The constitutive content of the offense of putting into circulation or driving an unregistered vehicle in the Romanian criminal law

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Abstract: Within the paper it is examined the constitutive content of putting into circulation or driving an unregistered vehicle in terms of the provisions of article 334 of the New Criminal Code. The novelty in the Romanian doctrine is represented by the examination of the objective and subjective side of the offense, given its new legal content. The paper continues other research activities conducted for a group of offenses specific to traffic safety on the public roads, in the new context which required the completion of the legislation in this area. Due to the innovations and the frequency of committing this offense, the paper can be useful to law students, theoreticians and practitioners, and others whose activity involves knowledge of these legal norms.

Keywords: offense; putting into circulation an unregistered vehicle; driving an unregistered vehicle; the objective side; the subjective side; essential requirements.

Introduction
The offense of putting into circulation or driving an unregistered vehicle was not provided in the Criminal Code of the 1969, being taken in the New Criminal Code, from the Government Emergency Ordinance (G.E.O.) no. 195/2002, republished. This crime was mentioned in a similar wording, but without having a marginal title, in article 85 of the mentioned regulation.

In the New Criminal Code, the offense of article 85 of G.E.O. no. 195/2002, republished, is called marginally “Putting into circulation or driving an unregistered vehicle”, a designation which does not appear in the text of the old law.

Also, the second change that occurs in the contents article 334 of the New Criminal Code, regards the punishment provided in paragraph (1), (2) and (4) and in addition to imprisonment from one to three years, one to five years and 6 months to 2 years, it was also added a fine as main punishment. Thus, unlike the old law where the fine penalty is provided only for the offense of paragraph (2) in the new Criminal Code, the alternative penalty of fine is mentioned for all offenses.

As elements of similarity between the two indictments, we note that, as the previous law, there were provided four separate offenses, each presenting several simple normative ways.

In terms of content constitutive of the crime to putting into circulation or driving an unregistered vehicle, according to the regulations of the New Criminal Code, we intend to further examine the objective and the subjective side.

1. The Objective side of the offense of putting into circulation or driving an unregistered vehicle

The objective side includes the material element, the essential requirement, the immediate result and the causal connection. Also, since there are no perfect identity elements between the constitutive contents of the four offenses, we will proceed in examining them separately.
1.1. **In the case of the offense provided for in article 334 paragraph (1) of the new Criminal Code**, the material element can be achieved by two alternative actions, namely:

- putting into circulation an unregistered or unrecorded motor vehicle or tram on public roads;
- driving an unregistered or unrecorded vehicle or tram on public roads;

Under the provisions of article 11 paragraph (1), (2) and (5) G.E.O. no 195/2002, republished, vehicle owners or their authorized holders are required to register or record them, as appropriate, before putting them into circulation. Registration is continuous, from the entry into circulation until the removal from circulation and there are required the following operations: - registration with the competent authority under the law to acquire the ownership right over a vehicle by the first owner; - transcribing in the records of the competent authorities all subsequent submissions of the ownership right of a vehicle.

The examination of the two actions incriminated by the legislator requires, firstly, some explanations concerning the mandatory activity of registering or recording of a vehicle.

Thus, the applicant for registration operation of a vehicle in the competent authorities’ records must prove the authenticity of the vehicle certification by the Romanian Auto Register (R.A.R.), which contains the assurance of the fact that it is not listed in the database as being stolen. In accordance with article 12 paragraph (1) of the same law to travel on public roads, the vehicles, except those pulled or pushed by hand and bicycles must be registered or licensed as appropriate, and wear license plates with registration number with the shapes, sizes, and content of the standards in force. Also, with the achievement of the operations on the vehicle registration, the competent authority shall issue a certificate of registration to the owner or mandated keeper, under the category of which the vehicle belongs and registration license plates [article 15 paragraph (1) of the same law].

