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The Repressive Nature of the Forfeiture of Motor Vehicles Imposed on Intoxicated Drivers: A Comparative Analysis of Polish and Lithuanian Criminal Law

Represyjność przepadku pojazdu mechanicznego wobec nietrzeźwych kierowców (analiza porównawcza w polskim i litewskim prawie karnym)

1. Introduction

The Law on Road Traffic Safety of the Republic of Lithuania, states that “drunkenness”⁵ is the condition of a person who has consumed ethyl

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⁵ Neblaivumas – in Lithuanian language.

alcohol, when the concentration of it, for example, in exhaled air, blood etc., exceeds the legally established permissible limit⁶. In general, in Lithuania the maximum allowable concentration of ethyl alcohol in individual operating vehicle is 0,4 ‰⁷. However, for certain drivers stricter rules are applied. For example, novice drivers are considered to be drunk when the concentration of ethyl alcohol is more than 0‰⁸.

Drunk driving in Lithuania can be subject to administrative or criminal liability. The type of liability depends on the degree of intoxication. If a person drives when he is found to be intoxicated with 1.51 ‰ or more, harsher – “criminal liability” – applies. Such a person is considered to have committed a “minor crime”⁹. The liability is established in Article 281¹ of the Lithuanian CC¹⁰.

In the case of Poland, the legal framework governing liability for operating a motor vehicle after alcohol consumption is differentiated, but it invariably constitutes criminal liability in the broad sense (*sensu largo*). The decisive factor in the classification of the prohibited act is the determination of whether the perpetrator was in a state of “after alcohol use” or in a state of intoxication. The state “after alcohol use” occurs

⁶ Law of the Republic of Lithuania on Road Traffic Safety. State Gazette, 2000-10-31, No. 92-2883 (in Lithuanian language – Lietuvos Respublikos saugaus eismo automobilių keliais įstatymas. Valstybės žinios, 2000-10-31, Nr. 92-2883).

⁷ The Supreme Court of Lithuania has clarified that if specific legal norms state that a person is considered drunk if alcohol level is determined to be higher than 0.4 promile, this means that alcohol level must be determined to be 0.41 promile or higher (Ruling of the Supreme Court of Lithuania of 21 December 2021, No. 2AT-7-28-495/2021; in Lithuanian language – Lietuvos Aukščiausiojo Teismo 2021 m. gruodžio 21 d. nutartis administracinio nusižengimo byloje Nr. 2AT-7-28-495/2021).

⁸ Law of the Republic of Lithuania on Road Traffic Safety. State Gazette, 2000-10-31, No. 92-2883 (in Lithuanian language – Lietuvos Respublikos saugaus eismo automobilių keliais įstatymas. Valstybės žinios, 2000-10-31, Nr. 92-2883).

⁹ According to Lithuanian regulation, a minor crime (in Lithuanian language – “nesunkus nusikaltimas”) is an intentional offense for which the maximum penalty enshrined in the law does not exceed three years of imprisonment. A less serious crime (in Lithuanian language – “apysunkis nusikaltimas”) is an intentional offense for which the maximum penalty exceeds three years but does not exceed six years of imprisonment. A serious crime (in Lithuanian language – “sunkus nusikaltimas”) is an intentional offense for which the maximum penalty exceeds six years but does not exceed ten years of imprisonment. A particularly serious crime (in Lithuanian language – “labai sunkus nusikaltimas”) is an intentional offense for which the maximum penalty enshrined in the criminal law exceeds ten years of imprisonment.

¹⁰ Criminal Code of the Republic of Lithuania, Official Gazette, 25 October 2000, No. 89-2741 (in Lithuanian language – Lietuvos Respublikos baudžiamasis kodeksas. Valstybės žinios, 2000-10-25, Nr. 89-2741), hereinafter: Lithuanian CC.

when the blood alcohol concentration is between 0.2‰ and 0.5‰, or the alcohol content in exhaled air is between 0.1 mg and 0.25 mg per 1 dm³ [Article 46(2) of the Act of 26 October 1982 on Upbringing in Sobriety and Counteracting Alcoholism, consolidated text: Journal of Laws 2023, item 2151]. In contrast, the state of intoxication, as defined in Article 115 § 16 of the Polish CC¹¹, is established when the blood alcohol concentration exceeds 0.5‰ or results in a concentration above this threshold, or when the alcohol content in 1 dm³ of exhaled air exceeds 0.25 mg or results in a concentration above that limit.

Even though drunk driving (1.51‰ or more promile) was criminalized in Lithuania back in 2017, until now it remains a relevant topic. Raising different discussions in court practice and academia. For several years now, a significant part of criminal cases examined by courts has been related to drunken drivers. Some interesting examples can be mentioned.

For example, there were debates as to what “driving” is considered to mean. In the court practice it was established that driving does not necessarily have to be related to the engine running, distance traveled etc. and is sufficient to confirm the control of the vehicle¹².

It was also examined in Lithuania whether a person can be held criminally liable under Article 281¹ of the Lithuanian CC, which provides for liability for drunk driving of motor vehicles, for operating an “electric scooter” with alcohol concentration exceeding 1.5‰. It was stated that, an electric scooter is considered a motor vehicle because it has an electric motor, is designed for transporting people, has an instantaneous power greater than that of a motorized bicycle and equivalent to that of a moped, and its maximum possible speed even exceeds both other mentioned categories¹³.

It should also be noted that since 2019, under Article 281¹ of the Lithuanian CC, individuals can be held criminally liable for refusing to

¹¹ Act of 6 June 1997 – Criminal Code, Journal of Laws 2025, item 383 (consolidated text, as amended) (in Polish language – Ustawa z 6 czerwca 1997 r. – Kodeks karny, Dz.U. 2025, poz. 383, tekst jedn. ze zm.), hereinafter: Polish CC.

¹² Ruling of the Supreme Court of Lithuania of 15 February 2023 in criminal case No. BIK-7/2023 (in Lithuanian language – Lietuvos Aukščiausiojo Teismo 2023 m. vasario 15 d. nutartis baudžiamojoje byloje Nr. BIK-7/2023).

