



The Offense of Driving a Vehicle under the Influence of Drugs and Road Accidents

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Abstract: In Romania, many of the road accidents are caused by people whose ability to drive is impaired by the consumption of psychoactive substances or alcohol. The number of deaths caused by people driving a car under the influence of alcohol or other substances is also worrying. What we consider important to highlight is the fact that in the case of consumption of psychoactive substances while driving, the legislator did not provide a minimum level of concentration of these substances in the blood, as evidenced in the case of alcohol consumption, which would point out that this crime would not have criminal relevance, leaving to the judgment of the judicial bodies the assessment of the evidence. We note that both the lack of express provisions for sanctioning the use of psychoactive substances while driving has led to an alarming increase in this criminal phenomenon, and the decisions of courts that do not detain people who commit such a crime, considering that it does not pose a social danger, encourages criminal phenomenon, road accidents.

Keywords: crime; drugs; psychoactive substances; road accidents; social danger

1. Introduction

For a better understanding of the constitutive object of the crime under analysis, we consider it appropriate to refer to the notions of narcotic and psychotropic substances and psychoactive substances. While narcotic and psychotropic substances are identified in the contents of Law no. 339/2005 regarding the legal

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regime of plants, narcotic and psychotropic substances and preparations, substances likely to have psychoactive effects are identified in the contents of Law no. 194/2011 on combating operations with products likely to have psychoactive effects, other than those provided by the normative acts in force. Another normative act is represented by Law no. 143/2000 on preventing and combating drug trafficking and illicit drug consumption.

Following the analysis of the legal framework, it can be unequivocally observed that there is no correlation between all these laws, which on the one hand regulate narcotic and psychotropic substances, and on the other hand regulate the prevention and combating of illicit drug trafficking.

If art. 2 of Law no. 143/2000 on the prevention and combating of illicit drug trafficking and consumption establishes the penalties applicable to the cultivation, production, manufacture, experimentation, extraction, preparation, transformation, offering, putting on sale, sale, distribution, delivery under any title, sending, transportation, procurement, buying, possessing or other operations regarding the circulation of dangerous drugs, without the right, in the case of the consumption of psychoactive substances while driving, the legislator did not foresee a minimum level of concentration of these substances in the blood, thus, we consider that this offense is somewhat left in outside the legislative framework, the measures that can be taken, remaining at the discretion of the courts.

According to national legislation¹, drugs are plants and narcotic or psychotropic substances or mixtures containing such plants and substances.

In the specialized literature (Drăgan, 2000), the drug "has been defined as any substance used in therapeutics, due to some curative properties, but whose effect is sometimes uncertain and harmful to the human body". However, this definition is far too vague, generalizing drugs.

2. Analysis of the Provisions of art. 336 of Criminal Code

In relation to driving a vehicle under the influence of alcohol or other substances, art. 336 provides the following:

(1) Driving on public roads a vehicle for which the law requires the possession of a driver's license by a person who, at the time of taking the biological samples, has an alcohol content of more than 0.80 g/l of pure blood alcohol is punished with imprisonment from one to 5 years or a fine.

¹ Art. 1 letter b from Law no. 143/2000 on preventing and combating drug trafficking and illicit drug consumption.

(2) The same penalty is imposed on the person, under the influence of psychoactive substances, who drives a vehicle for which the law stipulates the mandatory possession of a driving license.

(3) If the person in one of the situations provided for in para. (1) and para. (2) carries out public transport of people, transport of dangerous substances or products or is in the process of practical training of some people to obtain a driving license or during the practical tests of the exam to obtain a driving license, the penalty is imprisonment from 2 to 7 years.

Analyzing the provisions of art. 336, we note that the crime of driving a vehicle under the influence of alcohol or other substances has a simple version, according to paragraph (1), a variant assimilated according to paragraph (2) and an aggravated version according to paragraph (3).

Regarding the simple version and the assimilated version, to retain the crime, the following conditions must be met cumulatively:

1. To have the driving action;
2. To be executed on a public road;
3. To be a vehicle for which the possession of a driver's license is mandatory;
4. To be carried out by a person who has an alcohol concentration of more than 0.80 g/l pure alcohol in the blood or to be carried out by a person who is under the influence of psychoactive substances.

Regarding the aggravated version of the crime, the person must carry out public transport of people, transport of dangerous substances or products or is in the process of practical training of some people to obtain the driver's license or during the practical tests of the exam to obtain driver's license.

