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Considerations with Regards to the Subjective Part of the Involuntary Manslaughter

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Abstract: In the context of the constant growth of the number of cars registered in Romania, allowing the vehicles to access public roads is a major risk for the drivers. The modernization process of the means of transport for the rural areas of the country is highly delayed, so a coexistence between the old means and the current means of transportation results often in serious accidents in which both vehicles and rolleys. In such cases, the issue of guilt rises, guilt which is oftentimes shared both by the automobile driver and the rolley driver. Mostly the drivers of the rolleys are victims, and under these conditions one might ask themselves if the Courts won't incline to establish de plano a common guilt, although the rules of evidence suggest an exclusive guilt on the victim's part.

Keywords: accidents; presence of alcohol; carloads on national roads; violations of the legal provisions

1. Preliminary Considerations

A recent decision of the Court brings forward controversial issues as relating to the felony of manslaughter, as well as the felony of being guilty and connecting the material trait of this felony and the illicit non-action, which leads to the death of the victim.

Thus, by the penal sentence 2251/11/12/2014, the Court of Vaslui condemned the felon F.L. to prison for one year and a half, for manslaughter, as punished and sanctioned by Art.178, Paragraph 2 and 3, Penal Code, and with applying Art.81, Penal Code.

In fact, the event was based on the danger produced by the accused, F.L., who drove drunk and due to the impossibility to adapt the speed to the road conditions, didn't notice in time the carload, neither did he notice the victim, M.I. and the state of danger caused by the victim, who was also driving drunk a carload without any signals, the Court noticing that both the accused and the victim could have prevented the accident from occurring if they respected the legislation.

Against this decision, the accused appealed, and invoked the lack of culpability, but ignored the disrespecting of other rules and regulations on public roads.

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2. Applying the More Favorable Criminal Law

The test case presented above raises various other issues of juridical nature, connected to the subjective part of the involuntary manslaughter felony, mostly when there is also a lack of obedience with regards to driving a vehicle on public roads, without this felony being connected directly to the death of the victim, though.

The serious form as stated by Art.178, paragraph 3, Penal Code 1969 and punished with imprisonment from 5-15 years exists when manslaughter is performed by a driver of a rolley bearing an amount of alcohol which overpasses the legal limit or being drunk.

From the point of view of forensic medicine, the presence of alcohol means being intoxicated with alcohol. As per Art.87, paragraph 1, of the Governmental Order 195/2002, the legal limit of alcohol which draws onto it the legal accusation is of 0,8 g/l of pure alcohol in blood. The drunkenness is different and doesn't necessarily connect to a certain concentration of alcohol in the blood, some persons being highly resistant and some others being highly sensitive to alcohol (Pavaleanu, 2009).

By "drunkenness" we understand the psychological and physical disorder under the influence of the intoxication with alcohol.

The problem of the juridical classification of a person's action, who drove a vehicle on public roads and bore an alcoholic concentration over the limits and provokes the death of another person by accident, was highly debated in specialized literature. Thus, some authors, influenced by the juridical practice, considered that the felony as per Art.178, paragraph 3, Penal Code 1969 has a very complex character, absorbing the incriminating deed as per Art 87 of the Governmental Ordinance 195/2002. Other authors don't share the same opinion, claiming that the incriminated deed couldn't be in any way included in the felony of manslaughter , the two separate deeds occurring possibly only under the same circumstances, but nothing more (Boroi, 2006).

In order to unify the juridical practice existing before the current Penal Code, the Supreme Court decided that driving on public roads a vehicle or a tramway by a person bearing an over-the-limit alcohol amount in the blood and causing the death of a person is a complex felony, as per article 178, paragraph 3, Thesis 1, in which the felony as per article 87, paragraph 1 – Governmental Ordinance 195/2002 is included(Supreme Court, 2000).

Conversely, as per the current Penal Code, if the felony of manslaughter is a felony of its own, the rules which prevail are the ones applied to the felony contexts.

This way, in what regards mitior lex, even in the case of retaining the common guilt of the victim and the accused, art.192, paragraphs 2 and 3 and Art 336 Penal Code are imposed, as well as Art.38, Penal Code, the felony being a connection between manslaughter, punished with 2-7 years of imprisonment and driving a vehicle in a state of drunkenness, punished with 1-5 years of imprisonment. As follows, comparing both the punishment limits and the rules of the context in which the felony was performed, one can state that the Penal Code contains more favorable provisions than the prior regulation, with regards to manslaughter due to a state of drunkenness over the legal limit.

