



The Constitutive Content of the Operating a Motor Vehicle without a Valid Driver's License Offense according to the New Criminal Code

Ion RUSU¹

Abstract: The purpose and the objectives of the research aim at examining the constitutive content of the operating a motor vehicle without a valid driver's license offense, presenting recent examples of judicial practice that may be current still in terms of the new regulations imposed by the entry into force of the New Romanian Criminal Code. The research results consist of examining the constitutive content referring to the judicial practice and highlighting practical issues. The study can be useful for both theorists and practitioners in the field.

Keywords: offense; the New Romanian Criminal Code; judicial practice

1. Introduction

In the recent years, amid the unprecedented increase of criminality in the area of traffic on public roads, the authorized bodies of the Romanian state ordered several measures aiming at diminishing the phenomenon as a whole. Among other measures, there were conducted also numerous changes in legislation, being incriminated the new facts affecting the most important social values.

Amid this background, there was the need of incriminating such acts in a new way, which implies the exclusion from the special law and their provision in the Criminal Code.

According to the legislator's conception of the New Criminal Code, the offenses against traffic safety on public roads are set out in Chapter II, with the same marginal name of Title VII "Crimes against public safety", after the offenses against the security of traffic on railway.

¹ Associate Professor, PhD, "George Bacovia" University of Bacau, Romania, Address: 157 Calea Marasesti, 600164 Bacau, Romania, Tel.: +4034116448, Fax: +4034116448, Corresponding author: av.ionrusu@yahoo.com.

This option of the legislator of the New Criminal Code is quite normal, given the evolution of criminality in this area, also the need to prevent and combat it at a high level. Among other crimes from the group of those regarding traffic safety on the public roads it also belongs to the offense of driving a vehicle without a license.

2. The Current Criminal Code in Relation to the Old Law

The examined offense is not provided in the Criminal Code of 1969, but it was referred to Government Emergency Ordinance no. 195/2002, republished, with subsequent amendments. In a similar wording, the concerned offense is provided for in article 86 of the mentioned legislative act; currently the text is repealed.

Doing a comparative analysis of the legal content of the offenses, we can identify some elements of differentiation and the similarity between the two regulations.

One aspect of differentiation is that in the existing Criminal Code the offense of article 86 of G.E.O. No. 195/2002, republished, the marginally named at article 335, "Driving a vehicle without driving license", a name which does not appear in the old law.

While the provisions of paragraph (1) of the two texts are identical, including the limits of the penalty, the provisions of paragraph (2) of the New Criminal Code are modified in comparison to the provisions of the same paragraph of article 86 of the mentioned regulation, being provided driving a vehicle on public roads, not a motor vehicle or tram as provided by the provisions of the old law.

The same changes were made by the legislator of the new Criminal Code in the content of paragraph (3), article 335, while the minimum and maximum limits of the sentences were retained.

The provisions of article 335 of the New Criminal Code, also the old law, there are provided three separate offenses, each presenting several simple normative ways.

In conclusion, we consider that the two regulations present the same offense, the only distinguishing elements being those related to the marginal names and replacing the terms motor vehicle or tram in the legal content of the paragraph (2) and (3).

3. The Constitutive Content of the Offense

The constitutive content of the crime examines the objective and subjective side.

3.1. Objective Side

From the structure of the objective side of the crime there will be examined the material element, the essential requirement, the immediate consequence and the causality connection.

The material element of the objective side is achieved by an action that is specific to each offense, the action in question referring each time to the special situation in which the active subject of the offense is.

Given the legal content of the offenses referred to in the text of article 335 of the New Criminal Code, we will proceed in examining the material element and essential requirements for each crime separately.

Thus, in the case of **the offense provided for in article 335, paragraph(1), the material element** of the objective side is achieved through the act of driving on public roads of a motor vehicle or tram by a person who does not possess driving license.

Note the fact that the driving action should regard a motor vehicle or tram, so not just for any vehicle.

In connection to the wrongful invocation of the state of emergency, in judicial practice it was decided that it is true that the defendant drove the motor vehicle under the conditions of not possessing a driving license for transporting the witness "N" from "H" headquarters. But it results no apparent imminent danger for the life of the witness or that fact that the defendant's action was the only way to remove this danger. (Andreescu & Simonescu-Diaconu, 2012, pp. 104-105)

To complete the material element of objective side in the case of the examined offense it is necessary the cumulative fulfillment of the following **essential requirements**:

- the driving action to be executed by a person who does not possess a driving license;
- the driving action to be executed on a public road;
- the driving action must relate to a motor vehicle or tram.