Regarding the registration, article 14 paragraph (1) of the normative act provides that, “trams, trolley buses, mopeds, cars and self-propelled machinery used in construction, agricultural and forestry activities, the tractors are not subject to registration, and the animal-drawn vehicles shall be registered by local councils”.

Regarding the categories of vehicles that are not submitted for registering, and those who do not obey the periodic technical inspection, they are established by joint order of the Ministry of Transport and Ministry of Internal Affairs, which will be published in the Official Monitor of Romania, Part I [article 14 paragraph (2) G.E.O. no. 195/2002, republished].

The examination of the mentioned legal rules allows us to formulate the conclusion that on the public road, two types of vehicles can run, such as those subject to registration. Mentioning along with vehicles the trams (which are not considered motor vehicles, according to article 6 Section 6 of the law) does not mean that the legislator had in mind only this category subject to registration, because according to the provisions of article 14 paragraph (1) of the framework of the legislative act, this category also includes the trolley buses, mopeds, etc.

Regarding the action of putting into circulation a vehicle or tram, we consider that there are needed some explanations, as in the doctrine there were a lot of opinions.

Thus, in a first opinion it was appreciated that, the term of “putting into circulation a vehicle” means putting into motion by starting the engine and transmission coupling mechanisms, which cause the vehicle’s movement propelled by the force of the engine [1]. In another majority opinion, it was considered that by putting into circulation a vehicle [2], [3], [4] is defined as a “stipulation” or “declaration”, given by one who in fact has the ability to decide the putting into circulation a vehicle/tram (to run effectively on a public road), although it was not registered or recorded. This decision possibility of the offender does not imply the existence of a property right (provision) on the vehicle/tram, the action being prosecuted even if there is an actual ownership, even illegitimate. We fully agree with this view, and we consider that the action of putting into circulation of a car or tram can be achieved by an active subject physical entity and also by an active subject legal entity.

In the Romanian judicial practice it was decided that “the defendant’s act “E” who drove on the public roads a car with expired temporary circulation authorization and the defendant “H” who asked the defendant “E” to drive that car on public roads meets the constitutive elements of the offenses referred to in
Regarding the action of driving a motor vehicle or tram, it is understood the action specific to the driver of a vehicle that handles the specific mechanisms that determine the movement of the vehicle on public roads. Therefore, for the existence of the crime it is required for the author to effectively drive a vehicle that must travel with its own mechanisms, i.e. not to be towed.

Thus, the judicial practice from Romania decided that “the act of the defendant of being on the wheel of a towed car, given that this car has no engine running, it does not meet the constitutive elements of the offense provided for in article 85 paragraph (1) in G.E.O. no. 195/2002, as the movement of the car on public roads was achieved by being towed by another vehicle” [6]. As a result, because the offense of article 85 paragraph (1) G.E.O. no. 195/2002, republished, was taken entirely with the same legal content (excluding alternative penalty by fine), the offense provided for in article paragraph 334 (1) of the new Criminal Code, the jurisprudence remains valid and under the conditions of entry into force of the new regulations.

For the existence of crime in both ways, it is necessary to be fulfilled the two cumulative essential requirements, namely: 1. breaching the compulsory registration or recording and 2. the circulation of a vehicle or tram to be achieved on public road. Fulfilling one of the two mentioned requirements or failure of one of them, will lead to the absence of the offense.

In relation to the first requirement (requirement of registration or recording), in the Romanian judicial practice it was decided that the “engine log splitter, a tractor being used in agriculture or forestry exploitation does not fall within the category of the motor vehicle from of G.E.O. no. 195/2002, so that its driver cannot be subject of the offense for driving an unregistered motor vehicle on public roads” [7]. Taking into consideration the mentioned decision, as well as examining the legal norm, it results that this essential requirement will be satisfied whenever the vehicle or tram is part of the category of those subject to registration or recording (according to the law). This applies of course to those vehicles or trams that are designed and prepared to travel on public roads, not those that are destined for other purposes (stored in the motor vehicle fleet, used for exchanging parts, etc.).

