General aspects regarding offences against road traffic safety in the Romanian criminal law. Some critical views

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Abstract: The paper aims to briefly discuss some aspects concerning a series of offences against road traffic safety, given the new item referring to their introduction in the Criminal Code. On the other hand, there was also considered the comparative examination of the two laws, which can be taken into consideration in the process of identifying and implementing, in a more favourable way, the criminal law. The innovations consist of a comparative examination of the provisions of the two laws, as well as formulating critical opinions. The work can be useful to higher education environment, to practitioners, and to those who want to improve their knowledge in this area.

Keywords: traffic offences; the new Criminal Code; the previous law; concept and characterization.

Introductory remarks

In Romanian law offences against road traffic safety were provided by the Government Emergency Ordinance no. 195/2002, regarding public roads circulation, republished, with subsequent amendments [1], in a special chapter, respectively Chapter VI entitled "Crime and Punishment", art. 84-87 and 89-94.

In the new Romanian Criminal Code, which entered into force on February 2 2014 by Law no. 187/2012 implementing Law no. 286/2009 regarding the Criminal Code [2], the legislator has introduced a special title in criminalizing offences concerning public safety.

In this title, called marginal "Crimes against public safety", alike the one about crimes against traffic safety on the railways mentioned in Chapter I (with the same name marginal), there are set out in Chapter II offences to road traffic safety as "Crimes against road traffic safety".

In the explanatory memorandum, with direct reference to this group crimes, it was pointed out that compared to the previous regulation, there were established marginal titles to all offences, and to some type or attenuated one, there was provided a fine as penalty alternative to imprisonment punishment. Also, the legal content of the offences of driving a vehicle under the influence of alcohol, refusal or avoidance of biological sampling, have been improved taking into account the remarks of the National Institute of Forensic Medicine and other changes caused, especially by the development of correlations with other criminalities in the draft of the Criminal Code.

As a novelty, it should be noted that the concentration of alcohol in the blood relevant for retaining as offence in art. 336 are done at the moment of the biological sampling, without the possibility of subsequent recalculations [3].

Immediately following the entry into force of the new Criminal Code, some of these new provisions have been criticized in doctrine, as appropriate, provisions relating to collection of samples of biological time, time which can not be identified with time of the offence provided for in art. 336 of the Criminal Code. [4].

These critical opinions expressed in doctrine, were supplemented by case law, so that the phrase "at the time of sampling biological samples", was remarked as unconstitutional [5].

The introduction of these offences in the new Penal Code, with some modifications and additions, is in our opinion a good thing, having firstly in mind the importance of defended social values.
Given the new provisions of the new Criminal Code, certain differences existing in the regulations content, we shall proceed to identify and examine their brief, with direct send to the provisions of the previous law.

As first element of continuity to criminalize such facts, we record the legal contents, sometimes identical, sometimes alike, and their mentioning in separate articles.

A first important distinction is the fact that while in the current law this group of offences is mentioned in the new Criminal Code in Title VII entitled "Offences against public safety", Chapter II "Crimes against road traffic safety", in the previous law; these offences were stipulated in GEO no. 195/2002, republished, in a separate chapter.

As elements of continuity of the incrimination of such facts, we put down the juridical contents, sometimes identical, sometimes resembling with those stipulated by the New Criminal Code, and mentioning them in separate chapters.

We believe that the solution chosen by the legislature was determined by the need to harmonize the Romanian legislation with the European Union Member States.

We conclude therefore that the legislature the new Criminal Code by including these offences in the group considered to be of danger to public safety, gave special attention to preventing and combating crime in traffic on public roads [4].

Without realizing a hierarchy of offences under title based on the importance of social values defended, yet we find that the new Criminal Code offences against road traffic safety are set out in Chapter II, as crimes against traffic safety on the railways, while what other offences against public safety, such as the compliance with the regime arms, munitions, nuclear and explosives, as well as with the treatment given to other activities regulated by law, etc., are provided in the following sections.

Regarding the structure of Chapter II of the new Criminal Code we specify that crimes were listed in the order prescribed by law before.

An important change that occurs in the new Criminal Code regards the marginal denomination of every offence, inspired by the content of their legal name not provided in the previous law.

