain procedural institutions was intentional, and thus led to use of a less than adequate legal system intentionally, or whether the legislature forgot and expects use of case law, which would then again to a certain extent become a source of law. These too are questions that will have to be considered upon application of the law.

Thus the new government act on minor offences does not resolve certain unclear aspects, and even forms new doubts about further interpretation in certain controversial points resolved by case law, whereas in such a situation, it is hard to speak of the principle of legal certainty.[18] In terms of the issue of rights to justification of the decision on imposing fines, the starting point once again is the subsidiary regulation of the CAP, which complements partial requirements for justification scattered in the drafted act on offences.[19] In consequence, the new act on minor offences appears in this as a squandered opportunity to create comprehensive and clear codification. For example, the Criminal Code contains much more indicative regulation, providing a quicker and more certain overview about what the justification should contain. In relation to this, we lean towards the opinion that the legislature intends for continued application of requirements placed on the justification by administrative courts. However, it could make clearer instructions available to administrative authorities on how to approach the justification and what all it should contain. If it directed its intentions to ignoring case law, it would be unclear in certain contexts as to how the justification should

[18]Other very important principles are proportionality, which means *„relation between legitimate ends that a public authority pursues, and the means by which it pursues them. Ordinarily, it means not imposing a burden on a person that is out of proportion to the value of the public authority's action.";* and reasonableness, which means that "*decision be unreasonable on judicial review when it is inconsistent with the reasons that it is right for judges to impose on other decision makers."* Endicott (2011) at 632; Bayne (1993) at 449-452.

[19]*"Every "formality", "condition", "restriction" or penalty imposed in this sphere must be proportionate to the legitimate aim pursued."* In Handyside v United Kingdom, para 49.

look. In any case, case law itself provides us with no clear answer concerning matters of content.

Regarding the question outlined above on how to bridge new (or persisting) deficiencies in the regulation, one may probably expect that administrative authorities will continue to refer to the conclusions determined by judicial case law, which has so far complemented and often even replaced the insufficient legislation regulating justification of a decision on administrative torts. Meanwhile however, administrative authorities have been calling for quite some time for "instructions" on how to justify their decisions properly. It is therefore a question whether, due to legal certainty in "minor criminal law" and "major criminal law", in order to preserve unity in access to criminal charges under Article 6 of the ECHR, procedural institutions should be clearly and comprehensively regulated *expressis verbis* in adequate measure in the new act on minor offences, instead of relying on (sometimes even normatively binding) texts of certain decisions of the SAC.

As indicated, the new act can be considered a squandered opportunity in certain aspects, and it speaks of the less than fully functioning work of the legislature in its effort to make legislation clearer. In such a situation, it is hard to speak of the principle of legal certainty. In terms of justification, where the starting point again is the subsidiary legal regulation of the CAP, which complements partial requirements for justification scattered in the new act on minor offences, the new act on minor offences appears in certain areas to be a squandered opportunity to create clear and comprehensive codification - something practice has been calling for over many years.

Conclusions

In our article at first, we considered whether and how road safety can affect legislation. We discovered that there is clear connection between road safety materials (e. g. vision zero strategies) and enacted legislation (often measures which aims to improve insufficient enforcement). Therefore, public interest on road safety is one of the reasons why certain legislation was adopted.

Following this introduction, we demonstrated how road safety is affected by case-law in Czech Republic. Case-law can have rather indirect influence but depending on its position it can clearly influence level of road safety (improvement or impairment). We also demonstrated that road safety arguments are essential for assessment of constitutionality of legal measures improvement of road safety.

A strong connection exists between law and road safety. Road safety arguments should be considered by administrative authorities as well as by courts as their decisions also affect road safety.

References

Bayne, P. (1993). 'Administrative Law. Reasonableness, proportionality and delegated legislation' in *Australian Law Journal* 67:448, 449-152.

Belin, M-A., Johansson, R., Lindberg, J. & C. Tingvall (1997). 'The Vision Zero and its Consequences' at the 4th international conference on Safety and the Environment in the 21st century, November 23-27, 1997, Tel Aviv, Israel. At: http://www.trafikverket.se/contentassets/5e3d8c0eb4e94efd9738cca74b912bf5/vz_and_its_consequenses.pdf

Endicott, Th. (2011). *Administrative law.* 2nd edition, Oxford university press. Oxford, UK: Oxford university press.

Global Status Report on Road Safety 2015. World Health Organization at: http://www.who.int/violence_injury_prevention/road_safety_status/2015/en/

Halberstam, D. (2017). 'The Promise of Comparative Administration Law: a Constitutional Perspective on Independent Agencies' in Rose-Ackerman, S., Lindseth, P.L. & B. Emerson (eds.). *Comparative Administrative Law (Research handbooks in comparative law).* 2nd ed. Cheltenham, UK: Edward Elgar Publishing.

Lewans, M. (2016). *Administrative Law and Judicial Deference*. Oxford Portland, Oregon: Hart Publishers

Mobility and transport road safety at: https://ec.europa.eu/transport/road_safety/specialist/erso/country-overviews_en

National Road Safety Strategy at: http://www.ibesip.cz/data/web/dokumenty-nsbsp/revize-a-aktualizace-nsbsp-2020-vc-ap-final.pdf

Quinot, G. (2010). 'Substantive reasoning in administrative law adjudication' in *Constitutional Court Review* 3(1):111-139.

Rose-Ackerman, S., Lindseth, P.L. & B. Emerson (eds.) (2017). 2nd ed. *Comparative Administrative Law (Research handbooks in comparative law).* Cheltenham, UK: Edward Elgar Publishing.

Speed and Crash Risk. IRTAD, 29 March 2018 at: https://www.itf-oecd.org/speed-crash-risk

Türk, A.H. (2013). 'Oversight of Administrative Rulemaking: Judicial Review' in European Law Journal 19(1):126-142.

Transport Research Centre (2016) at: https://www.cdv.cz/tisk/ztraty-z-dopravnich-nehod-v-roce-2016-skoda-pres-69-miliard-korun/

Cases

Case 104/2008-45. Judgment of Czech Supreme Administrative Court from 14. 12. 2009, case number 5 As 104/2008-45.

Case 137/2011-52. Judgement of Czech Supreme Administrative Court from 19. 4. 2012, case number 7 As 137/2011-52.

Case 173/2015-32. Judgement of Czech Supreme Administrative Court from 11. 5. 2016, case number 10 As 173/2015-32.

Case Pl. ÚS 15/16.Judgement of Czech Constitutional Court from 16. 5. 2018, case number Pl. ÚS 15/16.

Handyside v United Kingdom, Merits, App No 5493/72, A/24, [1976] ECHR 5.