

THEORETICAL AND JUDICIAL PRACTICE REFLECTIONS REGARDING THE OFFENCE OF PUTTING INTO CIRCULATION OR DRIVING AN UNREGISTERED/UNLISTED VEHICLE (ART. 334. CRIMINAL LAW)

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Abstract

With the entry into force of the New Criminal Code, the offenses of road safety on public roads have been repealed from the Government Emergency Ordinance no. 95/2002 and inserted into the contents of the normative document.

At the time of the transition, the legislator has chosen to amend certain aspects relating to the existing criminal incriminations of antisocial deeds in direct connection with the road domain.

The regulation of the offense for putting into circulation or driving an unlisted vehicle contained in the provisions of article 334 of the New Criminal Code has a correspondent in Article 85 of the GEO no. 195/2002 on the circulation on public roads. The deeds incriminated by the provisions referred to in Article 334 par. (1), (2), (3) and (4) have the content almost identical with the previous settlement thereof, with differences under the aspect of the sanctioning regime. Also, regarding the content, the only difference which is meant to better clarify the incrimination conditions refers to the requirement that the vehicle or the tram not to be registered or recorded according to the law.

During the study, we shall try to present a series of theoretical aspects and judicial practice regarding the committing of such crimes.

Keywords: offenses, safety, roads, circulation, public, unlisted, vehicle

1. Introduction

Essentially, a given society assumes a series of rules, principles and fundamental values of the citizens, values that are sustained and defended by the rule of law and, implicitly, by the legislation composing their defense mechanism. The whole community revolves around a well-defined system of law that is permanently expanding and adapting itself to the social demands.

"Following the appearance of the state, the function of defending the essential social values that underlie and develop the society is achieved by the help of the criminal law"¹. As against this opinion we will stress the fact that criminal law represents, at the same time, the most complex mechanism of defending the fundamental rights of citizens, that its main pillar.

Normally, criminal offences stipulated in the specific regulations are the mirror of the social values, and the role of the criminal law is that of defending them from anyone violating them. Though, to a certain extent, it might seem a metaphor, criminal law is applicable to all the aspects of life.

The regulations in the New Criminal Code² also comprise those criminal offences against the traffic safety on public roads.

This survey regards the offence stipulated and punished by art. 334 of the Criminal code. The appearance of the new criminal code also brought to the Romanian system of law a reform of the criminal law.

This reform was greeted, in most of the cases, by the great doctrinaire authors, but just like any novelty, it was also criticized, which in some cases overshadowed the benefits brought by the new legislation.

As a novelty, a series of offences in the special legislation were included in the new Criminal code, so as, offences such as those falling under the Government Emergency Ordinance no. 195/2002 regarding the circulation on public roads, were repealed and included in the Criminal code.

Art. 121 of Law no. 187/2012 for the implementation of Law no. 286/2009 regarding the Criminal code abrogated art. 85 of the Emergency Ordinance of the Government no. 195/2002.

This survey takes into account the analysis of the provisions of the incriminating text in art. 334 of the New Criminal code, corresponding to art. 85 in the E.O.G. no.195/2002.

2. Analysis of the offence

2.1. The legal contents

According to the provisions of art. 334 par.(1) of the New Criminal code, putting into circulation or driving on public roads an unregistered or unlisted vehicle or tram is punished, according to the law, with prison from one to 3 years or fine.

According to the provisions of art. 334, par (2) *putting into circulation or driving on public roads a vehicle or tram with a fake license plate or registration*

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¹ Constantin Mitrache, Cristian Mitrache, Roman Criminal law. *General part*, Ed. Universul Juridic, Bucuresti, 2014, p.21.

² Law no. 286/2009 regarding the (new) Criminalcode, published in the Official Journal No. 510 of July 24, 2009.

number is punished with prison from one to 5 years or fine.

Furthermore, the provisions of par. (3) of the same article stipulate that *towing an unregistered or unlisted trailer or of a trailer having a fake registration number or license plate is punished with prison from 3 months to 2 years or fine.*

Finally, according to the provisions in par. (4), *driving a vehicle on public roads or towing a trailer whose license plate numbers have been called in, or driving a vehicle not allowed in the Romanian traffic, although registered in another country, is punished with prison from 6 months to 2 years or fine.*

At first sight, we may notice that within the same article we find four distinct offences.

