

FROM THE WHIP TO AUTOMATED SPEED CAMERAS: THE EUROPEAN PATH OF ADMINISTRATIVE SANCTIONS TOWARD ROAD SAFETY

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Abstract

History constitutes the undeniable witness of humanity's capacity to learn and adapt, and the metamorphosis of the legal sanction, determined by the cultural, social and technological progress of different eras, represents an eloquent example of the gradual evolution of society. Starting from this premise, the article analyses the evolution of legal sanctioning mechanisms in a historical transformation of over two millennia, from corporal punishments characteristic of premodern systems to advanced forms of surveillance of individual behaviours in public space. The purpose of the study is to highlight the manner in which the reconceptualization of the sanction has led to the emergence of a modern regime of regulation and control of behaviour, reflected today in road traffic contraventional law.

The article pursues three main objectives: the identification of the historical stages of legal transition, the highlighting of the role of Enlightenment thinking in redefining the purpose of punishment and the interpretation of contemporary mechanisms of behavioural surveillance in the field of road traffic. In this evolutionary perspective, Enlightenment thinking represented a decisive moment, by placing reason at the centre of social organization and by redefining the purpose of punishment in relation to legality, proportionality and human dignity, orienting the legal sanction towards two fundamental concepts: prevention and the certainty of the application of the rule.

In the field of road traffic, this approach allows the interpretation and analysis of contraventional sanctions – administrative fines, the system of penalty points and the suspension of the exercise of the right to drive motor vehicles on public roads – as instruments of continuous evaluation of the conduct of traffic participants. At the same time, the development of automatic traffic monitoring systems configures what can be described as a “road panopticon”, in which the technological infrastructure of surveillance generates the self-disciplining of drivers through the permanent possibility of observation.

Keywords: *contraventional sanction, technological surveillance, road panopticon, road safety, disciplinary society, corporal punishment.*

1. Introduction

„The body becomes a useful force only if it is both productive and subjected.”¹

One of the last corporal punishments applied in Europe took place in the year 1972, when a minor from the Isle of Man, aged 15, was subjected to a birching² following a criminal conviction. The case is considered to be the reference moment of a major legal transformation, being analysed in the case *Tyrer v. United Kingdom*, in which the European Court of Human Rights established that the application of a corporal punishment constitutes degrading³ treatment incompatible with the European standards of human rights. The judgment symbolically marks the end of a millennial tradition of physical violence, in which the body of the condemned represented the main place of the exercise of the sanctioning power of sovereignty.

In the author's opinion, this change does not represent only the abolition of a form of punishment, but the expression of a profound and fundamental reconfiguration of the manner in which European societies regulate and treat the legal sanction. Along a historical trajectory of over two millennia, the legal mechanisms of sanctioning have passed from public corporal punishments to modern forms of regulation and surveillance of behaviour in public space. In this context, the article examines the evolution of the European legal sanction and analysis the manner in which road traffic contraventional law reflects this transformation.

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¹ Michel Foucault, *Discipline and Punish: The Birth of the Prison*, New York: Vintage Books, 1975, p. 26.

² Birching is a form of corporal punishment consisting in striking the convicted person with a bundle of thin birch twigs.

³ “The very nature of judicial corporal punishment is that it involves one human being inflicting physical violence on another human being.”, *Tyrer v. United Kingdom*, para. 30.

Therefore, I consider that the importance of the topic resides in the increasingly central role that administrative sanctions play in managing the everyday behaviours of individuals. The regulation of road traffic represents one of the most extensive fields of application of contraventional sanctions, and the development of automatic traffic monitoring systems has reformed the manner of establishing and applying them. In this framework, the legal sanction no longer operates exclusively through the severity of the punishment, but through the certainty of the application of the rule and the permanent possibility of surveillance.

In order to analyse this evolution, the article uses a historical and doctrinal method, complemented by conceptual analysis inspired by Foucauldian theory. Starting from the analysis of the transformation of European punitive mechanisms, the study follows the transition from the spectacle of corporal punishment to modern forms of disciplining individual conducts. In this sense, the concept of disciplinary society is used to interpret the role of contraventional sanctions and of traffic monitoring technologies in shaping the actions of drivers.

The article is situated within the existing dialogue in specialized literature regarding the transformation of the legal sanction and the expansion of surveillance mechanisms in contemporary societies, its contribution consisting in the application of these theoretical perspectives to the field of road traffic and in the proposal of the concept of “road panopticon”, through which the technological infrastructure of traffic monitoring produces the self-disciplining of the behaviour of traffic participants.

2. The spectacle of corporal punishment

„The body of the condemned man became the place where the vengeance of the sovereign was applied.”⁴

In the legal tradition of premodern societies, corporal punishment represented, for millennia, the main means through which the state asserted its authority and visibly exercised its power before the community. The spectacle of punishment, as described by Michel Foucault in *Discipline and Punish*⁵, was considered a legal and legitimate form of legal sanction, a social ritual in which the public was witness to the restoration of legal order, having as primary purposes the intimidation of the community and the reaffirmation of public power.

In Antiquity, many legal systems provided severe corporal sanctions. For instance, in Roman law, certain offenses could be punished by flogging or by other forms of physical violence. Corporal punishments had an exemplary role, being often applied in public in order to discourage deviant conducts.

In Europe, during the Middle Ages, this perspective on sanction was accentuated, criminal law having as its foundation the idea that punishment must be visible and memorable, so that the community would perceive the consequences of the violation of social order, and the body of the condemned constituted the instrument through which political power could demonstrate its authority.

Corporal punishments used in European societies were varied and extremely severe, among the most frequently applied being whipping, one of the most widespread sanctions, considered to be relatively “moderate” compared to other forms; corporal stigmatization, having the role of transforming the body of the condemned into a visible and irreversible sign of “infamy”; mutilation, such as the cutting of a limb or of the ear; capital punishment, with a significant political and ritual dimension, executed in public, often through spectacular methods: beheading, hanging or burning.

