

Offences Against Road Safety in Romanian Law

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Abstract

In this study, we have conducted a summary analysis of the group of offences that protects the most important social values in the public road transport system, mentioned in a separate chapter of the Romanian Criminal Code. These social values specific to the road transport system are identified with road traffic safety, the life, physical integrity and health of persons and, last but not least, the property of natural or legal persons involved in such events. Based on the conclusions and proposals of other state institutions, during the legislative process, the legislator took over the criminal provisions from the framework legislative act, but in an effort to simplify the process of establishing the facts, it drafted one of the criminal provisions with many shortcomings. We have previously criticised these provisions because they have caused some malfunctions in judicial practice, but it was only after the intervention of the Constitutional Court that these shortcomings were remedied. In these circumstances, in addition to presenting an overview of the offences that fall within this group and the importance of criminalising such acts, in researching these provisions, we also focused on the amendments and additions made by the legislator to the legal content of some of them after the current Criminal Code came into force. The study may be useful to law students in the country, master's and doctoral students studying the group of offences specific to the road transport system. The study may be useful to legal practitioners and, last but not least, to legislators who are about to make some amendments and additions to some of these provisions. We would like to point out that this study is a continuation of the analysis of the group of offences against road safety, with previous analyses resulting in the development of a university course that also includes these offences, as well as in other studies published in specialist journals or in the proceedings of international or domestic conferences.

Keywords: social values in the road transport system, criminalisation, summary analysis, amendments.

JEL Classification: K14

1. Introduction

In Romanian criminal law, the protection of traffic safety in the transport system has some particularities, in the sense that some groups of offences were provided for in the Criminal Code, while other groups were provided for in some special laws.

Thus, until the entry into force of the Criminal Code, offences against traffic safety in the transport system were provided for in separate legislative acts, as follows:

a) Offences against traffic safety on public roads in Government Emergency Ordinance No. 195/2002 on traffic on public roads³;

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³ Romania, Government Emergency Ordinance no. 195/2002 on Traffic on Public Roads, republished in

- b) Offences specific to the field of air transport in the Air Code;⁴
- c) Offences specific to the field of maritime transport in Law No. 191/2003 on offences against the maritime transport regime;⁵
- d) Offences against railway traffic safety in the Criminal Code.

As can be seen, traffic safety in the transport system has been treated separately for each distinct area of the transport system.

Thus, although the legislator recognises and identifies the four distinct areas of the transport system, intending to protect the safety of each of them through criminal law, they are nevertheless mentioned in separate legislative acts.

The Criminal Code introduces an entirely new element, in that, in addition to offences against traffic safety on railways, it also covers offences against traffic safety on public roads.

Title VII, entitled 'Offences against public safety', comprises six chapters, the first two of which cover the two groups of offences against traffic safety in the field of rail and road transport⁶.

The first chapter, entitled 'Offences against railway traffic safety', contains four criminal provisions (Articles 329–332) covering seven offences specific to railway transport safety; the same chapter also includes, in its final part, the definition of a railway accident (Art. 333).

Chapter II, entitled 'Offences against road traffic safety', contains nine criminal provisions covering several offences specific to road transport.

We note that these offences were taken over by the legislator of the Criminal Code, with some amendments and additions, from Government Emergency Ordinance No. 195/2002 on road traffic, where they were provided for in Chapter VI 'Offences and penalties' – Articles 84–87 and 89–94.⁷

Due to the flawed wording of some of the offences in this group, all of which have been highlighted and criticised in legal doctrine, certain dysfunctions with major implications for the prevention and combating of such offences have been identified in judicial practice.

We note that only some of these offences have been the subject of criticism, first in doctrine and then in judicial practice, culminating in interventions by the Constitutional Court, which declared certain provisions in the incrimination texts to be unconstitutional.

Against this backdrop, the High Court of Cassation and Justice intervened, promoting several decisions based on the provisions of Articles 475–477¹ of the Code of Criminal Procedure.

In this paper, we will examine the evolution of the criminalisation of offences against road safety in Romanian law, as well as analyse the systematisation of criminal offences in the Criminal Code, while highlighting subsequent amendments and additions

Official Gazette of Romania, pt. I, no. 670 (August 3, 2006).

⁴ Romania, Law no. 21/2020 on the Air Code, *Official Gazette of Romania*, pt. I, no. 222 (March 19, 2020).

⁵ Romania, Law no. 191/2003 on Offences Regarding Naval Transport, *Official Gazette of Romania*, pt. I, no. 332 (May 16, 2003).