2.2. Pre-existing conditions

The legal object of these offences resides in the social relations that ensure the safe traffic on public roads.

Offences stipulated in art 334 of the Criminal code are void of a material object, as they are endangering offences, while putting into circulation or driving a vehicle on public roads or towing a trailer under the circumstances stipulated in the incriminating text are means by which the respective offence is committed and not its material object.

Since the law does not require any kind of quality for the person committing the offence, we may say that the active subject is not qualified and can be anyone filling in the requirements for criminal liability.

The criminal stake is present under all its forms.

It is important to stress the fact that the deed of putting into circulation of an unregistered or unlisted vehicle or tram and of driving it on public roads will constitute a single offence. At the same time, the person involved in different ways is committing these two alternatively incriminated activities, commits only one offence.

The offence may be committed by co-authors, in case of co-owners, but there will be no co-authors in case one person puts an unregistered vehicle or tram into circulation and the other drives it. In this case we speak of two autonomous offences, that is the offence of putting into circulation an unregistered vehicle or tram and the offence of driving such a vehicle³.

With respect to the perpetration of the offence by driving, we can say that under no circumstance can we speak of accomplices, of co-authors, as only one person can drive a vehicle, while a simultaneous action of driving by two or more persons is practically impossible.

As regards the legal persons, we can say that, under certain conditions, they can perpetrate the offence stipulated by art. 334 of the Criminal code.

The passive subject is the State, “on which reverberate the consequences of all the violations of the state of law, as well as the consequences of traffic violations on public roads⁴.”

2.3. The constitutive elements

As previously stressed, the contents of art. 334 of the Criminal code defines a number of four offences. We will further try to describe them individually in order to offer a more comprehensive and efficient analysis.

The material element of the offence stipulated by art. 334, par. (1) is constituted by a person’s putting into circulation an unregistered or unlisted vehicle or tram on public roads, as stipulated by the legislation in force.

Related to it, we must specify that by “putting into circulation” we mean the prerogative of the person that can decide with respect to the vehicle (owner, custodian/keeper, thief, beneficiary of a leasing contract, etc.) to allow putting the said vehicle in traffic on public roads.

Driving on public roads an unregistered or unlisted vehicle or tram is the action by which the said vehicle is set in motion on public roads by using its own power of movement. The active subject of this offence may be a simple keeper, for example, a thief that entrusts the stolen vehicle to another person in Driving on public roads an unregistered or unlisted vehicle or tram is the action by which the said vehicle is set in motion on public roads by using its own power of movement. The active subject of this offence may be a simple keeper, for example, a thief that entrusts the stolen vehicle to another person in order to be driven on public roads⁵. This entrusting will have a criminal value only if preceded by driving such a vehicle (according to the legal text) on public roads. Thus, the permission to put into circulation the vehicle, not followed by the act of driving it (perpetration) will not be considered an offence. The action of putting into circulation a vehicle implies a series of actions committed by two persons. A first person will decide to allow the said action, under the circumstances shown above, and a second person that will implement this decision by driving the respective vehicle on the public road. In this case we consider that both persons will be liable as accomplices/ co-authors of the offence.

There are opinions in the specialized bibliography that claim that putting into circulation a vehicle means the moment when the vehicle is started and it has the power transmission coupled to the wheels⁶. Certain

³ Vasile Dobrinioiu, Ilie Pascu, Mihai Adrian Hatca, Ioan Chis, Mirela Gorunescu, Norel Neagu, Maxim Dobrinioiu, Mircea Constantin Sinescu, *The New Criminal law Code –annotated. The special part.. Second edition, revised and enlarged*, Ed. Universul Juridic, București, 2014, p.704.

⁴ Alexandru Boroi, *Criminal lawl. Special part*, Ed. Universul Juridic, Bucuresti, 2014, p. 571.

⁵ Vasile Dobrinioiu, Ilie Pascu, Mihai Adrian Hatca, Ioan Chis, Mirela Gorunescu, Norel Neagu, Maxim Dobrinioiu, Mircea Constantin Sinescu, op. cit. p. 704.

