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Infracțiuni contra siguranței circulației pe drumurile publice

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I. BRIEF PRELIMINARY STUDY

This study aims to approach a problem of road traffic offences, as it is common, as wide. We could be, of course, criticized for the use of the term “traffic offence”, but this one appears as a primarily doctrinal creation where the legislator establishes for this category of offenses called “crimes against the safety on public roads.” in the Criminal Code.

Being an inseparable segment of the activity of modern society, the transport represents “the circulatory system” of the whole world and of each state at the same time. Being incorporated within an international system, the regulations of the same specific lead towards a strong homogenisation of provisions, regardless of state, culture or social values. The field of transport must be and is regulated according to the highest standards regarding the civil protection and beyond.

The point of production (manufacturing) is not the same as the point of sale in most cases, thus, the transport represents the way through which the obtained products move in the branches of production towards the one that it is to be consumed within the domestic markets and international ones.

The main business of the transport is represented by the movement in time and space of the commodities, goods or people, which is not a purpose in itself, but rather a means of achieving different fields of interest of the society.

Applying sanctions for committing some dangerous actions or considered as being dangerous by society, we can see the importance of the criminal law in daily life and its indispensability, generally of the offences in the field of road traffic which the society frequently faces with lately and the number of sentenced people in this respect appears in a continuous growing or at least constant.

The approach mainly focused on the theoretical exposure of the subject and the synthesized presentation of some cases of judicial practice, as well.

The field of road transport has experienced a strong expansion nationally and internationally in the second half of the twentieth century. The current framework shows us that the number of cars and means of transport is currently increasing and the legal framework concerning this area should be more demanding due to the fact that , unfortunately, the repercussions appear with the

considerable development of the transport. These are felt in the number of lost lives of people and in the number of injured people in road accidents.

The legal literature regarding the transport branch began to exhibit stronger to the public only at the end of the twentieth century, the beginning of the XXI st century when articles, conventions, monographs, university courses or other such writings began to be published. Until then, the literature was just about the transposition of laws for their advertising rather than in the official gazette.

Since there is a real importance of the legislative perimeter, both nationally and internationally, whether we look from the perspective of the relations that are aimed at the road transport, the transport of dangerous merchandise, the management of safety on public roads or the road infrastructure, we intended to study the subject and to settle a number of theoretical and practical aspects.

Moreover, we are currently the witnesses of flagrant infringements of the road schemes of any kind, these presenting a real social danger.

In relation to the economic and social importance of road traffic and the perspectives of its development, we must mention the fact that the development of modern society has caused an unprecedented growth regarding this type of transport and has presented a special implication of this phenomenon in social and economic daily life. We have not insisted on the issues relating to the importance of the road transport from the economic point of view because this study is presented as one in legal issues, the analysis of the legal norms to this area being the main target we aim to achieve.

Thus, we can say that the road transport ensures the movement in common or individually of the people and the materials, aspects which actively contribute to the valorisation of human potential.

The usefulness of the road transport is the transfer of the people or commodities from point A to point B, aspects that contribute to the exchange of economic, cultural, artistic values, etc.[1]

The road transport acquires an important connotation on any segment of everyday life especially in a situation where, the experts say in statistics, there are

[1] Corneliu Turianu, *Infractiuni contra sigurantei circulatiei rutiere*, Ed. Stiintifica si Enciclopedica, Bucuresti, 1986, p.5;

about 1.2 billion of vehicles in the world, the number increasing considerably from year to year and it is estimated that there will be a number of 2 billion of vehicles in 2035.[2]

Regarding the situation in Romania, the year 2016 ended with a total number of 7 million registered vehicles, 20% of which are registered in Bucharest.

The continuous development of road traffic is not manifested only by increasing of the number of vehicles, but also the real evidence of the current intensity of the circulation on public roads and traffic increasingly more difficult.

The pace, which the real circulation is actually realised in, imposed special measures to ensure the appropriate conditions. It appears more often concerns of the legislative and executive apparatus for the purpose of modernizing the roads, of equipping them with signs traffic, markings and inscriptions corresponding to traffic conditions, the training of the agents for a better capacity of fluent driving, of the techniques of driving vehicles and the legislation in the field, in the sense of a fluidisation and the exercise of the right to drive in the best conditions without infringing the third people or other participants in road traffic.

The achievement of the adequate transport tasks, from social perspective, involves a "sine qua non" condition of the safety of the road traffic and of the existence of a scheme that leads towards the manifestation of maximum safety of the phenomenon.[3]

The existence of a regulatory, predefined mechanism which governs the whole activity of which it means the road traffic is vital to any country that presents itself to be an effective and progressive in development.

Why is it so important this mechanism? The vehicles are more and better, they reach very high speeds, are heavy, high volume, and all these features contribute to the achievement of a potential force of destruction which is strong enough to produce significant damages or to insult other social values protected by law.

Vehicles of all kinds travelling on the public roads represent an important source of danger for the citizens. By breaking the road schemes and committing of

[2] http://www.auto-bild.ro/;
[3] Corneliu Turianu, *op. cit*, p.6;

road offence can be harmed and other social values, protected by law, such as the social relations concerning the life.

The offences against the safety on public roads represent the majority of the legal facts through which the punishment has the character of protecting those values regarding social relations in connection with public roads.