⁶ Ion Rusu, Ioana Eleonora Rusu, and Bogdan Bîrzu, *Infrațiunile contra siguranței circulației pe drumurile publice în dreptul penal român*, 2nd rev. and expanded ed. (Bucharest: Universul Juridic, 2020), 7.

⁷ Ion Rusu and Minodora-Ioana Bălan-Rusu, *Infrațiunile contra siguranței circulației pe drumurile publice în dreptul penal român* (Bucharest: Universul Juridic, 2014), 11.

to the criminalisation texts and presenting some critical opinions.

2. The 1865 Criminal Code

The first Romanian Criminal Code of the modern era (the Criminal Code of 1865) did not include a special chapter referring to offences against road safety, which was normal given the development of this area of traffic and transport at that time.

However, some social values specific to this area were protected by criminalising specific actions in the field of road traffic and transport⁸.

We refer here to the provisions of Article 353 of the Criminal Code, which criminalised the demolition or collapse of buildings, bridges, dams, *roads* (sn) or other structures⁹.

In the case law of the time, which considered both the offence and the jurisdiction, it was held that ‘the act of damaging a road with a plough constitutes the offence provided for and punished by Article 353 of the Criminal Code, which falls within the jurisdiction of the justice of the peace, in accordance with Article 71 of the Law on Justices of the Peace (Cas. II, decision 568 of 27 February 1906, B.p. p. 339).’¹⁰

Another offence was criminalised in the provisions of Article 356, which provided for the punishment of the owner, tenant or any person who ‘causes damage to roads or their properties’, as well as the ‘craftsman who worked on raising the water level.’¹¹

Other acts that could be considered part of the same category were provided for in Article 376 and consisted of the destruction or degradation *of roads*, bridges, weirs, bridges, etc.

Other offences relating to traffic on public roads were provided for in Book III, under the heading ‘Police offences and their penalties’. These are criminalised in Article 385 (4) ‘those who obstruct traffic on the streets’, in Article 389 (2), (4), (5) and (6) and Article 393 (10).¹²

In doctrine, it has been noted that ‘with regard to the evolution of the road traffic system and the criminalisation measures ordered by the legislator of the time, the offences provided for in Article 389, points 4, 5 and 6, according to which acts relating to speeding in towns (by carriages), the lack of registration numbers (in the case of carriages) or the placing of obstacles on streets or roads are punishable.’¹³

Several conclusions can be drawn from an analysis of the offences provided for in the 1865 Criminal Code:

- the offences primarily concern actions that cause damage to road infrastructure,

⁸ Rusu, Rusu, and Bîrzu, *Infrațiunile contra siguranței circulației*, 11.

⁹ George St. Bădulescu and George T. Ionescu, *Codul penal adnotat cu jurisprudența și doctrina română și franceză* (Bucharest: Tipografia Ziarului “Curierul Judiciar,” 1911), 525.

¹⁰ Bădulescu and Ionescu, *Codul penal adnotat*, 525, quoted in Rusu, Rusu, and Bîrzu, *Infrațiunile contra siguranței circulației*, 11.

¹¹ Bădulescu and Ionescu, *Codul penal adnotat*, 533, quoted in Rusu, Rusu, and Bîrzu, *Infrațiunile contra siguranței circulației*, 11.

¹² Bădulescu and Ionescu, *Codul penal adnotat*, 548–49, 553, 563–64, quoted in Rusu, Rusu, and Bîrzu, *Infrațiunile contra siguranței circulației*, 11–12.

¹³ Rusu and Bălan-Rusu, *Infrațiunile contra siguranței circulației*, 59–60; Rusu, Rusu, and Bîrzu, *Infrațiunile contra siguranței circulației*, 11–12.

usually roads, highways and streets;

- other actions were aimed at obstructing traffic on the streets, while others referred to speeding in cities, the lack of registration numbers or the placement of obstacles on streets or roads.

As regards speeding and the lack of registration plates, these naturally referred to horse-drawn carriages and not to motor vehicles, which at that time had not yet been invented and did not circulate on the streets of Romania.

With the evolution of the motor transport system and the relevant legislation, we find these two offences even in the current legal provisions.

The form of guilt with which the offences in question could be committed was direct intent.

3. The Criminal Code of Carol II¹⁴

In Carol II's Penal Code, similar to the Penal Code of 1865, there was no special chapter dedicated to protecting road traffic and transport safety, as the legislators of the time gave priority to railway safety and transport.

However, Title VII (Crimes and offences causing public danger), Chapter III (Crimes and offences against the safety of transport and means of communication) provided for certain offences specific to the transport system.