⁶ A. Ungureanu, A Ciopraga, *Criminal Provisions in the Romanian criminal laws, vol. III*, Ed. Lumina Lex, București, p. 264.

authors dispute, of course, this theory, claiming that, in such a situation, the moment of putting the vehicle into circulation would overlap the moment of driving, fact that would leave the regulative procedure void/without substance.

The criminal investigation of the offence should determine the exact nature of the activity of the offender: putting the vehicle into circulation, driving the vehicle or both cumulated actions perpetrated by the same person. Clarifying the situation is of particular importance with a view to the right legal qualification of the offence and, implicitly, to clearing up all the other unknown factors, such as: participants, form of guilt, conjuncture, etc.⁷.

The vehicle is a vehicle equipped with an engine capable of moving it on the road. Trolley-busses and road tractors are also considered vehicles⁸.

The trailer/ tow is an engine-less vehicle meant to be towed by a vehicle or tractor⁹. It can be of two types: light trailer, whose total maximum authorized weight is under 750 kilos and semitrailer, whose maximum authorized weight is taken over partly by a vehicle or tractor¹⁰.

In order to circulate on public roads, vehicles, except those trailed or pushed by hand or bicycles, should be registered or listed, on a case to case basis, and should bear license plates with a registration or list numbers having forms, dimensions and contents stipulated in the standards in force. Vehicles that are not registered or listed may circulate on public roads only under circumstances stipulated by regulations¹¹.

Vehicles, except mopeds and trolley-busses, as well as trailers are to be permanently or temporarily registered or listed by the authority under whose territorial – home address, residence or headquarters – competence they fall, under the conditions stipulated by the legislation in force.

Vehicles, trailers and agriculture or forest tractors belonging to the Ministry of Defense, to the Ministry of Home Affairs, as well as those belonging to the Romanian Information Services will be registered by these authorities. Vehicles and trailers may, on a case to case basis, be registered under the conditions mentioned above. Before registration, the vehicles, except mopeds and trolley-busses may circulate with temporary license plates, based on a special certificate, issued by the competent authority.

Upon request, legal persons that manufacture, assembly, or perform the coachwork or the testing of vehicles, trailers or agriculture or forest tractors may receive authorizations and temporary plates for these tests.

The accounts of the registered vehicles will be kept by the authority under whose jurisdiction is the owner's home address, residence or headquarters¹².

Trams, trolley-busses, mopeds, agricultural or forest tractors, other than those of the Ministry of Defense, of the Ministry of Home Affairs and of the Romanian Information Services, including the trailers meant to be towed by the latter, as well as the animal-drawn vehicles, will be registered by the town or city halls or by the municipalities of the departments of Bucharest, which keep these accounts through their specialized compartments¹³.

Once the vehicle registered, the competent authority will issue to the owner or custodian/keeper a registration certificate, according to the category or sub-category to which the respective vehicle belongs, as well as the license plate with the registration number. Upon the vehicle owner's written request, the registration certificate may list a person, other than the owner, specifying in what capacity that person may use the vehicle, based on a legal right. In case the owner of the vehicle is a leasing company, mentioning the identification coordinates of the custodian/keeper in the registration certificate is mandatory. At the same time, it is forbidden to put into circulation a vehicle, registered or listed, that has not the license plate issued by the competent authority or whose plate does not comply with the standards in force, or a vehicle whose registration certificate has been suspended, while the certificate replacing it was issued without a circulation permit or its validity period expired¹⁴.

By registration or listing we mean, of course, the administrative activity of certifying that a vehicle may circulate on public roads. The proof certifying the registration/listing is the registration/listing certificate and the given number on the license plates.

It can be of two types:

Permanent registration/listing, which represents the registration/listing activity which grants a registration/listing certificate and number plates for an undefined period of time.

Temporary registration, which represents the registration/listing activity that grants a registration certificate and number plates for a determined period of time.

We can still notice that the criminal deeds stipulated by par. (2) and (3) of art. 334 harm the same social values as the criminal deed incriminated under par. (1). And we mean the social values regarding the accounts of vehicles circulating on public roads, that is the social relations that ensure a safe traffic on public roads.

⁷ Alexandru Boroi, *Criminal law. Special part*, Ed. Universul Juridic, Bucuresti, 2014, p. 572.