Doing a cursory, comparative examination of legal content of the offences of the two laws there can be identified both elements of similarity involving the takeover of the previous law, and some elements of distinction, which consist in waiving some notions or adding others in the text of the new law.

We believe that it is necessary to begin with a brief review of the main points of similarity and difference between the two regulations.

The offence under art.334 of the new Criminal Code, known as marginal, "Putting into circulation or driving a car not registered" is taken from the previous law, art. 85.

Between the two incriminations there are two main elements of similarity, respective the maintaining of the four offences in the same order and legal contents are identical.

Unlike the previous law, the penalty fine is only provided for the offence under paragraph. (2) art. 85, in the new Criminal Code, the alternative punishment of the fine is mentioned for all crimes.

In conclusion, we consider that the two rules have the same crimes, the only distinguishing features are related to the name marginal and introducing alternative fine as punishment for each of the four offences (unlike the previous law the fine was provided only for a single offences) [4].

A second offence under this chapter provided in art. 335 of the new Criminal Code, known as marginal "Driving a vehicle without driving" is taken from the previous law, art. 86.

The examination of the two texts leads to the conclusion that the provisions of paragraph (1) of the two texts are identical and the paragraph (2) and (3) of the new Criminal Code are modified from the same paragraph of art. 86, being stated the driving on public roads of a vehicle, not of a car or tram as provided the previous the provisions.

As in the previous law, Art. 335 of the new Criminal Code, stipulates, as in the previous law, three separate offences, each presenting several simple normative ways.

We consider that the two regulations contain numerous elements of identity, the only distinguishing features are those related to the name marginal and replacement car or tram deadlines vehicle legal content of par. (2) and (3) of the new law [4].

The next offence provided by art. 336 of the new Criminal Code under the marginal name "Driving a vehicle under the influence of alcohol or other substances" is taken from the previous law, art. 87.
Unlike the first two offences, the offence referred to has many distinguishing features. Thus, the content of paragraph (1), in the new law, the phrase "driving on public roads a vehicle for which the law provides for mandatory detention driving license".

Another difference between the two texts is to provide an alternative sentence with a fine in the new law. Regarding the crime in paragraph (2) art. 87 (the previous law), the new law sanctions the person who is under the influence of psychoactive substances, while the old law, in the content of the offence there is a mentioning to the person referred who is under the influence of substances or products as narcotic drugs with similar effects.

The text of the paragraph (3) of the art. 336 of the new Criminal Code is identical in content to that provided in paragraph (4) of art. 87 of the old law.

As an element of differentiation between the two texts, we retain the waiver of the current legal applicant to the offence provided in paragraph (5) art. 87 of the previous law (the fact being criminalized in the content of art. 337).

A final element of differentiation refers to the marginal name does not appear in the earlier criminal law [4].

The offence referred to in article. 337 under the marginal name "refusal or removal of biological sampling" is taken from the previous law, art. 87 paragraph (5).

Between the two indictments there are numerous distinguishing features, among which: replacing "car or tram" with the "vehicle" replacing "the presence of products or drugs" with "or the presence of other psychoactive substances", renouncing to the modality of the breath test refusal and resistance action, replacing "biological sample" with "biological sample", reducing the minimum and maximum limits of punishment and marginal name.

As similar elements of the contents of the two offences we mentioned the provision of qualified active subjects (driving instructors and examiners) [4].

The offence provided for in art. 338 under the marginal name "Leaving the accident site or its modification or deletion trace" is taken from the previous law, art. 89.

As elements of differentiation we mention the presence of the prosecutor as a body that approves leaving the accident site and replacing the phrase "leaving the place of the accident having as a result the killing or bodily injury or health of one or more persons, or where the accident occurred as a result of a crime " with "leaving the accident site" and the marginal denomination.

As resemblance elements of the content of the two offences, we notice: keeping the text incrimination two separate offences or leaving the site and change or delete traces of the accident, maintaining an identical legal content for the offence to edit or delete traces crash and maintaining the limits of punishment. We also point out the maintaining of causes of impunity and adding another, i.e. if as a result of the accident there resulted only material damages [4].

The offence provided for in art. 339 under marginal name "Preventing or hindering traffic on public roads" is taken from the old law, art. 92.