"This category of offences was established as an apart group I the system of the offences as a result of the amplification and diversity of produced infringements within road circulation, of the necessity of an intervention more efficient of the legislator in this field to ensure the protection of the social values in danger."[4]

The regulation under the criminal law of these facts also aims to prevent the prevention of offences by the character of typical instance that the criminal punishment enjoys. The rule in this field attempts to draw the attention of the community the importance of the social values relating to the movement on public roads, especially in the current situation, when the vehicle is a preferred means of transport and the potential active subjects of these offences could be any of us.

Given the fact that a special criminal law is likely to be subject to frequent changes or it refers to a limited field of social relations that involves a narrower circle of subjects of law, the judgement for which the legislator chose, by composing The New Criminal Law, the introduction of the road offences in a separate chapter and their repeal from the content of the Emergency Legislation of the Government no. 195/2002 relating to the movement on public roads, republished, not only reinforces the belief that these offences protect important values being known that the legal norms contained in the Criminal Code have constantly frequent character or the social value protected by these ones represents a particular importance for citizens.

The social reality shows us that the borders are no longer barriers, at least not in the European area, therefore it is necessary to look ahead and analyse critically not only the national legislation, but also the international one, especially

[4] Corneliu Turianu, *op. cit.*, p.7;

in recent times when many of the national normative regulations are in fact transpositions or ratifications of the international community acts.[5]

It is important to understand that the road transport know several classifications, thus, we can distinguish between commercial and private use transports , regularly or occasionally, domestic or international, homogeneous or mixed.

The social and economic development of the European countries and also of the economic relations between them gave preferential treatment to the growth rates of tones/km or passenger/km.

Since this study knows its objective within the offences on the road and road transport, I felt the necessity to include a number of the benefits of this kind of people or goods transfer, as follows : ►the mobility and availability superior to other kinds of transport which adds some lightness to passengers and a great flexibility; ► the rapid adaptability to all ground conditions (off-road, construction sites, forest roads, etc.), without the need for special investments for operating the vehicle; ► the ability to complement the others ways of transport (fluvial, naval, air) that cannot manage themselves the entire transport chain (of course, we can now talk about technologies that enables the possibility of browsing of the route from the place of production or production line to the marketplace, however, isolated); ► the improvement of the quality of perishable goods throughout the whole journey due to the lack of the constant handling (loading-unloading); ► the time may be lower in some cases ensuring a well the transport of the merchandise in the *door to door* system where the damage, loss, harm or other additional costs of the loading and unloading are eliminated; ►they allow the loading of the merchandise or the boarding of the passengers at the place where they are located;[6]

As everything can be perfect, we can mention some the disadvantages of road traffic: ► additional costs relating to the fuel; ►the relative risk the

[5] Octavian Căpățînă,*Transporturi rutiere interne și internaționale*, Ed. Lumina Lex, București, 1997, p.21;
[6] Gheorghe Caraiani, Pricină Lucian, *Transporturi si expeditii rutiere,* Ed. Lumina Lex, București, 2002, p. 11-12;

passengers are exposed (of all means of transport, the road one represents the highest degree of danger) ► further pollution;

In the interest of the effective solutions in the development of the transport and the alignment with the social needs of the individual, at the national and international level, the states have taken measures and embraced a firm attitude, basing a strong legislative framework, institutionally and judicially, covering all branches of transport.

In relation to the community law, the police and judicial cooperation represents a fundamental aspect of the European idea, the concept being known to the public for the first time by the Treaty of Maastricht[7].Furthermore, by the Treaty of Amsterdam, by the provisions of Pillar III, the police and judicial cooperation in criminal matters has experienced a strong expansion, just because of the particular importance of this legal perimeter.

II. RESEARCH DIRECTIONS

Among the **main directions** this extensive scientific research relied on in this area, we can include : ■ the analysis of the concept of " road crime " ; ■ the research of the typology of this criminal investigation ; ■ the research of the sources of the internal regulation; ■the study of the general issues related to the safety on public roads (historical and legislative development) ; ■ the study of some psychological aspects and criminological order; ■ the study of some institutions and authorities with an active role in the road transport system; ■ the analysis of the mechanism of international cooperation regarding the violations in road field; ■ the analysis of the national and international instruments regarding the safety on public roads; ■ the study of the dynamics road crime; ■ the objective-critical and criminal analysis of the offences against the safety on public roads; ■ the presentation of some comparative law issues; ■ the argumentation of the opinions with respect to the debatable theoretical and practical aspects ; ■ the study of some technical and tactical aspects of crime investigation on roads; ■ the

[7] Numită „Cooperarea în domeniul Justiţiei și Afacerilor Interne";

multidisciplinary of the field ; ■ the analysis on a case study; ■ offers of ferenda laws, as a result of the perfectible legislation.

III. RESEARCH METHODOLOGY

In relation to the **methodology of research,** in the development of this work and in order to achieve the purpose and goals mentioned above, it has been used:

- *Bibliographical methods*. In any type of scientifically research, the documentation and the analysis of the existing materials in the doctrine of the field represents a crucial step to develop a comprehensive study. I mainly used this method of research to create an initial idea of overview on the theme of the research and then I proceeded to identify the most relevant sources. It is true that there were some materials I had not access due to objective reasons (eg: unpublished documents or that were not indexed yet in the system of libraries) , but I believe that I could form a clear opinion on the doctrine in the field from the existing materials.
- *Observation method.* Of course, to point out the most relevant main moments of the study, it was required a careful analysis of the road crime phenomenon, whether we discuss about the psychology of the offender or the means of individualization of punishment or the penalty imposed in concrete. Thus, the observation of judicial practice has become necessary in the field, and other related issues. Since I am a practitioner of law with an experience of about 20 years in the magistrates (within the Court of Appeal, Bucharest, Criminal Section II for the last two years), I believe that I was relatively advantaged regarding the understanding and observation of the phenomenon, especially in the context I personally sliced various criminal litigations aiming the crime in the road.
- *Sociological methods.* I believe that when the issue is understood in fact, not by the principle, and the solution will be a fundamental and permanent one, not at random. Thus, it was necessary that for this research of the field in its annals, to understand the necessity and the

evolution of the regulations in the field and especially what degree of social danger, in particular, represents the commitment of these crimes.