An emblematic episode of the symbolic dimension carried by corporal punishment is represented by the execution of the last Grand Master of the Order of the Templars, Jacques de Molay, burned in Paris in 1314, after years of detention and judicial proceedings, for heresy. The public execution did not represent only a criminal sanction for the alleged heresy, but also an act of political affirmation of royal authority over an institution that had come to hold too much power⁶.

Gheorghe Doja, the leader of the peasant uprising of 1514 in the Kingdom of Hungary, captured and sentenced to death, was placed on a throne of iron heated in fire, and on his head was placed a heated iron crown, with the purpose of parodying his status as “king of the peasants”. The execution was organized in front of the public in order to transmit a clear message regarding the consequences of revolt against social order⁷.

⁴ Michel Foucault, *Discipline and Punish: The Birth of the Prison*, New York: Vintage Books, 1975, p. 3.

⁵ *Idem*, pp. 3-9.

⁶ Encyclopaedia Britannica (n.d.) Jacques de Molay. Available at: <https://www.britannica.com/biography/Jacques-de-Molay>.

⁷ Encyclopaedia Britannica (n.d.) György Dózsa. Available at: <https://www.britannica.com/biography/Gyorgy-Dozsa>.

Both the execution of Jacques de Molay and that of Gheorghe Doja illustrate the mechanism and the purpose of corporal punishments in premodern punitive systems – the sanction did not aim only at punishing and correcting the individual, but also at transmitting a political and legal message to the community. The spectacle of punishment transformed the body of the condemned into a symbol of sovereign authority and of the restoration of legal order. This theatrical and demonstrative importance of punishment will later constitute the object of Enlightenment critique and the subject of systematic analysis in the theory of disciplinary society.

3. The Enlightenment critique and the metamorphosis of the legal sanction

„It is better to prevent crimes than to punish them.”⁸

In the 17th–18th centuries, European intellectuals and philosophers challenge the absolute authority of monarchy, aristocratic privileges and the premodern punitive system, explicitly criticizing the arbitrary and violent character of corporal punishment, incompatible with the concepts of reason and human dignity promoted within the movement. The legal sanction, in the vision of Enlightenment thinking, had to be established by law and applied in a predictable manner, proportional to the gravity of the act, to pursue the prevention of crimes and to be certain, arguing that the efficiency of the sanction does not depend on its severity, but on the probability of its application.

One of the most influential critics of the premodern penal system, Cesare Beccaria, maintained that the legal sanction must be grounded in reason and social utility, not in revenge or demonstrations of power. In his fundamental work, *On Crimes and Punishments*, the author argues that the legitimacy of punishment derives from the necessity of protecting society and maintaining legal order. In this logic, punishment must be limited to what is strictly necessary for the prevention of crimes and for the protection of collective security. Beccaria emphasizes this idea by stating that “every punishment which does not arise from absolute necessity is tyrannical”⁹, thus highlighting that the excessive use of punitive violence represents an abuse of state authority.

Beccaria contributed decisively to the transformation of the manner in which modern societies began to understand the function of the legal sanction. Instead of public spectacles of corporal punishment, characteristic of premodern punitive systems, Enlightenment thinking promoted a legal model oriented towards prevention, proportionality and legality. In this sense, Beccaria’s work marks one of the decisive moments of the transition from a justice based on violence to a rational and moderate conception of punishment, in which the sanction no longer aims to intimidate through physical suffering, but to prevent illicit actions and to protect social interest.

The Enlightenment reflections regarding the legality of punishment, the proportionality of sanctions and the limitation of state violence upon the person gradually influenced the evolution of legal systems in Central and Eastern Europe as well. In Romania, this transformation took place at a slower pace and in a particular legal context, marked by the overlap of Byzantine, Ottoman and European influences. Premodern and medieval Romanian criminal law was regulated, to a large extent, by *pravile* – collections of legal norms inspired by Byzantine tradition and canon law, the most used being the *Pravila de la Govora* (1640) and *Îndreptarea legii* or the *Great Pravila* (1652). In the penal conception specific to the period, punishment had a predominantly corporal character and a visual significance. Beating, mutilation, corporal marking or public humiliation represented frequently used sanctions for a variety of offenses. These forms of sanctioning reflected a legal conception in which political and religious authority manifested itself through the direct and visible application of punishment, often accompanied by elements of public humiliation, meant to stigmatize the condemned and to consolidate the existing social order. Thus, the sanction was not perceived exclusively as a reaction to the illicit act, but also as an instrument of affirming princely authority and maintaining social discipline, similarly to the rest of the European space.

Beginning with the 18th century, administrative and legal reforms in the European space determined the emergence of an incipient form of legislative modernization in Romania, the normative acts elaborated during this period being oriented towards the systematization of norms and the clearer definition of sanctions. Although corporal punishments were not completely eliminated, their use was gradually restricted, alternative sanctions, pecuniary or custodial, being introduced.

The adoption of the Constitution of 1866 marks a decisive moment in the evolution of Romanian public law, introducing fundamental principles such as legality, the separation of powers and the protection of

⁸ Cesare Beccaria, *On Crimes and Punishments*, London: Penguin Classics, 1764.

⁹ *Idem*, p. 13.

individual rights. The fundamental change of paradigm is reflected in the development of a penal system based on custodial sanctions and pecuniary sanctions, in which the authority of the state exercises repression in accordance with the principles of legality and proportionality.

As a result, the Enlightenment critique did not only determine the gradual abandonment of corporal sanctions, but made possible the profound metamorphosis of the manner in which modern society exercises repressive power; the legal sanction no longer constitutes a spectacle of physical suffering and is transformed into a rational instrument of prevention and regulation of social patterns, creating the premises for the disciplinary mechanisms and modern forms of surveillance later discussed in the theory of disciplinary society.