From the analysis of the provisions of the law, we find that Article 359 (1) provided for *the offence of endangering railway safety*, which consisted of the act of a person who *'damages or destroys, in whole or in part, a railway line or objects or instruments belonging to it and used for its operation, thereby exposing persons or goods in trains or on the railway line, or in their vicinity, to danger (...)'*.

Paragraph (2) of the same article criminalises the act of a person who *'by means of a false signal, exposes the persons or goods referred to danger to in the preceding paragraph'*.

Article 360 referred to the offence of a railway disaster, which consists of *'the act referred to in Article 359, if it causes a railway disaster through the derailment, overturning or collapse of a train, or a collision between two trains'*.

Article 361 provided for several aggravated circumstances, which could consist of injury to health or bodily integrity, destruction of goods or the death of one or more persons.

Article 362 criminalises *the act of 'a railway official or any person employed by this institution who fails to perform his or her duties or acts contrary to his or her duties and thereby endangers the persons or goods referred to in Article 359 (...)'*, while Article 363 criminalises the negligent commission of the acts criminalised in Articles 359–362.

Article 364 mentions the punishment of the acts provided for in Articles 359–363, when they are committed *'on a road, bridge, aqueduct or other public works or constructions serving land, water or air transport, as well as on the means serving this purpose, whether state-owned or private'*¹⁵.

¹⁴ Romania, *Codul penal Carol al II-lea*, promulgated by Royal Decree no. 471 of March 17, 1936, *Official Gazette of Romania*, pt. I, no. 65 (March 18, 1936), as amended in nos. 83 (April 8, 1936) and 298 (December 22, 1936).

¹⁵ Rusu, Rusu, and Birzu, *Infrațiunile contra siguranței circulației*, 12–13; Rusu and Bălan-Rusu, *Infrațiunile contra siguranței circulației*, 60–62.

An examination of the incriminating texts shows that the legislators of that time were primarily concerned with protecting the safety of rail transport.

This tendency was only natural, since at that time in history, only rail transport had a very clear prospect of development.

In this context, the provisions of Article 364 protect the infrastructure related to other areas of transport, namely road, air and sea transport (in addition to railway infrastructure), with the text making no reference to the actual safety of traffic specific to these areas of transport.

With regard to these criminal provisions, the doctrine of the time highlighted the fact that 'in offences aimed at destroying means of communication, means of transport and means of conversation, the object of criminal protection is the same as in the offences under Articles 352 and 353, namely *collective safety* regarded as a vital interest for the maintenance and progress of society'¹⁶.

In conclusion, we consider that the criminalisation of acts against the safety of the transport system was not a particular concern for the legislators of the time, with priority being given to traffic safety in the field of rail transport.

On the other hand, it is necessary to bear in mind that, at the time of entry into force of the Carol II Penal Code, traffic safety on public roads was protected by a special law, to which we will refer later.

Similar to previous criminal codes, *the 1969 Criminal Code* did not provide for the separate criminalisation of acts affecting road safety.

However, we note that Article 281¹ provided for the offence of '*failure to comply with the public road transport regime*', an offence which protected road safety by penalising the act of road transport on public roads without a transport licence. Licence to operate a vehicle or route, or with an expired licence.

Therefore, with the exception of this offence, which provides for the punishment of road transport carried out without the appropriate licences, which, in essence, is an offence punishing certain aspects relating to traffic and transport safety on public roads, the 1969 Criminal Code does not criminalise any other act specifically to road safety and transport on public roads¹⁷.

4. Special laws with criminal provisions

As we can see, the absence of other criminal offences affecting road safety in the criminal codes referred to above is justified by the provision of such offences in certain special laws, which have been amended, supplemented or repealed successively, over shorter or longer periods of time¹⁸.

In relation to this issue, from the analysis of the evolution of offences affecting road safety through special laws, we note only three pieces of legislation of major relevance in this area.

In the order of their adoption over time, we note: Law No. 213/1929 on traffic on public roads, Decree No. 328/1966 on traffic on public roads and Government Emergency

¹⁶ Vintilă Dongoroz, commentary on art. 350, in Const. G. Rătescu et al., *Codul penal Carol al II-lea adnotat*, vol. 2, *Partea specială I*, art. 184–442 (Bucharest: Editura Librăriei SOCEC & Co., 1937), 411.

¹⁷ Rusu, Rusu, and Bîrzu, *Infracțiunile contra siguranței circulației*, 13.

¹⁸ Rusu, Rusu, and Bîrzu, *Infracțiunile contra siguranței circulației*, 13.

Ordinance No. 195/2002 on traffic on public roads.