- *Quantitative methods.* It is obvious that to achieve the above described objective it was necessary to study statistical data in order to improve the legal framework and means of prevention and control.
- *Comparative methods.* As mentioned, one of the objectives of this study was to present and analyse some aspects of comparative law. Putting on the scale more systems of law, I have managed to extract a number of the most comprehensive regulations and the best practices.
- *Monographic observation methods.* The monographic observation focused mainly the exact delimitation of the field and establishment of its dimension. We must point out that during the study I did not enter too deep into the segment of crime related to road traffic, but I sometimes brought some clarification.
- *Prospective methods based on extrapolation.* The official use of this method of research helped me to analytically understand the future tendencies of the development of the analysed field domestically and internationally and thus led me to draft some proposals of ferenda law in tune with the dynamics of the segment
- *Logical method.* Representing a predominantly deductive science, both for the understanding the philosophy of law and for its research, the methods of reasoning has a strong influence in order to develop some complex and achievable ideas.

IV. THE STRUCTURE OF THE WORK

To achieve **the first chapter** I investigated a number of historical issues regarding the early stages of the field of transport, the legislative development within the current Romanian space and some criminological and psychological elements that were essential to understanding and deepening the segment.

As we could see, from the historical point of view, the traffic offences were regulated in different forms since ancient times, whether we analyse the primitive

norms of regulating of the postal system domestically and internationally or the norms of regulation of the traffic itself of the vehicles

The various stages of development of the traffic legislation have mostly found its roots in the acts of international interest, in this sense, regulating an ireal normative area that required to be homogenized in all European states, including Romania.

The importance of the legislative perimeter relative to the past and current social realities proves that the road transport, of any kind, should not and were never neglected.

Moreover, the increasing traffic appears as a consequence of the economic-social life of the community, the people using increasingly more often means of traffic transport to transfer goods and people. If we look at segments of life in which we do not find the presence of the circulation of vehicles are fewer, and the rhythm where it is really made, the traffic movement requires the legislative device the need to regulate the smallest details of the field, but not only. Some preoccupations also appear on creating a favourable environment for smooth running of the traffic road, the state bodies trying to minimize the negative effects or even remove any danger that would be imposed on the transport of any kind.

In **Chapter II** we tried to address the issues of the institutions and authorities that are active in the road transport system and mechanisms for international cooperation. În cuprinsul

As far as it concerns them, we treated the subject in the perspective of the Ministry of Transport having the quality of a specialized person, taking part from the central public management which consists under its tutelage of a mechanism with an active role in the field of transport, consisting of six institutions. Our approach was to analyse the normative acts of their organization and the presentation of the attributions they have checked. Of course, their goals were indirectly supported, these one could be observed towards the conclusion, once with the mechanism of the understanding of the mechanism and the different field of activity. We believe that one of the most important aspects that must be highlighted within an approach as the one chosen by us, is firstly composed by the emphasis of responsibilities and distinct institutions.

Following Chapter II, Section 2, and the approach aimed at addressing to the international cooperation in criminal matters in relation to crime in the road sector and the cross- border exchange of information. We found necessary to initially analyse the main active institution in the area of police cooperation, the Interpol. Subsequently, the work pointed towards the law no. 302/2004, another instrument of greater importance in the realm of judicial cooperation. Finally, analysing the Directive no. 413 of 11th March 2015 of facilitating the cross-border exchange of information regarding the traffic offences which affect the road safety, we noticed that at present, the national and international level in terms of the cooperation covers all the segments of flagrant violations and propose a better facility of the exchange of information for the prevention and combating of crime in the road traffic. We believe that in terms of this character, the tools that are at the hand of the judicial bodies offer, at least in theory, a favourable environment to stop the phenomenon.

Further, in **Chapter III**, we decided to put in light the international and national tools relating to traffic safety on public roads, of course, analysing the content of these in terms of criminal law.

Since we cannot cover all the existing legal tools that are connected with the road traffic, we decided to lean only on some of them , after some objective selection criteria, and especially after their incidence in the common area that is open to the public. It is true that no normative norm should be neglected, but equally true is the fact that not all normative acts are mostly applicable in most areas, some of them enjoying a small interest, but we tried to analyse the significant and widespread interest

The effective implementation of the international standards and, where applicable, their implementation into the domestic legislation is crucial and contributes to the reduction of the phenomenon too much present in the objective reality of the violation of norms of conduct road in Romania

The legislative situation from our country was exposed in the second part of the chapter where the analysis was headed towards the Emergency Ordinance of the Government no 195/2002 regarding the movement in public roads, republished, the implementing regulation and related Criminal Law.