Between the two texts there are some differences, such as giving up crime in paragraph. (1) art. 92 of the current law, which still appears in the legal content of several crimes, namely art. 228, 229, 253 and 255 of the new Criminal Code; the provision of four offences, against five in the old law; waiving of sanctioning tournaments with animals; reducing the limits of punishment in the case of some crimes, and the marginal denomination.

The contents of both criminality presents some elements of similarity which consist of: identification of content elements of crimes, criminalization of same or similar acts or omissions etc. [4].

The crime of the art. 340 of the new Criminal Code, known as marginal "Failure duties on technical verification or making repairs" is taken from the previous law, art. 93.

Like other crimes, for those we refer to there is a series of distinguishing features, such as: modification of the prosecution under paragraph (1) of the old law, sanctioning the committing of the offence by misconduct, providing two aggravated ways, mentioning alternative punishments for each offence and the marginal denomination [4].

The crime of the art. 341 of the new Criminal Code, under the marginal name "Making unauthorized works in the area of the public road" is taken from the previous law, art. 94.

From a comparative examination of the two texts, one can make some observations, namely: in the new law, in paragraph (1) it is no longer provided, as a means of achieving material element, the location of buildings, billboards and advertisements in the area of the public road, being instead provided another possibility, namely arranging road access to the public road; offence in paragraph (2) of the new law takes an action by which the
material element of the objective side, i.e., the location of buildings, billboards and advertisements in the public road area, of the legal content of the offence provided for in art. 94, paragraph (1) of the previous law and the legal content of the crime in paragraph (2) of the previous law; the crime in paragraph (4) of the new law presents a similarly legal content to paragraph (4) of the present law, except for immediate prosecution, that do no longer consist in the production of a traffic accident that had as result human victims, or material damages, but only the production of a traffic accident; in the new law it appears the denomination of marginal etc.

Please also note that the legal responsible of the new Criminal Code renounced to criminalize acts in art. 90 and 91 of the previous law.

Under the provisions of art. 90 paragraph (1) of the previous law, the offence lies in the fact of the vehicle driver or driving instructors, situated in the training process, or of the examiner of the competent authority, placed during the practical tests for obtaining the driving license, to consume alcohol, products or drugs with similar effects, thereof producing a traffic accident that resulted in the killing and injury of health or physical integrity of one or more persons, until the biological sampling time or until testing with a means metrological checked of their presence in expired air.

In the new law, this act was decriminalized, motivated by the provisions of art. 336, of the new Criminal Code. It provides that any existence of alcohol or other psychoactive substances in the blood is considered by the legal authority at the time of getting the biological samples.

Under these conditions, the existence of such incrimination was no longer necessary, because interested in avoiding alcohol immediately after such a traffic event, until the moment of getting biological samples is even the active subject of the offence.

The crime of the art. 91 from the old law consists in failure of the unit authorized healthcare professional who performed the examination of the requirement to provide traffic police that a person was declared unfit to drive a motor vehicle or tram, if there was a traffic accident which resulted in the killing or bodily injury or health of one or more persons as a result of medical conditions, the driver of the vehicle.

We note that the text referred to, criminalize the act of a distinct legal entity or an authorized healthcare facilities.

Giving the criminalization of offences by the legislature, the new Criminal Code is justified because the criminal liability of legal persons mentioned. The person can be retained in the absence of such criminality under the provisions of Title VI, General Part of the new Criminal Code.

It is worth mentioning that this does not lead to decriminalization lack of criminal liability of legal person, for the reasons mentioned. In fact, in the case of detention of such facts, both natural and legal person shall be liable for the offence of abuse of office or other crimes [4].

2. Concept and characterization

The increased criminality in the field of traffic and transport on public roads in the Member States of the European Union and the need to prevent and combat more effectively the phenomenon in its overall led to the adoption of Directive 2011/82 / EU of the European Parliament and of the Council on 25 October 2011 facilitating cross-border exchange of information on traffic offences affecting road safety.

Subsequently, the Court of Justice of 6 May 2014, in case C-43/12 (6), this act was annulled on the grounds that it would not have been validly adopted pursuant to art. 87 paragraph (2) TFEU.

This decision however maintained the effects of Directive 2011/82 / EU until the entry into force, within a reasonable period not exceeding twelve months from the date of judgment, of a new directive based art. 91 par. (1) c) TFEU [7].