⁸ Art. 6, pct. 6 din O.U.G nr. 195/2002.

⁹ Art. 6, pct 27 din O.U.G nr. 195/2002.

¹⁰ Art. 6, pct 27 din O.U.G nr. 195/2002.

¹¹ Art. 12 din O.U.G nr. 195/2002.

¹² Art. 13 din O.U.G nr. 195/2002.

¹³ Art. 14 din O.U.G. nr 195/2002.

¹⁴ Art. 15 din O.U.G. nr. 195/2002.

The material element of the offences stipulated in par (2) and (3) will be embodied by putting into circulation or driving a vehicle or a tram with a fake license plate, and towing an unregistered trailer or a trailer with a fake license plate.

“Perpetrating these offences is the act of ignoring the right of both police agents, or on a case to case basis, and of the other state authorities that keep the accounts of vehicles and trailers, to demand to the owners of vehicles and trailers not to change their license plate numbers, as well as to impose them the correlative obligation of circulating on public roads only with the valid license plate number”¹⁵.

The notion of “fake license plate number” may, of course, have several definitions, but we consider that this phrase defines not only a fake, imaginary number placed on the vehicle, but also the number corresponding to a previous registration, whose validity expired at the time of the perpetration of the offence, the vehicle being erased from any kind of accounts of the competent authorities. In another sense, this phrase defines the inconsistency existing among the elements constituting the plate numbers and the truth resulting from the official documents relative to the vehicle on which the respective plates with the registration/ listing number are fixed¹⁶. Thus, it is important that the prosecuting authority establish if the vehicle had a fake registration number and if the perpetrator committed one of the illicit activities stipulated by the law. Furthermore, the prosecution shall also establish the fact related to the exact place of the perpetration, since the offence is likely to be committed only on a public road¹⁷.

In the section dedicated to legal practice, in connection with the offence stipulated by art. 334, we are going to present certain issues with great influence on understanding this institution, yet we are also going to make some remarks in this respect.

By the criminal sentence no. 77/1996 of Bucharest Court of Appeal they point out that a license plate number legally obtained in the past, at the time of registering other vehicle, be it the defendant’s property, will represent a fake license plate number with reference to the vehicle whereupon it was illegally placed, since it does not reflect the actual situation of this vehicle for which there is no valid registration in the police records, or the competent bodies for this purpose.

By decision no. 192 / 1999 of Suceava Law Court, the Court held that registration numbers become fake numbers at the time of their removal from circulation, since any number written on the plates placed on the vehicles and not listed with the competent authorities should be deemed a fake license plate number. Under such circumstances, we point out that the time of

deregistration of any vehicle will superpose over the moment when license plate numbers become fake numbers, if they continue to be placed on the vehicles.

In Romania certain courts ruled that driving on public roads an unlisted vehicle, with expired temporary license plate numbers, means perpetrating the offence of driving an unlisted vehicle in ideal concurrence with driving a vehicle with fake license plate number. The criminal sentence no. 154/1989 delivered by Bucharest Law Court ruled to the same purpose.

The relevant published literature¹⁸ also points out that under such circumstance we are solely subject to the offence of driving an unlisted vehicle, driving a vehicle with fake license plate numbers implying other prior condition, respectively: placing imaginary license plate numbers, or other number that the attributed one.

The decision of Alba Iulia Court of Appeal was also delivered to this effect, by the criminal sentence no. 468/2010, where they ruled that in order to retain the offence of driving a vehicle with fake license plate number it is necessary to exist a deceptive action in order to forge the license plate number.

Certainly, in support of this point of view, the authors considered that expiry of the license plate number may not attract the incidence of driving a vehicle with fake license plate number since, with reference to the material element of the offence of forgery, there is no counterfeiting, or alteration, or any other normative means of committing such offense. Without the deliberate intervention in order to manufacture, imitate, change the form or mentions on the license plate number for the purpose of creating a seemingly legal framework, there is solely the offence of driving an unlisted vehicle, art. 334 par. (1) New Criminal Code.

