

**ADHERENCE TO THE PRINCIPLE OF LIMITED TRUST
AS A GUARANTEE TO ENSURE ROAD SAFETY**

**PRZESTRZEGANIE ZASADY OGRANICZONEGO
ZAUFIANIA JAKO GWARANCJA ZAPEWNIENIA
BEZPIECZEŃSTWA RUCHU DROGOWEGO**

Emilia Gulińska

University of Technology and Humanities Casimir Pulaski in Radom
e-mail: e.gulinska@uthrad.pl; <https://orcid.org/0000-0002-1106-5067>

Abstract

The purpose of the study is to analyze the principle of limited trust as a guarantee of ensuring road safety in the light of current legal solutions. The analyzed principle is a rule of appropriate behavior of the driver of a vehicle in situations involving the traffic of pedestrians, and provides a normative basis for acting in confidence to other traffic participants. It should be emphasized that its observance guarantees the safety of pedestrians, while its violation poses a serious threat. It is also worth noting that the driver of a vehicle is not obliged to anticipate all unusual and dangerous behavior towards other traffic participants, as this would result in constant obstruction and paralysis of traffic flow.

Keywords: traffic participant, safety, precautionary principle, traffic law, driving a motor vehicle

Abstrakt

Celem pracy jest analiza zasady ograniczonego zaufania jako gwarancji zapewnienia bezpieczeństwa drogowego w świetle obowiązujących rozwiązań prawnych. Analizowana zasada stanowi regułę odpowiedniego zachowania się kierującego pojazdem w sytuacjach związanych z ruchem pieszych oraz stanowi normatywną podstawę do działania w zaufaniu do innych uczestników ruchu. Podkreślić należy, że jej przestrzeganie gwarantuje bezpieczeństwo pieszym, zaś jej naruszenie stanowi poważne dla nich zagrożenie. Warto także zaznaczyć, iż kierowca pojazdu

nie ma obowiązku przewidywania wszelkich nietypowych oraz niebezpiecznych zachowań w stosunku do pozostałych uczestników ruchu, gdyż skutkowałyby to nieustannym tamowaniem i paraliżowaniem ruchu drogowego.

Słowa kluczowe: uczestnik ruchu drogowego, bezpieczeństwo, zasada ostrożności, prawo ruchu drogowego, kierowanie pojazdem mechanicznym

Introduction

Safety belongs to one of the most elementary human needs. It is a fundamental right, which boils down to the elimination of situations that threaten man and his property. The responsibility for ensuring it derives from the tasks set by laws. The state as guarantor bases it on the principle of cooperation of public administration. The concept of safety is understood as a state and process in which institutions and residents of a certain territory have statutory protection against threats arising from the actions of other people, natural phenomena or technical failures [Gierszewski 2013, 11]. Public safety is one of the types of security, which is the totality of conditions and institutions that protect the life, health, property of citizens and national assets, the system and sovereignty of the state against the phenomena threatening its social and legal order, which may harm the universally accepted norms of conduct. It is a state in which citizens can freely, in accordance with universally accepted norms, exercise their civil rights and freedoms [ibid., 18-19]. Public safety is also referred to as a state in which the general public of individually indeterminate citizens, living in the state and society, is not threatened by any danger, and regardless of what its sources might be. The protection of public safety belongs to the state, which corners security and pronounces what is incompatible with security and what disrupts or may impede the normal functioning of the state. The subjective approach is characterized by the definition that public safety is the totality of conditions and institutions that protect the life, health and property of citizens, as well as the state system and national assets. What is the common denominator of the definition and concept of public security is the reference to three basic issues: the absence of threats to the free functioning of the citizen, the undisturbed functioning of the state organization and the fulfillment of its interests, and the observance by citizens in their conduct of the general principles of collective

coexistence, as well as the legal norms set by the state [Maśniak 2013, 143-44].