In order to highlight the evolution of criminal offences, we will briefly examine each of the three legislative acts in the order in which they were adopted.

4.1. Law No. 213/1929 on traffic on public roads

During the interwar period, the most important piece of legislation regulating traffic on public roads, which also provided for certain offences and contraventions, was Law No. 213 of 22 October 1929 on traffic on public roads¹⁹.

For violations of certain provisions on road safety, the relevant penalties were provided for in Chapter VII, entitled 'Offences and penalties', Articles 62–70.

A study of the criminalisation rules set out in Articles 62–70 leads to the conclusion that the overwhelming majority of penalties were of a contravention nature, being punishable by fines ranging from 200 lei to 20,000 lei.

However, the provisions of the law to which we refer also mentioned two offences.

The first offence was provided for in the provisions of Article 62(4), which stated that 'The person who, without being authorised to do so, uses a vehicle or equipment belonging to the state or to a legal person, or who uses a vehicle or equipment belonging to a legal person without the consent of the owner, shall be punished by imprisonment for a term of up to 3 years or by a fine of 1,000 to 10,000 lei.'

*'The use of a vehicle by an employee or other third party without the owner's consent constitutes a breach of trust, which shall be punished in accordance with Article 323 (II) of the Criminal Code'*²⁰.

There is no doubt that the text referred to in the law, namely Article 323 (2), refers to the text of the Criminal Code of 1865, which was in force at that time.

Thus, according to the provisions of Article 323 (2) of the 1865 Criminal Code, *'If the breach of trust referred to in the above paragraph is committed by a servant, wage earner, apprentice, journeyman, clerk, worker or assistant to the detriment of his master, the punishment shall be imprisonment for a term of 6 months to 2 years'*²¹.

The second offence was provided for in the provisions of Article 64(2) of Law No. 213/1929 and was charged to the perpetrator who *'During election periods, the withdrawal of permits by the police authorities is strictly prohibited. Officials who contravene this provision shall be punished with imprisonment of 3–6 months and loss of political rights'*²².

An examination of the two offences leads to the following conclusions:

- in the first offence, only the theft of a motor vehicle or driving a vehicle without the owner's consent was punishable;
- the act itself was not considered and punished as an offence specific to road traffic, but was assimilated to the offence of breach of trust;
- in order to avoid certain abuses that could be committed by the police during the election campaign, it was prohibited *to confiscate driving licences*;

¹⁹ Romania, Law no. 213/1929 on Traffic on Public Roads, *Official Gazette of Romania*, no. 236 (October 22, 1929).

²⁰ Mihail I. Papadopolu, *Codul legilor penale române adnotate* (Bucharest: Tipografiile Române Unite, 1932), 128–29.

²¹ Bădulescu and Ionescu, *Codul penal adnotat*, 466.

²² Rusu, Rusu, and Bîrzu, *Infrațiunile contra siguranței circulației*, 13.

- the offence under Article 64(2) only applied to a police officer who proceeded to confiscate a driving licence during the election campaign.

There is no doubt that the criminalisation of these acts was determined by the assessment of their social danger at that time.

There was no question of criminalising other acts in this category, as road traffic and transport were fairly limited, almost insignificant, at that time.

On the other hand, we note that at that time, rail transport was much more developed, representing the main means of transport for goods and passengers in Romania.

4.2. Decree No. 328/1966 on traffic on public roads²³, with subsequent amendments and additions (including after 1990)

After the change of political regime in Romania in the middle of the last century, legislation in the field of road traffic safety underwent numerous amendments and additions, with numerous normative acts being promoted successively at various intervals, some of them quite short.

Thus, in just 14 years (1952–1966), four legislative acts were successively promoted, namely: Decree No. 143/1952 on traffic on public roads, Decree No. 418/1958 on traffic on public roads, Decree No. 832/1962 on traffic on public roads and Decree No. 328/1966 on traffic on public roads.

As it is of major importance in terms of the evolution of the Romanian legislative system in this area, we will briefly examine this last legislative act²⁴.

Decree No. 328/1966 on traffic on public roads provided for a series of offences in Chapter VII ('Offences and penalties'), in Articles 35–39.²⁵

²³ Romania, Decree no. 328/1966 on Traffic on Public Roads, *Official Bulletin*, nos. 28–29 (May 31, 1966), republished in nos. 46–47 (May 15, 1970) and, pursuant to Decree no. 214/1984, in no. 49 (June 28, 1984).

²⁴ Rusu, Rusu, and Bîrzu, *Infraacțiunile contra siguranței circulației*, 14–15.