The High Court of Cassation and Justice ruled, by the decision no 18 of the 10th of December, 2012 on the uniform interpretation and implementation of the dispositions under art. 85 par. (1) and (2) of the Government Emergency Ordinance no. 195/2002 on public roads circulation, that putting into circulation, or driving on public roads of any vehicle on which they placed license plate number with expired temporary license plate number, and the validity of the temporary circulation license also expired, meets solely the elements of the offence provided at Art. 85 par. (1) of the Government Emergency ordinance no. 195/2002 on public road traffic, republished, with subsequent modifications and supplementations.

Thus, we can say that when any person is driving a vehicle registered in another state, with expired license plate numbers, we encounter the same offense.

Also, they considered including the offense of driving an unlisted vehicle in the offense of driving a

¹⁵ Alexandru Boroi, *Criminal law. Special part*, Ed. Universul Juridic, Bucuresti, 2014, p. 572.

¹⁶ Vasile Dobrinioiu, Ilie Pascu, Mihai Adrian Hatca, Ioan Chis, Mirela Gorunescu, Norel Neagu, Maxim Dobrinioiu, Mircea Constantin Sinescu, op. cit. p. 706.

¹⁷ Idem.

¹⁸ G. Marcov, *Offences perpetrated in traffic*, în RRD nr. 2/1968, p.38.

vehicle with fake license plate number, since we could say that committing the latter offense, the driver's passivity should exist concerning the legal registration of the vehicle, since nobody will use fake numbers save for creating a framework that may be apparently legal regarding the vehicle listing or registration of the unlisted vehicle or registered.

The Court of Appeal of Ploiesti, by the criminal sentence no. 833/2009, determined there will be concurrent offenses between the offense of driving an unlisted vehicle and driving a vehicle with fake license plate numbers, when an individual is driving an unlisted vehicle on public roads with license plates issued for driving test in other European states, and expired validity.

As regards the concurrent offenses, we say that this offense (art.334, par.(2) Criminal Code) might enter an ideal concurrence with other offenses, such as, driving a vehicle under the influence of alcohol or other substances, driving without a driving license etc.

Further on, taking into consideration the decision of the High Court of Cassation and Justice above mentioned, it is important to specify that the lawmaker understood to make a clear distinction among the types of numbers a vehicle can have, and that not all such plate numbers are designed for listing or registration in order to bring along the incidence of art. 334par. (2) of the Criminal Code.

Thus, according to art. 23 and art. 25 par. (1) of the regulation implementing the Government Emergency ordinance no. 195/2002 on public roads circulation, approved by the Government Decision no. 1.391/2006, with subsequent modifications, there are the following types of numbers:

- listing number – consisting of the county symbol or Bucharest Municipality, order number, expressed by Arabic numerals, and a combination of three letters with capital Latin characters;
- temporary listing numbers – in case of which, besides the symbol of the county or Bucharest Municipality and the order number, they will add the month and year of listing validity termination;
- registration number for tests – consisting of the county symbol of Bucharest municipality, order name and the mention “TESTS”;
- registration number – granted solely for the vehicles registered at the local councils, and consisting of the name of the respective locality and abbreviated name of the county, in capital Latin characters, and also an order number, in Arabic numerals;
- number of temporary circulation license – consisting of the county symbol or Bucharest Municipality and order number.

According to the said dispositions, it results that in the matter of the vehicles circulation on public roads there are three types of listing numbers, one registration

number and one temporary license number for circulation.

According to the dispositions of art. 334 par. (2) of the Criminal Code, the lawmaking body referred to the situations where the vehicle has a fake listing or registration number, yet not to the situation where this number is the number attributed by the temporary circulation license (a hypothesis subject to solving the Law matter by the appeal on points of law concerned the former regulation of art. 85 par. (2) of the G.E.O. no. 195/2002, republished).

We conclude that the dispositions of art. 334 of the Criminal Code refer solely to those situations where any kind of intervention was operated on the listing number of any actually listed vehicle, as above described, either by manufacturing the license plate number or imitating an authentic license plate number, or by changing the aspect or mentions of such license plate number, thus creating an improper appearance of truth, as well as the situation where the vehicle may be listed or not, yet it bears the license plate number of another vehicle¹⁹.

“Yet, any expired license plate number cannot be assimilated by analogy with a fake license plate number, where there was no intentional forging thereof, according to the above mentioned issues.

