
**DRIVING A VEHICLE WITHOUT A DRIVING LICENCE
IN THE NEW ROMANIAN CRIMINAL CODE****Bela Zazula, PhD student**

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Abstract: Improving the traffic safety represents a central objective of the European Union's policy in the transports field. The Union has in view an improvement of the traffic safety, having as purpose the diminishing of deaths, bodily injuries and material damages. An important element of this policy is represented by the consistent application of sanctions for transgressing the circulation norms committed in the Union, an objective to which the New Romanian Criminal Code has fallen into line.

Key words: public road, licence, driving, vehicle.

Introduction

The traffic offences have as an argument for the indictment the necessity to protect the circulation safety on public roads. The lawmaker of the New Criminal Code, by including these offences in the group of the ones considered to be dangerous for the public safety, has paid a special attention to the prevention and fighting of criminality in the circulation field on these roads.

1. Overall considerations

The crime of driving a vehicle without driving licence - provided at article 335 from the New Romanian criminal code - forms an integral part of the crimes against the circulation safety on public roads.

The infractions against the safety on public roads were stipulated in our country, in the previous regulation – in the Emergency Government's Decree no. 195/2002[1]. The New Criminal Code has included the crimes against the circulation safety on public roads in Chapter II, which is included at Title VII dedicated to the crimes against the public safety, a regulation inspired by the Spanish one.

In the Emergency Government's Decree no. 195/2002 concerning the circulation on public roads, this infraction was regulated by art. 86 which has a different content as regards the committing methods regulated by paragraphs (2) and (3).

Thus, in the old regulation, it was made reference to a vehicle or tramway, while in the New Criminal Code it is made reference to a vehicle for which the law stipulates the incumbency of owning the driving licence.

The different terminology is retaken from paragraph (3), and the expression "entrusts by choice" was replaced with the expression "on which he/she is informed". In the same article, it is made reference to psychoactive substances

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instead of stupeficient products or substances or medications with effects similar to those.

As it was also asserted in the doctrine, driving a vehicle on a public road without having a driving licence – namely those qualities, physical or mental skills necessary and certified for owning such a document – presents unequivocally a real danger for the circulation safety on public roads" [2].

At the same time, it is considered that the circulation safety on public roads doesn't only depend on certain objective factors, such as technical condition of the vehicle and of the road, but on certain subjective factors concerning the person driving the vehicle who must know the circulation rules on public roads, technical rules, to own a driving licence proving the abilities in this field [3].

The crime resides in the vehicle or tramway being driven by o person who doesn't have a driving licence.

The crime will still exist when a vehicle is driven on public roads for which the law stipulates the incumbency for the driving licence to be owned by a person whose driving licence doesn't correspond to the category or sub-category in which that vehicle is included, or whose licence was withdrawn or cancelled, or whose right to drive was suspended or who doesn't have the right to drive vehicles in Romania [4].

The infraction can be committed by a person who entrusts the vehicle for which the law stipulates the incumbency of owning a driving licence for driving on public roads to a person known to find himself/herself in one of the abovementioned situations or under the influence of alcohol or psychoactive substances.

2. Pre-existent conditions

A. Object of the crime

a) *Special judicial object*

The special judicial object is composed of the social relationships concerning the safety of traffic circulation, whose existence or normal unfolding supposes the interdiction for the vehicles to be driven by persons who don't have this right, as well as by those of entrusting vehicles to unskilled persons or to persons under the influence of alcohol or psychoactive products or substances [5].

b) *Material object*

The infraction doesn't have a material object. Driving, entrusting a vehicle for being driven on public roads within the conditions stipulated by art. 355 from the new Criminal code represent means by which the infraction is committed, and not its material object [6].

B. Subjects of infraction

a) An *active subject* is the person who doesn't have a driving licence or who has a driving licence not corresponding to a certain vehicle category or whose licence was withdrawn or cancelled or whose right to drive was suspended or who doesn't

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have the right to drive vehicles in Romania. In the variant provided at paragraph (3), the active subject is the person who entrusts a vehicle to another person, knowing that the person in question is in one of the situations in paragraph (1) or (2) or under the influence of alcohol or psychoactive substances [7].

For the method stipulated by paragraph (3), it is necessary for the active subject to have the dispose right on the vehicle to be entrusted for driving.

The person driving a towed vehicle carries out an activity presenting the characteristics specific to driving a vehicle, as it supposes handling the wheel, using the braking system, signalling or taking measures depending on the circumstances which could occur, as well as the possibility of conducting the towed vehicle outside the space transited by the hauling vehicle [8].

b) The main *passive subject* of each of the three methods is the state, in its quality of holder of the emerged social values.

Sometimes, depending on the particulars of each case, there can be a secondary passive subject that can be identified with the natural or juridical person undergoing a damage to his/her legitimate rights after having committed an infraction with one of the mentioned methods, but only when it was caused a traffic accident [9].

c) The *joint enterprise* is possible in any of its modes – co-authorship, instigation and complicity.

C. The place where the infraction took place

In order for this infraction to exist, it is compelled to meet the condition for the deed to be committed on public roads. By public road it is understood any land communication way - excepting the railways - specially arranged for pedestrians or traffic and opened to public circulation. The roads which are closed to public circulation are signalized at the entry with visible inscriptions.

