SPECIFIC ASPECTS OF THE OFFENSE OF LEAVING THE PLACE OF THE ACCIDENT

Alin-Sorin NICOLESCU[*]
Luminița CRISTIU-NINU[**]

Abstract

The legislator has adopted the respective texts of law to the new social realities once with the repeal of the criminal segment of GEO no. 195/2002 relating to the circulation on public roads, republished and the introduction of this one in the content of the New Criminal Code.

The offence of leaving the place of the accident, actually found in the content of the provisions of art. 338 of Criminal Code is one of the eight offences against the safety on public roads.

Knowing important modifications, the legal text may appear relatively ambiguous if we refer to the old indictment, meaning that certain factual situations remained outside the criminal law. We will analyse in this regard the obligations that arise to the driver in case of a traffic accident, bringing into question even the decriminalization of the prohibition of the consumption of alcohol after the road event.

Furthermore, we will treat even aspects related to the causes of special no imputation that, on a closer analysis, can create problems of interpretation. Through the phrase "it does not constitute the offence of leaving the place of the accident when only material damages occurred after the accident", the legislator has chosen to indict this offence even if the victim has evaluable lesions within 1-2 days of medical care, on condition that for the same fact, in the old regulation, 10 days were required or it was an oversight of the legislator that it is to be resolved at some point?

Keywords: *accident, driving, circulation, Criminal Code, offence, road.*

1. Introduction

The new regulation stipulates the offense of leaving the place of the accident or its modification or deletion of its traces is regulated as follows:

1. Leaving the place of the accident, without the authorization of the police or the prosecutor who carries out the investigation of the place of the deed, by the driver of his vehicle, by the driving instructor undergoing the process of training or either by the examiner of the competent authority found during the practical tests of the examiner in order to obtain the driving licence involved in a road traffic accident, is punished with imprisonment from 2 to 7 years.
2. The same penalty is penalized even the deed of any person to change the status of the place or to delete the traces the road traffic accident that has resulted in killing or the injury of bodily integrity or health of one or more people, without the consent of the research team on the spot.
3. It does not constitute an offense the leaving of the place of the accident when:

a) only material damage has occurred after

[*] Judge at Bucharest Court of Appeal (e-mail: nicolescualinsorin@gmail.com).
[**] Vice-President at Bucharest Court of Appeal (e-mail: luminita.cristiu@just.ro).

the accident;

b) the driver of the vehicle, in the absence of other means of transport, carries himself the injured people to the nearest healthy unit able to provide medical assistance and to which he declared his personal identification and the number of registration plate or the registration of the driven vehicle, recorded in a special register, in case he returned immediately to the place of accident;
c) the driver with priority of circulation regime notifies the police as soon as possible and after the end of the mission he will be present at the headquarters of the police whose jurisdiction the accident occurred in order to draw up the documents of infringement;
d) the injured leaves the place of the deed and the driver of the vehicle notifies immediately the nearest police station.

In relation to the old regulation, we mention the fact that this one conditioned the existence of the offense of gravity and the consequences of the occurred accident, while the new infringement does not make any difference in this regard. They are excluded from the existence of the crime the situations of leaving the place of the accident that caused only material damage, this circumstance representing a special supporting cause.

The leaving of the place of the accident must be also done without the authorisation of the competent authority.

If the author had to disobey the consent of the police that carried out the research at the place of the deed in the old regulation, the new Criminal Code provides expressly that the consent of the leaving the place of the accident may be given by the police or the prosecutor who carried out the research on the place of the accident[1].

Analysing further, we notice that due to the lack of the phrase "if the accident occurred as a result of a crime" (in the new regulation) the material element does not find one of the previous normative variants, and consequently, the driver involved in an accident will not be punished when leaving the place of the accident occurred due to the commitment of an offense (accident in which resulted only material damage).

In a simple form, the offense takes over some of the provisions of the old regulation, with a series of differences. The qualified active subject of the law must be involved in a traffic road accident; the new regulation no longer brings provisions relating to the seriousness or the extent of the traffic accidents which mean that the leaving of the place of any sort of accident may lead to the existence of the infringement. Of course, we refer to those that had as a consequence a minimal bodily injury or of health of a person except that sometimes, even a single day of medical treatment, aspect established by a forensic certificate, will be able to lead to the meeting of typical elements.

Related to this thing, it is important to remember the decision of the HCCJ no. 66 of 15th October 2007 relating to the understanding of the phrase the injury of bodily integrity or the health of one or more people, contained in the provisions of article 89 para. (1) of GEO no. 195/2002.

The practice of the law courts experienced a variety of solutions in relation to the meaning of the phrase "the bodily injury or health of one or more people", contained in article 89. para. (1) of EO no. 195/2002, republished, which criminalise the offense of leaving the place of the accident.