Where the vehicle's right of circulation is limited solely to a specified period of time, and afterwards the activities required to registration of the respective vehicle were either not carried out, or not completed, will not tantamount to forgery of the temporary license plate numbers, the number mentioned in that license will not become a fake number, but the respective vehicle will become an unlisted vehicle”²⁰.

On the other hand, by the incrimination provided by art. 344 par. (20) of the Criminal Code, “the lawmaker took into consideration that the offender may abscond from prosecution, in connection with an offense caused by the impossibility to identify the vehicle. Yet, when the temporary license plate number is being used, the vehicle can be identified, since the respective license plate number has not been attributed to any other vehicle.

Thus, identification of the vehicle will be carried out under the same conditions as in the case of final registration.

A similar situation will be found in respect of the regulation of identity documents of Romanian citizens.

In connection with these identity documents as well, expiry of the validity term thereof and use of this document will not lead to such finding that this act is fake, but will incur solely the personal liability.

If the opposite point of view were adopted, this would mean that only the expiry of the validity of identity documents and providing the expired identity

¹⁹ Vasile Dobrinioiu, Ilie Pascu, Mihai Adrian Hatca, Ioan Chis, Mirela Gorunescu, Norel Neagu, Maxim Dobrinioiu, Mircea Constantin Sinescu, op. cit. p. 709.

²⁰ Decision no.18 /10.12. 2012 on the interpretation and uniform application of dispositions under art.. 85 alin. (1) and (2) of Government Emergency Ordinance no.. 195/2002 on public roads circulation.

documents by the holders thereof, to the competent authorities, would be forgery relating to the identity”²¹.

No doubt, even when the legal matter referred to the High Court of Cassation and Justice concerned the dispositions of art. 85 par. (2) of the Government Emergency Ordinance no. 195/2002, hereinabove, we tried to adjust all such issues to the text of the law in force, respectively the dispositions of art. 334 par. (2), since the appeal on points of law (Romanian RIL) still applies in this respect.

Nevertheless, there are opinions in the published literature²² which do not approve of the efficiency of the decision delivered by the High Court of Cassation and Justice, since they started from the questionable premises that a fake license plate number will always be a fake number, while in practice there is the possibility that temporary and expired license plate numbers be placed on registered vehicles. Thus, since this is not about counterfeited numbers involving the vehicle on which they are placed, we confront with the situation of fake license plate numbers.

Furthermore, as regards the offense stipulated and sanctioned by art. 334 par. (3) of the Criminal Code, the material element is represented by towing an unlisted or not registered trailer, or bearing a fake listed or registered license plate number.

As regards the fourth offense, as provided by art. 334, par. (4), we say that the material element thereof will be driving on public roads of a vehicle, or towing a trailer having the license plate numbers removed, or a vehicle registered in other state, not having circulation rights in Romania.

Certainly, for better understanding of such institution, we find it necessary to bring into attention a number of issues regarding the listing, registration, removal and other operations closely connected to vehicle records.

Listing, registration or granting of temporary license plate numbers, or for tests to a vehicle will be cancelled by the authority having performed such operation, when they find out the legal regulations relating to the said operations have been violated²³.

Cancellation of vehicle records will be carried out by the authority which performed the listing or registration of the vehicle solely in case of definitive removal thereof from circulation, when:

- the owner desires the definitive removal from circulation of the vehicle, and brings evidence of suitable vehicle storage space, held in compliance with the lawful dispositions;
- the owner brings evidence about the dismantling, cassation or handing over the vehicle to specialized units for the purpose of dismantling;
- upon definitive removing the vehicle from the country;

- in case of vehicle theft.

Removal from records of registered vehicles, upon passing thereof to other owner, will be carried out by the authority having performed the registration, at the owner’s request, in compliance with the law.

The vehicles which were declared without any owner, or abandoned according to the law, by order of the public local administration, will be removed from records automatically in 30 days from receipt of the respective order²⁴.

As regards the place of perpetrating the offense, we say that the offenses specified under art. 334 of the Criminal Code, will be deemed offenses solely when committed on public roads. Without this spatial condition, the criminal activities analyzed above will not be offenses, according to the dispositions of the incriminating text.

The immediate consequence of such offence is represented by the creation of dangerous conditions to the traffic safety on public roads.