3. Juridical Practice Aspects

We state that in order to give a valid solution we should take into account the actions and lacks of actions of the accused and the victim in whole, so as to establish their guilt in producing the lethal

accident. There are situations in which the deathly accident is over imposed with driving the vehicle under a state of drunkenness, without the accident being thus avoided equitably.

We take into account the fact that when the Court is noticed by means of an indictment in which manslaughter is marked, as performed by a driver who bore an illegal amount of alcohol when the accident occurred, and in case the Court marks that the victim is exclusively guilty, the juridical framework is changed, and the felon be acquitted for manslaughter and convicted for drinking and driving, bearing a quantity of 0.8 g/l alcohol in the blood.

Due to the same reasons there are some other opinions in connection to this matter, as per the Courts and Penal sanctioning bodies.

Thus, in a test-case decision, the Supreme Court (*apud* Udroiu, 2011) decided that "*The guilt of the driver in case of a lethal road accident can be marked only when he breached a regulation with regards to the circulation on public roads and only if between this breach and the death of the victim we can establish a connection. If the accident is the victim's fault, noticing the presence of alcohol in the driver's blood is irrelevant under the conditions of being guilty of manslaughter".*

Also, in other Courts' practices within the country (Bucharest Court of Appeal, 2009), we argued that "*Marking the breach of a legal provision with regards to driving a vehicle on public roads is not enough for being accused of causing the road accident, and thus causing the death of the victim, and so it is necessary to analyze in what way the breaching of legal provisions influenced the accident which caused the death of a person. The accident was caused exclusively by O.C.M., who didn't have the right to drive that kind of vehicle on a national road (therefore, the presence of this type of vehicle wasn't overseen by the accused, P.C.), and drove the carload very close to the edge of the road (thus disabling P.C. from avoiding the carload) and without any signaling systems (which lead to the belated observation of the carload by the accused P.C.). As compared to the things marked in as per Art. 385, point 2, letter d, Penal Code, the Court completely admitted the appeal, annulled totally the penal decision and partially the sentence and separated the sentence applied to the felon P.C. and as per art.11, point 2, letter a) connected to art.10, letter d) Penal Code, disposed acquitting the accused P.C. for committing the felony as per art 178, paragraph 2, Penal Code".*

This way in the practice of the penal Code[1], similar juridical arguments were issued. For instance, the Public Prosecutor's Office of the Court of Iasi concluded that "establishing the fault of a person in performing an action which generates a prejudice is done by means of the norms and regulations which conduct that very activity and which are breached in. Thus, as we stated above, the driver of the carload didn't respect the obligations imposed by the Governmental Ordinance 195/2002 with regards to the conditions under which such vehicle can circulate on public roads at night. Non-considering these obligations generated a state of danger for the other drivers – a state which could be neither avoided, nor anticipated by the driver of the automobile."

In the same way, the Prosecutor's Office of the Court of Roman[2] stated that „By connecting all the evidences results that the victim S.I. entered the road through a spot where there weren't indicators or markings for pedestrians, in a state of drunkennes and without ensuring that he can go through without causing prejudices to the others. As per the above-stated, the deed doesn't constitute as felony, because the driver of the automobile respected the legal provisions with regards to circulating on that type of road but couldn't avoid the accident because the victim breached the provisions in Art.72, Governmental Ordinance 195/2002, this way being exonerated from penal punishment."

[1] GO no. 11/25/2011 din of file 1769/II/2/2011 of the Prosecutor's Office of the Bar of Iasi.
[2] The Resolution of 10/14/2011 of the File 1304/P/2011 of the Prosecutor's Office near Roman.

4. Specialized Literature Aspects

Due to the nature of the felony, establishing with certainty the connection between the cause of action or lack of action of the felon and the death of the victim is highly necessary, this issue being also supported by the Doctrine (Udroiu, 2014).