The area of public safety is traffic safety, which mainly includes the subject of ensuring the safety of traffic participants (including pedestrians) mainly on the roads, in residential and traffic zones. In the current legal system, there is no formal definition of this concept, nor does any legal act provide a legal definition [Ogrodniczak and Ryba 2016, 352]. Thus, the concept of road safety can be understood as a set of all rules, rights and obligations of people participating in traffic, as well as institutions responsible for safety and maintenance of the proper condition of roads [Raczyński 2020, 94].

This work analyzes the principle of limited trust as a guarantee of ensuring road safety in the light of current legal solutions. The work uses the dogmatic-legal method and the principle of legal functionalism by referring to the judgments of the Supreme Court.

1. The essence of the principle of limited trust

The principle of limited trust is expressed in Article 4 of the Road Traffic Law, according to which a traffic participant and another person on the road have the right to expect that other participants in such traffic observe traffic regulations, unless circumstances indicate that they may behave differently.¹ On the one hand, it includes the aspect of trust between movers, which makes it possible to undertake maneuvers with the assumption that the subjects know their rights and duties and therefore will not enter into a collision. On the other hand, it defines the limits of this trust, which are the objective symptoms of the behavior of a given traffic participant against a certain right or duty under a specific traffic regulation [Burtowy 2021b, 104]. In light of the current state of the law, the principle of limited trust is that every traffic participant and other person on the road has the right to believe that other participants in such traffic obey the applicable regulations, unless circumstances indicate that their behavior on the road may be different, and that the traffic participant

¹ Act of 20 June 1997 – Traffic Law, Journal of Laws, item 988 as amended [hereinafter: Traffic Law].

and other person on the road are obliged to obey orders and signals given by persons directing traffic or authorized to control traffic, traffic lights and traffic signs, even when the provisions of the law imply a different manner of behavior than that prescribed by such persons, traffic lights or traffic signs [Podgórska and Rajchel 2019, 330]. Thus, the rule in question obliges every driver to adjust his or her driving accordingly if there are grounds for anticipating that another traffic participant may disregard safety rules, but the condition for imposing criminal liability for violation of this rule is to show that the driver could and should have anticipated such behavior of another user. Imposing an obligation on a traffic participant to foresee any unusual and at the same time dangerous behavior of other traffic participants would lead to its constant obstruction and even paralysis.² Accordingly, the rule of limited trust provides a normative basis for acting in confidence towards other traffic participants.³

2. Personal scope of the principle of limited trust

The boundary between trusting and acquiring distrust in traffic was determined at the level of a potential violation of traffic safety regulations or rules. The boundary from which a traffic participant must abandon full trust to another road user and follow the principle of distrust is determined by circumstances indicating the possibility of non-compliance with traffic safety rules and regulations [Stefański 2003, 134]. Circumstances that lead to a loss of confidence in another participant include: 1) the personal characteristics of the traffic participant, indicating that he or she may not comply with the traffic safety rules and regulations that apply to him or her. This group of circumstances includes: children standing partially on the roadway and on the sidewalk, children riding bicycles, children on the roadway unaccompanied by adults, unaccompanied children of the elderly on or in the immediate vicinity of the roadway, as well as the presence of an intoxicated person on the roadway, a wobbling pedestrian on the road, indicating that he is intoxicated, the presence of elderly people or a certain category of people with special needs on the roadway;

² Judgment of the Court of Appeals in Rzeszów of 30 January 2020, I ACa 407/18, Lex no. 3123894.

³ Decision of the Supreme Court of 6 February 2013, V KK 264/12, Lex no. 1293867.

2) abnormal behavior of a traffic participant, as expressed by forcing an undue passage or blocking the road by an unruly pedestrian, failure of another road user to respond to broadcast warning signals, improper movement of pedestrians, failure of a vehicle coming from the opposite direction to turn on its dipped headlights, or strange behavior of the vehicle driver; 3) a special situation justified by life experience. This includes the pedestrian crossing zone, the vicinity of railroad stations, where people rush from and to trains, crossings to streetcar stop islands, streets with narrow sidewalks where pedestrians find it difficult to fit in, a bus standing at a stop, as it is a very common phenomenon that people who have got off the bus try to cross the road before the bus starts from the stop [Stefański 2011, 151-57].