The causal relationship results from the materiality of the offense, which needs no proof.

As regards the subjective side, the offenses provided under art. 334 Criminal Code are committed with intent (direct or indirect). Committing an offense by negligence or without guilt will not involve criminal liability.

There is a direct intention when the offender foresees the result of his act, pursuing occurrence thereof by committing this act. There is an indirect intention when the offender foresees the result of his act, and although not pursuing the result, he accepts the occurrence thereof.

The incrimination rule does not include specifications as to the motive of the criminal act or scope of the offender.

The offenses take place at the time when the material element thereof has been achieved.

As regards the sanctions, committing the offense provided under art. 334 par. (1) will be sanctioned by

imprisonment between 1 and 3 years or fine. The offense provided in par. (2) will be sanctioned by imprisonment between 1 and 5 years or fine. The hypothesis of par (3) proposes a sanction system between 3 months and 2 years imprisonment or fine. Finally, the offense provided under par. (4) will be sanctioned by imprisonment from 6 months to 2 years or fine.

3. Aspects of judicial practice

In connection with the judicial practice, in Romania, there are two opinions as regards settlement of the situation according to which a person is driving, on public roads, a vehicle registered in other state

²¹ Ditto.

²² Vasile Dobrinioiu, Ilie Pascu, Mihai Adrian Hatca, Ioan Chis, Mirela Gorunescu, Norel Neagu, Maxim Dobrinioiu, Mircea Constantin Sinescu, op. cit. p. 709.

²³ Art. 16 of G.E.O. no. 195/2002, republished.

²⁴ Art. 17 of G.E.O. no. 195/2002, republished.

without having a valid Civil Auto Liability (RCA) insurance.

Thus, one of these opinions held the incidence under art. 16 par. (1) letter b) the final thesis of the Code of Criminal Procedure (the offense is not provided by the criminal law) where a person is driving a vehicle registered in other state, without a valid insurance, or with an expired insurance.

According to other opinion, they held that the offense is incriminated by the criminal law, pursuant to the provisions of art. 82 par. (2) of G.E.O. no. 195/2002, the vehicles registered in other states can circulate on Romanian territory solely for the time when there is an insurance policy for them. Otherwise, the vehicles fall under the scope of art. 334 par. (4).

By the criminal sentence no. 1491/A/05.11.2015 delivered by the Court of Appeal of Bucharest, the defendant was acquitted, based on the provisions of art. 16 par. (1) letter b) final thesis, for perpetrating the offense of driving a vehicle registered in another state without the right of circulation in Romania, consisting in the fact that the defendant drove on Romanian territory a vehicle registered in Bulgaria for which he did not have a valid mandatory insurance.

By the criminal sentence no. 32/A dated the 8th of January, 2015, delivered by the Court of Appeal of Bucharest, the defendant was acquitted based on the provisions of art. 16 par. (1) B the final thesis, for perpetrating the offense of driving a vehicle registered in other state without the right of circulation in Romania, consisting in the fact that on the date of 12th of April, 2014, around 00.10 AM hours, the defendant B. F.M. of Vitanesti commune, Teleorman County, was driving the car brand Chrysler Neon, black, with license plate number x, on street y. of Alexandria town, Teleorman County, and was stopped in traffic by the traffic police of Alexandria, and he presented the car documents, driving license, registration certificate and green card series X, with validity term expired on 22.02.2014.

By the criminal sentence no. 127 dated the 19th of January, 2016, the Law Court of sector 5, Bucharest acquitted the defendant B.N. for perpetrating the offense of driving a vehicle registered in other state, without the right of circulation in Romania, this offense being stipulated and sanctioned by art. 334 par. (4) Criminal Code, consisting in the fact that the defendant was driving a vehicle registered in other state, without a valid insurance, on the Romanian territory.

This sentence was appealed by the Prosecutor's Office attached to District Court, sector 5, Bucharest. As concerns the perpetration of the offense making the object of this survey, The Court of Appeal of Bucharest sentenced the defendant B.N., the Court noting that the dispositions under art. 334 par. (4) Criminal Code sanctions as an offense the act of driving on public

roads a vehicle registered in other state, without the right of circulation in Romania. The Court holds that, pursuant to the dispositions under art. 82 par. (2) of G.E.O. no. 185/2002, the vehicles registered in other states can circulate on Romanian territory solely for the period when there is an insurance policy covering the civil liability resulting from the damages caused by car accidents.