The second requirement is met whenever the vehicle, tram, etc., is moved or driven, etc., on a public road. In this regard, in the Romanian judicial practice, it was decided that “it is not devoid of the social danger of a criminal offense the action of driving an unregistered motor vehicle on public roads for a distance of over 100 km and on a European road with traffic and pedestrian crossings, even more so as the offense was committed within the term of imprisonment with conditional suspension of execution of punishment” [8]. Also, “by incriminating the offenses of driving on public roads of an unregistered vehicle and on driving on public roads of a vehicle with fake number license plates there are protected the social relations on the marketing of vehicles, the development of accurate records thereof and protecting the citizens against possible cars thefts. It represents no social threat of a criminal offense the act of a driver to travel by a bought vehicle, after being in the service of registration and he had shown that he understood that he can keep the number of the former owner, but he did not came back to receive a new registration certificate” [9].

The immediate result, in the case of the offense provided for in article 334 paragraph (1) of the new Criminal Code, is to create a state of danger to traffic safety on the public roads, a danger resulted by the action of being put into circulation or driven on public roads of unregistered vehicles or trams, knowing that, among other things, they can be inadequate from the technical point of view.

Causal connection, between the incriminated action, in both ways and the socially dangerous resulting consequence, must not be proven, thereby resulting from the materiality of the committed offense.

1.2. In the case of the offense provided for in article 334 paragraph (2) of the new Criminal Code, the action of the active subject is achieved in two ways, namely:

Regarding the action of driving a motor vehicle or tram, it is understood the action specific to the driver of a vehicle that handles the specific mechanisms that determine the movement of the vehicle on public roads. Therefore, for the existence of the crime it is required for the author to effectively drive a vehicle that must travel with its own mechanisms, i.e. not to be towed.

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The immediate result, in the case of the offense provided for in article 334 paragraph (1) of the new Criminal Code, is to create a state of danger to traffic safety on the public roads, a danger resulted by the action of being put into circulation or driven on public roads of unregistered vehicles or trams, knowing that, among other things, they can be inadequate from the technical point of view.

Causal connection, between the incriminated action, in both ways and the socially dangerous resulting consequence, must not be proven, thereby resulting from the materiality of the committed offense.

1.2. In the case of the offense provided for in article 334 paragraph (2) of the new Criminal Code, the action of the active subject is achieved in two ways, namely:
- putting into circulation of a motor vehicle or tram on public roads with fake number license plates or registration;
- driving a vehicle or tram on public roads with fake number license plates or registration;

As the actions of putting into circulation and driving on public roads have been considered before, we will not add any other explanation. Under these circumstances, it must be explained the “fake number license plates or registration”.

According to the doctrine from Romania, by this phrase “fake number license plates or registration”, means “the activity of putting into circulation or driving a vehicle or tram on public roads with numbers other than those corresponding to the actual records of the competent authorities, being fake not only the imaginary number inscribed on the plates of the vehicles, but even that real registration number assigned to a vehicle, in the case where it runs after its cancellation” [2]. In another opinion it was argued that by “fake number license plates or registration we understand any type of inconsistency with the truth derived from the official documents. Therefore, it can be about a number made up (it was never assigned), nonexistent (fully or partially) in the actual documents of the competent bodies, or a number belonging to another vehicle or tram. For example, in the case where there are changes to the authentic number or when the number is entirely invented”. [3] As far as we are concerned, we consider that the latter view is the correct one, otherwise supported by a decision of Romanian supreme court.