¹³ Ruling of the Vilnius Regional Court of 21 June 2022 in criminal case No. 1A-316-1121/2022 (in Lithuanian language – Vilniaus apygardos teismo 2022 m. birželio 21 d. nutartis baudžiamojoje byloje Nr. 1A-316-1121/2022).

undergo a sobriety test. Criminal liability for refusal to take a sobriety test may be applied if signs of intoxication are observed. The latter may include: the smell of alcohol, inappropriate behavior, slurred speech, or uncoordinated movements¹⁴.

The aforementioned issues are, to some extent, resolved similarly under Polish criminal law.

As established by Polish courts, “to operate a vehicle is to be understood as setting it in motion, directing its course, regulating its speed, and applying its brakes in a manner consistent with the vehicle’s design”¹⁵.

By contrast, in case of the electric scooter, as the Polish Supreme Court has clarified: “an electric scooter, equipped with a motor whose parameters are comparable to those of an electrically assisted bicycle, and which retains all the typical structural features enabling its ordinary use as a scooter (i.e., propulsion by pushing off with one’s foot), does not constitute a «mechanical vehicle» within the meaning of the Criminal Code”¹⁶. This position, however, has not garnered universal approval among legal scholars commenting on the Polish CC¹⁷.

Finally, within the Polish legal framework, refusal to undergo a sobriety test (whether by means of a breathalyser or by blood analysis) does not constitute a separate criminal offence.

One of the measures applied to drunk drivers in Lithuania as well as Poland is the confiscation (forfeiture) of a car. The **aim** of this article is to compare the problematic aspects occurring in legal science and practise in the sphere of vehicles’ confiscation of drunk drivers in Lithuania and Poland. The **tasks** of the publication are:

- a) to compare the understanding of a vehicle in the crime of drunk driving in both countries,
- b) to discuss if the confiscation of drunk drivers vehicles is mandatory in all cases,

¹⁴ See more: Ruling of the Supreme Court of Lithuania of 22 December 2022 in criminal case No. 2K-276-387/2022 (in Lithuanian language – Lietuvos Aukščiausiojo Teismo 2022 m. gruodžio 22 d. nutartis baudžiamojoje byloje Nr. 2K-276-387/2022).

¹⁵ Judgment of the Regional Court in Kielce of 10 December 2013, IX Ka 1523/13 (in Polish language – Wyrok Sądu Okręgowego w Kielcach z 10 grudnia 2013 r., IX Ka 1523/13).

¹⁶ Judgment of the Supreme Court of 22 February 2023, III KK 13/22 (in Polish language – Wyrok Sądu Najwyższego z 22 lutego 2023 r., III KK 13/22).

¹⁷ P. Zakrzewski, in: *Kodeks...*, commentary on Article 178a of the Polish CC, thesis 8.

- c) the analysis of situations in which it is permissible for the court to adjudicate a specified monetary amount in lieu of ordering the physical forfeiture of the vehicle.

Methodology. This study employs a comparative method to examine the aspect of confiscation of vehicles of drunk drivers in Lithuania and Poland. Drunk drivers in the context of this article are understood as persons with 1.51‰ or more promile. To identify similarities and differences, the analysis included the investigation of legal framework as well as the investigation of court practise in both countries. Dual focus allowed for the preparation of nuanced comparison. Cases where drunk drivers cause accidents were not in the field of interest of this article. Bearing in mind that the Lithuanian practice is of longer nature and that the article is to be published in Poland, the slightly bigger amount and examples presented in the article are from Lithuania.

Literature. It is often stated in the literature that while preparing the Lithuanian CC (2000) the Polish experience, for example, the solutions of the Polish CC of year 1997 were analysed and some used as a model¹⁸. However, in the case of vehicle confiscation for drunk drivers, it is widely applied in Lithuania already from 2018, while in Poland the practice is quite new. The issue of criminal liability for drunk driving has been discussed repeatedly in the publications of authors from both countries¹⁹, however, most often, focusing exclusively on national regulation. It should be noted that only in 2024 Levon, together with Raglewski and Meška, prepared the first comparative analysis to date, where a hypothetical situation was discussed, analyzing what penalties could be imposed on the drunk drivers in Lithuania and in Poland. However, the issue of vehicle confiscation was not examined in the aforementioned article²⁰. Thus, this article is a kind of continuation of the comparative research cycle examining the issues of criminal liability of drunk drivers in Lithuania and Poland.

This article is dedicated *in memoriam* of our respected late esteemed colleague a lawyer and prosecutor A. Meška who contributed to the development of criminal justice in Lithuania and to comparative legal analysis.

¹⁸ J. Levon, *Įmoka...*, p. 48.

¹⁹ For example: A. Abramavičius, V. Mikelėnas, *Autotransporto...*; I. Daukšaitė, *Keliv...*, p. 29–67; I. Daukšaitė, *Perdavimas...*, p. 70–96; A. Gutauskas, *Vairavimas...*, p. 101–120; K.J. Pawelec, *Z problematyki...*, p. 79–92.

²⁰ J. Levon, J. Raglewski, A. Meška, *Baudžiamoji...*, p. 394–417.

2. What is a vehicle in the context of the crime of drunk driving in Lithuania and Poland?

The jurisprudence of the Supreme Court of Lithuania mentions that the object protected by Article 281¹ of the Lithuanian CC, which provides for criminal liability for drunk driving, is safe traffic²¹. It was also stated that human life and health are among the most important values protected by law, therefore, the legislator, taking into account the dangerousness of the said act and seeking to ensure traffic safety, established the strictest - criminal liability²².

In the case of Poland, confiscation of vehicles of drunk drivers was introduced also mentioning similar reasons, mainly motivated with the aim to tighten the liability for such crimes²³. It was mentioned that in a significant part of European countries (e.g., Denmark, Switzerland, France, Slovakia, Luxembourg, Belgium, Estonia, Finland, Slovenia etc.), a measure in the form of vehicle forfeiture is provided, which ensures effective action in preventing this type of crime²⁴. On the other hand, some scholars claim that such regulation, raises serious criminal policy concerns, as the severity of the measure is not determined by the gravity of the offense, but by the value of the vehicle, which, as it was emphasized, can vary greatly which lacks justification from a criminal policy perspective²⁵.

When analyzing the issue of criminal liability for drunk drivers, much attention in both countries is paid to the problem of vehicle confiscation.