As a consequence, namely, from the expiry date of the mandatory car insurance, respectively from the date of 01.02.2014, the car brand Mercedes Vito, license plate number X, driven by the defendant on the date of 05.11.2014, no longer had the right of circulation in Romania, thus falling under the scope of the sanctions pursuant to the dispositions under art. 334 par. (4) Criminal Code.

In law, the act of the defendant J, who, on the date of 17.09.2008 removed the license plates bearing registration no. X from the car belonging to the damaged party, parked on a street, and placed these plates on another car which he subsequently drove on the streets, the act of the defendant meets the constitutive elements of the offense of aggravated theft pursuant to art. 208 par. (1), art. 209 par. (1) letter e) of the Criminal Code and the offense driving on public roads a car with fake registration numbers placed on it, pursuant to art. 85 par. (2) of the G.E.O. no. 195/2002²⁵.

Driving on public roads of a vehicle with a trailer attached thereto, without registration, meets the constitutive elements of the offense pursuant to art. 85 par. (1) of G.E.O. no. 195/2002²⁶.

Art. 85 par. (1), correspondent in art. 334 par. (1), incriminates the expiry of the registration number, and not the expiry of the civil liability insurance (RCA). The consequences relating to the non-existence of the RCA are not of a criminal nature, but contraventional offences.

The serious error in fact should not be confused with an incorrect assessment of the evidence, this case of cassation being incident whenever the erroneous determination of the facts is obvious, concerning their existence or non-existence, their nature and the circumstances of committing thereof, by not taking into consideration the evidence confirming their existence, the sole condition being their influence on the solution taken²⁷.

The defendant sitting behind the wheel of a towed vehicle, when the engine of this car is not running, does not meet the constitutive elements of the offense pursuant to art. 85 par. (1) of G.E.O. no. 195/2002, since this car moved along the public roads being towed by another vehicle²⁸.

²⁵ C.A. Suceava, Criminal section and cases involving minors, criminal sentence no. 101 / 22.02.2010.

²⁶ C.A. Galați, Criminal section, criminal sentence no. 134 / 19.02.2010.

²⁷ C.A. Brașov, Criminal section and cases involving minors, criminal sentence no. 54 / 22.01.2010.

²⁸ C.A. Târgu Mureș, Criminal section, criminal sentence no. 206 / 5.04.2009.

4. Conclusions

Although, at first glance, the offense provided and sanctioned under art. 334 Criminal Code would not raise problems for the correct determination of the legal classification of a factual situation, in this survey I admitted and presented that the doctrine, and the juridical practice as well, experienced fields with different interpretations.

It is important, in such cases, to analyze very carefully whether the factual situation meets the constitutive elements of an offense.

On points of law in practice, we agree with the solution that the act of a person driving on Romanian territory a vehicle that was registered in other state, yet not having the mandatory car insurance, does not meet the constitutive elements of the offense analyzed.

The principle of legality of incrimination and punishment, enshrined in art. 7, par. 1 of the European Convention on Human Rights and Fundamental Freedoms requires, inter alia, that the legislation define clearly the offenses and punishment, in compliance with the principle of predictability.

The term “law” includes the legislative and jurisprudential law, at the same time, and involves certain qualitative conditions, including those of accessibility and predictability. In this respect, the European Court of Human Rights consistently held that the meaning of the notion of foreseeability depends, to a large extent, on the content of the concerned text, the area covered, and the number and quality of its recipients²⁹, and the predictability of the law does not oppose that the concerned person would have to rely on good advice in order to assess, to a reasonable level, the consequences that could result from an action or inaction thereof.

At the same time we appreciate that art. 334 par. 4 of the Criminal Code is written in a manner that creates confusion for its recipients regarding the scope extent of the objective side of the offense or the certainty that solely certain actions would be included in the content thereof, respectively specifically involving driving of a vehicle registered in other state without the right of circulation in Romania.

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²⁹ Dragotoni and Militaru-Pidhorni against Romania, Groppera Radio AG and others against Switzerland.