The obligation of having a driving license results from the provisions of article 23 paragraph (1) G.E.O. No. 195/2002, republished, which states that the right to drive a motor vehicle or tram on public roads it is only the person who possesses a valid driving license, corresponding to the category of which the vehicle, or the replacement proof thereof with the traffic right.

They also have the right to drive motor vehicle or tram on public roads, under the conditions determined by rule, and those persons who follow a training course, in order to obtain the license, only in the presence and under the direct supervision of a certified driving instructor in this respect, as well as the examiner within the competent authority during the conducting of practical examinations for obtaining the driving license for any of the categories set out by law (paragraph (2), article 23 of the special law).

In the judicial practice it was decided that the nature of the committed offense and the circumstances of its commitment determines the court to decide over applying the penalty of forbidding right to drive a motor vehicle on public roads, since his act has created a state of danger to traffic safety on public roads. (Andreescu & imonescu-Diaconu, 2012, pp. 66-68)

The material element for the offense provided for in article 335 paragraph (2) of the New Criminal Code consists of the driving action of a vehicle on public roads by a person who has driving license, but it is inappropriate for the category or subcategory which includes the driven vehicle; the license has been withdrawn or canceled or the right to drive such vehicles has been suspended for a period of time, or the license does not confer the right to drive a motor vehicle in Romania.

In judicial practice it was held that the defendant, having the knowledge of the suspension of his driving license, even when it was ordered, his claim in that he did not know the situation, cannot be accepted. The defendant knew that the offense referred to in article 100 paragraph (3) letter c) G.E.O. No. 192/2002, it is suspended the right to drive. (Andreescu & imonescu-Diaconu, 2012, pp. 109-110)

A special problem arises when the driver has accumulated 15 demerit points, in which case it must be made aware of this situation, and also the fact that it was suspended the right to drive the vehicle and he is obliged to report to the competent body to turn in the driving license.

Traffic identification of a driver of a motor vehicle or tram who has accumulated 15 demerit points, but who has not been notified in writing or even sent a notification of the situation, it does not meet the constitutive elements of the offense which we examine.

In order to complete the material element of the objective side there must be met the following **requirements**:

- the driving action to be executed on a public road;
- the driving action must relate to a motor vehicle;
- the driven vehicle must be part of the categories of those required to have driving license by the driver in question;
- the driving action of the vehicle on public roads must be performed by a person who is at least in one of the following situations: driver's license does not match to the category of driven vehicle; the person in question it has been withdrawn or canceled the right to drive the vehicle on public roads or the owned license does not confer the right to drive such vehicle on the Romanian territory.

Please note that in Annex 1 of G.E.O. No. 195/2002, republished, with subsequent amendments there are provided for the categories of vehicles for which a driving license is issued.

Provisions on how to obtain a driving license, vehicle categories that can be driven on the basis of holding a license are contained in Chapter III of the Regulation implementing the Government Emergency Ordinance no. 195/2002 regarding the traffic on public roads, approved by Government Decision no. 1.391/2006¹, as amended and supplemented.

From the interpretation of these texts, it results that every holder of a driving license can drive on public roads only category vehicles issued with a driving license.

So every driver of a vehicle is required to comply with these provisions, namely to drive a vehicle for which he has a driving license. Thus, there will be an offense when on public roads it is identified a person driving a motor vehicle with a maximum authorized mass that does not exceed 3,500 kg, and whose number of seats, except the driver, is no more than 8, which has a driving license for category A, which gives him the right to drive his vehicle with or without attachment.

¹Published in the Official Monitor of Romania, Part I, no. 64 of 26 January 2007.

For the existence of the offense there must be fulfilled the first three requirements mentioned and one of the requirements that relate to the situation of the driving license or vehicle driver (license inadequate for the category to which the driven vehicle belongs, suspended or canceled license etc.).