²⁵ Decree no. 328/1966, arts. 35–39: "Art. 35. Putting into circulation or driving an unregistered motor vehicle on public roads is punishable by imprisonment from three months to two years or by a fine.

Art. 36. Driving a motor vehicle on public roads without a driving licence or with a licence that does not correspond to the category of the motor vehicle shall be punished by imprisonment from six months to three years or by a fine. The same penalty shall be imposed on any person who drives a motor vehicle on public roads after their driving licence has been withdrawn, cancelled or retained for cancellation or as a result of the suspension of their right to drive motor vehicles. Entrusting a motor vehicle to be driven on public roads to a person who is in one of the situations referred to in the preceding paragraphs and who drives the motor vehicle on public roads shall be punished by imprisonment from three months to one year or by a fine.

Art. 37. Driving a motor vehicle on public roads by a person who has a blood alcohol level exceeding the legal limit or who is intoxicated shall be punished by imprisonment from one to five years. If the person in one of the situations referred to in the preceding paragraph is driving a motor vehicle that transports passengers or materials that may cause public danger, the penalty is imprisonment for two to seven years.

Art. 38. Leaving the scene of an accident without the consent of the police by any of the drivers involved in a traffic accident resulting in the death, bodily injury, or impairment of health of any person, or if the accident constitutes a criminal offence or occurred as a result of a criminal offence, shall be punished by imprisonment from six months to five years. The following may leave the scene of the accident without the consent referred to in the previous paragraph: (a) drivers of vehicles belonging to the ambulance service, fire brigade, or police when on a mission that cannot be postponed; (b) drivers of vehicles who, in the absence of other means of transport, transport injured persons to the nearest health facility capable of providing the necessary medical assistance, provided that they return immediately to the scene of the accident.

Art. 39. Failure to perform or improper performance, with knowledge, of the duties of technical inspection

Next, we will attempt to highlight a few specific aspects without examining these offences, noting that their content includes actions or, less frequently, omissions that are also found in the current Criminal Code.

These actions and inactions are as follows:

- putting into circulation or driving an unregistered motor vehicle on public roads;
- driving a motor vehicle on public roads without a driving licence or with a driving licence that is not appropriate for the category of motor vehicle being driven;
- driving a motor vehicle on public roads after the driving licence has been withdrawn, cancelled or retained for cancellation or as a result of the suspension of the right to drive motor vehicles;
- entrusting a motor vehicle to be driven on public roads to a person who is in one of the situations provided by law and who drives the motor vehicle on public roads;
- driving a motor vehicle on public roads by a person who has a blood alcohol level exceeding the legal limit or who is intoxicated; the offence is aggravated when the driver of the motor vehicle is transporting persons or materials that may cause public danger;
- leaving the scene of an accident without the consent of the police by any of the drivers involved in a traffic accident resulting in the death, bodily injury or health impairment of any person, or if the accident constitutes a criminal offence or occurred as a result of a criminal offence;
- failure to perform or improper performance, with knowledge, of the duties of technical inspection of motor vehicles by those who have such duties, in the event of a traffic accident resulting from technical defects in the motor vehicle; the act was punishable even when committed through negligence.

Even though, after its adoption, the legislative act in question was amended and supplemented several times, including after 1990, it can be seen that all the offences criminalised in the legislative act to which we refer are also criminalised in the new Criminal Code²⁶.

4.3. Government Emergency Ordinance No. 195/2002 on traffic on public roads and the implementing regulation

Government Emergency Ordinance No. 195/2002 on road traffic²⁷, with subsequent amendments and additions, proposes a new approach, which involves criminalising, in addition to the offences taken from the previous law, others specific to the field of road traffic.

Subsequently, the Implementing Regulation of Government Emergency Ordinance No. 195/2002 on road traffic²⁸, as amended and supplemented, was adopted.

of motor vehicles by those who have such duties, in the event of a traffic accident resulting from technical defects in the motor vehicle, shall be punished by imprisonment from three months to two years. The commission of the acts referred to in paragraph (1) through negligence shall be punished by imprisonment from three months to one year or a fine.”

²⁶ Rusu and Bălan-Rusu, *Infrațiunile contra siguranței circulației*, 62–64; Rusu, Rusu, and Bîrzu, *Infrațiunile contra siguranței circulației*, 15–16.

²⁷ Government Emergency Ordinance no. 195/2002, republished in *Official Gazette of Romania*, pt. I, no. 670 (August 3, 2006).

²⁸ Romania, Government Decision no. 1,391/2006 approving the Regulation for the Application of Government Emergency Ordinance no. 195/2002 on Traffic on Public Roads, *Official Gazette of Romania*, pt. I, no. 876 (October 26, 2006).

