

Gökçe –

Objection!

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15

**THE CRIME OF ENDANGERING TRAFFIC SAFETY
BY DRIVING UNDER THE INFLUENCE OF ALCOHOL**



THE CRIME OF ENDANGERING TRAFFIC SAFETY BY DRIVING UNDER THE INFLUENCE OF ALCOHOL

Driving under influence of alcohol has become quite common in our country today and has become one of the biggest problems. This situation is visible through the increasing number of news that are reflected on the media day by day. In this sense, the crime of endangering traffic safety has been codified in the Article 179/3 of the Turkish Penal Code and the acts that constitute this crime have been indicated as; driving even though not being able to manage and control a vehicle such safely due to the influence of alcohol, drugs or any other cause. This crime is included in the crimes that pose a general threat and this provision protects traffic safety and public order in particular, but also people's right to life, bodily integrity and right to ownership.

In what situations does “the crime of endangering traffic safety by driving under the influence of alcohol” come into question?

For the aforementioned crime to occur, the vehicle needs to be driven under the influence of alcohol, drugs or in a situation where one is unable to manage and control a vehicle such safely due to any reason.

In addition, driving under the influence of alcohol or drugs is not the only situation where this crime occurs. There are many situations that can be included in driving even though not being able to drive safely, which is another act that constitute this crime. For instance, in a supreme court ruling, it has been indicated that the crime occurs where one continues driving despite being tired and sleepless due to having driven for long hours. Similarly, it wouldn't be possible to drive safely in a case where a health condition, which hinders the ability to pay attention to the road or to control the steering wheel, relapses and this situation would be included in the scope of this crime.

Therefore, in order for the driver to not to be acquainted with this crime, matters such as not departing if one is not able to pay full attention to the road and not consuming anything that could cause sleep or has a health side effect, need to be taken into account.

What sanctions are regulated in the Turkish Penal Code for “the crime of endangering traffic safety by driving under influence of alcohol”?

The sanction for the crime of endangering traffic safety by driving under influence of alcohol has been set out in the Turkish Penal Code as imprisonment from three months to two years. This crime, as of nature, is not dependant to complaint, and also the reconciliation procedure is not applied. Additionally, the mechanisms such as deferment of the announcement of the verdict or suspension of punishment can be applied, depending on the amount of punishment. Moreover, this crime is subject to the accelerated trial procedure under the Article 250 of the Criminal Procedure Code.

What sanctions are regulated on the administrative dimension of “the crime of endangering traffic safety by driving under influence of alcohol”?

There is an additional administrative fine set forth for driving under influence of alcohol in the Highways Traffic Law. First and foremost, it should be noted that the sublimit for the administrative sanction of driving under influence of alcohol is 0.50 per mill. For those driving anything other than a private vehicle, the sublimit of per mill is being applied as 0.21.

In the Article 48/5 of the Highways Traffic Law, it has been codified that an administrative fine of 700 Turkish Liras would be applied and that the driver’s license would be withdrawn for six months, even when the act constitutes a crime for those having driven after consuming alcohol above these levels. Additionally, the fine and the length of withdrawal of the driver’s license would raise in case where this situation occurs for a second or third time.

On the other hand, there is a provision in the Highways Traffic Law Art. 48/6 setting forth that the Article 179/3 of the Turkish Penal Code would be applied to drivers that have over 1.00 per mill of alcohol. Thus, if the per mill of alcohol of the driver is above 1.00, it is accepted that the crime of endangering traffic safety by driving under influence of alcohol is constituted.

Herein, we would like to highly point out that the per mill of alcohol alone is not sufficient to be convinced that this crime has been committed and its effect on the driver should be investigated in each case. Accordingly, drivers having over 1.00 per mill of alcohol and drivers having below 1.00 per mill of alcohol ought to be analysed differently. However, although it is like this in theory; in practice, sanctions are being given regardless of the amount of per mill for it to be dissuasive for the society and by this way, traffic safety is attempted to be ensured. The Fifth Specialized Board of the Institution of Forensic Medicine has expressed that drivers having over 1.00 per mill are drunk to the point where it sweeps away any personal difference and that it should be accepted that almost every driver’s ability to drive safely is adversely affected under the influence of alcohol at these levels and has set a limit. However in general, the fact that the vehicle has been driven under the influence of alcohol or drugs is considered sufficient for a person to be punished in practice.

In conclusion, the act of driving under influence of alcohol has been specifically regulated in the Turkish Penal Code as the crime of endangering traffic safety and is also subject to an administrative fine in the Highways Traffic Law. Even though it is possible, according to both the Turkish Penal Code and the Highways Traffic Law, to impose sanctions when the per mill of alcohol of the driver is above 1.00; in practice, drivers can be punished for the abovementioned crime regardless of their level of per mill.

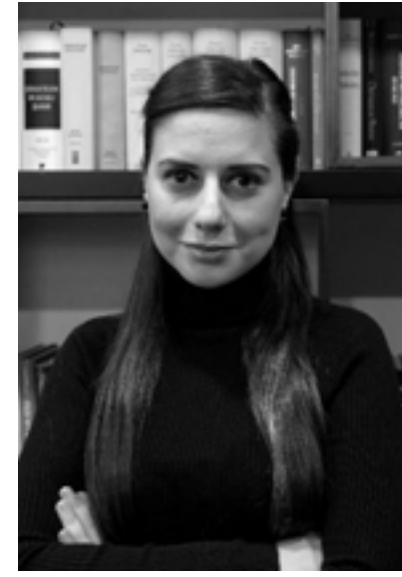
Answers. Not theories.

Gokce Attorney Partnership

Editors:



Av. Dr. Erkan Sarıtaş
erkan.saritas.@gokce.av.tr



Av. Hazal Algan
hazal.algan@gokce.av.tr



Av. Mehmet Topluıldız
mehmet.topluıldiz@gokce.av.tr



Stj. Av. Nur Selen Demiralp
selen.demiralp@gokce.av.tr

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Please contact us at
contact@gokce.av.tr
0 212 352 88 33

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