In the judicial practice there was no unitary view, in the sense that “fake registration number” was extended in relation to each specific case and interpreted differently by the courts. Thus, “the fake registration number” means any number that has no counterpart in a real entry in the records of the competent body to carry out the registration of that vehicle. The actual number which the vehicle had at a time, but it has lost its validity, is still fake registration as mentioned in article 85 paragraph (2) G.E.O. no. 195/2002 [10]. By another decision it was determined that the license plates have fake numbers since its removal from the circulation, whereas it must be considered fake any number inscribed on license plates of the vehicles that do not have a corresponding entry in the records of actual authority to operate the registration [11]. We note that in the interpretation of the phrase “fake registration number” the concerned courts have decided that the act of driving a vehicle on public roads with expired registration number meets the constitutive elements of the offense provided for in article 85 paragraph (1), or those of the offense provided for in article 85 paragraph (2) G.E.O. no. 195/2002. In another case it was decided that the act of driving on public roads in a vehicle whose license plates are expired only meets the elements of the offense provided for in article 85 paragraph (1) G.E.O. no. 195/2002, and not those of the offense provided for in article 85 paragraph (2) G.E.O. no. 195/2002; while there were not performed actions for the falsification of numbers, their simple expiration being unable to grant a fake feature [12]. Having the same interpretation, another court decided that the act of driving on public roads, by the defendant, in a vehicle with expired registration number does not belong to the offense provided for in article 85 paragraph (2) G.E.O. no. 195/2002, whereas the expired registration number is not fake, not being the result of counterfeit or alteration actions [13].

Examining the solutions given in the Romanian judicial practice, it results two different interpretations of the phrase “fake registration number”, namely: 1. in a first variant the courts have held that the act of driving a vehicle with expired license plates meets the constitutive elements of the offense provided for in article 85 paragraph (2) G.E.O. no. 195/2002; 2. in the latter it was considered that this action meets only the constitutive elements of the offense provided for in article 85 paragraph (1) G.E.O. no. 195/2002. Although the doctrine ruled almost entirely in line with the first version adopted by the courts, i.e. that act of driving a motor vehicle on public roads with registration numbers expired, it (the expired registration number) is assimilated to the phrase “fake registration number”, and we believe that this solution is not the correct one. The difficulty of achieving the legal classification in this situation is caused by the fact that the legislator did not define the meaning of “fake registration number”, although in our opinion it was recommended such legal interpretation.

Finally, this issue was solved by the High Court of Cassation and Justice, which ruled that “putting into circulation or driving a vehicle on public roads with expired license plates, and temporary circulation authorization has ceased its validity, meets the only constitutive elements of the offense provided for in article 85 paragraph (1) of the Government Emergency Ordinance no. 195/2002, on public road traffic, republished,
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with subsequent amendments” [14]. This compulsory decision for all courts clarifies the situation of putting into circulation or driving a motor vehicle on public roads with provisional number for which the traffic authorization expired, but not the putting into circulation of a vehicle removed from traffic. Justifying its decision, the Supreme Court states that “the legislator intended to incriminate by the provisions of article 85 paragraph (2) of the Government Emergency Ordinance no. 195/2002, republished, with subsequent amendments, only the cases when the vehicle is with false registration number, and not in the case where this number is assigned by the provisional authorization of circulation (hypothesis submitted to solving the matter of law by appealing into the interest of the law). In this respect, the provisions of article 85 paragraph (2) of the Government Emergency Ordinance no. 195/2002, republished, with subsequent amendments regarded those situations that occurred in any way on the registration number license plate of a car registered in reality, either by making a number or imitating a genuine number or by changing the appearance or mentioning such a number, thus creating a poor appearance of truth, such as the vehicle is registered or not, but having the license plate of another vehicle. However, a temporary expired registration number cannot be treated by analogy with a fake registration number, given that there was no intentional falsification thereof, for the purposes of the above data. The fact that the right to the circulation of a vehicle is limited to a certain period of time, after which either were not taken or there were not completed the necessary steps for the vehicle’s registration, it is not equivalent to forgery the provisional registration number, the number mentioned in that authorization does not turn into a fake, but the vehicle in question becomes unregistered.