In the Lithuanian CC it is established that confiscation of property is the forced, gratuitous taking of any form of property subject to confiscation, which is in the possession of the perpetrator into the ownership of the state. According to the mentioned legal act, a property subject to confiscation²⁶ is considered to be: a “tool”²⁷, “mean” or “result” of an act

²¹ “Saugus eismas” – in Lithuanian language.

²² Ruling of the Supreme Court of Lithuania of 19 October 2022 in criminal case No. 2K-7-98-628/2022 (in Lithuanian language – Lietuvos Aukščiausiojo Teismo 2022 m. spalio 19 d. nutartis baudžiamojoje byloje Nr. 2K-7-98-628/2022).

²³ *Projekt...*, druk nr 2024, uzasadnienie (Sejm print No. 2024, 9th term of the Sejm), justification. The Act by which Article 44b of the Polish Criminal Code was introduced.

²⁴ M. Mozgawa, M. Budyn-Kulik, M. Kulik, *Tryb penalizacji...*

²⁵ M. Kulik, in: *Kodeks...*, commentary on art. 44b Polish CC, thesis 14. See, inter alia P. Daniluk, *O propozycji...*, p. 54–67.

²⁶ “Konfiskuotinas turtas” – in Lithuanian language.

²⁷ In Lithuania the definition of criminal act is disclosed through the *corpus delicti* of the criminal act, which consists of four elements: 1) object; 2) objective side; 3) subject;

prohibited by the Lithuanian CC (Article 72 of Lithuanian CC) Confiscation is considered to be one of the penal effect measures²⁸ established in the Lithuanian CC.

As noted by researcher S. Bikelis, concepts of “tool” and “mean” are distinguished in Lithuania²⁹. A tool in legal science is often described as an object used to committ a crime, for example, a knife used to commit murder. Meanwhile, a mean is often an object that is not used directly to commit a crime but facilitates the commission of the latter, for example, a car to transport the body of a murdered person³⁰. Similarly, case law states that tool directly affects the object of the crime, while items are recognized as means of committing a crime if they create the conditions for, facilitate the commission of such an act³¹.

Even though the concepts of “tool” and “mean” are distinguished in Lithuania, it is worth mentioning, as Bikelis notes, that it is difficult to find a single case where a vehicle was named a “tool” of a crime, even when the direct impact of the vehicle resulted in ones injury or death³². Indeed, for example, in the practice of the Supreme Court it was repeatedly stated that a car is a mean of crime of drunk driving established in CC of Lithuania. In many old and new cases it is explained that a vehicle, in terms of Article 72 of the Lithuanian CC, is a mean of committing the crime of drunk driving³³. As the court stated, without the use of the vehicle, the

4) subjective side. Tools and means are considered to be a part of objective side of *corpus delicti*.

²⁸ “Środki karne” – in Polish language.

²⁹ S. Bikelis, *Nusikaltimo...*, p. 8.

³⁰ See more: A. Abramavičius et al., *Nusikalstamos...*, p. 199–218.

³¹ Old and new case law examples: Ruling of the Supreme Court of Lithuania of 10 January 2018 in criminal case No. 2K-80-511/2018 (in Lithuanian language – Lietuvos Aukščiausiojo Teismo 2018 m. sausio 10 d. nutartis baudžiamojoje byloje Nr. 2K-80-511/2018); Ruling of the Supreme Court of Lithuania of 21 February 2023 in criminal case No. 2K-7-61-511/2023 (in Lithuanian language – Lietuvos Aukščiausiojo Teismo 2023 m. vasario 21 d. nutartis baudžiamojoje byloje Nr. 2K-7-61-511/2023).

³² S. Bikelis, *Nusikaltimo...*, p. 9.

³³ Old and new case law examples: Ruling of the Supreme Court of Lithuania of 20 December 2017 in criminal case No. 2K-392-699/2017 (in Lithuanian language – Lietuvos Aukščiausiojo Teismo 2017 m. gruodžio 20 d. nutartis baudžiamojoje byloje Nr. 2K-392-699/2017); Ruling of the Supreme Court of Lithuania of 10 January 2018 in criminal case No. 2K-80-511/2018 (in Lithuanian language – Lietuvos Aukščiausiojo Teismo 2018 m. sausio 10 d. nutartis baudžiamojoje byloje Nr. 2K-80-511/2018); Ruling of the Supreme Court of Lithuania of 16 January 2018 in criminal case No. 2K-79-511/2018 (in Lithuanian language – Lietuvos Aukščiausiojo Teismo 2018 m. sausio 16 d. nutartis

commission of this crime is impossible, therefore the vehicle is a mean of committing the crime established in Article 281¹ of the Lithuanian CC, which corresponds to the concept (characteristics) of property subject to confiscation specified in Article 72 of the Lithuanian CC³⁴. Lithuanian court practice notes that the purpose of confiscating the mean of committing a crime is to deprive the possibility of using this mean again for criminal purposes, as well as to have a preventive effect³⁵. According to Bikelis, in order to achieve legal clarity and simplicity, it would be reasonable to combine concepts of tool and mean into one, as is, for example, commonly done in the Western legal tradition, for example, in legal English one term – “instrumentality” – is usually used³⁶.

Finally, while analyzing the concept of a “mean” of a crime in Lithuania, it can be mentioned, that the crime under consideration, provided for in Article 281¹ of the Lithuanian CC, is composed of several alternative acts, each of which constitutes an independent basis for applying criminal liability. In 2019³⁷, the same article of the Lithuanian CC

baudžiamoji byla Nr. 2K-79-511/2018); Ruling of the Supreme Court of Lithuania of 13 February 2018 in criminal case No. 2K-14-511/2018 (in Lithuanian language – Lietuvos Aukščiausiojo Teismo 2018 m. vasario 13 d. nutartis baudžiamoji byla Nr. 2K-14-511/2018); Ruling of the Supreme Court of Lithuania of 17 April 2018 in criminal case No. 2K-136-699/2018 (in Lithuanian language – Lietuvos Aukščiausiojo Teismo 2018 m. balandžio 17 d. nutartis baudžiamoji byla Nr. 2K-136-699/2018); Ruling of the Supreme Court of Lithuania of 21 February 2023 in criminal case No. 2K-7-61-511/2023 (in Lithuanian language – Lietuvos Aukščiausiojo Teismo 2023 m. vasario 21 d. nutartis baudžiamoji byla Nr. 2K-7-61-511/2023); Ruling of the Supreme Court of Lithuania of 29 March 2023 in criminal case No. 2K-102-719/2023 (in Lithuanian language – Lietuvos Aukščiausiojo Teismo 2023 m. kovo 29 d. nutartis baudžiamoji byla Nr. 2K-102-719/2023).