Loss of trust in another road participant occurs when any of the above-mentioned circumstances or situations arise. The possibility and duty to anticipate improper behavior of a road participant must arise from the offender's awareness of a circumstance or situation indicating possible conduct contrary to the law or traffic rules. These circumstances or situations must be overt and discernible to the driver of the vehicle [Idem 2006, 157].

After all, the rule of limited trust cannot be understood in the abstract, that is, it does not apply to the driver of a motor vehicle with respect to every potential traffic participant, but only to one who is within the field covered by the driver's ability to observe the road (i.e., persons or vehicles within the driver's field of vision), and whose behavior or age gives rise to a reasonable lack of trust. It also applies to such a road user whose appearance on the road and incalculable behavior, under specific road conditions, is within the scope of the duty of foresight of the driver of such a vehicle (e.g., a person emerging from behind a stopped bus). However, it cannot apply to such a traffic participant whose appearance on the road cannot be foreseen, and in any case whose appearance is not predicted by any reasonable circumstances existing in a specific traffic situation.⁴

Driving an unlighted motor vehicle on a public road after dark, and moreover, one that is technically inoperative in many respects

⁴ Judgment of the Supreme Court of 17 June 1999, IV KKN 740/98, Lex no. 39196.

(including the lack of functioning indicators) not only constitutes a gross violation of safety rules, but also a real danger to safety. In road traffic, precisely for this reason, there is a principle of so-called “limited trust” towards other participants of this traffic, that even the possible contribution of another participant to causing a traffic accident, does not exempt from liability the one who by their actions also contributed to it.⁵ It is generally accepted that violation by another road user relieves the compliant person from liability when he or she: 1) could not have noticed or foreseen the trespass on the part of a fellow traffic user; 2) noticing the trespass or anticipating it, did everything possible in the given situation to counteract the danger (the so-called correctness of defensive maneuvers); 3) was unable to adjust their behavior to the conditions that arose.⁶

As an example, one of the judgments of the Supreme Court, in which it stated that the driver of a public transportation vehicle cannot be accused of omission, which would be expressed in the failure to anticipate the possible behavior of a person riding a scooter on the sidewalk parallel to the roadway, even if it was a minor. The sight of this traffic participant did not constitute an alarming circumstance for the defendant, as the driver of a vehicle on the roadway. There was still nothing to indicate either the minor’s intention to change direction at the nearest pedestrian crossing, let alone that they would do so in violation of basic safety conditions, i.e. without stopping in front of the crossing and without waiting for a bus already in the crossing or just entering it. As the expert aptly put it, the bus driver had no opportunity under the circumstances to avoid a collision with a person on a scooter when he entered the crosswalk without stopping. The defendant’s legal position would have been different if it had been established that the minor was already in close proximity to the pedestrian crossing when the bus approached it. However, the findings are different. They indicate that at the time the bus approached the pedestrian crossing, there were no pedestrians in the area of the crossing, nor was there a person driving the scooter. This entitled the defendant to enter the crosswalk. It is true that the principle of limited trust obliges every driver to adjust their driving accordingly if there

⁵ Judgment of the Supreme Court of 24 January 1997, II KKN 133/96, Lex no. 29516.