However, in this paper, we focus on the first two forms of the crime, since recently the number of road accidents caused by people under the influence of psychoactive substances has increased alarmingly.

According to Decision no. 6/2019 of March 21, 2019, the ICCJ established that the act of driving a vehicle, as provided by art. 336 of the Criminal Code, does not necessarily involve setting the vehicle in motion by activating the self-propulsion systems.

“In interpreting the provisions of art. 336 para. (1) of the Criminal Code, the action of the person behind the wheel of a vehicle that he sets in motion and directs on a public road, in the absence of coupling the engine to the gearbox, acting only the brakes, direction and its signaling, having proven an alcoholic drink of 0.8 g/l of pure alcohol in the blood and a driver's license holder constitutes the material

element of the offense of driving a vehicle under the influence of alcohol or other substances, respectively the action of driving a vehicle, as provided of art. 336 of the Criminal Code, it does not necessarily involve setting the vehicle in motion by operating the self-propulsion systems¹."

To determine the consumption of alcohol or psychoactive substances, the legislator provided for the taking of biological samples, which are examined within the authorized medico-legal institutions.

If in the case of alcohol consumption, the legislator established a concentration of 0.80 g/l of pure alcohol in the blood, we obviously notice that in the case of the consumption of psychoactive substances, a certain concentration is completely missing.

We believe that the phrase "under the influence of psychoactive substances" contained in art. 336 of the Criminal Code, is left out of the legislative framework, lacking both clarity and legal logic, in relation to the minimum concentration of psychoactive substances that must exist at the time of committing the crime. Thus, to highlight the legislative gap, we mean to refer to the normative acts that define the notion of "psychoactive substance".

In the sense of art. 2 of Law no. 194/2011 on combating operations with products likely to have psychoactive effects, other than those provided for by the normative acts in force, republished, we highlight:

a) substitute - any substance or combination of substances of natural or synthetic origin, in any physical state, or any product, plant, fungus or parts thereof whose legal regime is not regulated by other legal provisions, which has the ability to produce psychoactive effects and which, regardless of the content, name, method of administration, presentation or advertising, is or can be used instead of a narcotic substance or preparation or with psychotropic effects or instead of a plant or substance under national control or for the same purposes; (...)

b) psychoactive effects - one of the following effects that a product can have when it is consumed by a person: stimulation or inhibition of the person's central nervous system, resulting in changes in mental functions and processes and behavior or creating a state of dependence, physical or mental; (...).

In relation to art. 2 of Law no. 339/2005 on the legal regime of plants, narcotic and psychotropic substances, and preparations, with subsequent amendments and additions (...)

¹ ICCJ Decision no. 6/2019 of March 21, 2019, <https://www.iccj.ro/2019/03/21/decizia-nr-6-din-21-martie-2019/>> accessed 25 September 2022.

c) psychotropic substance - term designating the substances listed in the annexes to the 1971 Convention on Psychotropic Substances;

d) narcotic substance - term designating the substances listed in the annexes to the 1961 United Nations Single Convention on Narcotic Substances, modified by the 1972 Protocol;

d¹) plants and substances under national control - term designating plants and substances with psychoactive properties, introduced in the annexes to this law through the national procedure provided for in art. 8 para. (3); (...).

According to art. 1 letter b) from Law no. 143/2000 on the prevention and combating of illicit drug trafficking and consumption, republished, with subsequent amendments and additions, "b) drugs - plants and narcotic or psychotropic substances or mixtures containing such plants and substances, listed in tables no. I-III."

We note that the previously mentioned legal provisions seem to regulate all substances with psychoactive properties, only that among these plants and substances, the high-risk and high-risk drugs provided for in Law no. 143/2000 regarding the prevention and combating of illicit drug trafficking and consumption, at least not among those whose regulation is carried out by referring to the provisions of art. 2 letter d) from Law no. 339/2005.

It is known that every time, the consumption of large amounts of alcohol (over the legal limit),

causes the production in the body of the consumer of some pathological phenomena such as mental confusion, lack coordination of movements, sensory, visual and auditory disorders, phenomena that significantly decrease the power of discernment, the ability to concentrate and the driver's attention in traffic, alters the reflexes, the time of reaction, the ability to appreciate distances or the speed with which the vehicle traveling from the opposite direction moves vice versa, etc., issues that can cause consequences for the driver driving a vehicle on a public road

immediate, such as causing a serious traffic accident that may result in death or injury serious damage to the bodily integrity of some people or significant material damage (Rusu & Bălan Rusu, 2014, p. 142).