³⁴ Ruling of the Supreme Court of Lithuania of 16 January 2025 in criminal case No. 2K-49-489/2025 (in Lithuanian language – Lietuvos Aukščiausiojo Teismo 2025 m. sausio 16 d. nutartis baudžiamoji byla Nr. 2K-49-489/2025).

³⁵ Old and new case law examples: Ruling of the Supreme Court of Lithuania of 30 October 2018 in criminal case No. 2K-315-303/2018 (in Lithuanian language – Lietuvos Aukščiausiojo Teismo 2018 m. spalio 30 d. nutartis baudžiamoji byla Nr. 2K-315-303/2018); Ruling of the Supreme Court of Lithuania of 21 February 2023 in criminal case No. 2K-7-61-511/2023 (in Lithuanian language – Lietuvos Aukščiausiojo Teismo 2023 m. vasario 21 d. nutartis baudžiamoji byla Nr. 2K-7-61-511/2023).

³⁶ S. Bikelis, *Nusikaltimo...*, p. 9.

³⁷ Law Amending Articles 68 and 281 of the Criminal Code of the Republic of Lithuania and Supplementing the Code with Article 281-1, Register of Legal Acts (TAR), 21 January 2019, No. 859 (in Lithuanian language – Lietuvos Respublikos baudžiamoji kodekso 68, 281 straipsnių pakeitimo ir Kodekso papildymo 281-1 straipsniu įstatymas, TAR, 2019-01-21, Nr. 859).

established criminal liability for alcohol consumption immediately after a traffic accident before its circumstances were determined, when a person was found to be intoxicated with a blood alcohol level of 1.51‰ or more promile. For example, in 2023 the Supreme Court of Lithuania heard a case where a person while driving a car, caused a traffic accident and, without recording this fact, fled the scene of the accident. He also consumed alcohol immediately after the mentioned traffic accident until the circumstances were established, and later he was found to have a blood alcohol concentration of 1.90‰. The question arose whether confiscation of a vehicle belonging to a person convicted of such a crime was possible. The Supreme Court explained that yes, noting that a vehicle, from the perspective of Article 72 of the Lithuanian CC, is a mean of committing this crime. As the court noted without the vehicle, the person could not have caused a traffic accident, before the circumstances of which were established, he had consumed alcohol³⁸. Lithuanian court practice recognizes that in such a cases, the mandatory conditions for liability under the norm in question are inseparable from driving a vehicle and the commission of such a crime without a vehicle is impossible. Thus, a car is recognized as a mean of committing a crime even in cases where a person consumes alcohol after a traffic accident before its circumstances are determined and a blood alcohol level of 1.51‰ or more is determined³⁹.

It can also be mentioned that in case of Lithuania, only administrative liability is provided for drunk driving inland water vehicles (Article 406, Part 5 of the Code of Administrative Offences of the Republic of Lithuania). In the case of administrative responsibility, the confiscation of property may be imposed only when it is provided for in the article of the special part of the Code of Administrative Offences of the Republic of Lithuania establishing administrative liability for the act committed

³⁸ See more: Ruling of the Supreme Court of Lithuania of 29 March 2023 in criminal case No. 2K-102-719/2023 (in Lithuanian language – Lietuvos Aukščiausiojo Teismo 2023 m. kovo 29 d. nutartis baudžiamojoje byloje Nr. 2K-102-719/2023); Ruling of the Supreme Court of 21 February 2023 in criminal case No. 2K-7-61-511/2023 (in Lithuanian language – Aukščiausiojo Teismo 2023 m. vasario 21 d. nutartis baudžiamojoje byloje Nr. 2K-7-61-511/2023).

³⁹ Ruling of the Supreme Court of Lithuania of 31 May 2022 in criminal case No. 2K-171-387/2022 (in Lithuanian language – Lietuvos Aukščiausiojo 2022 m. gegužės 31 d. nutartis baudžiamojoje byloje Nr. 2K-171-387/2022).

by a person. Meanwhile, Article 406 of the mentioned code does not provide for confiscation of property of a person who was drunk while driving inland water vehicles.

In the case of Poland, one of the particularly contentious issues concerning the regulation of forfeiture was the question of whether, upon the commission of an offense under Article 178a of the Polish CC, it is admissible to order the forfeiture of a motor vehicle that the offender operated in land, water, or air traffic while in a state of intoxication or under the influence of an intoxicating substance. For a considerable period, there was a lack of uniform resolution of this issue in practice. In the jurisprudence of the highest Polish judicial instance, one could find rulings which did not preclude the possibility of forfeiture of a motor vehicle as “instrumenta sceleris” under Article 44 § 2 of the Polish CC⁴⁰. Ultimately, however, the Supreme Court, in its resolution of 30 October 2008, I KZP 20/08, held that a motor vehicle cannot be subject to forfeiture as an instrument used for the commission of the offense under Article 178a of the Polish CC, because it constitutes the object of the executive act of this offense. This interpretation was met in legal scholarship with both approval⁴¹ and critical commentary⁴². The argument against the admissibility of ordering the forfeiture of a vehicle in the case of an offense under Article 178a of the Polish CC could also have been supported by historical legislative attempts in Poland to introduce a separate provision addressing this matter. Given that the Polish Supreme Court’s position was adopted in practice, the legislature, recognizing the merits of ordering the forfeiture of a motor vehicle driven by an intoxicated offender, decided to introduce Article 44b into the current Polish CC⁴³. This provision entered into force on 14 March 2024. The statutory regime governing the forfeiture of motor vehicles has been substantially amended by the Act of 4 December 2025 amending certain acts for the

⁴⁰ Examples: Judgment of the Supreme Court of 26 February 2007, IV KK 56/07 (in Polish language – Wyrok Sądu Najwyższego z 26 lutego 2007 r., IV KK 56/07); Judgment of the Supreme Court of 15 April 2008, II KK 29/08 (in Polish language – Wyrok Sądu Najwyższego z 15 kwietnia 2008 r., II KK 29/08).