With regard to Government Emergency Ordinance No. 195/2002, we would like to point out that, in addition to the special chapter devoted to the criminalisation of criminal acts (Chapter VI, entitled ‘Offences and penalties’), the legislative act in question also contains other chapters with distinct titles, such as: vehicles (Chapter II); drivers (Chapter III); road signs (Chapter IV); traffic rules (Chapter V); administrative liability (Chapter VII), etc.

The regulations implementing Government Emergency Ordinance No. 195/2002 on traffic on public roads comprise the following chapters: Chapter I – general provisions; Chapter II – vehicles; Chapter III – driving licences; Chapter IV – road signs; Chapter V – traffic rules; Chapter VI – traffic of motor vehicles with excessive weight and/or dimensions or transporting dangerous goods or products; Chapter VII – administrative penalties and technical and administrative measures; Chapter VIII – final and transitional provisions.

We would like to point out that in the current Criminal Code, given the way it is drafted, two of the offences, namely manslaughter and negligent bodily harm, are directly related to the offences that are part of this group.

Thus, according to the provisions of Article 192 (2) of the Criminal Code, *‘manslaughter as a result of failure to comply with legal provisions or precautionary measures for the exercise of a profession or trade or for the performance of a certain activity’* is an aggravated form of the offence of negligent homicide ⁽²⁹⁾.

There is no doubt that these provisions will most often apply in cases where the driver involved in a traffic accident resulting in the death of a person is guilty of failing to comply with provisions on road safety.

Among the provisions of the framework legislation that may be referred to are exceeding the speed limit on the section of the road where the offence was committed, failure to comply with the conditions governing overtaking and failure to comply with other provisions of the law.

In the case of the offence of negligent bodily injury provided for in the provisions of Article Therefore, this aggravated normative modality will be applied in a manner similar to manslaughter, *in the sense that the provision violated by the driver will be identified*.

Therefore, this aggravated form will be applicable in a manner similar to manslaughter, in the sense that the provision violated by the driver involved in the traffic accident will be identified.

We note that in the case of a driver committing a crime of manslaughter or bodily injury through negligence, Chapter V, entitled ‘Traffic Rules’, and Chapter VII, entitled ‘Administrative Liability’, of Government Emergency Ordinance No. 195/2002, as well as Chapters V, VI and VII of the Regulation implementing Government Emergency Ordinance No. 195/2002, are of major importance, as it is necessary to establish a direct link between the traffic rule violated, the accident caused and its direct consequences.

In other words, in order to establish that one of the two offences mentioned has been committed, the criminal investigation authorities must establish which legal provisions have been violated by the driver, provisions expressly mentioned in the texts of the above-mentioned chapters of the two normative acts.

In relation to the evidence administered, if the driver’s violation of a legal provision is not proven, the act may constitute the elements of the offences of manslaughter or bodily

²⁹ Rusu, Rusu, and Bîrzu, *Infracțiunile contra siguranței circulației*, 16–17.

harm through negligence, in their typical forms, or that it is not provided for by criminal law (in which case the defendant must be acquitted)³⁰.

5. Offences against road safety provided for in the Criminal Code

The Criminal Code takes a new approach to the large group of offences against public safety, which is provided for in Title VII under the same marginal heading.

Unlike previous criminal codes, this time this category includes a special chapter and a group of offences against road traffic safety.

This group of offences, entitled 'Offences against road safety', is provided for in Chapter II under the same heading.

All these offences have been taken over, with some amendments and additions, from Government Emergency Ordinance No. 195/2002 on traffic on public roads.

In its initial wording (at the time of publication of the Criminal Code), the chapter provided for eight offences, as follows: putting into circulation or driving an unregistered vehicle, driving a vehicle without a driving licence, driving a vehicle under the influence of alcohol or other substances, refusal or evasion of biological sampling, leaving the scene of an accident or altering or removing traces of it, obstructing or hindering traffic on public roads, failure to comply with technical inspection or repair requirements, and carrying out unauthorised work on public roads.

Recently, a new offence was added to this chapter, namely '*Consumption of alcohol or other psychoactive substances after causing a traffic accident*' (Art. 336¹ of the Criminal Code).³¹

If we refer to the offences provided in Government Emergency Ordinance No. 195/2002 on traffic on public roads, we note that there are also some differences, as they have been selectively incorporated into the Criminal Code, with some amendments and additions.

Firstly, we note that in the Criminal Code, each offence included also has a marginal name (as do all offences), which does not appear in the previous law (Government Emergency Ordinance No. 195/2002).