On the other hand, by the incrimination provided by article 85 of Government Emergency Ordinance no. 195/2002, republished, with subsequent amendments, the legislator had into view the possibility for the perpetrator to evade prosecution in the case of committing an offense because of the impossibility of identifying the vehicle. Or, using the appropriate provisional registration number, the vehicle can be identified, whereas the number in question is not assigned to another car. In this way, the identification of the vehicle takes place under the same conditions as for the final registration” [14].

We presented these terms of motivating the Supreme Court because the decision is likely to bring a different interpretation in the doctrine as well on the phrase “fake registration number” and for expressing some personal opinions which aimed at deciphering the meaning of this phrase. This decision rendered by the Supreme Court remains valid also after the entry into force of the new Criminal Code, the provisions of which are identical to those of the current law. Under these circumstances, given the mentioned decision and some personal opinions, we consider that the phrase “fake registration number” means: - manufacturing license plates with registration numbers that do not correspond to the authorized bodies and attach it to a car or tram; - deletion, addition or modification of numbers or digits on a real, genuine license plate and attaching it to a car or tram; - manufacturing license plates with authentic registration numbers issued for a vehicle (tram), and attaching it to another car (tram) that is or not registered (recorded).

In order to complete the objective side with the material element, it is required to be met the two essential requirements, i.e.: 1. the action of putting into circulation or driving a motor vehicle or tram, with fake registration number, 2. on a public road. Finding the lack of these essential requirements, or the existence of only one of them it will lead to the lack of the examined offense.

The immediate result, in the case of the offense provided for in article 334 paragraph (2) of the new Criminal Code, is to create a state of danger for the traffic safety for all public road users and other physical and legal entities.

The causal connection, between one of the two incriminated actions in the text (or both) and the consequence that is socially dangerous must not be proven, thereby resulting in the materiality of the committed offense.

1.3. In the case of the offense provided for in article 334 paragraph (3) of the new Criminal Code, the material element of the objective side is achieved by two separate actions, namely:

- towing an unregistered or unrecorded trailer;
- towing a trailer with fake number license plate or registration;
As the meaning of the notions registered, recorded and false number license plates and registration were previously analyzed, we will not add any other explanations.

The term “towing” (not being defined by the legislator) means the “operation of towing a vehicle by other self-propelled vehicle, so that the towed vehicle moves without using its own energy” [2].

For the existence of the offense in its materiality it is not required to perform the action of towing on a public road, the legislator did not provide such a requirement. In these circumstances, regardless of the identification place (in a field, on a forest road, a road that is not public, etc.), the offense will exist if the trailer is not registered or recorded or it has fake registration numbers.

In the judicial practice it was decided that the action of driving a trailer with unregistered tow meets the constitutive elements of the offense provided for in article 85 paragraph (3) G.E.O. no. 195/2002 [15]

The immediate result, in the case of the offense provided for in article 334 paragraph (3) of the new Criminal Code, is to create a state of danger to traffic safety on public road and the safety of physical and legal entities in all areas.

The causal connection, must not be proven, thereby resulting from the materiality of the act.

1.4. In the case of the offense provided for in article 334 paragraph (4) of the new Criminal Code, the material element of the objective side is achieved by three alternative actions, namely:
- driving on public roads a vehicle whose license plate with registration/record number was withdrawn;
- towing a trailer on public roads whose license plate with registration/record number was withdrawn;
- driving on public roads a vehicle registered in another state that does not have circulation right in Romania;

In order to establish the existence of this crime in the first two methods it is necessary that the registration/recorded license plates numbers, at the moment of identifying on public roads, (in the case of the vehicle or trailer) to have been withdrawn under the law, by the competent authority. In this sense, according to article 112 paragraph (3) of the Government Emergency Ordinance no. 195/2002, republished, with subsequent amendments, in the cases provided in paragraph (1), letter b), o), p), r) and s), at the moment of retention of the registration certificate by the traffic police it also withdraws the license plates with the registered/recorded number. In the paragraph (3) thereof it provides that the registration certificate and the license plates with the registered/recorded number, except those which do not meet the standards, are returned to the owner or user of the vehicle by the traffic police, when it presents the prof regarding the reason for which the document was withheld, as provided by the Regulation.