4. Disciplinary society and the shaping of behaviours

„Discipline produces subjected and practised bodies.”¹⁰

The behavior of the human being can be regarded as a whole, as the totality of the actions and reactions of the individual in interaction with the social and normative environment of their existence. From a sociological and legal point of view, conduct represents, besides the expression of individual will, also the result of a complex and permanent process of formation and adaptation to the rules and values of the community. Accepted patterns are instilled from childhood, the family, education, religion and institutions contributing equally to the integration of the person into the existing social order. The process of formation does not end in childhood, as human conducts is subject throughout life to continuous shaping in order to comply with social and legal norms, including through mechanisms of institutional control.

The form of social organization in which control over the behaviour of individuals is exercised through institutions and permanent mechanisms of surveillance and norm-setting is described by Michel Foucault as a disciplinary society. Unlike previous systems, in which emphasis was placed on intimidating the community through public manifestations, this concept presupposes the regulation of compliance through a network of institutions, the school, the army, public administration or the prison becoming spaces in which conduct is observed, evaluated and corrected when it deviates from established norms. Therefore, conduct is shaped through various means capable of ensuring social order – clear norms of conduct, the judicious organization of social space, constant surveillance of the individual and legal sanctions – and the power of the state is no longer imposed through violence and intimidation. Discipline becomes, in this context, a fundamental instrument of social organization, and the legal sanction transforms into a mechanism of regulation and orientation of individual actions and reactions.

In the work *Discipline and Punish: The Birth of the Prison*, Michel Foucault shows that, starting with the 17th–18th centuries, European societies moved from a model of power based on the spectacle of corporal punishment to a disciplinary model, characterized by permanent surveillance, classification and regulation of actions¹¹. In this new configuration of power, the sanction no longer targets primarily the body of the condemned, but their behaviour, which becomes the object of constant social evaluation throughout life.

The concept of panopticon, a central element of Michel Foucault's analysis, is inspired by the architectural project conceived at the end of the 18th century by Jeremy Bentham for the organization of penitentiary institutions. Bentham conceived a circular building in which detention cells were arranged on the circumference, while in the centre of the construction there was an observation tower from which the guard could simultaneously observe all the cells, without the detainees being able to know whether they were effectively being supervised at a given moment¹². Bentham also proposed the use of this architectural model in other institutions, considering that constant surveillance allows a more efficient administration of conduct. The purpose of this system was not only the physical control of individuals, but also the production of an essential psychological effect. People, aware of the permanent possibility of observation, would adjust their behaviour themselves, awaiting the sanction and conforming to imposed norms.

Starting from this model, Michel Foucault attributes to the panopticon a much broader significance, presenting it as a metaphor of the manner in which power functions in modern societies, it acquiring the value

¹⁰ Michel Foucault, *Discipline and Punish: The Birth of the Prison*, New York: Vintage Books, 1975, p. 138.

¹¹ *Idem*, pp. 7-31.

¹² Bentham, J., *Panopticon; or, The Inspection House*, London, 1791.

of a symbol of a new means of expression of authority, that of being able to supervise, classify and regulate patterns of conduct¹³.

5. Road traffic contraventional law – a mechanism of discipline

„The certainty of punishment is more important than its severity.”¹⁴

The first sanction for exceeding the legal speed limit was applied in 1896 to the British citizen Walter Arnold, who drove a motor vehicle at a speed four times higher than the legal limit of 2 miles per hour (approximately 3.2 km/h) within urban localities. The ascertainment of the offense was not carried out by technical measuring means, non-existent at that time, but by the direct perception of the police officer, who followed the vehicle on a bicycle for approximately five miles before stopping him and establishing the exceeding of the legal speed limit. Arnold was sanctioned with a fine of one shilling, to which court costs were added¹⁵. The case is relevant for the evolution of legislation regarding circulation on public roads because it marks the moment from which the behaviour of the driver begins to be evaluated by reference to objective criteria, such as speed. Another relevant example is also the case of the first woman sanctioned for speeding. In 1899, a New York woman was fined for driving an automobile at approximately 12 miles per hour in an area where the limit was 8 miles per hour. This event reflects that the road sanction had already become a means of discipline applicable to all traffic participants.

The process of regulating road traffic began before the age of the automobile. Thus, long before the appearance of the self-propelled vehicle, authorities established that normative intervention was necessary in order to manage the flows of movement in the urban environment, current road legislation being, in fact, the result of a long cycle of adaptation of legal rules to the evolution of social and technological mobility.

The first attempts to organize circulation on public roads are noticeable in ancient Rome, given the already existing urban congestion, the size of the population and the intensity of economic activities. In the 1st century BC, the circulation of wheeled vehicles within the city of Rome during the daytime was prohibited, this measure having the purpose of reducing congestion and facilitating pedestrian movement in the central areas of the city. Subsequently, Emperor Hadrian also introduced restrictions regarding the number of carts that could simultaneously enter the city¹⁶. Therefore, it is observed that the mobility of vehicles was not perceived exclusively as a manifestation of individual freedom, but as a phenomenon that had to be harmonized with the interests of the community and with public order, and circulation constituted, from the perspective of public authority, a problem of governing urban space.

Much later, in the 19th century, the technological development of “road locomotives” gave rise to concerns regarding road safety and the impact on traditional traffic of animal-drawn vehicles, the self-propelled vehicle being initially considered a potential source of danger, therefore requiring state intervention in order to limit the risks generated by this invention. Although it mainly addressed heavy mechanical vehicles used in agriculture, transport or construction, the first British legislation in the field of road traffic – the Locomotive Act of 1861 – established speed limits for self-propelled vehicles, of approximately 10 miles per hour outside localities and 5 miles per hour in urban areas, introduced certain restrictions regarding vehicle weight, in order to prevent road damage, and obligations that vehicles comply with certain technical conditions, also assigning local authorities control competences over the circulation of mechanical vehicles.

Subsequently, the Locomotive Act of 1865, normative act known under the name of the “Red Flag Act”, introduced much more restrictive rules – mechanical vehicles had to have a crew of at least three people and to be preceded by a person walking and carrying a red flag in order to warn other traffic participants, and the maximum speed was limited to 2 miles per hour in localities and 4 miles per hour outside them¹⁷.