Thus, some of the courts have ruled in the sense that the deed of the driver of a

[1] Tudorel Toader, Maria-Ioana Michinici, Anda Crisu-Ciocinta, Mihai Dunea, Ruxandra Raducanu, Sebastian Radulet, *Noul Cod penal, Comentarii pe articole*, Hamangiu Publishing House, 2014.

vehicle of leaving the place of the accident in which he was involved, without the consent of the police who carried out the investigations, meets the constitutive elements of the offense provided in art. 89 para. (1) of GEO no. 195/2002, republished, without having relevant the number of days of medical treatment necessary for the cure of wounds.

Other courts, on the contrary, considered the phrase "the injury of bodily integrity or health of one or more people" refers only to the injuries that required for healing more than 10 days of medical care and the other consequences provided in the old regulation in the provisions of art. 182 para. (2) of the old Criminal Code. Thus, these courts have acted that whenever did not happened one of these consequences the typical elements of the analysed offense are not met because it lacks the condition that the injury of bodily integrity or health have had consequences required by law.

Under these circumstances, we can notice that the problem of law subject to the interpretation of the magistrates of the Supreme Court of Justice dealt with the meaning of the above mentioned phrase, thus, by the recalled decision, the High Court of Cassation and Justice stated that the offense of leaving the place of the accident, within the text of law, cannot be considered as committed if they are not met even the objective conditions imposed by the definition given to the injury of bodily integrity of manslaughter by art. 184 of the old Criminal Code, respectively, over 10 days of medical care.

Regarding the current situation, we consider that relative to the provisions of art. 338 of Criminal Code the meaning of the term "injury" in the content of the provisions of art. 75 of GEO no. 195/2002 and the philosophy which has been the basis for the decision no. 66 of 15th October 2007 of HCCJ (above mentioned) are incomplete.

In this respect, the High Court of Cassation and Justice has been delegated by the Bacau Court of Appeal in order to solve this problem of law.

They have put into question, in this way, whether to be met the constitutive elements of the offense of leaving the place of the accident provided by art. 338 para. (1) of Criminal Code with reference to the provisions of art. 75 (b) of GEO no. 195/2002 concerning the public roads, republished, it is necessary that the victim of the accident show lesions recorded in a medical act, measurable outcomes (injury) in a number of days of medical treatment or not, in any case, if there is necessary the existence of a forensic certificate; and what is meant by the term of injury provided by art. 75 (b) of GEO no. 195/2002, from a legal point of view, taking into account that the explicative Dictionary of Romanian language defines the wound as being "an internal or external breakage of the tissue of a living bring, under the action of a destructive agent; injury, wound."

The analysis drawn by the rapporteur judge of HCCJ for the meeting of January 25, 2018 outlines the idea that the interpretation and application of the provisions of art. 338 para. (1) of the Criminal Code regarding the offense of leaving the place of the accident, the term of "injury" provided by art. 75 (b) sentence II of GEO no. 195/2002 should be interpreted in the sense of "traumatic lesions or affecting the health of a person whose seriousness is assessed by days of medical treatment (at least one day)."

We do not share this point of view of the rapporteur judge, as the old regulation clarified by the decision no. 66 of 15th October 2007 (Appeal in the interest of the law) we appreciate it much closer to the juridical-objective reality, but HCCJ, in the panel to solve a problem of law will decide,

but we as practitioners of the law, of course, will own those laid down.

2. Pre-existing conditions

The constituent elements of this offense must be linked with other legal provisions such as those from the content of the art.6 of GEO no. 195/2002, republished, regarding the traffic on public roads or the performance of those from the content of art. 79 of GEO no. 195/2002, republished, relating to the traffic on public roads.

According to the article 75 of GEO no. 195/2002, the traffic accident is defined as being the road event which occurred on a road open to the public traffic or had the origin in such a place, which had a result the death, injury of one or more people or the damage of at least one vehicle or other material damages and in which it was involved at least one moving vehicle.

The special literature has shown that the concept of traffic accident exclude the intentional acts (which might constitute separate offenses), referring only to car incidents occurred by manslaughter, with random character[2].

At a first glance overview on the incriminating text, we find that there are two types of crime, one type of criminal [para. (1)] and the other assimilated [paragraph. (2)]. The type variant involves the leaving of the place of the accident, without the authorisation of the police or the prosecutor who carries out the investigation of the place of the deed, by the driver of his vehicle by the driving instructor, found in the process of training, or by the assessor of the competent authority, found during the practical examination in order to obtain the driving licence, involved in a traffic accident.

The assimilated version consists in the deed to change the status of the place or to delete the traces of the traffic accident which has resulted in killing or the injury of bodily integrity or health of one or more people, without the approval of the research team on the place of the spot.

In the content of paragraph (3) there are four special supporting causes related to the commitment of the offense of leaving the place of accident which will be analysed in a future section.

The allowed situation in the case of committing this offense is constituted by the production of a car accident, of course, prior to the performance of the material element of the analysed offense. The accident must accomplish the conditions set by GEO no. 195/2002 republished to have impact in the case of this offense[3].