The criminalization of this act is determined by the harmful effect of alcohol consumed above a certain limit or other psychoactive substances, which usually cause disturbances in the driver's attitude and behavior auto and which implicitly generates a decrease in the ability to maneuver the vehicle driven on public roads in safety conditions for all traffic participants (Rusu, Antoniu, Toader, (coords), 2016).

According to Decision 365/RC of October 16, 2020, of the Criminal Section of the ICCJ, "the person is under the influence of psychoactive substances, in accordance with the provisions of art. 336 para. (2) Criminal Code, whenever substances that produce psychoactive effects have been introduced into her body, regardless of the amount of substance consumed or the concentration of the substance identified in her biological samples and regardless of whether the physical, mental or behavioral changes of are or are not perceptible to the person, since the legislator presumes that any psychoactive substance introduced into the body generates changes in the central nervous system and cognitive functions incompatible with the safe driving of a vehicle for which the law stipulates the obligation to hold a driving license (I.C.C.J., Criminal Section, decision No. 365/RC of October 16, 2020)" (Tudorache, 2010, pp. 121-126).

If substances likely to have psychoactive effects were successively identified at the level of the Council of the European Union, their list was not updated by the Romanian legislator either, not being transposed into any annex of Law no. 194/2011.

From the analysis of the previously mentioned normative acts, it is observed that Law no. 194/2011 does not expressly criminalize the possession of psychoactive substances for personal consumption, while Law no. 143/2000 criminalizes the possession and consumption of high-risk drugs and high-risk drugs. Therefore, the notions of psychoactive substances cannot be equated with the category of risk and high-risk drugs.

From here also arises the question according to which the driver must be under the effective effect of these psychotropic substances, his mental capacity and/or the ability to drive vehicles being affected to meet the conditions for incrimination prev. of art. 336 para. (2) Criminal Code or the simple presence in the body of some traces of psychoactive substances meets the constitutive content of the offense provided for in art. 336 para. (2) Romanian Criminal Code.

3. The Way of Application of the Provisions of art. 336 of Criminal Code by the Courts

In relation to the judicial practice, it was appreciated that since the incrimination norm expressly provides that there is a crime only if the driver is under the influence of the psychoactive substance (consisting in the reduction of the ability to maneuver the vehicle on public roads in safe conditions), and not and in the absence of this influence, the act held against the accused person is not provided for by the criminal law. In this sense, it was argued that the person must be under the effective effect of these psychotropic substances, i.e., his mental capacity and/or the ability to drive

vehicles must be affected to fulfill the criminalization conditions provided for in art. 336 para. (2) Criminal Code, and not in the sense that the mere presence in the body of some traces of psychoactive substances meets the constitutive content of the offense provided for in art. 336 para. (2) Criminal Code.

In this sense, we highlight Decision 4/2022 of 23.02.2022 of the Pitesti Court of Appeal, which states that *"according to the Decision of the Constitutional Court of Romania no. 138/2017 regarding the rejection of the exception of unconstitutionality of the provisions of art. 336 para. 2 Criminal Code, it was found that, considering the wide range of products susceptible to have psychoactive effects, as it emerges from the legislation, objectively, the legislator cannot provide a minimum level of the concentration of psychoactive substances as an essential requirement regarding the material element of the objective side in the case of the crime of driving a vehicle under the influence of psychoactive substances, a crime regulated under art. 336 para. 2 Criminal Code"* (Stancu, 2016, pp. 23-25).

Thus, the legislator understood to criminalize the act in any situation of driving a vehicle after the consumption of psychoactive substances, by consumption is understood the introduction into the human body of a product, regardless of whether it was dissolved, impregnated, dispersed or diluted, in a of the following ways: orally or by injection, inhalation, smoking or external application on a person's body, in any other way, so that the product reaches a person's body [art. 2 letter f) from Law no. 194/2011, republished].

It is irrelevant that the condition of the driver of the vehicle who is under the influence of some psychoactive substances is the result of abuse - which involves the consumption of plants, substances and preparations containing substances susceptible to psychoactive effects outside of a medical prescription - or is the result of medical use, which signifies the legal prescription use of medicines under the control of national legislation, since the recipients of the criticized legal text carry out an activity with permitted risk, for which they are subject to some forms of schooling, so that they are knowledgeable and diligent people, who, while holding the driver's license, have the obligation to stay up to date with the legal norms in the matter.