⁴¹ M. Siwek, *Glosa...*, p. 213–220.

⁴² J. Raglewski, *Glosa...*; S. Tarapata, *Przedmiot...*, p. 138–143.

⁴³ Act of 7 July 2022 Amending the Act – Criminal Code and Certain Other Acts (Journal of Laws of 2022, item 2600); Bill, Sejm print No. 1451 of 3 July 2025, 10th term of the Sejm (in Polish language – Ustawa z 7 lipca 2022 r. o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw, Dz.U. 2022, poz. 2600; *Projekt...*, druk nr 1451).

purpose of improving road traffic safety⁴⁴, which is set to enter into force on 29 January 2026. According to the explanatory memorandum accompanying the bill, its primary objective is „to harmonize and simplify the rules governing the imposition of vehicle forfeiture”⁴⁵. One of the key modifications entails a departure from the previous restriction under Article 44b of the Criminal Code, which limited forfeiture exclusively to motor vehicles operated by the perpetrator in land traffic.

3. Is confiscation of the vehicle of the drunken driver mandatory in both countries?

Discussion arises in Lithuania and Poland, whether confiscation of vehicles of drunk drivers is always mandatory.

The mentioned issue was analysed in the court practice and doctrine of Lithuania quite a few times. For example, as mentioned in the 2023 case of the Supreme Court of Lithuania, pursuant to Article 72(3) of the Lithuanian CC, the property subject to confiscation (for example, a mean or a tool of a crime), belonging to the offender must be confiscated in all cases. However, in the same case it was also noted that when applying this measure, the proportionality of the confiscation of property must also be assessed⁴⁶. It is noteworthy that the court has also discussed proportionality in its previous practice. For example, in the 2020 case, the Supreme Court of Lithuania recalled the practice of the European Court of Human Rights, mentioning that in accordance with the requirements of Article 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, such a measure must meet the requirements of a fair balance, reasonable proportionality must be maintained between the needs of the public interest and the requirements of protecting the right of an individual to his property⁴⁷.

⁴⁴ Dz.U. 2025, poz. 1872.

⁴⁵ *Projekt...*, druk nr 1451, p. 4–5.

⁴⁶ Ruling of the Supreme Court of Lithuania of 21 February 2023 in criminal case No. 2K-7-61-511/2023 (in Lithuanian language – Lietuvos Aukščiausiojo Teismo 2023 m. vasario 21 d. nutartis baudžiamojoje byloje Nr. 2K-7-61-511/2023).

⁴⁷ Ruling of the Supreme Court of Lithuania of 3 March 2020 in criminal case No. 2K-39-495/2020 (in Lithuanian language – Lietuvos Aukščiausiojo Teismo 2020 m. kovo 3 d. nutartis baudžiamojoje byloje Nr. 2K-39-495/2020).

In the 2025 case, the Supreme Court of Lithuania referred to the doctrine of the Constitutional Court of Lithuania, recalling that the latter has stated that the constitutional principles of justice and the rule of law imply that the measures established by the state for violations of law must be proportional to the violation of the law. There must be a balance between the pursued goal of punishing and ensuring the prevention of violations of the law and the measures chosen to achieve this goal. Justice administered by the court in a purely formal manner is not defended by the Constitution of the Republic of Lithuania⁴⁸. In the same case, court also admitted that a vehicle is a mean of committing a crime established in Article 281¹ of the Lithuanian CC, which corresponds to the concept of property subject to confiscation. In such case, in accordance with Article 72, Part 3 of the Lithuanian CC, the court examining the case must apply confiscation of property belonging to the convict.

However, it should be mentioned that in Poland and Lithuania, the penal codes provide for numerous options of leniency, and sometimes even avoidance of penalties. In other words, different forms of realisation of criminal responsibility are presented in law of the said countries.

For example, the possibility of conditional discontinuance of proceedings in Poland or release of criminal liability on bail in Lithuania. As it was stated in the court practice of 2025 of the Supreme Court of Lithuania, in cases where a person is released from criminal liability on the grounds specified in Chapter VI of the Lithuanian CC or released from punishment on the grounds specified in Chapter X of the Lithuanian CC, or released on parole from a correctional institution on the grounds specified in Chapter XI of the Code of Execution of Sentences of Lithuania, the issue of applying vehicle confiscation is left for the court to decide⁴⁹. Similarly, the court stated even earlier, for example in 2018, noting that the legal basis for the application of property confiscation in cases of conviction and release from criminal liability differs. The confiscation is imposed on a convict together with the sentence, in such cases, based on the legal regulation provided for in Article 72 of

⁴⁸ Ruling of the Supreme Court of Lithuania of 16 January 2025 in criminal case No. 2K-49-489/2025 (in Lithuanian language – Lietuvos Aukščiausiojo Teismo 2025 m. sausio 16 d. nutartis baudžiamojoje byloje Nr. 2K-49-489/2025).

⁴⁹ Ruling of the Supreme Court of Lithuania of 16 January 2025 in criminal case No. 2K-49-489/2025 (in Lithuanian language – Lietuvos Aukščiausiojo Teismo 2025 m. sausio 16 d. nutartis baudžiamojoje byloje Nr. 2K-49-489/2025).

the Lithuanian CC, the confiscation does not depend on the court's discretion and is mandatory. An exception to this rule could be only such exceptional cases where the application of property confiscation would be a disproportionate legal measure. On the other hand, when releasing a person from criminal liability, the legal basis for the application of property confiscation is specified in Part 2 of Article 67 of the CC of Lithuania. From the legal regulation it follows that in such case it is left to the discretion of the court. When implementing this discretion the court should first assess the compatibility of this legal measure with the goals and principles that were behind the decision to release the person from criminal liability. In this sense, court decisions may differ depending on whether the property was acquired legally or illegally, whether its leaving at the person's disposal poses a danger to society or not, whether the property became an instrument of a criminal act by chance or was specially acquired or prepared for this purpose, etc. Similar statements can be found in the court practice to follow later on⁵⁰.