We often hear the phrase “Highway Code” in the press. Even the printers use this form when producing the transpositions of traffic road in so called manuals for the students of the schools of drivers or other purposes.

Currently, Romania does not enjoy a unification of the whole legislative material typically to the road in one piece, thus, the notion of “Highway Code” appears as a doctrinal invention, no way as an act

In this respect, there have been repeated requests in the Parliament of Romania for the completion of the normative tools in a single specific act, but without particular consequences

Regarding the legislative initiation of unifying theses ones in a so called “Highway Code”, we make understand us this attitude as being as a beneficial one that could represent an important legislative progress in the field.

Also from the perimeter of the benefits that would bring such a Highway Code we can say that there is an addition of predictability of the road rules by increasing the real access to the public to these ones, given the fact that, currently, the so called Highway Code makes reference only to EOG no 195/2002, republished in the implementing Regulation, and not at the others acts with a highly impact in the field.

It is important to benefit from a narrow, coherent, static legislation and especially unitary in terms of which the fields of life, as well important, are regulated by Codes (eg: Criminal Law, Civil Code, Tax Code, Work Code etc.).

I did not entered the dense field of commercial, fluvial, sea air or rail transport or the segment of contract of transport, since these ones are not subject of the analysis, but it is true that in order to develop work there were consulted even some of the normative acts that refer directly to them.

Although, at a first glance, the substance of the traffic offences might be lost by entering the analysis of other sectors of the road traffic, we believe that these remarks are as well necessary because we propose we wanted to convey the complete philosophy of the road offence in this study.

Compared to the analysis of the constituent elements of the offences regarding the safety on public roads, this one is found in Chapter **IV.** Of course, we have not limited to describe the character of the offence, but we have proposed

a multi- disciplinary approach in which we tried to incorporate aspects of criminal law, criminal procedural law, comparative law and jurisprudence related aspects

From the study referred to the offences provided and punished by the art. 334 of Criminal Code under the marginal "Putting **into service or driving a not registered car**" we can draw more conclusions.

The road crime is the segment that occupies the most the instances of judging, but the stipulations have as the commitment of the offences made by art. 334 in Criminal Code, especially the entry into service or driving a car that is not registered ranks as third as weight.

Analysing the judicial practice and doctrine from Romania, we found of that there are different points of view relating to the understanding of the phrase "the vehicle has no right of circulation in Romania", thus, at the level of the instances there are two opinions regarding solution of the situation according to which a person who drives a vehicle registers in other state holds an available endurance. In a first interpretation, *the respective vehicle does not represent a component of the sphere without right of driving in Romania,* fact that imposes an equitation but in the second interpretation of the legislative interpretation, the instances embraced the opinion according to which *the registered vehicle in other state and which does not have an insurance available in Romania represents a vehicle without the right of driving in Romania, imposing a solution of conviction*

In our case, we agree with the first view but we also consider that the second interpretation finds some legal basis.

On these conditions, we find necessary that the High Court of Cassation and Justice should be informed the regarding this aspect and, consequently to say the interpretation of the phrase above mentioned

Moreover, in the current context in which the High Court said the fact of driving in public roads a lorry or a forest car that was registered or unregistered according to the law or by a person who does not own a driving licence does not have the conditions of typical of offences by art. 334 align (1) from Criminal code, as well art. 335 align (1) from Criminal code, but the Constitutional Court appreciated as being necessary such an offence, it cannot remain within the criminal illegality such a serious antisocial act.

Regarding the legal remedies that we can appeal at in order to correct this serious legal errors, we include:

I. *The modification of the provisions* of art.6, pt. 6 of Ordinance no. 195/2002 (relating to the definition given to the vehicle) – with the purpose of the practical implementation of the provisions of the Criminal code in such circumstances and in accordance with the decision of the Constitutional Court.

II. *The amending of the Criminal Code* as follows: "The circulation or driving on public roads of a tramway or agricultural or forestry tractor which is not registered or incorporated (…) [art. 334 align. (1)]", and "Driving on public roads a vehicle, a tramway or an agricultural or forestry tractor by a person who does not possess a driving licence (…)."

Moreover, by the ferenda law, we propose to introduce into the content of Criminal Code some definitions related to the frequently used terms or phrases in the legal regulation of road crimes or to add a legislative text that send directly to the definitions offered by the provisions of art. 6, pt 6 of the Ordinance no. 195/2002, republished. We currently believe that there is no legal basis for granting the understanding of special laws of the terms used in the Criminal Code.

Regarding the offence of **driving a vehicle without having a driving licence** (art. 335 Criminal Code), it is the second offence as a share of this segment.

From our perspective, the new regulation appears to be more effective in some ways that we exposed within the respective section, but we cannot find the reasons why, in the content of align (3), the legislature chose not to criminalise the act in the manner of entrusting the vehicle to a person who suffers from a mental illness.

Regarding these issues, *of ferenda law*, we propose the recrimination of entrusting of a vehicle for which the law requires the obligation of owning a driving licence for driving on public roads by a person who suffers from a mental illness

Also, although within the institution of specification of the penalty it is taken account of all the particular situations in fact, we believe that the legislator should recharge differently, in a worse normative alternative: driving on public

roads of a vehicle for public transport for people or of the transport of dangerous substances or products by a person who does not possess a driving licence.