It is generally understood by *car accident"* an event occurred within the road traffic, due to the breaking of the road traffic during driving or by breaking the norms relating to technical verification of vehicles produced by swabbing, knocking, tipping over, falling of the load or any other way, and which has resulted in the death, the injury of bodily integrity or health of the people, the damage of goods or which interrupts the traffic. "[4]

We will not find in the presence of the offense of leaving the place of the accident or the changing or the deletion of the traces of this one in the case in which the accident (the premise situation) has been consumed, for example, in a courtyard (private property as well as other area that cannot enter under the term "public road"), even if the material

[2] Mihai Adrian Hotca, Maxim Dobrinoiu, *Infracţiuni prevăzute în legi speciale. Comentarii şi explicaţii*, C.H. Beck Publishing House, Bucharest 2010, p. 518.

[3] Alexandru Ionaș, Alexandru Florin Măgureanu, Cristina Dinu, *Drept penal. Partea Specială*, Universul Juridic Publishing House, 2015, Bucharest, p. 508.

[4] Alexandru Boroi, *Drept penal. Partea specială*, C.H Beck Publishing House, Bucharest, 2014, p. 585.

element committed by the respective author folds exactly on the rule of incrimination.

The legal object of the offenses provided by article 338 of NCC is constituted by the social relations related to *the traffic safety on public roads*, "whose existence and normal conduct involve the criminalization of the facts of leaving the place of accident by the driver of his vehicle by the driving instructors, found in the process of training or by the assessor of the competent authority, found during the practical tests to obtain the driving licence, involved in a car crash, without the consent of the prosecutor or the police that carries out the research of the place of the crime[5]. "

The obligation of the drivers to remain at the place of the accident appears justified by the necessity to establish the causes that have caused the accident, to identify the guilty people responsible for producing it, and, consequently, to call these ones to account, according to the law[6].

We can say in subsidiarity that committing such crimes brings prejudice even to the social relationships concerning the administration of justice, because it is complicated the activity of finding the truth and the good conduct of the criminal investigations. They are also affected the relations arisen as a result of the obligation for the granting of first aid to the victims of the traffic accidents[7]. We could say under the latter aspect that the act provided in art. 338 of the new Criminal Code could be confused with the act provided by art. 203 of Criminal Code (leaving without help a person in difficulty), the difference consisting in that the offense provided by art. 203 may have as active subject only a person whose activity was not endangered the life, the health or the bodily injuries of the victim while the active subject of the offense provided by art. 338 is just the person involved in the traffic accident[8].

Regarding the material subject, on the hypothesis provided by article 338 para. (1) of NCC this one lacks, but on the hypothesis provided by para. (2) it exists, consisting of any element (object) as modified, deleted or removed from the place of the accident.

The active subject of the typical version provided by the paragraph (1) is qualified, the offense subsisting only in the case of the driver of the vehicle, of the driving instructors, found in the process of training, or the examiner of the competent authority, found during the practical exam to obtain the driving licence, involved in a traffic accident.

Some authors state, however, that the active subject of this crime is directly, and can be represented by any person who satisfies the conditions of criminal liability[9].

The qualification of the active subject shall not be subject only to the quality of the driver of the vehicle, but also by his involvement in a road traffic accident, within the framework of the typical version.

If we analyse through the perspective of the assimilated version provided by the paragraph (2), the active subject loses his qualification, the offense can subsist having as active subject any person who commits one the ways of the material element.

The criminal participation is possible in all its forms stating that in the case of the variant provided in para. (1) the accomplice

[5] Vasile Dobrinoiu, Ilie Pascu, Mihai Adrian Hatca, Ioan Chis, Mirela Gorunescu, Norel Neagu, Maxim Dobrinoiu, Mircea Constantin Sinescu, *Noul Cod Penal comentat. Partea Specială, 2nd edition*, revised and supplemented, Universul Juridic Publishing House, Bucharest, 2014, p. 731.

[6] *Ibidem.*

[7] *Ibidem.*

[8] *Idem*, p. 732.

[9] Viorel Pașca, Petre Dungan, Tiberiu Medeanu, *Drept penal parte special. Prezentare commparativă a Noului Cod Penal și a Codului Penal din 1968*, Universul Juridic Publishing House, 2013, p. 209.

is not possible due to the nature of the offense. We say this because the conditions of the accomplice for this crime cannot be fulfilled. When there are more drivers of vehicles involved in a road traffic accident, these ones committing subsequently to the accident, the material element provided by the art. 338, we will not retain the institution of the accomplice but a separate offense for each of them.

Taking into account the nature of these offenses, we believe that the legal people may respond to criminal law as a participant (complicity, instigation or improper participation).