In conclusion, the incrimination contained in para. 2 of art. 336 Criminal Code refers to the simple presence, without the need for a certain concentration, of psychoactive substances in the body of the person who drives a vehicle on public roads for which the law stipulates the mandatory possession of a driving license. The time when the defendant consumed drugs is not important for the retention of the material element of the crime, given that the scientific evidence submitted to the case file confirms that in the spatio-temporal context of the incident, the defendant was under the influence of psychoactive substances.

In relation to the considerations presented, since the deed inferred to the judgment exists, it meets all the essential features of the crime in accordance with art. 15 Criminal Code and was committed by the defendant with intent, attracting criminal liability, the trial court issued a decision to convict him.

The trial court started from the fact that the punishment is a coercive measure and at the same time a way to re-educate the convict, the purpose of the punishment being the prevention of new crimes. In addition to special prevention, in the process of individualizing the punishment, general prevention must also be considered, through the general deterrence of potential perpetrators in committing such crimes, as well as through retribution (expression of the indignation of society as a whole towards these crimes and the position the state in the sense that these facts will not go unsanctioned).

Compared to the logic of the sanctioning system regulated by the new Criminal Code, in the process of individualization, the court must first determine the punishment, and then evaluate whether or not the application of the punishment is imposed, so that later, in the situation where it considers that the application of the punishment is imposed to determine whether the execution of the sentence or suspension under supervision of the execution of the sentence is required.

Specifically, related to the spatio-temporal framework of committing the criminal offense, it was noted that the defendant drove the car under the influence of psychoactive substances at night, when visibility is reduced, and on a public road sector with reduced traffic parameters in the respective time interval. The consumption of psychoactive substances significantly diminishes the reflexes, at the same time decreasing the vigilance of drivers in the performance of this activity. "Thus, being under the influence of tetrahydrocannabinol, an aspect highlighted by the laboratory analysis, the defendant no longer had the necessary skills to drive the vehicle on public roads. It was observed that the defendant easily made the decision to drive in the described circumstances, without being determined by any exceptional situation. (...) In the context given by the concretely high degree of social danger of the deed, as it was evaluated in the preceding, the penalty of the fine provided as an alternative is not sufficient to achieve the educational and preventive purpose of the punishment and a solution of postponing the application of the punishment could not be considered by the trial court as justified, as there was no guarantee that such a solution, of postponing the application of the punishment, would prevent the defendant from committing other crimes and would impose an awareness of the gravity of the act already committed" (Stancu, 2016, pp. 23-25).

Another contrary opinion could be identified in Criminal Sentence no. 485/03 April 2020, where the Court of Constanța held that "the defendant is not under the influence of psychoactive substances, and the compound THC - COOH, present in

the blood, represents an inactive metabolite, originating from the consumption of marijuana at least 12 hours before from the moment of harvesting (medico-legal expertise report). Considering the above, the court concludes that the constitutive elements of the crime of driving a motor vehicle under the influence of other substances are not met, provided. of art. 336 para. (2) Criminal Code, the act committed not being provided for by the criminal law, for which reason the acquittal will be ordered”.

It has been held in judicial practice that the legislator assumed that once consumed, any substance with a psychoactive effect affects the central nervous system to an extent incompatible with the safe performance of activities that present a high degree of risk to the health of individuals, such as, among others, and the case of driving a vehicle on public roads.

In this sense, we highlight the ICCJ Decision, in which it was held that “a person is under the influence of psychoactive substances, in the sense of the provisions of art. 336 para. (2) Criminal Code, whenever substances likely to produce psychoactive effects were introduced into his body - by ingestion, injection, inhalation, smoking or in any other way - the quantity of the substance being irrelevant in this aspect consumed or detected in the biological samples of the perpetrator, after the action that constitutes the material element of the analyzed crime. Similarly, the person who has consumed such substances is under their influence even when the changes in their cognitive functions or behavior are not visible or easily identifiable.

This is because the reason for criminalization is to protect the safety of traffic on public roads, an activity whose normal development is conditioned by the prohibition of driving vehicles by persons under the influence of substances prohibited by law, such as those in the category of psychoactive substances.

The state of danger for social relations regarding traffic safety on public roads arises because of the simple act of driving a vehicle by a person who has consumed psychoactive substances, because the driver's cognitive functions, including attention and reaction capacity, are inevitably affected by the consumption of psychoactive substances, even when the use of said substances is not objectified in unequivocal, easily perceptible behavioral changes.