Against this background, targeting in particular procedural issues, it was adopted the Directive 2015/413 / EU facilitating cross-border exchange of information on traffic offences affecting road safety, which takes over the previous regulations.

According to paragraph (1) of the preamble of the European legislative act, the improvement of road safety is a prime objective of EU transport policy. The Union is pursuing a policy to improve road safety with the objective of reducing fatalities, injuries and material damage. An important element of this policy is the consistent enforcement of sanctions for violations of traffic offences committed in the Union which significantly endanger road safety.
Thus, from the need to achieve those objectives, the European legislative act establishes a procedure for mutual information of the Member States, given that in the territory of a Member State there has been found a violation of rules that affect road safety by a driver who is a citizen of another Member State.

Thus, to implement a road safety policy aiming for a high level of protection of road users in the Union and taking into account the diversity of situations in the Union, Member States should take action without prejudice to the policies and more restrictive legal provisions, to ensure greater convergence of road traffic rules and their application between Member States [4].

Under the provisions of art. 2 of European legislative act mentioned, the cross-border exchange of information on traffic offences affecting road safety, will consider the following facts: speeding, not wearing a seatbelt, jumping red traffic lights, drink-driving, driving under the influence of drugs, failing to wear a safety helmet, use of a forbidden lane and illegal use of a cell phone or other communication devices while driving.

The European legislative act, establishes a mandatory procedure according to which Member States will allow access of the national contact points of other Member States, to data on vehicles and their owners or keepers.

Given the importance of defending these social values, before and European legislator in Romania, crimes against the security of public roads are provided in a separate chapter in the new Criminal Code.

These facts concerning criminality danger or of result, which once committed by actions or inactions referred to therein, jeopardize the safety of road traffic or cause traffic accidents resulting in casualties or property damage (sometimes significant) [4].

These offences are:
- **Entry into circulation or driving a car not registered**, provided for in Article 334 of the content of the new Criminal Code;
- **Driving a vehicle without driving license**, an offence under Article 335 of the content of the new Criminal Code;
- **Driving a vehicle under the influence of alcohol or other substances**, provided for in Article 336 of the content of the new Criminal Code;
- **Refusal or avoidance of biological sampling**, provided for in Article 337 of the content of the new Criminal Code;
- **Leaving the accident site or modifying or deleting traces**, an offence under Article 338 of the content of the new Criminal Code;
- **Prevent or hinder public roads**, provided for in Article 339 of the content of the new Criminal Code;
- **Breach of duties relating to technical verification or repairs**, act provided in Article 340 of the new content of the Criminal Code;
- **Carrying out unauthorized works in the public road**, provided for in Article 341 of the content of the new Criminal Code;

As shown in title of the Chapter, and of the incriminations, this group of offences has certain characteristics that distinguish them from other groups, resulting from the specific characteristics of social activity regulated, respectively the circulation on public roads.

What characterizes this group of crime is primarily the social value defended, namely road traffic safety, a social value involving complexity, physical integrity of persons, vehicles, goods or other goods transported.

Examining the marginal denominations of their content and quality of active subjects, it results that the offences in this chapter can be grouped into two categories.

The first category includes offences relating the attitudes and behaviour of drivers in traffic on public roads or owners of vehicles or other natural or legal persons. In the first category there can be included offences under art. 334, 335, 336 337 and 338 of the new Criminal Code, offences which are active subjects directly involved in the movement of vehicles on public roads, either as drivers of vehicles, either as their owners.

In the second category there can be included offences where the active subjects do not have the quality of drivers, committing a series of facts that affect road safety, such as those preventing or straining on the traffic on public roads, the carrying out of unauthorized works, failure of respecting work duties of the technical verification or doing repairs (referred to in Art. 339, 340 and 341 of the new Criminal Code) [4].

Another feature of this kind of crime is the variety of active subjects who may have a certain skill that can consist of the position of a vehicle certified by holding the corresponding driving license driving vehicle category, as the person in charge of verification, technical inspection, repair or technical interventions etc. Also active subject of some offences can be any person who meets the general conditions required by law.
Unlike other crimes can be committed and those examined under conditions which can be attracted criminal liability of legal persons.

The general rule passive subject for these offences is the State in its capacity as holder of social values defended, but in some situations, passive subject may be a natural or legal person.