Although this legislation reflects the difficulty of society to adapt and integrate an innovation into the existing legal order, with the consequence of delaying the development of this technology in Great Britain until

¹³ Michel Foucault, *Discipline and Punish: The Birth of the Prison*, New York: Vintage Books, 1975, pp. 195-228.

¹⁴ Cesare Beccaria, *On Crimes and Punishments*, London: Penguin Classics, 1764.

¹⁵ Guinness World Records (2024) First person charged with a speeding offence. Available at: <https://www.guinnessworldrecords.com/world-records/414379-first-person-charged-with-a-speeding-offence>; Historic UK (2023) Walter Arnold and the world's first speeding ticket. Available at: <https://www.historic-uk.com/HistoryUK/HistoryofBritain/Walter-Arnold-Worlds-First-Speeding-Ticket/>.

¹⁶ Encyclopaedia Britannica (2023) Roman transportation and traffic regulations. Available at: <https://www.britannica.com>.

¹⁷ Legislation.gov.uk (1865) Locomotive Act 1865. Available at: <https://www.legislation.gov.uk>.

the lifting of the restrictions imposed on self-propelled vehicles (moment historically celebrated through the Emancipation Run), the two Locomotive Acts are important because they introduce for the first time three fundamental ideas which will create the premises of the current normative framework: the legitimacy of state intervention in regulating circulation on public roads; the responsibility of the driver for behavior in traffic; the limitation of speed as a legal instrument for preventing risk.

At the end of the 19th century, France introduced, through the Paris Police Ordinance of 1903, one of the first driving licence systems and imposed the identification of cars through metal plates containing the owner's name and a distinctive number, this constituting the first form of vehicle registration. In Great Britain, the legal regime of circulation was reconceptualized through the Motor Car Act of 1903, which introduced driving licences, the vehicle registration system and a speed limit of 20 miles per hour¹⁸.

Circulation in Romania was also regulated long before the appearance of the motor vehicle, in the context of the organization of urban transport and of the activity of carriage drivers in cities undergoing a process of modernization, the increase in urban mobility determining local authorities to intervene normatively in order to maintain order in public space and to control the activity of transporters. One of the first legislative events in this field is the Ordinance of 1859 for the regulation of carriage traffic in Bucharest. The normative act had as purposes the organization of public carriage transport activity and the establishment of rules of conduct in traffic for carriage drivers, also establishing obligations regarding the compliance of vehicle drivers, the technical condition of carriages and harnesses, as well as the manner of carrying out the activity in the urban space. Also, carriage drivers were obliged to hold documents attesting the right to practice this activity and to comply with rules regarding order and discipline in carriage stations¹⁹.

The process of regulation was consolidated through the adoption, in 1868, of the Regulation for market carriages in Bucharest. This act detailed the administrative regime applicable to carriage drivers and established a series of sanctions for the violation of certain rules and obligations: the prohibition of driving while intoxicated, the obligation to maintain the vehicle in good working and clean condition, as well as the obligation to have lanterns lit at night. These norms can be considered the first forms of legal organization of circulation in the Romanian space, which, even if they did not yet concern the motor vehicle, represent an early example of administrative intervention over urban mobility.

The appearance of the automobile at the beginning of the 20th century generated a prompt adaptation of Romanian legislation. Technological development and the increase in the number of mechanical vehicles imposed the elaboration of specific norms to regulate their circulation, in this context being adopted in 1906 the Regulation of the police of movement and circulation on public roads. Also, a notable step in the evolution of Romanian road law was the Regulation for the circulation of motor vehicles from 1913, considered to be the first Romanian "road code". The normative act provided the technical conditions for the circulation of motor vehicles, the rules of conduct in traffic and the obligation to obtain a driving licence. In addition, it introduced rules regarding the adaptation of speed to road conditions, the obligation to slow down near curves, bridges or railway crossings and the necessity of stopping the vehicle in situations in which the circulation of pedestrians or animals could be endangered²⁰.

The adoption of this regulation reflects an essential transformation of the perspective of Romanian authorities on road mobility, the new legislation treating the circulation of motor vehicles as a complex social phenomenon that requires technical, administrative and sanctioning rules. Consequently, traffic law begins to acquire, in the Romanian legal space, the characteristics of a distinct field, focused on risk prevention and the disciplining of the behaviour of traffic participants.

The first examinations for obtaining a driving licence in Romania are attested in 1907. The examination, predominantly practical, was held before a commission composed of representatives of the police and of the local administration of Bucharest. Candidates had to demonstrate that they could control the vehicle, that they were capable of manoeuvring the automobile in the urban space and that they could react appropriately to traffic situations. At the same time, basic knowledge regarding the technical functioning of the automobile was also verified, as vehicles often required frequent mechanical interventions from the driver²¹. Unlike modern systems, the licence, which had a relatively simple form, similar to a certificate, was, in most situations, linked to a certain

¹⁸ National Motor Museum (2023) Motor Car Act 1903. Available at: <https://www.nationalmotormuseum.org.uk>.

¹⁹ Antena Satelor (2018) Istoria circulației în București. Available at: <https://www.antenasetelor.ro>.

²⁰ Cercel, S. (2008) Istoria dreptului românesc. București: Editura Universul Juridic.

²¹ Antena Satelor (2018) Istoria circulației în București. Available at: <https://www.antenasetelor.ro>.

type of vehicle or even to a particular vehicle, and administrative procedures were managed, mainly, by the police.

The driving licence marks the transition from an exclusive control over the vehicle to a control regarding the person who drives it and constitutes one of the main legal instruments through which authority regulates access to an activity potentially dangerous for the safety of circulation on public roads, alongside vehicle registration and sanctions applied for the violation of traffic rules.