All around the institution of specification of the penalty, we concluded that related to the old criminal law, referring strictly to judicial practice, when a person who had undergone the training stage of a driving school had no criminal record and was well integrated into society, the offence of driving a vehicle without a driving licence usually benefit from the provisions of art 18^1 in Criminal Code related to the art 10 align (1)let. b^1 of the Code of Criminal Procedure, mainly acquittal, since the act did not present the degree of a social danger of an offence

Thus, *of ferenda law,* we propose to introduce in the content of provisions of art. 335 in Criminal Code, a cause of mitigation of criminal liability with1/3, if the person who commits the typical offence of driving a vehicle without a driving licence, but the person has attended the courses of an accredited driving school, according to the law.

We also consider that the level of social danger will considerably increase if the person s in one of this normative situation referred to art. 335 par (1) and (2) carries also passengers.

Thus, *of ferenda* law, we propose the recrimination, in a worse normative alternative:

- Driving on public roads a vehicle for public transpot of people or the transport of dangerous substances or goods by a person who does not possess a driving licence;
- Driving on public roads a vehicle or a tramway by a person who does not possess a driving licence [in terms of the conditions referred to align (2)], if this person carries passengers.

Also, the issues regarding the proposals of ferenda law issued as a result of the recent decisions mentioned by the High Court of Cassation and Justice (decision no. 3/2014) and by the Romanian Constitutional Court (decision no. 732/2014) are applicable also within this offence.

In relation to the offence of **driving a vehicle under the influence of the alcohol or other substances** (art. 336 in Criminal Code) , it is *the first* offence as a share of this segment.

Relating to the offence referred in the content of paragraph (1), the first aspect we want to emphasise is the need to adapt the legal text according to the decision of the Constitutional Court no. 732/2014, which was declared unconstitutional and without effect the phrase "at the time of taking biological samples".

Of ferenda law, we suggest criminalizing as offence of consumption of alcohol, drugs or drugs with similar effects, following a traffic accident that had as a result the killing or injury of body or the health of one or more people by the driver of a vehicle or driving instructor, undergoing the training or the examiner of the competent authority, was during the practical examination to obtain the driving licence until the collection of biological samples.

For some objective reasons, there may be situations where the blood samples according to methodological Norms of 12th December 2013 regarding the collecting, storage and transport of biological samples cannot be analysed in the shortest time, even in some cases may suffer long delays. In the former regulation, the biological samples had to be analysed within 3 days after sampling. The new nornative version suggest a period of maximum 7 days.

We consider that for a relevance of the analysis of biological samples, the period of conservation of 7 days lead to alterations of the samples and thus to incorrect values of alcohol established by the certificate of medical examination or through the expertise regarding backward calculation.

Of ferenda law suggests replacing the phrase "no more than 7 days" from the content of paragraph (3) art. 20 of the methodological Norms of 12th December 2013 regarding the sampling, storage and transport of biological samples, with the phrase "no more than three days"

Regarding the existence of the ethyl test device used to determine the concentration of the breath of a person, we consider that it would be auspicious *the introduction of a device that should be in the standard endowment of any operative worker in the office of the traffic police, capable to establish at least the existence of tetrahydrocannabinol (the most common existing active substance in specific hallucinogenic plants, such as marijuana) by conventional methods.*

Moreover, from certain toxicological expertise papers it appears the fact that the forbidden substances produce psychoactive effects only if their presence in the body exceeds some indices. Thus, not every concentration of prohibited substances will lead to "the influence" of cognitive processes of the driver of a vehicle. We believe that it is necessary a detailed research of this field with medical and bio-chemical specific by authorised people, and with the results of these studies to determine if there is the case of the adding of valuable limits in the norm of incrimination to distinguish between a possible contravention and offence (as in the case of the alcohol concentration of 0.80g/l pure alcohol in blood).

Relating to the offence of **refusal or evasion of biological samples** (art. 337 of Criminal law) require some clarifications.

We note that from the content of rule of incrimination, the space factor is absent, thus it can be reached to an interpretation which we do not share, that the offence provided by art. 337 of Criminal Law subsist even though the achievement of the material element occurred in pre driving on a public road.

Since the law represents a perfectible matter, we believe that *of ferenda law* the introduction of a condition regarding the space would eliminate any discussion regarding the fulfilment of typical elements of the offence.

We note a serious legislative issue represented by the penalties of crimes provided by art. 336 paragraph (3) of Criminal Law and art. 337 of Criminal Law. It is noted that the violation of the provisions of art. 336 paragraph (3) is punished with the imprisonment from 2-7 years and the violation of the provisions of art. 337 of Criminal Law is punished with a penalty of 1-5 years.

In this case, an individual who performs public transport of people or any other activity described in art. 336 paragraph (3), knowing the fact that he has an alcohol over 0.80g per thousand or is under the influence of psychoactive substances, certainly he will not be subject to the removal of biological samples, in this way being punished gentler because he commits the offence provided by art. 337 of Criminal Law (1-5 years), and not the offence provided by art. 336 of Criminal Law (2-7 years).

This is another reason in addition to the others exposed to the contents of the study that formed our conviction that the legislative solution to punish the

offence of refusal or evasion from the collection of biological samples with the penalty from 2-7 years in prison as it was in the old criminal regulation, it is absolutely necessary to remove the deficiencies in the treatment of penalties.

Of ferenda law, we suggest the restoring of the old sanctioning treatment to overcome the problems of law shown in the section in which the offence provided by art. 337 of Criminal Code was treated.