Thus, in the situation in which a driver, the manager of a building company, while driving his the car from the work causes a road traffic accident resulted with the death of a person, is helped by other employees of the company sent to the place of the accident by the governing bodies in order to delete the traces of the accident (helped with a bull-excavator, of a legal person, to move the victim's car) , we will retain in addition to other incident crimes in the present case and complicity to leaving the place of the accident for the legal entity or ,depending on the case, the improper participation to the commitment of this offense in the situation in which the employees are unaware of the fact that there had been a traffic accident with victims.

In another situation, if an employee of a transport company of values causes a road traffic accident resulting with the injury of bodily integrity of a person and leaves the place of the accident in order to continue the transport, at the determinative instigation of the collective governing entity, we will find ourselves in the situation of instigation to commit the offense of leaving the place of the accident by the legal entity.

The main passive subject of this criminal liability is *the state*. The secondary passive subject is constituted by *the injured person by the road traffic accident.*

3. The constitutive content

3.1. The objective side

The offense provided and punished by art. 338 para. (1) can be accomplished by leaving the place of the accident without the consent of the police or the prosecutor who carries out the investigation the place of the deed, by the people referred to in the text of incrimination, involved in a road traffic accident.

As far it concerns the offense contained in the provisions of para. (2), the material element of this one is achieved through the deed to modify the condition of the place or to delete the traces of the traffic accident that resulted with the killing or injury of bodily integrity or health of one or more people, without the consent of the investigation team on the spot.

The obligation imposed on the driver of any vehicle involved in a traffic accident, with the exceptions listed in para. (3) to remain at the place of the accident is justified by the necessity to establish the causes that have caused the accident, to identify the people responsible for producing the accident and to call them to account to penal liability.

The place of the accident means the area of land where the action or inaction took place and has caused the accident, where the injury has been produced (fatal or with harmful consequences for bodily injuries or health) and where different traces are printed that are relevant for the determination of the causes of the accident[10].

Leaving the place of the traffic accident means the removal and the departure of the person involved in the area

[10] *Idem.*

(area of land) where the road event (accident) occurred in question.

In relation to cognitive processes which determine the driver to undertake such action, we can retain the attempt to evade from the penal liability (e.g. the r the driver is under the influence of beverages or other substances or as a result of the accident the injury of bodily integrity or the death of one or more people occurred).

The fear of the crowd may represent another reason promoter of committing the penal deed, but in such situation we believe that criminal liability will not be held.

The change of status of the place of the traffic accident consists in changing or transforming the elements of the surface of the land on which the traffic accident occurred and had as result the killing or the injury of bodily integrity or health of one or more people. For example, by introducing and creating some non-existent traces or by removing of some objects resulting from the accident[11].

Deleting the traces of the traffic accident involves an activity of elimination or removal of signs left by the road event which has resulted in killing or injury of bodily integrity or health of one or more people.

We notice that frequently the commitment of the offense of leaving the place of the accident knows, in fact, the achievement of the typicality by the action of continuing the way or by the action of stopping, the investigation of the situation by the guilty driver of producing it and continuing the road.

Thus, if the driver proceeds to leave the place of the accident with the vehicle involved in the accident, we consider that it is necessary to retain a contest of offenses between the offenses referred to para. (1) and (2), the status of the place being modified and the traces of the road accident being removed. On the other hand, the driver who abandons the vehicle after the traffic accident and leaves, on foot or by other means of transport, the place of the accident will be responsible for committing the offense provided and punished by art. 338 para (1).

In other words, whenever the commitment of the material element of the offense provided by paragraph (1) shall be carried out by using the vehicle involved in the accident, it will be as an incident the contest of offenses consequential connection.

The incriminator text provides an essential requirement attached to the material element, namely that the leaving of the place of the road traffic accident to be carried out *without the consent of the police or of the prosecutor who carries out the investigation of the place of the deed*[12].

Another essential requirement affects the driver's involvement in a road traffic accident, which means that he must have a certain role in the occurrence of the road event.

Analysing the hypothesis provided in paragraph (1), (2) and the special supporting causes from the content of paragraph (3), we could say that under the incidence of art. 338 of Criminal Code not all the traffic accidents are included, thus, "leaving the place of the accident in order to create a state of danger for the protected social values by the incrimination of this deed and, therefore, to justify the intervention of the criminal liability, it is necessary that the road traffic accident to present certain seriousness and also a certain significance. Moving away

[11] Vasile Dobrinoiu, Ilie Pascu, Mihai Adrian Hotca, Ioan Chis, Mirela Gorunescu, Costica Paun, Norel Neagu, Maxim Dobrinoiu, Mircea Constantin Sinescu, *op. cit*., 2014, p. 735.