After the Great Union of 1918, the Romanian legal system was subject to a complex process of legislative unification, under the influence of French law. Through the Penal Code of 1936, entered into force during the reign of Carol II, the tripartite system was established: crimes, delicts, contraventions. Therefore, an act of reduced gravity, the contravention, was clearly integrated into criminal law, being subject to the same sanctions, procedures and principles of law as the other two categories, crimes and delicts. Although the contravention was completely absorbed and subjected to the regime of criminal illegality, in parallel there were many other administrative deviations, provided by special normative acts, such as police regulations, norms regarding public order etc. These regulations were not applied in a unitary manner, which favoured the appearance of a legal and conceptual duality. The criminal contravention was subject to the jurisdiction of courts, and the administrative deviation was sanctioned extrajudicially, as, depending on the applicable norms, the finding and sanctioning of acts were carried out either by judicial bodies or by administrative authorities, which shows that the legal regime of contraventions was lacking predictability and, in a negative way, too flexible. In this sense, the most relevant example is the legislation regarding road traffic, incoherent and dispersed in various normative acts. The violation of traffic rules or of the obligations of drivers could attract either contraventional liability in the criminal sense, or the application of an administrative sanction.

During the communist period, the contravention is reconceptualized as a distinct form of illegality, with the consequence of its subordination to the administrative regime. Through the adoption of Decree no. 153/1970 regarding the establishment and sanctioning of contraventions, for the first time the administrative nature of the contravention is established, it being defined as the act committed with guilt, which presents a lower social danger than the offense and which is sanctioned administratively. In this qualification, the contraventional sanction, in the form of a fine or a warning, accompanied, depending on gravity, also by a complementary measure, could be applied on the spot or within a short term through a report drawn up by a finding agent within a state body. Although there was the possibility of contesting the sanction in court, access to justice was limited in practice, and procedural guarantees were reduced compared to current standards.

The administrative-repressive regime characteristic of socialism is replaced with a system in accordance with the requirements of the rule of law and of the European Convention on Human Rights following the reform of the existing legal framework, against the background of the political changes after 1989. Government Ordinance no. 2/2001 regarding the legal regime of contraventions represents a response to the need to adapt contraventional law to the new constitutional principles and to European standards in the field of fundamental rights. The normative act establishes a general framework, applicable to all contraventions and introduces, as elements of novelty: the systematization of sanctions, clearly establishing the types of main and complementary sanctions, as well as the criteria of their individualization; institutions such as the warning, the limitation period of the application of the sanction or the possibility of paying half of the minimum fine; the effective right to lodge a complaint before the court, within a clearly regulated procedural framework, thus increasing the degree of predictability and coherence of the contraventional regime. Compared to its predecessor, Government Ordinance no. 2/2001 is characterized by the balance between state authority and the protection of individual rights, introducing a legal institution subject to effective judicial control and to the principles of legality, proportionality and individualization of the sanction.

As regards the evolution of road legislation in Romania, the decisive role held by the Vienna Convention on Road Traffic (1968) must be mentioned, which introduced fundamental principles regarding the behaviour of traffic participants, road signalling, the recognition of driving licences and the technical conditions of vehicles, with the purpose of creating a common framework, meant to facilitate international circulation and to strengthen road safety. Romania's accession to the Convention determined the systemic alignment of Decree no. 328/1966 regarding circulation on public roads with the new European standards. Road systematization (colours, shapes, symbols, traffic signs) was standardized and unified, traffic rules were harmonized and clarified, becoming much more predictable, the possibility of mutual recognition of driving licences between states was introduced and rules regarding technical conditions and minimum safety standards were established, these

modifications being carried out gradually, not in a single stage. However, specific to the communist regime, the reform was partial and carried out in accordance with the characteristic ideology, without emphasis on legal guarantees or individual rights, but even in this incompletely adapted form, the decree constituted the “incubator” of the first Romanian legislation with a truly modern, unitary and systematized character, Government Emergency Ordinance no. 195/2002 regarding circulation on public roads.

Government Emergency Ordinance no. 195/2002 establishes a complex sanctioning regime, in which main contraventional sanctions are complemented by complementary sanctions and, in some cases, by technical-administrative measures. In this framework, the complementary sanction of the suspension of the exercise of the right to drive stands out, considering its particular relevance in the context of modern road safety policies, being conceived not only as a repressive measure, but also as a preventive instrument. Subsequent amendments of the normative act aimed at extending sanctions, tightening the sanctioning regime, introducing modern sanctioning mechanisms and the digitalization of procedures. Also, recent legislative interventions reveal a constant concern of the state to strengthen mechanisms meant to discourage dangerous behaviours in traffic, such as exceeding legal speed limits, driving under the influence of alcohol or psychoactive substances or aggressive driving behaviour.

Therefore, road traffic created the premises and represented both the reason and the foundation of the development of a predominantly administrative sanctioning regime, given the structure and defining elements of deviations from traffic rules. Analysed individually, they are acts with low social danger, but with significant risk potential at a large scale. Under these conditions, the classic criminal sanction, characterized by complex procedures, would not have achieved its preventive purpose. Instead, the administrative sanction allows a rapid and standardized reaction, adapted to the repetitive nature of road violations. The state does not intervene only *ex post facto*, but tries to reduce, vigilantly, the probability of recurrence by establishing preventive measures: traffic rules, speed limits, technical conditions for vehicles or the obligation of holding a driving licence.

6. Automated radar, a “road panopticon”?

„He who is subjected to a field of visibility, and who knows it, assumes responsibility for the constraints of power.”²²

In contemporary society, the panoptic mechanisms described by Michel Foucault are not limited to the classical institutions of discipline, such as the school, the army or the prison, but extend over other spheres of social life. The development of modern technologies of monitoring and data collection has allowed the emergence of forms of surveillance much more widespread and more efficient than those initially proposed through the architectural model of Jeremy Bentham. This tendency is also noticeable in the field of the regulation of road traffic, where the behaviour of drivers is subject to a permanent process of surveillance through technological monitoring systems.

Discipline is based on the effect produced by the permanent possibility of automatic surveillance upon the psyche of the individual. What are the levels and how do they manifest? First of all, the anticipation of the sanction intervenes, the individual being aware that the deviation can be detected without the necessity of direct contact with the authority, which leads to the immediate adaptation of conduct. The second level is the internalization of the norm: repetition creates the habit of complying, so that respecting traffic rules becomes a reflex response. The stabilization of conduct, the third stage, manifests itself through the maintenance of correct conduct over longer distances, especially in areas monitored with average speed control systems. From a psychological point of view, the individual no longer relates to the sanction as to an exceptional situation, but as to an ordinary, permanent possibility.