Other differences relate to legal content, certain actions or omissions that constitute the material element of the objective aspect, as well as the minimum and maximum limits of the penalties provided for, where, in some cases, the alternative penalty of a fine has been added, and in others, penalties have been reduced and subsequently increased.

Important differences arise in the case of the offence of driving a vehicle under the influence of alcohol or other substances, differences that consist in taking into account, for the purpose of establishing guilt, the moment when the biological samples were taken, and not the moment when the offence was committed, which is identified with the moment when the driver was caught in traffic.³²

In our doctrine³³, these provisions in the initial wording of the criminalisation text

³⁰ Rusu, Rusu, and Bîrzu, *Infracţiunile contra siguranţei circulaţiei*, 17–18.

³¹ Ion Rusu, commentary on art. 334, in George Antoniu and Tudorel Toader, eds., *Explicaţiile Codului penal*, vol. 4, *Articolele 257–366* (Bucharest: Universul Juridic, 2025), 554; Rusu, Rusu, and Bîrzu, *Infracţiunile contra siguranţei circulaţiei*, 39–40.

³² Ion Rusu, commentary on art. 335, in George Antoniu and Tudorel Toader, eds., *Explicaţiile noului Cod penal*, vol. 4, *Articolele 257–366* (Bucharest: Universul Juridic, 2016), 580.

³³ Rusu and Bălan-Rusu, *Infracţiunile contra siguranţei circulaţiei*, 155–56; Rusu, Rusu, and Bîrzu,

have been criticised since the Criminal Code came into force, as it was considered that the moment of taking biological samples does not always correspond to the moment of committing the offence, in which cases criminal liability is different or even non-existent.

Another major difference concerns the autonomous criminalisation of the act of refusing or evading the collection of biological samples, an act which, in the previous regulation, was provided for in the content of paragraph (5) of Article 87 of Government Emergency Ordinance No. 195/2002. In the new law, the act provided for in Article 92(1) of Government Emergency Ordinance No. 195/2002, which consisted in the refusal or evasion of the collection of biological samples, has been decriminalised.

The new law decriminalised the act provided for in Article 92(1) of Government Emergency Ordinance No. 195/2002, which consisted of the removal, destruction, damage or rendering it unusable of road signs, traffic lights, etc.³⁴

An analysis of the incrimination texts shows that after the entry into force of the Criminal Code, against the backdrop of criticism in doctrine and judicial practice, followed by the interventions of the Constitutional Court, the legal content of some of the offences in this group was amended and supplemented, with these amendments effectively obliging the legislator to incriminate new acts.

Thus, after the entry into force of the Criminal Code, paradoxically, several amendments and additions were made to the content of the chapter and to the legal content of some of the offences, namely:

1) In the case of the offence of putting into circulation or driving an unregistered vehicle provided for in the provisions of Article 334 of the Criminal Code, in paragraphs (1), (2) and (4) of the text in its original wording, the phrase '*agricultural and forestry tractor*' was introduced³⁵;

2) In the offence provided for in Article 335, paragraphs (1) and (2), the phrase '*agricultural and forestry tractor*' was introduced; the text was supplemented by Law No. 200/2023, as in the case of the supplement to the text of Article 334 of the Criminal Code.

We note that prior to the intervention of the legislator, the Constitutional Court, by Decision No. 224/2017, had found that '*The legislative solution contained in Article 335 (1) of the Criminal Code, which does not criminalise the act of driving an agricultural or forestry tractor on public roads without a driving licence, is unconstitutional*'³⁶.

The legislator's total lack of interest in bringing the criminal provisions of Articles 334 and 335 of the Criminal Code into line with the provisions of the Constitution by complying with and applying the Decision of the Constitutional Court is evident from the delay with which it intervened to supplement the texts in question.

3) The legal content of the offence of driving a vehicle on public roads under the influence of alcohol or other substances provided in the provisions of Article 336 of the Criminal Code has been scientifically criticised by us since the Criminal Code came into force. In the year the Criminal Code came into force (2014), the Constitutional Court, in Decision No. 732/2014, ruled that the phrase '*at the time of taking biological samples*' in the

Infracțiunile contra siguranței circulației, 157.

³⁴ Rusu, commentary on art. 335, in Antoniu and Toader, *Explicațiile noului Cod penal*, 4:580–81.

³⁵ Romania, Law no. 200/2023 amending and supplementing Law no. 286/2009 on the Criminal Code and other normative acts, *Official Gazette of Romania*, pt. I, no. 616 (July 6, 2023).