The material element of the objective side is achieved through a variety of actions or inactions that differs from a deed to another, among which: the release or driving a vehicle on public roads or not registered or unregistered tram, entry into service or driving a motor vehicle on public roads or tram fake registration number or registration, driving on public roads of a car or a tram by a person who does not possess a driving license, or whose driving license is improperly category vehicle driving, improper fulfilment or non-fulfilment of the tasks of verification or technical periodical inspection of motor vehicles, trailers or trams etc.

To complete the action or inaction by which the material element of the objective side, for each offence be met more essential requirements specific to each. These requirements include: the existence of a public road, a car or tram unregistered or fake registration number or registration situational awareness a person who does not possess driving license etc.

In most cases, the immediate consequence that occurs is to create a state of danger to road safety, but there are cases where the result is the production of a traffic accident or an accident movement which resulted in the killing or bodily injury or health of one or more persons.

To avoid other interpretations, the legislature made a legal interpretation of the phrase crash, which consists of "event that meets the following conditions:
- Occurred on a road open to public traffic and originated in such a place;
- Resulted in death, injury to one or more persons or damage to at least one vehicle or other property damage;
- The event involved at least one vehicle in motion" (Art. 75 of the GEO no. 195/2002, republished).

Also, the legal authority interpreted the concepts of vehicle, auto-vehicle and road, concepts that are mentioned frequently in the legal content of most crimes in this group.

The vehicle means, the mechanical moving on the road, with or without means of accessories, normally used for transporting people and / or goods or to perform services or works (art. 6 pt. 35 of EO no. 195/2002, republished).

The term auto vehicle means any vehicle equipped, by design with a driving engine in order to travel on the road. Mopeds, trolleybuses and road tractors are considered auto vehicles. Vehicles that run on rails, called trams, tractors used exclusively for agricultural and forestry operations, and vehicles designed to perform services or works, called self-driven vehicles, moving only occasionally on the public highway are not considered vehicles.

According to the law (art. 6 pt. 14 of the GEO no. 195/2002, republished) by public road it means any way of communication by land, except railways, specially designed for pedestrian traffic or road open to public traffic; roads are closed to public traffic are indicated at the entrance with visible inscriptions [4].

Particularly important to note is that the legal interpretation of these terms which appear in the legal content of crimes that are part of this group should be considered in each case without the possibility of achieving an interpretation.

Conclusions and critical opinions

In recent years, amid the development of cooperation between all European countries, and especially of the States of the European Union, road traffic has experienced unprecedented growth.

This increase in traffic, in addition to the beneficial effects caused numerous problems especially related to road traffic safety and thus causing serious traffic accidents, sometimes with serious consequences.

At EU level in order to increase road safety it was adopted the Directive 2011/82 / EU of the European Parliament and of the Council of 25 October 2011 to facilitate cross-border exchange of information on traffic offences affecting road safety bill replaced Directive 2015/413 / EU to facilitate cross-border exchange of information on traffic offences affecting road safety, which takes over previous bill.

Given the need to prevent and combat more effectively the facts of danger or result concerning road traffic safety, Romanian legislator has included this group in the new Criminal Code offences.

Although, in general, regulations are superior to previous ones, though the legal content of certain crimes there crept some incomplete provisions, and other offences not listed as offences.
Among the provisions that do not show sufficient evidence of predictability, mentioned by way of example, the provision which refers to the time of taking biological samples, which was declared unconstitutional, in this case the procedure for the determination of such crimes will be identical to the law earlier.

Another criticism relates to determining consumption of psychoactive substances, which is not currently provided in the text of the indictment.

A final critical remark that formula, aimed unpredictability of legal content of the offence of leaving the accident spot, where the action by which the material element of the objective side consists of leaving the scene of the accident, without the authorization of the police or of the prosecutor conducting the research on the spot.

Due to the poor wording of the text, it is understandable that there would be committed this offence only by the driver of a vehicle leaving the scene of the accident without authorization of the police or prosecutor conducting on-spot investigations, the essential requirement imposing effective deployment of this activity.

The final conclusion which emerges is that, on the one hand, the inclusion of this group of offences in the Criminal Code is a novelty and actuality in Romanian criminal law, and on the other hand, it can mean a more realistic possibility of preventing and combating crime in this area.

References