The first technical devices for measuring speed were invented in the second half of the 20th century, representative being the photographic device for measuring vehicle speed developed by the Dutch pilot Maurice Gatsonides. This technology subsequently led to the appearance of the first speed cameras in the 1960s²³.

In the 1970s–1980s, in several Western states, radar cameras effectively used for sanctioning speed were introduced, their use expanding with the development of digital technologies. In the United States, the first automatic speed monitoring systems, implemented in communities in Arizona, date from 1987, and in the 1990s

²² Michel Foucault, *Discipline and Punish: The Birth of the Prison*, New York: Vintage Books, 1975, p. 202.

²³ Kustom Signals (2025) *History of speed enforcement technology*. Available at: <https://www.kustomsignals.com>; Sensys Gatso (2024) *Speed camera history*. Available at: <https://www.sensysgatso.com>.

this technological solution was introduced in numerous cities in America. Equally, the European space offered an institutional and normative framework favourable to the development and expansion of automatic traffic surveillance systems. In 1976, Great Britain develops automatic number plate recognition systems (ANPR – Automatic Number Plate Recognition), initially used for security, later being integrated into road traffic control systems.

Today, these systems are used on a large scale in many states, such as France, Italy, Great Britain, the Netherlands, Spain, Belgium or Australia. In some states, the number of these devices is very high; for example, Brazil uses over 14,000 speed cameras and over 1,000 cameras for traffic light control, and Great Britain has thousands of such systems installed on public roads. This expansion of surveillance mechanisms in everyday life has been conceptualized in specialized literature²⁴ as being specific to the “surveillance society”, in which monitoring becomes an extended practice integrated into the social and technological infrastructure.

Modern automatic traffic surveillance systems are built on the basis of integrated technologies, which include: radar or laser sensors, which measure the speed of the vehicle; high-resolution digital cameras, which record the image of the vehicle; automatic number plate recognition systems; databases and IT platforms for identifying the owner of the vehicle and issuing the fine. When a vehicle exceeds the legal speed limit, the radar detects the deviation and triggers the camera, which captures images of the vehicle and of the license plate. The data are subsequently processed by the IT system and transmitted to the competent authority, which automatically issues the contraventional report.

Average speed control systems, also known as “section control” or “point-to-point enforcement”, measure the time in which a vehicle travels a certain distance between two cameras placed on the same road segment, and depending on this interval the average speed is calculated, whose exceeding is automatically sanctioned. For example, the Netherlands implemented the first permanent average speed control systems in 2002, this measure having the effect of significantly reducing violations of speed limits on monitored sectors. Another relevant example is the “Tutor” system introduced in 2006 in Italy, which covers thousands of kilometres of highways and has significantly contributed to reducing the number of traffic accidents. In this sense, the European Commission shows that these “average speed control” systems are particularly effective, as they reduce the number of contraventions to a few percentages or even below 1% on monitored sectors²⁵.

As a result, we observe that automatic systems substantially modify the classical procedure of establishing the deviation, which depended, in most cases, on the direct perception of the police officer and on the direct and immediate interaction with the offender. In a completely impersonal manner, the deviation is detected by a device, documented in digital form, correlated with the identification data of the driver and transformed into an almost autonomous process, which requires reduced human involvement. In this order of ideas, automatic traffic surveillance systems present certain characteristics relevant for modern discipline. Their functioning is continuous: they do not depend on the presence of a police crew in a certain place, but can operate permanently. The deviations found are standardized: speed, the distance travelled between two points or passing on red are detected by reference to uniform criteria. They have a documentary role, meaning they produce video recordings, photographs, metadata and temporal identifiers which represent the evidence of the sanction. Last but not least, they are scalable, which means that they can operate at the same time on a very large number of vehicles, without having a directly proportional effect in terms of human resources.

Datafication, the conversion of road behaviour into data, constitutes, as long as it respects the initial purpose, an important benefit of automatic systems. Elements such as speed, time, route, license plate, interval between two points etc. become measurable and processable units, resulting in a datafied version of conduct which facilitates the ability to order, filter and analyse millions of detections. Once collected and centralized, the data allow the identification of behavioural patterns or of high-risk areas of road infrastructure.

Despite the undeniable advantages in terms of road safety, automatic surveillance systems are the subject of doctrinal controversies and significant legal challenges that cannot be overlooked. For instance, the right to privacy and the legitimate limits of monitoring in public space are debated, as cameras and ANPR systems store

²⁴ David Lyon, *Surveillance Society: Monitoring Everyday Life*, 2001.

²⁵ European Commission (n.d.) Average speed control. Available at: https://road-safety.transport.ec.europa.eu/eu-road-safety-policy/priorities/safe-road-use/safe-speed/archive/speed-enforcement/speed-enforcement-techniques-and-their-effectiveness/average-speed-control_en; European Commission (n.d.) Speed enforcement techniques and their effectiveness. Available at: https://road-safety.transport.ec.europa.eu/eu-road-safety-policy/priorities/safe-road-use/safe-speed/archive/speed-enforcement/speed-enforcement-techniques-and-their-effectiveness_en.

images, license plates, routes, that is, data about individual behaviour and mobility. For this reason, even if they have proven their efficiency in practice, they raise considerable issues when discussing proportionality, purpose limitation, the manner and duration of data storage and the procedural guarantees offered to the individual concerned.

Another legal issue concerns the active subject of the contravention, as automatic systems identify the vehicle, not the person who drives it. In several legal systems, procedures have been introduced through which the owner is notified and requested to communicate the identity of the person who drove the vehicle at the time of the finding. This technological solution obviously simplifies the application of the law, but is in contradiction with the principle of personal liability and with that of the presumption of innocence in legislations built on the basis of an absolute administrative presumption, which implies, regardless of the case, the engagement of the liability of the owner for the act of another.