[12] Vasile Dobrinoiu, Ilie Pascu, Mihai Adrian Hotca, Ioan Chis, Mirela Gorunescu, Costica Paun, Norel Neagu, Maxim Dobrinoiu, Mircea Constantin Sinescu, *op. cit*., p. 734.

from the place of the accident, as well as the modification of the status of the place or deletion of the traces of the accident fall under the incidence of criminal law only if after the road traffic accident occurred the killing or the injury of bodily integrity or health of one or more people, and also without the consent of the investigation team on the spot[13]. "

The first instance court held essentially that on 26th .03.2015, around 08.50, the defendant got behind the wheels of the vehicle, wanting to head for the place of work. While he was performing the manoeuvre of reverse, the defendant injured a victim who was on the sideway of the boulevard. Following the accident, the defendant got out of the car and noticed that the person who was hit was sitting on the sidewalk having a bruise and a wound at the right cheekbone. The defendant has proposed the injured person to take him to hospital, but this one refused. Under these conditions, got behind the wheel of the vehicle and left the place of the accident without the consent of the police.

Following the reports of forensic discovery, it was established that the victim suffered injuries that required 3-4 days of health care.

The defendant has requested his acquittal on the grounds that the deed was not committed with guilt prescribed by law or intentionally, claiming that the form of guilt would have been the negligence, reported also to the attitude of this one with regard to his insistence for the transportation to the hospital of the injured person, remained at the place of the accident until the driver's departure, fact which has reinforced the belief that there is no form of norm violation broken from the point of view of the safety on public roads.

The same court of first instance considered that the existence of the fault without provision cannot be held, meaning that the defendant had not provided the result of his deed, given the fact that it was obvious that he committed a road traffic accident, within the acceptation of law circulation (art. 75 of GEO no. 195/202), and as an experienced driver (owner of the driving licence since 1995, as a result of the auto registration sheet), may not plead any excuse as regards the unfamiliarity with the legal provisions and the obligations which were his due.

The defendant noticed that the person who had hit was hurt, but however he did not notify immediately the police and left the lace of the accident, having the representation of the socially dangerous result of his deed.

On the other hand, by proceeding to a comparative analysis of the two successive text of law, the court concluded that for the meeting of the constitutive elements of the offence it is no longer necessary to satisfy the condition that the deed shall have the following result: „killing or the injury of bodily integrity or the health of one or more people", as provided by article 89 of GEO no. 195/2002, so that the decision was left without consequence, by the will of the legislature.

Under these circumstances, it was appreciated by the trial court that in law, the deed of the defendant meets under the aspect of the objective and subjective nature, the constitutive elements of the offense of leaving the place of the accident, provided by the art. 338 paragraph 1 of the Criminal Code.

To those shown, the court noticed that, beyond any reasonable doubt that the deed really exists, it is an offence and it has been committed by the defendant, so that the court ordered his conviction.

The defendant has made an appeal in legal terms against this decision requiring

[13] Alexandru Boroi, *op. cit.*, p. 586.

the acquittal on the basis of article 396 paragraph 5 in relation to article 16 para. 1 (b) of the Criminal Procedure Code since he had no intention of leaving the place of the accident, he tried to help the injured person, had no time the representation that he violates a legal standard.

Examining the documents and the works of the file in the context of the invoked critics, Bucharest Court of Appeal, in complete disagreement with the majority held that the appeal in question was founded.

As it was constantly shown in the doctrine, both under the influence of previous rule and the new Penal Code, the offence provided by article 338 of the Criminal Code is committed only intentionally, which may be direct or indirect. The realization of the act of negligence does not constitute an offence.

There is an intention, for example, when the offender realizes that by leaving the place of the accident a state of danger for the safety of the road traffic is created and, at the same time, the activity of the judicial authorities related to that accident is prevented or hindered.

Even in everyday speech, as it is set in the Explanatory Dictionary of Romanian Language, (which the legislation cannot ignore), the terms "leaving the place of a deed" have certain connotations of hit-and-run offence to ensure his escape, in order not to be discovered or to make difficult or ruin the finding out the truth, and such attitude is always based on punishable intention.

Or, in this case, the whole attitude of the defendant to get off the car, to talk to the injured person, offering to take him to the hospital, to wait, to make sure that the person moves alone, and the caused injuries are very minor and to only after then, they are incompatible with the detention of the intention of committing the offence which is retained in charge.

The minimal injuries suffered by the hit person, his conscious refusal to be taken to the hospital, the fact that he was the first to leave the place of the accident in a good physical condition created the defendant the belief that he may leave a his turn without breaking the law.

This subjective representation constituted an offence of the defendant, regarding the criminal provisions, the lack of the intention as a form of guilt leading to the not meeting of the constitutive elements of the offence provided by the art. 338 paragraph 1 of Criminal Code. Therefore, The Court of Appeal from Bucharest criminal division II, in complete disagreement with majority, ordered the acquittal of the defendant for the commitment of the offence provided by the article 338 paragraph (1) of Criminal Code because the deed was not committed with the form of guilt required by law, mainly on the basis on art. 17 related to art. 396 paragraph (5) of Criminal Procedure Code combined with article 16 paragraph (1) letter (b) sentence II[14].