The offence of leaving the place of the accident was one of those that had changes once with the repeal of the Emergency Ordinance of Government no 195/2002 and the introduction in the contents of the New Penal Code.

Regarding the former regulation, we noticed that the courts have applied the non-unitary law to the interpretation of the provisions relating to "injury of the body or the health of one or more people", from the content of art. 89 of GEO no. 105/2002. In this way, it was ruled the High Court of Cassation and Justice by Decision no. LXVI (66) of 15th October 2007, disposing of these aspects in understanding the meaning of the phrase in the spirit and meaning of terms from the legal point of view, not literary. Thus, in order to be incident the offence, it was necessary the victim suffered valued injuries in at least 10 days of medical care or the other consequences needed to be drawn the offence of negligent body injury.

We also note that due to the shape of the new incrimination, the decision above- mentioned remained unanswered in the application of art. 338 paragraph (1) of the new Criminal Code, and consequently, it would be required to debate the issue in relation to new indictment.

The legal text, as it appears now, may lead to situations at least sensitive, as follows:

The situation of the driver who slightly injured one person while performing a manoeuvre, and the victim refuses to be taken to the hospital or to a medical centre for detailed examinations, claiming that there is nothing serious. Subsequently, the driver in question will ensure that the victim can move in the best conditions and continues his movement, without telling the prosecuting authorities about the incident.

This case is just one of which could create difficulties, being presented by us in the content of the respective section. In such a case, the Court of Appeal from Bucharest established that the offence does not subsist in terms of the lack of guilt as a constitutive element of the offence, although we tend to believe that the material of the offence is committed as an indirect intention, and in this case there is no incidence of any causes of punishment.

Moreover, the phrase "it does not constitute an offence the leaving of place of the accident when following the accident occurred only material damages" raises a number of questions: did the legislator choose to criminalise this offence even if the victim has evaluable injuries within 1-2 days of medical treatment, provided for the same act, in the old regulation, there were needed 10 days, or it was an oversight of the legislator that is to solve at some point?

Of course, the current criminalization is different from the old regulation. The word "development", by its literary meaning may be associated with evolution, transition from an old qualitative form, to a new one, etc. Unfortunately, in case of this offence, we can say that the legislator could formulate it, in clearer terms, inordert not to cause differences of opinion or interpretation.

Throughout the study, we paid a special attention to the arising obligations of the driver implied in a traffic accident. Throughout the Subsection 3 we found necessary to analyse the aspects related to the legal obligations of the drivers in these situations, but also the decriminalisation of the prohibition of the consumption of alcohol after committing the traffic accident. As we well know, before 1st February 2014, the consumption of alcohol in such situations was considered an offence and it was punished separately. After the entry into force of the new codes, this offence apparently remained outside the segments protected by the criminal law, but its content found in subsidiary the essence in art. 336., driving a vehicle under the influence of alcohol or other substances. This antisocial action consuming alcohol immediately after a traffic accident, until the arrival of the competent bodies, it remained virtually decriminalised as a result of the pronouncement of the Decision no. 3/2014 of the High Court of Cassation and Justice and Decision 732/2014 of the Constitutional Court of Romania.

Another important modification related to the old regulation concerns the situation of committing an offence by a person who leaves the place of the accident, which had not the consequence of killing or physical injury or a health one of one or more people, product following the commission of anther offence that could be: driving without a driving licence, driving under the influence of alcohol or other substances, driving a vehicle which is not registered, etc. we note that in this situation, the offence provided by art. 338 par. (1) of Criminal Code does not subsist and in the situation where the act was committed under the influence of the provisions of art. 89 of GEO no. 195/2002, respectively before 1st February 2014 there are the provisions of art. 4 of Criminal Code relating to the enforcement of the criminal law of decriminalization because the phrase "if the accident occurred due to an offence" is missing from the text of indictment of the new legislative alternative.

We presented in this respect a practical situation analysed by the Court of Appeal from Cluj.

We believe that *of ferenda law* should be reintroduced in the content of art. 338 par. (1) of Criminal Code the phrase "if the accident occurred as a consequence of an offence" as it was provided in the old criminal regulation at art. 89 of GEO no.195/ 2002.

Otherwise, even if we could not illustrate through judicial practice precisely due to what is to be said, it can arise situations when a person drive a vehicle having a concentration of alcohol of 2% produces a traffic accident resulted only with material damage and leaves the place of collision. As the obligation of the driver in case of traffic accidents is to appear at the police station within 24 hours, it is obvious that the respective person will not be prosecuted even if he consumed alcohol over the allowed legal limit, but he produced a road traffic accident and left the place.

Of ferenda law, we suggest the replacement of the phrase from the content of art. 79 par. (1) letter b of GEO no. 195/2002, republished, "within 24 hours" with the phrase "immediately after".

Another remedy for this situation, only that this time a little more demanding, is represented by the modification of the supporting cause especially

provided in the content of the provisions of art. 338 par. (3) letter a, as follows: " It does not constitute an offence the leaving of the place of the accident when: a) there were only material damage after the accident *and the driver implied in the accident presents himself in shotly time to the police unit in the area where the accident took place"*

We noted that the phrase "the place of accident" does not know a legal definition related to the legal text provided in the content of art. 338 of Criminal Law. Due to the lack of some tough provisions, it could appear some problems of interpretation of the phrase and consequently, the pronouncement of some illegal and ungrounded court order having as objective to judge this offence.

Consequently, *of ferenda law,* we consider that the phrase "place of the accident" should be found defined in the content of the Criminal Law.