In the case of the offense referred to in paragraph (3), article 335 of the New Criminal Code, there must be met the following requirements:

- the person entrusted the vehicle to be driven on a public road;
- the person entrusted and who drove the vehicle to be in one of the situations referred to in paragraph (1) and (2) of the article 335 (a situation known by the person who entrusted the vehicle);
- the entrusted vehicle to be part of the category of those for which the law requires to have driving license;
- the person to be under the influence of alcohol or other psychoactive substances.

In the judicial practice it was decided that the act of the defendant to insist as injured party to drive the vehicle, despite knowing that it does not possess driving license, followed by driving the vehicle by the latter, meet the constitutive elements of the offense provided for in article 86 paragraph (3) G.E.O. No. 195/2002. (Andreescu & imonescu-Diaconu, 2012, pp. 115-116)

In connection with the act of driving a vehicle in Romania by a person who has a driving license obtained in another state, the judicial practice decided under Article 41 section 2 of the Convention on Road traffic concluded at Vienna in 1968, ratified by Romania by Decree no. 318/1980, the Contracting Parties shall recognize national or international driving license under Annexes 6 and 7 of the Convention, except the driving license by student driver (provisional).

Provisional driver license is not recognized as a Community driving license, so it is not available outside the issuing country. (Andreescu & imonescu-Diaconu, 2012, pp. 106-107)

In the case of the offense **provided for in article 335 paragraph (3)** of the New Criminal Code, the **material element** of the objective side is achieved by the action of entrustment of a vehicle to be driven on public roads, to a person who is in one of the situations referred to in paragraph (1) or (2) thereof, or under the influence of alcohol or other psychoactive substances.

In the meaning of the incrimination text, by entrusting it is understood the active subject action of giving into custody to another person for driving a vehicle for which it is necessary to have a driving license on the public roads, a person about whom (the active subject) he knows to be in one of the situations stated in paragraph (1) or (2), or under the influence of alcohol or other substances. The action of entrusting must be achieved effectively, including handing over the keys of the vehicle.

For the existence of the offense there should be met the following **requirements**:

- the entrusting would be achieved so that vehicle would be driven on a public road; in the event that the giving into custody was made in order to drive on a road that is not public, or for maintaining, repairing or keeping it, the offense will not be committed; in such cases, where the entrusting was done for driving on a road that is not public or another activity, and the person entrusted with the vehicle drives on public roads, it will be retained the offenses provided for in paragraph (1) or paragraph (2) of article 335 of the New Criminal Code, but only for the person who has been entrusted with the vehicle; the person who entrusted the vehicle will not be criminally charged;
- the person who entrusted the vehicle had to know that the person entrusted with the vehicle is in one of the situations described in paragraph (1) or (2), or under the influence of alcohol or other psychoactive substances; if the person who entrusted the vehicle did not know that the person is in one of the situations mentioned, it will not be criminally charged for the offense, instead it will be criminally charged the person was entrusted with the vehicle for committing any of the offenses referred to in article 335 paragraph (1) or (2), or possibly for the offense provided for in article 336 of the New Criminal Code;
- the vehicle to be in a working condition (not damaged), in the sense of being able to be driven (to move).

The same offense is committed when the vehicle is driven by a person who is under the influence of alcohol or other psychoactive substances.

As the legislator has not provided a certain level of alcohol in the blood, we find that for the existence of the crime it is necessary for that the person to have consumed a certain amount of alcohol, without requiring for this quantity to be similar to that of article 336 of the New Criminal Code (infiltration into the blood stream of over 0,80 g/l of pure alcohol). It is necessary, however, to determine the

concentration of alcohol, regardless of its level, by examining into the laboratory the biological samples and not by an alcohol tester.

In connection to the person who is under the influence of psychoactive substances, this situation must be stated also after collecting and analyzing the samples. There will be regarded the provisions of the Government Emergency Ordinance no. 6/2010 amending and supplementing Law no. 143/2000 on the prevention of illicit drug consumption and supplementing Law no. 339/2005 on the legal regime of plants, psychotropic and narcotics substances.

In the doctrine it has been argued that the term “psychotropic substances” means “those substances with stimulant properties that represent a risk to human health and they affect behavior, consciousness and mood of those who consume them”. (Dungan,2011, p. 57)

The immediate result for each of the considered offenses is to create a danger hazard to the traffic safety on public roads, social value protected by the rules of incrimination.