Of course, the analysed offences will be committed even in a real contest with conventional convexity, in the situation in which the material element provided by the paragraph (2) shall be carried out in order to hide the traces of the accident and implicitly of the offence of leaving the place of the accident in the normative version covered under paragraph (1). In such case, the commitment of the second offense will be familiar with the form of guilt of direct intention due to the fact that it has a special purpose, that of hiding the commitment of the first offense.

In the case of committing the offense provided by article 338 par. (1) from Criminal Code, the immediate consequence consists of the creation of a state of danger for the social relationships regarding: the

[14] Bucharest Court of Appeal – *Second Criminal Section, criminal decision no. 1257*/A dated 19.09.2016.

safety of driving on public roads, the arising relations as a result of the obligation of granting the first aid and the social relations regarding the carrying out of the justice.

For the reunification of the objective side of the offenses regarding the safety of driving on public roads, especially of the offense provided and punished by article 338 par. (1) from Criminal Code, there must be a causal link between the action that which constitutes the material element and the specific result, report of causation which results *ex re* (from the nature of the deed). Related to the offense provided by par. (2), the casual link must be proved.

In the case of the infringement provided by paragraph (2), the immediate consequence will be constituted by the damage of the social relationships relating to the safety of driving on public roads and the social relationships relating to commitment of the justice.

3.2. Subjective side

The offense provided by the article 338 par. (1) from the Criminal Code will be able to be committed only intentionally, which can be direct or indirect. The situation is similar to and in the case of the situation provided by par. (2).

There is a direct intention when the offender realizes that by leaving the place of the accident it is created a state of danger for the safety of driving on public roads and also prevents or makes difficult the activity of judicial bodies linked to that accident, but not related to another deed that constitutes an offense. Consequently, for the existence of the offense, it is not necessary the intention of the avoidance of following, but of running some useful findings to find the truth[15].

There is an indirect intention if the driver passes over an obstacle that could be even a person, this one not being able to realize exactly (due to weathercast conditions, to speed, etc.), then continued on his way. Thus, the respective driver provides the result of his deed and, even he does not follow the commitment of the offense, he accepts the possibility of producing the result which is socially dangerous.

If the commitment of the offense under the form of the real contest of conventional connection, above described, the commitment of the second offense will always meet the form of guilt of the direct intention, thus there will be the special purpose, that of hiding the commitment of the first offense, but, generally, the mobile and the purpose of the commitment of offense are not relevant in order to retain or not the offenses provided and punished by the article 338 from the new Criminal Code, these ones may have relevance in the case of individualisation of the case.

Analysing further the defendant's psychological process of the defendant at the time of committing the offense provided and punished by the article 338 par. (1) from the Criminal Code, we cannot neglect the aspects related to the commitment of the offenses as a result of a fear. We will not discuss the fear of being taken to criminal liability or the fear of finding other offenses, but about the fear inspired by the specific objective of the factual situation.

Thus, from this perspective we recall the criminal decision no. 97/R/20210 pronounced by the Court of Appeal of Bacau, case in which the defendant argued in hid defence the commitment of the deed as a result of some fear created by the people found at the place of the accident that was not received by the court resulting the fact that at the moment or producing the

[15] Vasile Dobrinoiu, Ilie Pascu, Mihai Adrian Hotca, Ioan Chis, Mirela Gorunescu, Costica Paun, Norel Neagu, Maxim Dobrinoiu, Mircea Constantin Sinescu, *op. cit.*, p.736.

accident, this one had an alcoholic saturation in blood of 1.90%, and under the aspect of the subjective side it was demonstrated his intention of leaving the place of the accident in order to hide the drunkenness.

The problem becomes even more interesting because there may really be situations in which the author of the criminal deed eave the place of the accident due to the fear created by people found on the spot, by eyewitnesses, relatives to the victim, etc.

By penal decision no. 176/1993 of the Court of Bucharest, criminal section I, it was argued that there will be no state of necessity if the defendant left the place of the accident which occurred in order to save himself and the people in the vehicle created by a group of gypsy people who, gathered at the place of the accident, started to throw stones on his car because the serious danger which requires with necessity an action of save is determined by a random and not an attack from the part of one or more people.

We criticise the decision of the court on the grounds that the danger may come from accidental causes but also from deed committed intentionally or negligence, the danger being able to create even from the conduct of the offender.

3.3. Forms, penalties

The preparatory acts are not punishable but possible, the legislator considering that these ones do not present a degree of enough social danger in order to have criminal relevance. The consumption of the offence takes place the moment when the material element is fully made. We also mention that the attempt is not criminalized although it is possible in the case of analysed crimes.

Regarding the incriminating system, the commitment of the offences provided by article 338 para. (1) and (2) are punished with imprisonment from 2 to 7 years.

3.4. Special supporting causes

According to the article 338 (3) of the new Criminal Code, the leaving of the place of the accident does not constitute on offence when:

a) only material damage occurred following the accident.

