

BULGARIA

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Road Traffic Act “RTA” (effective from 2007)

Art. 113. (1) When crossing traffic lanes, pedestrians must use the pedestrian crossing under the following rules:

1. before entering the traffic lane, to consider the distance to approaching vehicles and their speed of movement;
2. not to unnecessarily prolong the route and time for crossing, and not to stop unnecessarily on the traffic lane;...

Art. 114. Pedestrians are prohibited:

1. from suddenly entering the traffic lane;
2. from crossing the traffic lane when visibility is limited;...

SCC, III Penal Division, Decision No. 300/2016

- In 2012, a motorcyclist, driving at about 30 km/h over the speed limit, crashes and kills a 22-year-old girl on a pedestrian crossing.
- Four years later, the Supreme Court of Cassation (SCC) ruled a final decision, qualifying the conduct of the pedestrian as contributory negligence because, when crossing, she did not take into account the speed of the approaching motorcycle.
- The SCC decision considers the contributory negligence only with regards to determining the sentence, and does not comment on the civil law compensation.
- The case drew considerable public attention and the decision was subject to significant criticism with regards to contributory negligence. It is interesting to note that even the chair of the judge's panel expressed a dissenting opinion.

SCC, Interpretative Decision No 2/22.12.2016

- The Chief Prosecutor initiated an interpretative case on some issues of transport crime before the General Assembly of the Penal Chamber of the SCC;
- The Minister of Justice raised the question:
 - *Could the conduct of a pedestrian, crossing a traffic lane, be qualified as contributorily negligent to the damaging result (death or personal injury) under Art. 343 of the Penal Code if the driver of the vehicle has violated the traffic rules on speed limit provided in the Road Traffic Act?*
- The Chairman of the SCC raised the question:
 - *Depending on the crossing place, when is the right of the pedestrian to cross the traffic lane absolute?*
- The two questions were combined for a joint consideration.

Judgement of the Court - 1

- **When using a pedestrian crossing**, the pedestrian's right is absolute if exercised in accordance with the requirements of the law. When the pedestrian has violated the rules of Art. 113 and Art. 114 of the RTA, his conduct is contributorily negligent to the damaging result (death or personal injury), even if the driver has violated traffic rules on speed limit.
- **The right to cross an intersection regulated by traffic lights** is absolute when the pedestrian has entered the traffic lane on authorized light signal. When the driver of the vehicle has violated traffic rules on speed limit, the conduct of the pedestrian could be qualified as contributorily negligent to the damaging result (death or personal injury) only if the pedestrian has not complied with the authorized signal of the traffic lights.

Judgement of the Court - 2

- **The right to cross places equated to pedestrian crossings** is also absolute when exercised in compliance with law. When the pedestrian has violated the rules of Art. 113 and Art. 114 of the RTA, his conduct is contributorily negligent to the damaging result (death or personal injury), even if the driver has violated traffic rules on speed limit.
- **The right to cross at unregulated places** is not absolute and the pedestrian has to comply with the law. There is contributory negligence to the damaging result (death or personal injury) by the pedestrian if he did not comply with the restrictions provided in Art. 113 and Art. 114 of RTA and his obligation to cross the traffic lane on a pedestrian crossing, when there was one nearby.

Dissenting opinion

- Disagreement with the conclusion of the majority, which does not differentiate between the degree of danger of the violation of the pedestrian and the violation of the driver.
- It is unjust to treat in the same way using a pedestrian crossing and crossing at unregulated places, as in both cases violation of traffic rules by the pedestrian is qualified as contributory negligence.
- The obligation of pedestrians to consider the speed of the vehicle does not mean that they could be expected to be able to determine the exact speed and calculate the braking distance.
- The conclusion of the dissenting opinion is that the conduct of a pedestrian could not be qualified as contributory negligence if the driver of the vehicle breached traffic rules.

Road Traffic Act (effective from January 2017)

Art. 113. (1) When crossing traffic lanes, pedestrians must use pedestrian crossings under the following rules:

1. before entering the traffic lane, to consider the approaching vehicles;

...

Art. 119. (5) In case of an accident involving a pedestrian on a designated “pedestrian crossing”, when the driver has exceeded the permitted speed limit or violated another rule of the Road Traffic Act connected with the accident, the pedestrian shall not be considered contributorily negligent for the occurrence of the accident.

Commentary

- The conclusions of the interpretative decision cannot be supported because they call into question a fundamental right in all modern legal systems - the priority of a pedestrian over vehicular traffic when using a pedestrian crossing.
- Theoretically, the term "absolute right" as used in the question raised before the SCC creates confusion, because it comes from civil law. The Road Traffic Act only mentions priority, and not a right, and the priority of one or another participant in the traffic is absolute by definition.
- The conclusion of the dissenting opinion is actually reflected in the amendment of the Road Traffic Act from January 2017, which is an immediate recognition of its value.
- The amendment, though just in terms of content, could be subject to critique in terms of legal technique, as it raises the question whether or not contributory negligence should be defined in a law.