In the judicial practice it was decided that the defendant's act of driving a motor vehicle (without having graduated the driving school) on a relatively large distance of about 2,1 km, around 9.00 pm (you cannot state that in the locality in question there is reduced activity), a car which, due to carelessness, left the road, stopping into a ditch, has created a real danger in that locality; therefore it cannot be stated that the act did not represent the social danger of an offense. (Andreescu & imonescu-Diaconu, 2012, pp. 97-98)

The same court sustained that even if the defendant subsequently obtained the driving license, the concrete danger of his act is not less, as the driver was inexperienced and driving at night, so in difficult conditions, thus being a high probability of an accident with unpredictable consequences.

In another case it was decided that the offense provided for in article 86 paragraph (3) G.E.O. No. 195/2002 is one of danger, the result being socially dangerous occurring by its commission; it consists in creating insecurity in traffic for road users, with the risk of accidents. (Andreescu & imonescu-Diaconu, 2012, pp. 103-104)

The examples of recent judicial practice remain current under the conditions of entering into force of the New Criminal Code, but with reference to the examined offense.

Like all crimes, between the action of the active subject of the offence and the immediate consequence, there must be a **causality connection**, which no longer has to be proven, as it results directly from the materiality of each act.

3.2. The Subjective Side

The form of guilt with which the active subject acts in the case of the offenses set out in Article 335 of the New Criminal Code is the intention of both forms.

Note the direct intent, when the active subject of one of the three offenses, provides the result of his act which consists of endangering the safety on public roads and tracks its production by executing one of the actions prohibited by law (driving a motor vehicle or a tram without driving license, driving a vehicle with improper license category, driving a vehicle having its driving license suspended, canceled, etc.).

There will be indirect intent when the active subject foresees the result of his act which consists of endangering the traffic safety on public roads, and although he does not seek it, he accepts its possibility.

Also, for the existence of the offense provided for in article 335 paragraph (3) it requires that the active subject knows the fact that the person who entrusts the vehicle is in one of the situations described in the text of incrimination. Not knowing this situation it will lead to the absence of offense in this way.

The motive and purpose have no relevance for the existence of the offenses in their materiality, which are important in the process of individualization of sentences which will be conducted by the court.

4. Conclusions

In our view, the inclusion of crimes against the security of road traffic in the Criminal Code is a novelty for the Romanian law, which traditionally provided such offenses only in special laws. It is worth mentioning that such provisions exist in the law of other European countries with traditions regarding the protection of these values. The offense examined in terms of its constitutive content incorporation, by presenting examples of the recent judicial practice, and emphasizing the elements of differentiation, was imposed amid the changes occurred in the Romanian Criminal Law.

5. References

Andreescu, M. &Simonescu-Diaconu, R.-E. (2012). *Infrac iuni rutiere. Jurispruden rezumat / Traffic offenses. Jurisprudence in brief*. Bucharest: C.H. Beck, C.A. Ploiesti in criminal decision no. 116 of 5 February 2010 (Jurindex), pp. 104-105, C.A. Bucharest, Section II of the criminal decision no.1642 of 9 November 2009 (Jurindex) 66-68, C.A. Galati criminal decision no.70 / A of 1 February 2010 (Jurindex), pp. 109-110, C.A. Craiova, criminal decision no.1170/2009 (Jurindex), pp. 115-116, C.A. Constanta criminal decision no.54 / P of 28 January 2010,(Jurindex), pp. 97-98, C.A. Suceava, criminal decision no. 273 of 8 July 2009 (Jurindex), pp. 103-104.

Dungan, P. (2011). Analiza con inutului infrac iunilor contra siguran ei circula iei pe drumurile publice prin prisma noului Cod penal (I) / Content analysis of offenses against traffic safety on public roads in the view of the New Criminal Code (I). *Dreptul/TheLaw*, no. 2/2011, p. 57.

*** Regulation implementing the Government Emergency Ordinance no. 195/2002 regarding the traffic on public roads, approved by Government Decision no. 1.391/2006, subsequently amended and supplemented (2007), published in the Official Monitor of Romania, Part I, no. 64 of 26 January 2007.

*** Government Emergency Ordinance no. 6/2010 amending and supplementing Law no. 143/2000 on the prevention of illicit drug consumption and supplementing Law no. 339/2005 on the regime of plants, narcotics and psychotropic substances (2010), published in the Official Monitor of Romania, Part I, no. 100 of 15 February 2010.