We must point out related to this hypothesis that if the accident resulted with at least one person who suffered an injury of bodily integrity or health or has undergone some simple physical sufferance (minor), the specific justified cause no longer finds incidence.

b) the driver, in the lack of other means of transport, carries himself the injured people to the nearest medical care able to provide the necessary medical assistance and where he declared his personal data of identification and the number of registration of the driven vehicle, recorded in a special register, if he returns immediately to the place of the accident.

This case of inexistence of the offence is not anything else than a particular application of the state of emergency as a supporting cause. We appreciate that the legislator did not define the meaning and the sense of the word "immediately", but we will appreciate it as a period of time when a person who committed a car crash and carries the victims to a medical care must return to the place of the accident so the term will receive a special connotation depending on the particular circumstances of the cause[16].

Exemplifying in this regard, in relation to the criminal law, by the penal sentence no. 178 of 5th December 2016 of the Court from

[16] Vasile Dobrinoiu, Ilie Pascu, Mihai Adrian Hotca, Ioan Chis, Mirela Gorunescu, Costica Paun, Norel Neagu, Maxim Dobrinoiu, Mircea Constantin Sinescu, *op. cit.*, p.737.

Bolintin Vale village, which remained final by the rejection of the appeal, the Court held the deed of the person of carrying immediately the victim after the commitment of the car crash, but not to the nearest medical care, without returning to the place of the accident, meets the constitutive elements of the analysed offence, the defendant not being present under the incidence of some special supporting cause.

c) the driver of the vehicle with priority circulation regime notifies immediately the police, and he presents to the headquarters of the police whose jurisdiction occurred the accident after the mission, in order to draw up the documents on the findings.

In this case, the text of the law governs the situation of the drivers of vehicles with priority regime driving. E.g.: The vehicles of the Ministry of Internal Affairs, Ministry of Defence, the Romanian Intelligence Service, the Border Police, the Protection and Guard Custom Service, those intended for the extinguishing fires, ambulances, etc.

d) the victim leaves the place of the accident, and the driver of the vehicle announces immediately the event to the nearest police station.

4. Aspects of procedural penal law

In the case of committing this crime, the criminal proceedings will be initiated **ex officio.** The competence of carrying the criminal offence ids the responsibility of to the criminal research bodies of the judicial police. The competence of judgement in the first instance returns to the Court.

Of course, from those set out above, we find applicability only I the situation in which the quality of the person does not arise another level of competence. Thus, if the person who commits the crime has the quality of, or example, a lawyer, the competence in the first instance will return to the Court of Appeal.

5. Legislative no concordance, following, as a result of Decision no.3/2014 of the High Court of Cassation and Justice and of the decision 732/2014 of the Constitutional Court of Romania

All the offences provided I the previous normative act have equivalent in the content of the New Criminal Code, even if changes subsist sometimes, the deeds forbidden by law do not remain the same.

As we previously mentioned, once with the coming into force of the codes, the road offences provided by GEO no. 195/2002 met their correspondent in the content of the new Criminal Code, in title VII., Offences against the public safety.

We noticed that even though the offence provided by article 90 from GEO no. 195/2002, namely:

(1) The deed of the driver or of the instructor, found in the process of training, or of the assessor of the competent authority, found during the evolution of the practical tests of the exam in order to obtain the driving licence, alcohol consumption, products or narcotic substances or drugs with similar effects to these ones, after causing a car crash that has as a result the killing or the injury of bodily integrity or health of one or more people, up to biological samples or to the test with a technical means approved and verified by the metrological or up to the establishment with the approved technical means of their existence in the exhaled air , it is punished with imprisonment from 1 to 5 years, it has constituted an integrated part in the text of incrimination of the offence provided and punished by the article 336 from Criminal Code under the influence of driving a vehicle under the influence al alcohol or other substances:

(1) driving on public roads a vehicle for which the law provides the obligation of owning the driving licence by a person who, at the moment of collecting the biological samples**,** the driver has an alcoholic impregnation of over 0,80 g/l of pure alcohol in blood is punished with imprisonment from 1 to 5 years or by fine.

We can easily notice that by the phrase *at the moment of collecting the biological samples*, from the article 336, the legislator transposed the ideology of the incrimination of the art. 90 from GEO no. 195/2002.

It is prohibited by art. 90 the consumption of alcohol, products or narcotic substances or drugs with similar effects to these ones, after causing a car accident which had a result the death or the bodily injury or health of one or more people, up to the collecting of the biological samples or up to the testing in order to establish those values with an approved means, the article 336 from New Criminal Code proposed as for committing the offence of driving a vehicle under the influence of alcohol or other substances that the relevant value al the alcohol or the level of intoxication with forbidden substances to be the one from the first collection of biological samples in this matter.