⁶ Judgment of the Supreme Court of 25 May 1995, II KRN 52/95, Lex no. 20787.

are grounds for anticipating that another traffic participant may disregard safety rules, but the condition for imposing criminal liability for violation of this principle is to show that the driver could and should have anticipated such behavior of that other traffic participant [...] Indeed, a driver cannot be expected to adjust their driving to the movement of people on the side of the road if there is no specific reason to foresee that they will behave in a way that endangers traffic safety.⁷

3. Precautionary principle vs. principle of limited trust

According to M. Burtowy, caution should be equated with such a psychophysical state and attitude of the traffic participant, which allow for an adequate rapid response to foreseeable dangers. Synonyms of caution will be “attentiveness,” “prudence” and “vigilance” [Burtowy 2021a, 102-103]. It is worth noting that the Traffic Law distinguishes two types of caution: general and special caution. General caution is defined in Article 3, para. 1 of the Traffic Law, according to which: a traffic participant and another person on the road are obliged to be cautious or, when the law requires it, to be particularly cautious, to avoid any action that could cause a threat to the safety or order of the traffic, impede the traffic or, in connection with the traffic, disturb the peace or public order and expose anyone to harm. Due caution is usually understood as such behavior of traffic participants that, taking into account all the circumstances existing at the time, excludes or, in any case, minimizes the risk of traffic safety. Failure to exercise due caution usually takes the form of failure to observe the rules of traffic safety. A traffic participant should be guided, in addition to traffic rules, by common sense, general forethought and respect for the safety of others.⁸ The general rule of caution is to avoid any action that could endanger the safety or the order of traffic, impede traffic or, in connection with traffic, disturb the peace or public order and expose anyone to harm. It is assumed that this is an average caution, that is, an average measure of diligence expressed in taking the actions that an average person in such a situation should normally take to avoid negative

⁷ Decision of the Supreme Court of 16 April 2018, III KK 366/17, Lex no. 2495929.

⁸ Judgment of the District Court in Sucha Beskidzka of 8 June 2016, II K 101/15, Lex no. 2063519.

consequences.⁹ Special caution, on the other hand, is regulated in Article 2, para. 22 of the Traffic Law, which stipulates that it is a caution consisting in increasing attention and adapting the behavior of a traffic participant to the conditions and situations changing on the road, to the extent that it is possible to react quickly enough. Thus, special caution is a qualified form of prudence, i.e. elevated to the limits that guarantee the effectiveness of the reaction, above all in the case of an unexpectedly changing situation on the road. It applies only to drivers and pedestrians, and is valid in situations expressly indicated in the traffic law [Kotowski 2013, 120-40]. The position on the above issue was also taken by the Supreme Court, stating that in the Traffic Law there are safety rules that are fundamental to ensure the safety of traffic participants. Therefore, in order to emphasize their importance, the legislator refers to the obligation to observe them as special caution. Such rules include the rules of behavior of the driver of a vehicle in situations involving the movement of pedestrians. This is because their observance guarantees the safety of pedestrians, while their violation poses a serious threat to them. Therefore, in certain situations related to traffic, when the law requires its participant to take additional precautions, this special caution, disregarding them can be judged as particularly reprehensible.¹⁰ Since the legislator not only made a distinction between “ordinary” and “special” caution, but also created a whole catalog of situations in which the duty of special caution goes as far as the limit of making sure that a particular maneuver or part of it can be performed safely, there is no sufficient basis for equating this particular – undoubtedly more far-reaching – form of special caution with its basic scope in every case. In a situation where the law clearly separates the two concepts, to equate them by way of interpretation would constitute an encroachment into the sphere of creating, rather than applying, the law. In addition, the attempt to equate the scope of the duty to exercise special care required for certain maneuvers – with the duty to ascertain the possibility of safely performing a certain maneuver, and only after carrying out such a preliminary procedure to build a norm of behavior carrying a criminal sanction is, in fact, the creation of the domain of criminal liability based

⁹ Judgment of the District Court in Kalisz of 3 October 2013, IV Ka 339/13, Lex no. 177072.

¹⁰ Resolution of the Supreme Court of 30 July 2009, SNO 49/09, Lex no. 1288920.

on interpretation, and not on the content resulting directly from a provision of statutory rank.¹¹ To sum up, the precautionary principle obliges one to react only to existing (observable) situations on the road, while the principle of special precaution, as a qualified form of the aforementioned precautionary principle, obliges one to behave in a manner that allows for an effective response not only to existing conditions on the road, but also to those changing or likely to change [Idem 2016, 139-41].