This means that, regardless of the concentration of the substance identified in the biological samples or the possible psycho-physical changes presented by the perpetrator, the act of driving a vehicle by the person in whose body psychoactive substances are present creates a state of danger for social relations protected by art. 336 para. (2) Criminal Code and thus justifies the sanctioning of the act by criminal means (Nestor, 2020).

The conclusion formulated in this way is also supported by the grammatical and logical-systematic interpretation of the rule that incriminates the act held against the appellant, which highlights the option of the legislator not to restrict the scope of application of the criminal rule by possibly conditioning the criminal character of the act on the existence of some additional objective requirements, such as finding, at the same time, the presence of the prohibited substance in the body, and certain physical, mental or behavioral changes."

Considering the specifics of the crime, we believe that the judicial body must make an overall analysis, including by referring to the national and international specialized doctrine regarding the effects of drugs on the ability to drive a vehicle, at least in the case of common drugs, to understand more how they influence traffic behavior, consumption limits and the extent to which some concentrations affect road safety. Only in this way will the concrete social danger be assessed in a fair way, in accordance with the nature of the crime in question and the particularity of each individual case.

The consumption of psychoactive substances while driving is a worrying phenomenon, which has gained momentum recently.

If not long ago, we only heard about alcohol consumption, nowadays, more and more traffic participants are penalized by the traffic police for driving under the influence of psychoactive substances.

According to Romanian Police statistics, in 2020 at the national level, 740 drivers were found to be under the influence of psychoactive substances, and 8 serious road accidents were caused by the consumption of psychoactive substances, because of which 6 people died, 6 were seriously injured and 7 slightly injured.

In 2021, at the national level, 1535 drivers were found to be under the influence of psychoactive substances, and 8 serious road accidents occurred due to the consumption of psychoactive substances, because of which 3 people died, 8 were seriously injured and 3 slightly injured.

During 2022, at the national level, 1294 drivers were found to be under the influence of psychoactive substances, and 4 serious road accidents occurred due to the consumption of psychoactive substances, because of which one person died, 3 were seriously injured and two slightly injured (Libertatea, 2022).

The alarming fact is that, in just 3 days, in Constanța county, "34 offenses were found for driving under the influence of psychoactive substances and 40 for driving vehicles under the influence of alcohol." (Hotnews.ro, 2022)

Related to these aspects, we consider it appropriate to highlight the fact that the legislator must distinguish between a driver who is under the influence of

psychoactive substances at the wheel, a driver who consumed such substances several days before getting behind the wheel and persons who consumed psychoactive substances, for medical or therapeutic purposes.

4. Conclusions

In conclusion, the solutions of the courts regarding the crime provided by the provisions of art. 336 Criminal Code (Romanian Criminal Code, Law no 286/2009), must have an exemplary character, to discourage the consumption of alcohol or psychoactive substances. In this sense, we believe that the application of a simple criminal fine would not be sufficient to make the perpetrators aware of the seriousness of the act and especially the fact that it represents an immediate and direct danger to the life, bodily integrity, or health of people. A simple criminal fine, for a person who has such an addiction, can also represent a “disguised encouragement” of the phenomenon, since they can rely on the fact that such violations can only be “solved” with a criminal fine. If the measure of arrest is considered too harsh, we believe that to protect social values, the cancellation of the driver's license can be taken as a measure.

Both the courts and the traffic participants must know through their actions, they are affecting the most respected social value, the right to life and physical and mental integrity.

We also consider it appropriate to state that the legislator should try to delimit each substance of this type, to precisely clarify the notion of “psychoactive substances” and the at least indicative time interval during which they cannot get behind the wheel after contact with such substances. In the absence of clarifications, the criminalization provided for by Article 336 para. (2) of the Criminal Code, we can say that it has an unpredictable character, a person not being able to know with certainty whether a certain conduct adopted at a given moment falls under the criminal law or not.

Considering the specifics of the crime, we believe that the judicial body must make an overall analysis, including by referring to the national and international specialized doctrine regarding the effects of drugs on the ability to drive a vehicle, at least in the case of common drugs, in order to understand more how they influence traffic behavior, consumption limits and the extent to which some concentrations affect road safety. Only in this way will the concrete social danger be assessed in a fair way, in accordance with the nature of the crime in question and the particularity of each individual case.

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