Of ferenda law, we suggest the indictment of the leaving of the place of the accident in terms of par. (1), and if the accident took place as a consequence of some offence.

Noting the American model of indictment of leaving the place of the accident, namely the situation of Texas, we believe that the system of placing at intervals of the caused damage after an accident and thus implicitly the penalty of the offence of leaving the place of the accident in relation to the intensity of injuries would be beneficial for the Romanian society, thus it can be absorbed the offence of physical injury by negligence or manslaughter.

Starting with the offence of **preventing or hampering the road traffic** (art. 339 of Criminal Law), in accordance with the other two offences which make up the majority of criminal provisions relating to the offences against the safety of the road traffic, we enter a criminal field relatively light, the number of pending cases being much lower than others.

Relating to this offence, *of ferenda law*, we suggest the indictment of the organisation of unauthorised races on public roads.

Also, *of ferenda law* suggest incriminating the act of evasion, destroying, degradation, bringing into state of disuse or modifying the meaning of signs, of traffic lights, traffic engineering or any other means of road signs.

Relating to the offence of **the infringement of the duties on technical inspection or repairs** (art. 340 of Criminal Law), we believe that the old regulation provided more effective provisions.

We believe *of ferenda law* that the indictment of the act of repairing vehicles, trailers, trams or mopeds having *traces of damage* without fulfilling the conditions prescribed by the law, as it was in the old regulation, it appears more effective. The traces of damage widen somewhat the horizon of the conditions, thus, they will include in the scope of the illicit those vehicles involved in traffic accidents that are not very hard or strong, which resulted in body injury of a person, but only with traces of minor damage, and not the traces of an accident. The indictment in this form could enhance the efforts the mechanic counts on at the moment of the visual verification of the vehicle, efore starting thee process repair.

Finally, the last offence on which we focused is represented by **the fulfilment of an unauthorised work on public road** (art 341 of Criminal Law). This is the lowest share offense against the security on public roads.

We believe that the new form of the indictment covers the problems of drafting the old regulation, as they were provided within the section under consideration.

To improve the segment of the security on public roads and the defence of related social relations;

Also, *of ferenda law,* we suggest the indictment of the offence of the act of a person who during the driving on public roads a vehicle for which the law provides the necessity of having a driving licence exceeds with 80 km/h the speed limit provided on a road section.

Also, *of ferenda law,* we suggest the indictment of the offence of the act of a person who during the driving on public roads a vehicle for which the law provides the necessity of having a driving licence behaves profoundly aggressive, accomplished by the repeated violations of the legal provisions that the contravention penalty is to suspend the right of driving, if this has endangered the safety on public roads.

Also, *of ferenda law,* we suggest the indictment of the offence of the act of a person who during the driving on public roads a vehicle for which the law

provides the necessity of having a driving licence found in a state that deplete profoundly the cognitive abilities, if thereby he endangered the security on public roads. (eg. excessive fatigue, driving after a strong emotional shock, etc.)

To support this proposal of ferenda law we remember of the person who after an unknown emotional impact decided to commit suicide, the suicidal approach being to drive on the opposite road, with the lights off on NR1, colliding with a vehicle in which there were five people, the consequence of this tragic event being the death of all five people in the car that ran regularly and the death of the person who caused this situation.

Throughout my research, I noticed that a very important element and I refer to the penalty system, a component of the incriminating text of any offence it has been neglected by the authors of consulted criminal law. Consequently, I insisted on, presenting practical situations of application of penalties when committing crimes and a number of statistics about this institution.

The sanctioning regime and the application of a consistent penalty, individualised according to criminal law, fair and whose execution achieve its purpose, represents the purpose of the act of justice. I will be open to criticism in this regard, if there is the case, but as a practitioner of the law, I believe that I had to give it a special attention to this field.

Certainly, the limits of penalty have the character of presenting in abstract the gravity of the infringement of criminal norms and to guide the judge in applying a proportionate penalty with the social threat created by the violation of the norms of indictment. Alternatively, in subsidiarity, the penalty limits can have a preventive character for the people prone to commit crimes.

I believe that the purest form to highlight the institution of the application of penalty is to illustrate by different practical situations.

Compared to the crime of the field of the security of driving on public roads, the social reality shows us that the legislator sliced this aspect, introducing specific criminal acts in the content of the New Criminal Code, aspect that reveals the reached dangerous degree.

It is known the fact that in the Criminal Law appear prohibited behaviours that have continuity in committing them and the indictment of these ones represents the protection and the guarantee of vital social values.

Also, we must not forget that one of the attributes of the criminal courts is to excel in the field of prevention and exemplarity default. Thus, I believe that currently, there is a judicial practice that reveals a lenient attitude of the judiciary on sanctioning the traffic offences, fact that is alarming. I consider the attitude of the legislator more serious who, although compared to the number found in a continuous growing in criminal cases having as objective the commitment of traffic offences, he chose the latest regulations , an easier penalty regime.

Another aspect that I found throughout the study aimed at the instability of the judicial practice relating to the detention of the form of guilt that can be committed the offences of abstract danger against the safety on public roads.

The courts have ruled differently relating to the peculiarities of the intention.

The problem I experienced over the court practice is represented by the retention of the commitment of these offences as direct or indirect intention, aspects that appear contradictory, sometimes in practice, related to similar situations.