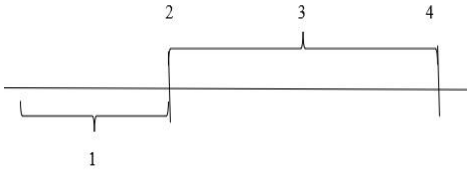
Thus, in the old regulation, with the assumption that a driver (*who was not under the influence of alcoholic beverages or other substances similar effects to these ones)* has committed a car accident (with human victims), it is forbidden to this one to under the incidence of committing the criminal offence, the consumption of alcohol or other substances up to the moment of the collection of biological samples. Otherwise, this one would have answered criminally for the commitment of the offence provided and punished by art. 90 of GEO no. 195/2002 and the establishment of the factual situation in terms of the alcoholic impregnation of blood or the consumption of other substances at the time of the committing the accident or driving a vehicle, they were calculated backward, by the collection of two biological samples taken every one hour, thus, establishing the descendent or ascendant curve relevant to the forensic biologists.

1. The moment of driving the vehicle- with criminal relevance to the commitment of the offence of driving a vehicle under the influence of alcoholic beverages until the date of 1st .02.2014;
2. The moment of committing the accident;
3. The time interval until the arrival of the bodies of criminal investigation and *the time interval prohibitive for the consumption of alcohol or other substances,* with criminal incidence for the commitment of the offence provided and punished by article 90 from GEO no. 195/2002.
4. The moment of collecting the biological samples.

We notice that the article 90 from GEO met its implementation only for the time interval shown at point 3. Of course, this one has another particular application in the situation when the driver leaves the place of the accident, but this situation does not interest for what we will further present.

In the new legislative version, the driver is no longer prohibited, *in law*, by the consumption of alcohol after the accident, but from the interpretation of article 336 from New Criminal Code, the biological sample with criminal relevance would be the first, so, a similar difficult situation for the driver as the one from the old regulation. The driver would have responded criminally under the aspect of the committing the offence provided and punished by article

336 no matter the fact that at the moment of committing the car accident has already been under the influence of alcoholic beverages or forbidden substances or he has taken them after the commitment of the car accident, but until the moment of collecting the biological samples. Thus, we can notice the legislative analogy.



1. the moment of driving the vehicle – without criminal relevance for the commitment of the offence of driving a vehicle under the influence of alcoholic beverages or other substances, at the date of 1st .02.2014 and until the moment of the publication of the Decision of Constitutional Court of Romania no. 732/16th .12.2014;
2. The moment of committing the accident;
3. The period of time up to the arrival of the bodies of criminal investigation, period which is no longer prohibiting, in law, regarding the consumption of alcohol or other substances.
4. The moment of collecting the biological samples with criminal relevance for the commitment of the offence provided and punished by article 336 from New Criminal Code;

No matter the time that would have been when the driver of the vehicle under the influence of alcoholic beverages or would have consumed, the only moment with criminal relevance is constituted by the point 4, and the only incident offence may be constituted by article 336 from New Criminal Code.

We may say the old regulation was tougher in terms of committing of a contest of the offence of driving a vehicle under the influence of alcoholic beverages or other substances and the consumption of alcohol or other substances after the accident. As shown above, in the case of the new regulation, in this situation we could have retained only an offence.

On several occasions, the doctrine and practitioners denied the effectiveness of the incriminating text of the article 336 of New Criminal Code.

At the same time, the admission of the unconstitutional exception of the phrase "the time of the collection of biological samples" makes that the offence provided by article 90 from GEO no. 195/2002 which was introduced later in the content of the text of incriminating provided by article 336 from New Criminal code (as shown above), to be decriminalized.

6. Conclusions

The offence of leaving the place of the accident was one of those that has met changes once with the coming into force in the content of New Criminal Code.

Relating to the former regulation, we noticed the courts no unitary the law in the terms of the interpretation of the provisions relating to "injury of bodily integrity or health of one or more people", from the content of article 89 from GEO no. 105/2002. The High Court of Cassation and Justice ruled by the Decision LXVI (66) of 15th October 2007 in this direction, settling these aspects in terms of the understanding of the phrase in the spirit and the understanding of the terms from a legal point of view, not literary. Therefore, the offence in order to be incident, it was necessary that the victim has suffered assessable injuries in at least 10 days of medical care or other necessary consequences in order to be able to be brought the incidence of the offence of bodily injury by negligence.

We notice that due to the new form incrimination, the attorneys charged with the application according to the law have faced real difficulties in adopting solutions regarding the legal analysed provisions.

The Decision of the High Court of Cassation and Justice of 15th October 2007 remaining without echo in the new form of the regulation, we can't wait for the new legislative solution that the Supreme Court will pronounce.

Due to the fact that the criminal law appears as a subject according to the social relationships, being associated with the mirror and the values of the current community, the future decision of HCCJ will repeal or confirm us the fact if, at least under this aspect, the perception the road crime, related to the provisions of article 338 of Criminal Code suffered other approach, being evident, at least referring to the way of writing of the offence that the incriminating provisions are much more severe.

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