Paradoxically, the automation of the decision represents a major disadvantage of automatic systems, if analysed from the perspective of the preventive-educational role of the sanction. Although, from a formal point of view, the sanction retains its legal character and requires a procedural framework, in reality, the process materializes through a technical-administrative flow in which the sanction is based mainly on the data generated by the system. Technological neutrality is a frequently invoked argument in favour of automatic surveillance, as technology produces objective evidence, standardizes the legal reaction, eliminates subjectivity, arbitrary selection and modalities of individualization of the act. The system does not tolerate and does not differentiate according to the social status of the driver. However, "neutrality" must be viewed through the filter of prudence, considering the important legal effect it produces: the depersonalization of the sanction. The agent-offender relationship, in which the driver is stopped, warned or immediately sanctioned, becomes the exception, and the sanction in the form of an administrative communication based on technical data, the rule.

However, the same contravention can be committed under different conditions. Subjectivity or personalization of the sanction, formally called "individualization", is provided by the Romanian legal system, having an essential preventive-educational function. According to Government Ordinance no. 2/2001, the contraventional sanction must be individualized depending on the concrete circumstances of committing the act, the degree of social danger, as well as the personal circumstances of the offender, criteria which must be directly and immediately evaluated by the finding agent. In the absence of the effective possibility to individualize the sanction, the warning, especially in its oral form, is practically devoid of applicability in the hypothesis of digital finding. Or, in the absence of a direct interaction between the police officer and the offender, the efficiency of the institution of the warning is drastically reduced, if not even eliminated, transforming the contraventional sanction into an exclusively repressive mechanism. This direction contradicts the legal regime of contraventions, which stipulates that the warning is a main sanction and emphasizes the necessity of individualizing the sanction according to the concrete circumstances of committing the act, so that the legal reaction is proportional and efficient. Indeed, the offender retains the option of requesting the court to carry out an effective individualization of the sanction, but this variant inevitably involves additional material costs, a longer period of time and, at the same time, the risk of artificially burdening the activity of courts. In light of these considerations, the real purpose of sanction automation is questioned: a return to a strictly repressive mechanism, the omission of the legislator to preserve the place and role of the warning or the expression of a budgetary policy?

In Romania, through Law no. 383/2022 regarding certain measures for increasing the efficiency of road traffic monitoring, the "Integrated system for monitoring road traffic on public roads in Romania" (e-SIGUR) was introduced, an ensemble of IT systems, communication infrastructure, hardware and software platforms, certified or homologated technical means and metrologically verified, as well as services for printing and communication of documents. Monitoring is carried out, according to the normative act, through data collection by fixed or mobile technical means, followed by automatic and manual processing, aiming at supervising and controlling compliance with traffic rules, including the finding of their violation, but also identifying vehicles sought or subject to confiscation, establishing measures for the fluent and safe conduct of circulation, protecting infrastructure and administering roads.

In order to integrate e-SIGUR within the existing legislative framework, Government Emergency Ordinance no. 195/2002 was successively amended²⁶, legislative interventions aiming at adapting the classical procedure of finding contraventions to current technological realities. Thus, through Government Emergency Ordinance no. 84/2024, the normative framework was consolidated by expressly consecrating the possibility of finding contraventions with the help of certified or homologated technical means and by regulating the automatic processing of data collected by public road administrators. The introduction of art. 109² allowed the use of data obtained through monitoring systems for establishing violations of traffic rules, also establishing a mixed mechanism, in which automatic detection is followed by validation and manual processing by police officers. According to legal provisions, the system can detect deviations such as speed, prohibition or restriction of driving on a lane, passing on red, aggressive driving behaviour etc., however, at present, these functionalities remain largely at a theoretical and declarative level. Official data show that the project was operationalized and subsequently expanded only in 2025, being composed of radars placed in high-risk areas, and deviations are sanctioned after identifying the driver, the report being communicated to the domicile without the need to stop in traffic²⁷.

Despite being presented as an automated road traffic monitoring system, an obvious discrepancy is observed between rhetoric and operational reality. In fact, the equipment used consists of radar devices of the TruCAM type mounted on a tripod, placed, configured manually and subsequently removed by the traffic police officer, which contradicts the idea of continuous and systemic surveillance of traffic²⁸. The procedure still involves successive stages of downloading and manual processing of data, and the mechanism necessary for identifying the offender and applying the sanction remains the same: requesting the communication of data by post, the response (or lack thereof), drafting the report and communicating the sanction are carried out in the classical manner, without significant changes.

However, the existence of an automated and integrated system has been constantly promoted²⁹, being invoked approaches regarding the development of an extensive network of cameras and their interconnection into a unitary digital mechanism — assurances whose materialization remains, for the moment, uncertain³⁰. Under these conditions, the qualification of the system as being what it promises to be is debatable, as we are rather in the presence of a pseudo-automation, in which technology is used punctually, without substantially reforming the existing legal and procedural mechanism. However, as history has shown, real progress is not achieved through simple declarations of intention or hypothetical technical solutions, but presupposes complex structural processes, carried out over long periods of time. It remains to be seen whether and when this integrated system for monitoring road traffic will surpass the script stage and will be implemented in practice effectively, as a functional, coherent and truly automated mechanism, or whether it will continue to remain an aspiration undermined by technical and institutional limitations.

Returning to the panopticon, automatic road surveillance systems present essential structural similarities with it. In the architectural model, the subject was placed in a field of permanent visibility, without being able to know whether they were observed at a given moment, this combination between permanent potential visibility and the impossibility of verification disciplining behaviour. Automatic traffic surveillance systems produce the same effect: the driver is aware of the existence of monitoring infrastructure, but does not know the location of cameras, whether they record, what types of deviations are monitored etc. Therefore, power does not have to be effectively present constantly, but it is sufficient to be credible.