³⁶ Constitutional Court of Romania, Decision no. 224 of April 4, 2017, *Official Gazette of Romania*, pt. I, no. 427 (June 9, 2017).

provisions of Article 336 (1) is unconstitutional. The text was brought into line with the Law No. 200/2023, a legislative act which also supplemented the provisions of Articles 334 and 335 of the Criminal Code.

The text was brought into line with the Law No. 200/2023, a normative act which also supplemented the provisions of Articles 334 and 335 of the Criminal Code.

The second amendment to the criminalisation text in Article 336 was made by Law No. 172/2024.³⁷

Therefore, we note that after its entry into force, the criminalisation text in Article 336 of the Criminal Code was amended and supplemented twice, which shows a total lack of interest on the part of the legislator in its work of adopting normative acts.

4) The amendments to the wording of Article 336 of the Criminal Code have created a vulnerability, in the sense that alcohol consumption after a traffic accident resulting in the death or bodily injury of one or more persons and until biological samples are taken remains unpunished. In concrete terms, a driver of a vehicle involved in such a traffic accident could defend himself by arguing that he had consumed alcohol or other substances after the traffic accident occurred, until the arrival of a police officer at the scene.

In these circumstances, a new offence was introduced, namely '*Consumption of alcohol or other psychoactive substances after a traffic accident*'; this text was introduced by Law No. 200/2023.

5) The latest amendments and additions we refer to concerned changes to the penalty system. Thus, by adding a new paragraph to the provisions of Article 83 of the Criminal Code, namely paragraph (2¹), it is no longer possible to defer the application of the penalty in the case of offences provided for in Articles 335 and 336 of the Criminal Code.

The second amendment to the penalty regime occurred in the structure of the text of Article 91 of the Criminal Code, through the introduction of a new paragraph, namely paragraph (3¹), which excludes the possibility of ordering the suspension of the execution of the sentence under supervision in the case of offences provided for in Article 192 (2) and (3), if they were committed under the conditions of Article 335 or Article 336 of the Criminal Code³⁸.

In conclusion, we consider that both the amendments made by the legislator to the structure of the aforementioned criminal provisions and the tightening of the penalty regime were necessary and represent a new approach by the legislator towards the adoption of a more severe penalty regime.

6. Conclusions

In this study, we have attempted to present the evolution of the criminalisation of offences in the field of road safety in Romania, while also highlighting the constant concern of Romanian legislators in this area.

There is no doubt that the criminalisation of such acts has been directly influenced by the evolution of the transport system in general and, implicitly, by the evolution of road traffic and transport.

Last but not least, the evolution of the criminalisation of acts that affect road

³⁷ Romania, Law no. 172/2024 amending and supplementing Law no. 286/2009 on the Criminal Code, *Official Gazette of Romania*, pt. I, no. 510 (May 31, 2024).

³⁸ Rusu, commentary on art. 334, in Antoniu and Toader, *Explicațiile Codului penal*, 4:555–56.

transport safety has also been and continues to be influenced by the changes taking place in this area at the European Union level.

As we have highlighted, at the national level, offences against transport safety in the four distinct areas (rail, road, air and sea) have traditionally been mentioned both in certain special laws and in the Criminal Code.

Thus, since the second half of the last century, offences against rail transport safety have been provided for in the 1969 Criminal Code, while offences against road transport safety have been provided for in certain special laws.

The current Criminal Code breaks with this tradition and includes them in a special chapter, after the group of offences against railway safety and the group of offences against road safety.

In the process of incorporating these offences from Government Emergency Ordinance No. 195/2002 on road traffic, against the backdrop of inadequate analysis, the legislator made some additions to some of the offences already existing in the framework legislative act, while in other cases it excluded certain phrases or added others, which subsequently proved to be incorrect.

These hesitations and mistakes by the legislator were the subject of decisions by the Constitutional Court, which found that some of these phrases in the criminalisation rules were unconstitutional or, in other cases, the unconstitutionality of the text was determined by the failure to include certain distinct categories of vehicles (as is the case with agricultural and forestry tractors).

Under these circumstances, the legislator was obliged to intervene in order to bring the content of the criminal provisions into line with the provisions of the Romanian Constitution.

In a general conclusion, we can assess that at this moment, due to the amendments and additions, but also to the inclusion of a new criminal offence, the criminal law provisions protecting traffic safety in road transport are adequate.

Undoubtedly, the overall evolution of traffic and transport on public roads, determined by new scientific and technical advances in the field, and, last but not least, the evolution of crime in this area, will pose new challenges that will certainly lead to the improvement of legal rules in this field.

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