The private roads are not public roads. In accordance with art. 3, letter b) from the Emergency Government's Decree no. 43/1997, the private roads are the ones dedicated to meet the individual requirements of traffic transports in the economic, forest, petroleum, mine, agricultural, energetic, industrial activities and other similar, of access in the premises, as the ones inside them, as well as the ones designed for site organisations and that are administered by natural or juridical persons who have them in their property or administration.

3. Prerequisite situation

This resides in the incumbency of owning a driving licence for certain vehicles.

4. Constituent element

A. Objective side

a) *The material element* of the infraction is done through many actions different from one deed to another.

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In the case of methods regulated by paragraph (1), the criminal activity is done by driving a vehicle on public roads without driving licence.

By driving a vehicle, one understands that technical operation by which one person sets in motion the vehicle and handles it on public roads according to its purposes.

In other words, driving supposes moving the vehicle, therefore in movement. Consequently, as long as the vehicle didn't start off, we cannot discuss about driving it on public roads.

The vehicle is the mechanical system that drifts on the road, with or without self-driving force means, used regularly for transporting persons or goods [10].

In order to exist the infraction stipulated at art. 335(2) from the Criminal code, the action of driving on public roads must be carried out by a person who, although he/she has a driving licence, this one doesn't correspond to the category or sub-category in which that vehicle is included; whose licence was withdrawn or cancelled or whose right to drive such vehicles was suspended for a certain period of time; the owned licence doesn't give the right to drive a vehicle on the Romanian territory.

The withdrawal, cancellation or suspension of the driving licence represent technical and administrative measures taken by the police within the conditions provided by law.

The withdrawal of the driving licence is ordered by the traffic police in the situation where the holder was declared incapable by an authorised medical institution to drive vehicles on public roads.

The cancellation of the driving licence is ordered in the following conditions:

- the holder of the driving licence was convicted by a definitive court decision for an infraction that ended in killing a person or bodily injury committed as a consequence of not having observed the circulation rules;
- the holder of the driving licence was convicted by a definitive court decision for certain traffic infractions;
- the holder of the driving licence was applied, through a definitive court decision, the complementary punishment of prohibiting the profession or occupation of vehicle driver;
- the driving licence was obtained by breaking the legal norms - a situation ascertained by the competent law court.

The period for which a driving licence can be suspended is: 30, 60 or 90 days.

The deed can also be committed by the fact that a vehicle is driven by a person residing in Romania and who didn't change the driving licence obtained in other country, within the term stipulated by law.

The crime stipulated and punished by art. 335(3) can be committed by entrusting a vehicle within the conditions presented in this article.

By entrusting, one understands rendering the vehicle and offering the consent as regards its driving [11].

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Thus, the owner or the holder has the obligation to verify if the one to be entrusted the vehicle for being driven on public roads has a driving licence. The fact that he/she didn't verify, it basically implies the acceptance of the risk for him/her not to have a driving licence and therefore the existence of an infraction.

But it is possible sometimes to exist objective circumstances likely to make the owner or the holder to have the certainty that the person to whom he/she hands over the vehicle is the holder of a driving licence. For instance, the person in question has indeed a licence, but for driving motor vehicles or vehicle of another category, or his/her licence was recently withdrawn, cancelled or retained, without the holder knowing this situation [12].

In the situations of this kind, the obligation of checking the existence of a driving licence is no longer necessary, and being about a *de facto* error, the committed deed has no criminal nature.

At the same time, the person entrusting the vehicle must know if the person to whom the vehicle was entrusted is under the influence of alcohol or other psychoactive substances. As regards the person under the influence of psychoactive substance, this situation must be ascertained following the assay and analysis of the taken biological samples [13].

In the doctrine, it was asserted that the psychotropic substances are substances with stimulating properties which present a risk for the persons' health and which affects the behaviour, consciousness or mood of the ones consuming them [14].

b) The *immediate effect* resides in creating a dangerous state for the circulation safety on public roads.

c) The *causality connection* results in committing the deed not being necessary to prove it.

B. Subjective side

a) *Subjective element*

The deed can be committed with direct and indirect intention.

b) *Motive and purpose*

In order for an infraction to exist, we are not interested about the motive or the purpose of committing the deed.

5. Forms. Sanctions

A. Forms

a) The *preparing actions* are possible, but they are not punished.

b) The *attempt* is possible, but is not punished by the lawmaker.

c) The *commission* takes place in the moment when the immediate effect is produced which resides in putting into danger the safety on public roads.

d) The *depletion* coincides with the execution of the last conducting action, respectively with the moment of its detecting by the police in the traffic.

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In the case of the method mentioned in paragraph (1), the punishment stipulated by law is with imprisonment ranging from 1 to 5 years, while in the case of the methods specified by paragraphs (2) and (3), the punishment is with imprisonment ranging from 6 months to 3 years or with a fine.

Conclusions

What is characteristic for this infraction category is firstly the protected social value, i.e. the circulation safety on public roads, the social value which implies, in its complexity, the physical wholeness of persons, vehicles, of transported merchandises or of other goods.

Notes

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