However, it must be mentioned that the analogy between the original Panopticon and the road one is not perfect. The former was an architectural model of a prison, a closed space designed for the re-education of

²⁶ Universul Juridic (2024) Modificări ale O.U.G. nr 195/2002 și O.G. nr 2/2001. Available at: <https://www.universuljuridic.ro/o-u-g-nr-195-2002-privind-circulatia-pe-drumurile-publice-si-o-g-nr-2-2001-privind-regimul-juridic-al-contraveniilor-modificari-o-u-g-nr-84-2024/>.

²⁷ Ministerul Afacerilor Interne (2025) Prima sancțiune aplicată după operaționalizarea sistemului e-SIGUR. Available at: <https://www.mai.gov.ro/prima-sanctiune-aplicata-dupa-operationalizarea-sistemului-e-sigur/>; Știrile ProTV (2025) Detalii despre radarele din sistemul e-SIGUR. Available at: <https://stirileprotv.ro/stiri/actualitate/politia-rutiera-noi-detalii-despre-radarele-din-sistemul-e-sigur-vor-fi-amplasate-in-fiecare-zi-in-zonele-cu-risc-rutier.html>.

²⁸ Laser Technology, Inc., TruCAM User's Manual. All-in-one Digital Video Camera/Laser Speed and Ranging Device, 2nd Edition, 2009, Available at: <https://ia803408.us.archive.org/31/items/manualzilla-id-6874222/6874222.pdf>.

²⁹ Știrile ProTV (2025) Cum funcționează noile radare inteligente. Available at: <https://stirileprotv.ro/stiri/actualitate/cum-funczioneaza-noile-radare-inteligente-si-ce-trebuie-sa-stie-soferii-politia-pregateste-700-de-dispozitive-mobile.html>.

³⁰ Europa FM (2026) Implementarea sistemului e-SIGUR amânată. Available at: <https://www.europafm.ro/implementarea-sistemului-e-sigur-amanata-cand-vor-deveni-functionale-camerele-radar-si-cele-pentru-calculul-vitezei-medii/>.

convicts, while the latter functions in an open space and aims at regulating the conduct of the majority, constituting an advanced and extended form of discipline. Consequently, the use of the panoptic model in the field of road traffic is limited by certain legal aspects. Unlike the primary idea of constant and general surveillance, in road traffic matters, surveillance is objectively punctual and dependent on the placement and effective functioning of technical means, which reduces the effect on conduct. In addition, the legal mechanisms specific to contraventional law, such as the individualization of the sanction and the necessity of establishing the identity of the offender, presuppose a human factor and the evaluation of concrete circumstances, both incompatible with a fully automated surveillance system.

7. Conclusions

“The purpose of punishment is not to torment a sentient being.”³¹

The analysis of the evolution of the legal sanction in the field of road traffic reveals a profound transformation of the manner in which modern societies manage behaviours that affect social values. Over a historical course of more than two millennia, punitive mechanisms have made the transition from the public spectacle of violence to advanced modalities of regulation and technological surveillance, this evolution confirming the hypothesis of the article, the legal sanction no longer constitutes, primarily, a reaction to the act, but an instrument of prevention and shaping, integrated into a permanent system of social control. In this sense, road traffic contraventional law represents a relevant example of the transition from the mechanism of visible repression to the model of invisible discipline.

Consequently, the trajectory of discipline in the field of circulation can be viewed as a transition from the dramatic visibility of control to the infrastructural invisibility of surveillance. At the end of the 14th century, the “man with the red flag” embodied the authority of the law, through a real and visible presence. Nowadays, this role belongs to automatic monitoring systems, in which control is dispersed and integrated into the techno-legal ensemble. At present, the sanction no longer operates exclusively *ex post facto*, but is doubled by *ex-ante* mechanisms, oriented towards prevention and anticipation.

The results of the research highlight that automatic surveillance systems have a double role, they increase the efficiency of the application of road rules and contribute to the internalization of discipline by traffic participants. This conclusion fits within Michel Foucault’s vision, according to which “punishment has become the most hidden part of the penal process”³², and the efficiency of the sanction does not derive from its spectacular character, but from its integration into a discreet and continuous monitoring mechanism. At the same time, the psychological effect of surveillance, rendered through the statement “visibility is a trap”³³, consists in shaping conduct through the anticipation of the possibility of observation, not only through the sanction actually applied.

The impact of the research results consists in the reconfiguration of the manner of understanding road traffic contraventional law, demonstrating that it no longer has only the role of sanctioning, but has been transformed into a visionary preventive instrument, which is part of a broader policy of surveillance and behavioural shaping, similar to a “road panopticon”. At the same time, the antinomy between the efficiency of standardizing the sanction and the necessity of its individualization is highlighted, giving as example systems such as e-SIGUR, which, although promoted as a manifestation of automation, are, in fact, only formally digitized, without eliminating human intervention or modifying the traditional procedure.

Regarding future research directions, I consider that the study has launched several relevant challenges, opening perspectives that require further deepening: the individualization of the sanction in the context of the automation of the finding process; the legal implications of the use of data in road surveillance systems, in relation to data protection and decision automation; the efficiency of different models of automatic surveillance in European states, in correlation with the level of compliance and the reduction of accidents; the long-term psychological impact of surveillance on the behaviour of drivers and on the perception of the legitimacy of the legal sanction.

In conclusion, the “road panopticon” is not only a theoretical metaphor, but faithfully reflects the legal and technological reality of contemporary society. Therefore, from the whip that lashed the body of the condemned

³¹ Cesare Beccaria, *On Crimes and Punishments*, London: Penguin Classics, 1764.

³² Michel Foucault, *Discipline and Punish: The Birth of the Prison*, New York: Vintage Books, 1975, p. 9.

³³ *Idem*, p.200.

to the radar that records the speed of a vehicle, the legal sanction has not disappeared, but has radically changed its form and role. In this new paradigm, discipline is no longer imposed, but produced, and compliance is no longer the result of immediate fear, but of a structural and conceptual transformation of the legal order.

Law transforms depending on the manner in which technology is used in state policies, and today law no longer functions through presence, but through possibility, not because it is seen, but because it can see.

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