To provide the reader with an example in what kind of situations courts in Lithuania may decide not to impose vehicle confiscation on a drunk driver, the following case can be mentioned. For example, release from criminal liability on bail is often applied to drunk drivers in Lithuania. According to Lithuanian regulation a person who has committed a minor intentional crime may be released from criminal liability on bail by the court if there is a request from a person who is worthy of the court's trust to transfer the perpetrator to his responsibility under bail. Bail may be granted with or without a deposit. A person may be released from criminal liability under bail if he has fully admitted his guilt and regrets having committed a criminal act; has at least partially compensated or eliminated the damage caused and there is reason to believe

⁵⁰ See more: Ruling of the Supreme Court of Lithuania of 9 January 2018 in criminal case No. 2K-50-788/2018 (in Lithuanian language – Lietuvos Aukščiausiojo Teismo 2018 m. sausio 9 d. nutartis baudžiamojoje byloje Nr. 2K-50-788/2018); Ruling of the Supreme Court of Lithuania of 19 March 2019 in criminal case No. 2K-86-895/2019 (in Lithuanian language – Lietuvos Aukščiausiojo Teismo 2019 m. kovo 19 d. nutartis baudžiamojoje byloje Nr. 2K-86-895/2019); Ruling of the Supreme Court of Lithuania of 10 March 2020 in criminal case No. 2K-50-303/2020 (in Lithuanian language – Lietuvos Aukščiausiojo Teismo 2020 m. kovo 10 d. nutartis baudžiamojoje byloje Nr. 2K-50-303/2020); Ruling of the Supreme Court of Lithuania of 27 April 2021 in criminal case No. 2K-107-976/2021 (in Lithuanian language – Lietuvos Aukščiausiojo Teismo 2021 m. balandžio 27 d. nutartis baudžiamojoje byloje Nr. 2K-107-976/2021).

that he will fully compensate or eliminate the damage caused and will comply with the law and will not commit new criminal acts. According to wording frequently used in court practice, in the mentioned case the court has a discretion to decide on the application of the confiscation of a car. However, de facto, it should be noted that the non-confiscation of a vehicle in cases where a person is released from criminal liability on bail occurs only in exceptional circumstances. Such a conclusion is also in line with the case law, according to which the circumstances characterizing the personality of the perpetrator are grounds for releasing him from criminal liability on bail, but they are not, in themselves, in the absence of any other circumstances a basis for not imposing confiscation of a car. In addition, the Supreme Court of Lithuania has repeatedly stated in its practice that the interests of the accused or family members or the value of the car cannot be considered an exceptional circumstance that would invalidate the application of Article 72 of the Lithuanian CC⁵¹. In summary, the analysis of case law indicates that, on the one hand, courts frequently emphasize their discretion not to order confiscation of a vehicle in some cases of drunk driving (for example, when a person was released from criminal liability on bail); on the other hand, the non-application of confiscation of the vehicle remains exceptional.

As Bikelis noted in 2018, traditionally, the Lithuanian legal system considers only two options for confiscation of the means of committing crimes – confiscation in full or complete non-application of confiscation. However, according to the scholar, these are only extreme positions and among them there are other options which may help find the most balanced solution, for example, confiscation of part of the property⁵². As the latter scholar states, the letter of the Lithuanian CC establishes the imperative of confiscating the means of committing a crime from persons “convicted” of committing a criminal act⁵³. As Bikelis states,

⁵¹ Ruling of the Criminal Cases Division of the Supreme Court of Lithuania of 19 June 2018 in criminal case No. 2K-218-648/2018 (in Lithuanian language – Lietuvos Aukščiausiojo Teismo Baudžiamųjų bylų skyriaus 2018 m. birželio 19 d. nutartis baudžiamojame byloje Nr. 2K-218-648/2018); Ruling of the Criminal Cases Division of the Supreme Court of Lithuania of 26 March 2018 in criminal case No. 2K-114-1073/2018 (in Lithuanian language – Lietuvos Aukščiausiojo Teismo Baudžiamųjų bylų skyriaus 2018 m. kovo 26 d. nutartis baudžiamojame byloje Nr. 2K-114-1073/2018).

⁵² S. Bikelis, *Nusikaltimo...*, p. 6.

⁵³ S. Bikelis, *Nusikaltimo...*, p. 11.

considering the imperative nature of regulation, this is a rather radical decision⁵⁴. As he suggests, the possibility of confiscating part of the mean of crime follows from the constitutional principles of proportionality and justice and such a solution can help eliminate the shortcomings that, in certain circumstances, extreme solutions may have – confiscating the entire mean of crime or not applying these measures at all⁵⁵.

An analysis of the modes of adjudicating the forfeiture of a motor vehicle under the Polish CC reveals that they are differentiated. As of 29 January 2026, the general rule will be the discretionary adjudication of the forfeiture of a motor vehicle operated by the perpetrator in land, water, or air traffic. The prerequisite for imposing this measure will be a conviction for certain enumerated types of offences against traffic safety (Article 44b § 1 of the Polish CC), not all of which must have been committed under the influence of alcohol. Conversely, the forfeiture of a motor vehicle shall be mandatory where the alcohol concentration in the perpetrator's body "amounts to at least 1.5‰ in blood or 0.75 mg/dm³ in exhaled air, or has led to such a level" (Article 44b § 1a of the Polish CC). The legislator, however, provides for the possibility of refraining from adjudicating forfeiture in cases of exceptional circumstances warranting such leniency. This statutory framework signifies that the rule is to adjudicate the forfeiture of the motor vehicle, while the departure from this principle constitutes an exception. On the other hand, it is rightly pointed out in the legal literature that: "owing to the significant punitiveness of this measure, this exception will, in practice, become the rule"⁵⁶.

4. Forfeiture of a motor vehicle not owned by the offender

In Lithuanian as well as Polish court practice, various scenarios involving drunken drivers and driven vehicle ownership have been analysed. For example, situations when the ownership of the vehicle belongs both to the drunk driver and their spouse, when a drunk driver operates a vehicle owned by a third party etc. It is interesting to examine whether similar situations are handled in the same way in two neighboring countries.

⁵⁴ S. Bikelis, *Nusikaltimo...*, p. 15.