The provisions referred, for withdraw plates with registration or recording number, to relate to the following contravention facts: failure to respect the technical constructive norms on transporting dangerous goods, the license plates with the registration/recorded number are not according to the standard or have lighting devices other than those legally approved, the data from certificate of registration or registration do not match with the technical characteristics of the vehicle, the vehicle has not been removed from circulation in the cases provided by law and the vehicle is not insured for civil liability in case of third party damage, by traffic accidents, according to the law. In these circumstances, we believe that for the existence of the offense, for the cause case it must add the proof of legal lifting of the license plates, a proof which may be achieved by presenting the minutes of the contravention, applied previously to the commission of the offense, or by other written notification issued by the competent authority.

In the case where the person has filed a complaint to the competent court against the taken measure, and the cause was not solved, we will not be in the presence of an offense, as the complaint suspends the execution of the penalty, even if, physically, the license plates were taken by the police.

We note that this time the legislator has incriminated an act as a crime, under the conditions of non-complying a deposition resulting from a legal contravention rule.
For the existence of the offense in the last way, i.e. when driving on public roads a vehicle registered in another state, that does not have the circulation right in Romania, it is necessary to verify all the facts specific to each individual act.

A special situation regards driving a vehicle registered in another Member State of the European Union, something that requires verification and knowledge of European legislation in the field.

For the other countries that are not EU members, there have to be verified the bilateral or international instruments to which Romania is a party and they need to be complied in this area.

In the legal practice from Romania management it was decided that the action of driving an unregistered motor vehicle on public roads in Romania meets the constitutive elements of the offense provided for in article 85 paragraph (4) G.E.O. no. 195/2002 [16].

The essential requirement that must be met to complete the material element of the objective side, is to drive a vehicle or towing a trailer whose license plates with the registration number were withdrawn on a public road. Failure to fulfill this requirement will result in the lack of offense.

The immediate result, in the case of the offense provided for in article 334 paragraph (4) of the new Criminal Code, is to create a state of danger to traffic safety on public roads.

The causal connection, must not be proven, thereby resulting in the materiality of the committed offense.

2. The Subjective side of the offense of putting into circulation or driving an unregistered vehicle

The form of guilt with which the active subject acts in the case of the offenses set out in article 334 of the new Criminal Code is the intention with both forms. It will be set the direct intent when the active subject of one of the four offense, foresees the result of his act, which consists of endangering the traffic safety on public roads, and tracks its production, by executing one of the actions prohibited by law (putting into circulation or driving on public roads of an unregistered vehicle or tram, with fake number license plates, etc.). There will be indirect intent when the active subject who foresees the result of his act, which is to endanger the safety of road traffic, and, although it does not seek it, he accepts its possibility.

Therefore, for the existence of criminal liability, it is necessary firstly for the active subject to know the facts of the vehicle, tram, namely that it is not registered or recorded, or that the registration numbers are fake [in the case of the offenses provided for in paragraph (1) and (2) of article 334 of the new Criminal Code].

In the case of the crime from paragraph (3) it is necessary to establish that the active subject was aware of the fact that the trailer was unregistered, unrecorded or had fake registration numbers, and in the case of the offense of paragraph (4) the active subject must know that the vehicle or trailer’s license plates were withdrawn by law, or that the vehicle registered in another state has no right to circulate in Romania.

The action of knowing the circumstances mentioned above does not imply the obligation of the judicial bodies and other state bodies to inform the driver about the situations where the person is permitted to circulate on or outside the public roads, it is the obligation of the driver to be informed about these situations.