Precautionary principles are directives for specific behavior in established traffic situations. Unfortunately, this prudence is equated all too often with a limitation of trust in traffic. This means that the driver is obliged to assume as an assumption that at any moment an obstacle may appear on the road. The tactics of their driving must, therefore, take into account the need to stop the vehicle within a short braking distance. An example of this may be the need to respond to certain traffic signs warning of the possibility of traffic disruptions, for example, in areas particularly prone to children running out – near schools, kindergartens, play areas, or the appearance of people with disabilities. However, it should be borne in mind that there can be no automatism of judgment in this area. Even with due caution, there are times when the driver is unable to prevent an accident, and therefore cannot be blamed for its occurrence. This exceptional rule of conduct cannot be interpreted broadly, although it underlies the current regulations. Some of them adopt a profoundly reassuring model of conduct, from which it follows that if participants in traffic violated a mandatory directive in a particular situation, then their mistake should be rectified by the other participant in that situation, to whom the directive is addressed, formulated as if the first one did not exist [Pawelec 2011, 108-12].

Conclusion

To sum up, the cautious approach in driving applies to those situations, where the driver gets a clear signal that another road user does not comply with the applicable provisions. Every traffic participant must show proper consideration and avoid any action threatening safety and orderly traffic,

¹¹ Decision of the Supreme Court of 20 November 2012, V KK 110/12, Lex no. 1231647.

disrupting peace and public order, or putting all the traffic participants at risk of injury.

REFERENCES

- Burtowy, Michał. 2021a. "Komentarz do art. 3." In *Prawo o ruchu drogowym. Komentarz*, edited by Michał Burtowy, 102-103. Warszawa: Wolters Kluwer.
- Burtowy, Michał. 2021b. "Komentarz do art. 4." In *Prawo o ruchu drogowym. Komentarz*, edited by Michał Burtowy, 104. Warszawa: Wolters Kluwer.
- Gierszewski, Janusz. 2013. *Bezpieczeństwo wewnętrzne. Zarys systemu*. Warszawa: Difin.
- Kotowski, Wojciech. 2013. "Zasady bezpieczeństwa ruchu drogowego w świetle prawa." *Wojskowy Przegląd Prawniczy* 4:120-40.
- Kotowski, Wojciech. 2016. "O właściwym zabezpieczeniu dowodów." *Palestra* 9:139-41.
- Maśniak, Dorota. 2013. "Bezpieczeństwo ruchu drogowego jako bezpieczeństwo publiczne." *Gdańskie Studia Prawnicze* 29:143-52.
- Ogrodniczak, Michał, and Joanna Ryba. 2016. "Bezpieczeństwo ruchu drogowego w świetle wybranych aktów prawnych." *Autobusy* 6:352-55.
- Pawelec, Kazimierz J. 2011. *Dowody w sprawach przestępstw i wykroczeń drogowych*. Warszawa: LexisNexis.
- Podgórska, Agnieszka, and Jan Rajchel. 2019. "Prawne zagadnienia bezpieczeństwa i porządku w ruchu drogowym oraz wypadków drogowych." *Drogownictwo* 11:328-35.
- Raczyński, Maciej. 2020. "Bezpieczeństwo w ruchu drogowym – piesi jako niechronieni uczestnicy ruchu drogowego." *Ogrody Nauk i Sztuk* 10:92-102.
- Stefański, Ryszard A. 2003. "Glosa do postanowienia SN z dnia 11 marca 2003 r., III KKN 94/01." *Wojskowy Przegląd Prawniczy* 3:134.
- Stefański, Ryszard A. 2006. "Glosa do wyroku SN z dnia 19 października 2005 r., IV KK 244/05." *Wojskowy Przegląd Prawniczy* 2:157.
- Stefański, Ryszard A. 2011. "Glosa do postanowienia SN z dnia 5 listopada 2010 r., III KK 153/10." *Prokuratura i Prawo* 6:151-57.