⁵⁵ S. Bikelis, *Nusikaltimo...*, p. 17.

⁵⁶ R.A. Stefański, in: *Kodeks...*, commentary on Art. 44b of Polish CC, thesis 19.

In the court practice of Lithuania there are a few cases where it was examined whether a car driven by a drunken spouse could be confiscated if it belonged to the latter and the spouse as joint spousal property. The court answered affirmatively. It was noted that the spouses use, manage and dispose of property that is joint ownership by mutual agreement (according to Article 3.92, Part 1 of the Lithuanian Civil Code⁵⁷). Taking into account the equal rights of spouses related to joint ownership, Article 3.92, Part 3 of the Lithuanian Civil Code establishes a presumption that a spouse concludes agreements with the consent of the other spouse, except for cases where the written consent of the other spouse is required. The issue of compensation for damage caused by the illegal actions of a co-owner resulting in a decrease of value in the joint spousal property may be resolved through civil proceedings⁵⁸.

In another case, the Supreme Court of Lithuania dealt with a slightly different situation. In the mentioned case one spouse, knowing that the driver was drunk, allowed the latter to drive a vehicle owned by him and his spouse, while he himself was traveling in the car as a passenger. As the court stated, by transferring property belonging to the right of joint ownership to an intoxicated person, knowing that such property would be used to commit a crime he assumed the risk of confiscation. The fact that the other spouse, the co-owner of the confiscated property, did not know that the family car had been transferred to commit a crime does not negate the validity of the application of confiscation. Once again court repeated that the issue of compensation for damage caused by the illegal actions of a co-owner resulting in a decrease in the joint spousal property may be resolved through civil proceedings⁵⁹.

In Polish criminal law, the admissibility of ordering the forfeiture of a motor vehicle is contingent upon the vehicle being the property solely of the offender, both at the time of the commission of the offence

⁵⁷ Civil Code of the Republic of Lithuania, Official Gazette, 6 September 2000, No. 74-2262 (in Lithuanian language – Lietuvos Respublikos civilinis kodeksas. Valstybės žinios, 2000-09-06, Nr. 74-2262).

⁵⁸ Ruling of the Supreme Court of Lithuania of 4 May 2021 in criminal case No. 2K-112-942/2021 (in Lithuanian language – Lietuvos Aukščiausiojo Teismo 2021 m. gegužės 4 d. nutartis baudžiamojoje byloje Nr. 2K-112-942/2021).

⁵⁹ Ruling of the Supreme Court of Lithuania of 3 February 2021 in criminal case No. 2K-13-458/2021 (in Lithuanian language – Lietuvos Aukščiausiojo Teismo 2021 m. vasario 3 d. nutartis baudžiamojoje byloje Nr. 2K-13-458/2021).

and at the time of the ruling⁶⁰. It cannot be subject to co-ownership. The forfeiture of a motor vehicle is also precluded if the offender was using it under a different legal title, such as a leasing, rental, or gratuitous loan for use (*commodatum*) agreement. Should this fundamental prerequisite not be met (Article 44b § 5 point 1 of the Polish CC), the court shall order a compensatory payment (*nawiązka*) in favour of the State Treasury, in an amount ranging from PLN 5,000 to PLN 500,000 (Article 44b § 6 of the Polish CC), thereby safeguarding the proprietary rights of third parties.

It should be mentioned that Article 72, Part 5 of the Lithuanian CC provides for the possibility of confiscating an amount of money corresponding to the value of the vehicle to be confiscated.

The aforementioned legal norm also specifies the conditions under which such confiscation of money is possible. Such confiscation of money (instead of the car) is possible in the following cases: when the property to be confiscated is hidden; consumed; belongs to third parties or cannot be taken for other reasons or confiscation of this property would be inappropriate. As it is mentioned in the practice of the Supreme Court of Lithuania, Article 72 Part 5 of the Lithuanian CC gives the court the right to recognize that confiscation of property would be inappropriate in a particular case. This is a provision of an evaluative nature. The basis for the conclusion that confiscation of property is inappropriate, and therefore a decision is made in the case to confiscate the value of the property, could be the circumstances established by the court, indicating that in a particular case the objectives set for this measure of criminal influence would not be achieved or that confiscation of property would clearly contradict the principle of justice⁶¹. The court has the discretion to decide whether the entire value of the property to be confiscated is confiscated from a person or only a part of it⁶².

⁶⁰ M. Kulik, in: *Kodeks...*, commentary on Art. 44b of Polish CC, thesis 6.

⁶¹ Ruling of the Supreme Court of Lithuania of 27 April 2021 in criminal case No. 2K-107-976/2021 (in Lithuanian language – Lietuvos Aukščiausiojo Teismo 2021 m. balandžio 27 d. nutartis baudžiamojoje byloje Nr. 2K-107-976/2021).

⁶² Ruling of the Supreme Court of Lithuania of 10 March 2020 in criminal case No. 2K-50-303/2020 (in Lithuanian language – Lietuvos Aukščiausiojo Teismo 2020 m. kovo 10 d. nutartis baudžiamojoje byloje Nr. 2K-50-303/2020); Ruling of the Criminal Cases Division of the Supreme Court of Lithuania of 30 October 2018 in criminal case No. 2K-315-303/2018 (in Lithuanian language – Lietuvos Aukščiausiojo Teismo Baudžiamųjų bylų skyriaus 2018 m. spalio 30 d. nutartis baudžiamojoje byloje Nr. 2K-315-303/2018).

In Lithuania, the criteria for determining the monetary value of the confiscated car are not expressed in the Lithuanian CC, they were developed in court practice.