Specifically, the classic situation where X drives on public roads a vehicle without having a driving licence (by rebellious, curiosity or due to the state of euohoria created by the consumption of alcohol), some courts have held the commitment of offence as guilt of indirect intention, others as guilt of wilful intent.

In this case, a number of clarifications are required. I believe that “the rule” in setting the form of guilt relating to the commitment of crimes of abstract danger against the traffic safety (such as the example mentioned above) is *the indirect intention.*

The situation is easier relating to the offences resulted from this field.

To retain the form of guilt of wilful intention, in the above mentioned situation, it will be necessary that from the evidence material to show that the offended intended to create a state of danger relating to the safety on public roads. How can we deduce this? I believe the behaviour of a driver who does not have a

driving licence, to perform a number of dangerous manoeuvres on public road (controlled drifting, repeated violation of rules of road behaviour, etc.), it will be likely to express a wilful intention of this one to endanger the safety on public roads.

We believe that it is wrong the association of the intention to commit the material element as a form of assumed guilt relating to the immediate action of the offence.

In other cases, the offence will be committed with the form of guilt of the indirect intention, the defendant not following, but accepting the possibility of creating a state of danger in relation to the safety on public roads.

The form of the offence will have to be reported to the anticipation of immediate action.

From factual point of view, there are very few practical situations where the violation criminal rule relating to the road crime it is aimed at creating a state of danger.

These aspects are available even in the case of committing an offence of driving an unregistered vehicle, leaving the place of the accident, driving a vehicle under the influence of the alcohol or other substances, etc.

I subject the analysis of the form of guilt to the lawyers who will read these lines, the following situations:

1. X, a young boy of 22 years old **without possessing a driving licence,** takes advantage of the fact that he has the keys of his father's car at hand and decides to climb up behind the steering wheel; he takes a walk through the town and then return home.
2. The same young boy consumes a quantity of alcoholic drinks that creates him a concentration of **0.25 g/l of pure alcohol in blood** and after that climbs up the steering wheel to take a walk.
3. The same young boy consumes a quantity of alcoholic drinks that creates him a concentration of **2.05 g/l of pure alcohol in blood** and after that climbs up the steering wheel to take a walk.
4. After a quarrel with his parents, a young boy climbs up behind the steering wheel although **he does not possess a driving licence.** He drives

with excessive speed towards home and causes a traffic accident resulted with the bodily injury of another driver.

5. After a quarrel with his parents, a young boy climbs up behind the steering wheel of a car although **he owns a suspended driving licence. He drives with excessive speed on the opposite way** and causes a traffic accident resulted with the bodily injury of another driver.
6. After a quarrel with his parents, **X decides to commit suicide.** He climbs up behind the steering wheel of a car although **he has a cancelled driving licence.** He drives with **excessive speed** and causes a traffic accident resulted with the bodily injury of another driver.

In our opinion, the situations described at the examples 3, 5 and 6 represents the commitment of the offence of driving without possessing a driving licence as a form wilful intention.

In the first part of **Chapter V** , I insisted on some aspects of compared law and I continued with the presentation of extremely important aspects from the technical- tactical field of criminology regarding the investigation against the safety on public roads.

Under these conditions, a part of the allocated period of the study was directed towards the aspects of comparative law. Once with the deep involvement in the subject, I have met different systems of law, different perceptions of acts of criminal action and different regulations, fact that helped me in working out some proposals of ferenda law.

I found in this way that the social realities are protected differently from state to state, from a society to another, and the criminal regulations reflect the true values which the society is built on.

Often, the committing of some offences at the driving regime on public roads or connections to these ones draws the civil liability, or in any case, we will find again in the situation where the settling of such a situation will have wider connotations than criminal. In this regard, I have made a series of clarification relating to this institution, the conditions and the limits of its application in this field, to the Government Emergency Ordinance no. 54/2016 regarding the compulsory insurance of motor civil liability for damages caused to the third

parties by car accidents and trams, to Fund of protection of road victims and other similar institutions and instruments.

The drivers are sometimes surprised by the authorised bodies in traffic, before having any road event (the conduct in the field of prevention); sometime the committing of these offences have consequences of producing material damages, injured and/ or dead. If the material damages are covered by monetary compensations relatively easy to prove, for moral damage, the justice does not have tariffs or standards, the practice of the courts being extremely varied relating the compensation of the sufferance.

Chapter VI was dedicated to the study of a case where I have analysed an unhappy road event spent in Iasi , where a young boy has committed a serious traffic accident resulted with the death of two people, as a result of the infringements of the legal provisions related to the traffic safety on public roads. Of course, the situation might seem relatively common, but the young boy was indicted for the commitment of offence provided and punished by art. 192 of Criminal law (manslaughter), aspect that caught our attention.

Finally, thanks to the multidisciplinary research, I concluded the study with several **conclusions and proposals of ferenda law**, considered by us beneficial for the Romanian legislation which have been presented above.

One thing that is not negligible and beneficial to the segment that was the subject of the study is the circumstance that the High Court of Cassation and Justice repeatedly had and continues to show an important implication contributing to clarify some judicial situations arose in connection to the offence of the road field.

We hope that this study represents an embedding of some theoretical and practical aspects regarding the analysed field, objective proposed by us since the early stage of the research.

We also want through the laid work to have succeeded to make a minimum contribution to the development of special literature on the segment of traffic offence and bringing out of some special approach, multidisciplinary, thus contributing to a better interpretation of institution of law which operate in such cases.

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