In the case of the offenses referred to in paragraph (1) and (2) of article 334 of the new Criminal Code, if the active subject is the owner of the vehicle in question, he cannot claim ignorance of the listed items.

In the legal practice decided that the allegations of the courts regarding the lack of the subjective side for the offenses provided for in article 85 paragraph (2) and article 86 paragraph (1) because the defendant had no knowledge that the car that he was driving was unregistered, and the license plates numbers were expired, shall not be received as cause. Thus it cannot be retained the error in which the defendant was regarding this aspect, as he had an obligation to check whether the vehicle was registered, knowing that the vehicle had only provisional numbers [17]. In another case the court ruled that article 85 paragraph (1) incriminates the expiry of the license plate and not the civil insurance policy RCA (civil auto liability). The consequences of the lack of RCA are not of criminal feature, but it is contravention [18].

However, we consider that in the legal practice there can be encountered situations where the driver of a vehicle was caught driving a motor vehicle on public roads with fake numbers on the license plates, and not to be criminally charged. This applies to the situation where a person buys a vehicle that has a fake number license plate, which appears in the registration certificate as well, and it is caught driving that vehicle on a
public road. In this situation, of course taking into account the actual circumstances that primarily regards the acquisition method, it can be invoked the non-imputability cause provided in article 30 of the new Criminal Code. This can be invoked when a person borrows a vehicle that is in the situation described in the incrimination standard and knows that it has a fake number on the license plates, a case where the person who borrowed the car will be responsible for the offense of “putting into circulation”.

Motive and purpose have no relevance for the existence of the offenses in their materiality, which are important within the process of individualization of punishment achieved by the court.

Conclusions

The offense of “Putting into circulation or driving an unregistered vehicle” is provided for in article 334 of the new Criminal Code and it is part of group of the offenses against traffic safety on public roads. Examining the constitutive content of this crime represents a new element in Romanian doctrine, having the purpose of highlighting the new provisions of the Romanian criminal law, contained in the new Criminal Code and the interpretation of these legal norms in terms of objective and subjective side.

According to the rule of incrimination, this offense can be committed in four distinct ways, with some identity elements.

Thus, in the first way, the offense is in the action of the active subject of putting into circulation or to drive an unregistered vehicle or tram on public roads, with false number license plates.

Also, there will be an offense when on the public roads a trailer is towed with fake registration numbers and in the situation where it is driven on public roads a vehicle or a trailer whose license plates registration numbers have been withdrawn or when driving on public roads a vehicle registered in another state that does not have the right for circulating in Romania, according to the Romanian law.

Unlike the other three offenses, the one provided in article 334 paragraph (3) will exist when the action of towing an unregistered trailer or registered with fake number license plates is not subject to traffic on a public road, something which leads to the conclusion that the existence of the crime is sufficient so that the action of towing would take place even on a road which is not public.

References

[6] The Court of Appeal from Targu Mures, criminal decision no. 206 / R of 15 April 2009 (www.just.ro);

= ISSN 2285-0171 ISSN-L=2285-0171
[13] The Court of Appeal from Pitești in criminal decision no. 638 / R of 10 October 2010;
[14] High Court of Cassation and Justice (I.C.C.J.), Completul constituind să judece recursul în interesul legii, Decizia nr. 18 din 10.12.2012 / The Court established to hear the appeal on points of law, Decision no. 18 of 10/12/2012, published in the Official Monitor of Romania, Part I, no. 41 of 01.18.2013 - www.scj.ro;
[15] The Court of Appeal from Brasov, criminal decision no. 84 / R 5 February 2009 (Jurindex);
[16] The Court of Appeal from Bucharest, Criminal 2nd Section of the criminal decision no. 1729 / R of 24 November 2009 (Jurindex);
[17] The Court of Appeal from Timişoara, criminal decision no. 115 / R of 1 February 2010 (Jurindex);
[18] The Court of Appeal from Brasov, criminal decision no. 54 / A of 22 January 2010 (Juridex);