The value of the property to be confiscated is usually based on the assessment of an average value of such a type of vehicle in a market⁶³. However, when deciding on the issue of confiscating the amount of money corresponding to the value of the property to be confiscated it is necessary to assess all the significant circumstances in the case, for example, both the circumstances of the crime committed, and the data describing the person who committed the crime⁶⁴. For example, recently there was an interesting case where a person (born in 1992) was driving Lamborghini while intoxicated with 1.93 promile. The court imposed a fine of 2,500 EUR, banned her from driving road vehicles for 2 years and confiscated 70.000 EUR (part of the value of the Lamborghini she was driving). When deciding on the confiscation of the part of the vehicle value the court emphasized that the car belonged to a third person (who was unaware of the criminal act being committed), the fact that the woman had no previous convictions, confessed and regreted the crime⁶⁵. Similarly, in another case, a Lithuanian court ordered the forfeiture of only a portion of the vehicle's value, taking into account that R.S. worked as a truck driver, had not been punished for offenses related to transport before, critically assessed his behavior, admitted his guilt, gave detailed explanations and after committing the crime voluntarily attended a course on alcohol's harm. What is more, the court also assessed the person's financial situation, i.e. that he was dismissed from work, paid maintenance for two children and his financial situation was bad. Having assessed all the circumstances discussed above,

⁶³ Ruling of the Supreme Court of Lithuania of 9 April 2019 in criminal case No. 2K-100-648/2019 (in Lithuanian language – Lietuvos Aukščiausiojo Teismo 2019 m. balandžio 9 d. nutartis baudžiamojoje byloje Nr. 2K-100-648/2019).

⁶⁴ See more: Ruling of the Supreme Court of Lithuania of 9 April 2019 in criminal case No. 2K-100-648/2019 (in Lithuanian language – Lietuvos Aukščiausiojo Teismo 2019 m. balandžio 9 d. nutartis baudžiamojoje byloje Nr. 2K-100-648/2019); Ruling of the Supreme Court of Lithuania of 14 March 2019 in criminal case No. 2K-77-648/2019 (in Lithuanian language – Lietuvos Aukščiausiojo Teismo Baudžiamųjų bylų skyriaus 2019 m. kovo 14 d. nutartis baudžiamojoje byloje Nr. 2K-77-648/2019); Ruling of the Supreme Court of Lithuania of 5 April 2018 in criminal case No. 2K-119-976/2018 (in Lithuanian language – Lietuvos Aukščiausiojo Teismo Baudžiamųjų bylų skyriaus 2018 m. balandžio 5 d. nutartis baudžiamojoje byloje Nr. 2K-119-976/2018).

⁶⁵ *Iš neblaivios...*

the court decided that the confiscation of the total value of the truck (16,262.74 EUR) would be disproportionate and confiscated just the part of its value⁶⁶.

5. Conclusions

- 1) According to Lithuanian law, a vehicle is considered a mean of committing a crime provided for in the Article 281¹ of the Lithuanian CC, which provides for a criminal liability for drunk driving. In the case of Poland, for a long period, there was a lack of uniform resolution of this issue in practice.
- 2) In both analysed countries the introduction of vehicle confiscation of drunken drivers was mainly motivated with the aim of prevent committing new crimes and harsher criminal liability.
- 3) In Lithuania the confiscation of the vehicles of drunken drivers is widely applied in court practice since 2018, while in case of Poland just since 2024.
- 4) The question of whether confiscation of vehicles is mandatory in all cases of drunken driving (1.51‰ or more promile) remains a relevant issue, giving rise to debate in both legal practice and academia in Lithuania. In the Lithuanian case law it is mentioned that the court is obligated to confiscate the car belonging to drunken driver, who was “convicted” of a crime. However, in cases where a drunk driver is released from criminal liability on the grounds specified in Chapter VI of Lithuanian CC (for example, on bail) or released from punishment on the grounds specified in Chapter X of Lithuanian CC, or released on parole, the issue of applying punitive measures is left to the “discretion” of the court. On the the other hand, in court practice even in cases when a person was released from criminal liability the non-confiscation of the vehicle is rare. Under the Polish CC, as of 29 January 2026, the general rule will be the discretionary adjudication of the forfeiture of a motor vehicle operated by the offender in land, water, or air traffic. The forfeiture shall, however, be mandatory

⁶⁶ Judgment of the Criminal Cases Division of the Vilnius Regional Court of 3 July 2025 in criminal case No. 1A-306-497/2025 (in Lithuanian language – Vilniaus apygardos teismo Baudžiamųjų bylų skyriaus 2025 m. liepos 3 d. nuosprendis baudžiamojoje byloje Nr. 1A-306-497/2025).

where the alcohol concentration in the offender's body amounts to at least 1.5 per mille in blood or 0.75 mg/dm³ in exhaled air, or has led to such a concentration, unless an exceptional case justified by special circumstances exists.

- 5) In Polish criminal law, the admissibility of ordering the forfeiture of a motor vehicle is possible in cases where a vehicle is property solely of the offender, both at the time of the commission of the offence and at the time of the ruling. In the case of Lithuania, it is resolved in a different manner. For example, in case of the drunk driver using a car that is a joint spousal property, the vehicle can be confiscated as well.
- 6) Under Lithuanian law, the substitute for adjudicating the forfeiture of a vehicle is the forfeiture of its monetary equivalent. In such cases, the court ordinarily applies the average market value of a vehicle of the relevant type. This measure may be imposed solely in expressly enumerated and narrowly defined circumstances, and the court is authorised to order the forfeiture of only a portion of the vehicle's monetary equivalent, where justified by the principle of proportionality. In Polish criminal law, the forfeiture of the monetary equivalent of a vehicle remained in force from 14 March 2024 until 28 January 2026. At present, the court instead imposes a compensatory payment (*nawiązka*).

Streszczenie

Przeprowadzone rozważania wykazały, że rozumienie roli pojazdu w przestępstwie prowadzenia pojazdu w stanie nietrzeźwości w Polsce i na Litwie jest odmienne. W prawie litewskim przepadek pojazdu ma co do zasady charakter obligatoryjny, zaś w polskim Kodeksie karnym od 29 stycznia 2026 r. fakultatywny. W obu porządkach prawnych zostały wskazane szczególne przypadki, w których przepadek pojazdu nie jest dopuszczalny.

Słowa kluczowe

odpowiedzialność karna za jazdę pod wpływem alkoholu, konfiskata pojazdów

Summary

The foregoing analysis has demonstrated that the role of a vehicle in the crime of driving under the influence is understood differently in Poland and Lithuania. Under Lithuanian

law, the forfeiture of a vehicle is mandatory in principle, whereas under the Polish Criminal Code it has been discretionary since 29 January 2026. Both legal systems specify cases in which the forfeiture of a vehicle is not permissible.

Keywords

criminal liability for driving under the influence, vehicle seizure

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