Also, some authors highlighted that there are situations when additional factors or elements intervene, either prior or simultaneous to the action or lack of action on the felon's behalf, or even later, which interferes and causes a complexness of the causal connection. Because the Penal Law cannot accuse but the person that performs action or lack of action which can be connected to the negative result provided by the incrimination norm, we must draw out of the multitude of contributions which constitute that complexity, that one which bears the title of Cause, being the expression of the dangerous behavior of the felon. In this respect, we should consider the connections generated by actions or lacks of action on various persons' part, even if among these persons we have the victim. Also in the specialized literature, we argued that under the hypothesis in which the exclusive fault of the victim is market as such, we can exclude the penal responsibility of the felon (Basarb, Pasca, 2008), (Loghin, Toader, 1999).

Considerations with regards to the legal norms which regulate the circulation on public roads. Under the conditions in which two criminal expertise reviews compiled by the experts of INEC state that the accused was driving 50 km/h in the countryside, therefore respecting the legal provisions for circulating on this type of road, assuming a higher fault of the victim is concluded as evidence. The conclusions of the expertise reviews aren't mandatory for Court, but neither can they be annulled on no accounts.

Thus, we state that we cannot ignore the conclusions of such reviews which are connected with each other when they conclude that the victim could have avoided the accident if he didn't drive on a road on which the access of the vehicle was prohibitted. These conclusions all the more so true as they are confirmed by objective eyewitnesses such as the drivers who drove right behind the vehicle of the felon.

Another legal aspect in order to establish the fault of the felon is connected strictly to the violations of the legal provisions themselves, provisions which regulate the circulation on public roads. Thus, the major accusation of the victim also stems from the circulation rules ignored by the victim, as compared to those of the felon.

The drivers of carloads don't need any license to drive these types of vehicles on public roads, therefore they don't know the legal depositions which regulate the circulation on public roads like the automobile drivers do. Due to not knowing the rules and regulations for driving these types of vehicles, the drivers of carloads violate constantly the rules, being dangerous both to themselves and to the other drivers.

Oftentimes, the carloads and their drivers aren't equipped as required for night-time driving, as per article 165, paragraph 1 of the Rules of the Governmental Ordinance 195./2002. Also, the drivers violate the provisions of Art 71, paragraph 3 of the Governmental Ordinance 195/2002 according to which the access and driving of the carloads on national roads is prohibitted, as well as on roads at the beginning of which there are signs that say access isn't allowed.

But, in addition to violating the rules of Art.71, GO no.195/2002 and of Art.165, paragraph 1 of the regulations of the Governmental Ordinance 195/2002, the provisions of Art 164 of the Regulation

aren't respected either: "On public roads on which access is permitted, the carloads must be driven as close to the right edge of the road".

Moreover, the provisions of Art.165, paragraph 1, letter i) of the Regulation are violated as well, according to which the drivers of carloads "must not transport objects which overpass the length or width of the vehicle, if the load isn't provided with signals at night or under conditions of low visibility, with a fluorescent device on the back of the carload", as well as the provisions of Art.163, paragraph 2, letter b of the Regulation and of Art.17, paragraphs 1 and 3 which state the mandatory loads for these types of vehicles during night time.

The violation of at least one of the imperative rules stated above accuses the victim of being a felon.

A very significant aspect connected to the above-mentioned issues is the fact that the Police doesn't sanction these types of misbehaviors, because they are considered not to be that serious. In an effort to prevent the road accidents, although one emphasizes the responsibility of the drivers, one doesn't insist on the responsibility of the carload drivers, whom due to the fact that they are considered victims, might be exonerated from juridical responsibility.

Moreover, under these circumstances, the way in which a fault or guilt is established is also important, such as the way in which the accused and the victim might share guilt.

In this respect, we ask ourselves which is the measuring unit for the Court to establish the percentage of guilt shared by both parties. In other words, how can we state that the victim's fault would be 50% and not 60%, or 90% or 100% etc.

5. Conclusions

Causing the death of a person when driving a vehicle on public roads doesn't determine a cause and effect connection between driving the vehicle and causing the death of that person. Moreover, driving on public roads under a state of drunkenness doesn't prove the felon guilty of causing the death of the victim. The result of causing the death of a person after driving in a state of drunkenness must be proved with clear evidence, which must not infer doubt, as per the principle in dubio pro reo.

In fact, a favourable factor for these types of deadly accidents is the fact that the Police doesn't fulfill its duties with regards to road safety on public roads. Thus, the Police allows the access of overloaded vehicles, during night-time and without signaling systems, on national roads which are far from having public lighting, although these vehicles should have been obliged to get out of the road and the drivers be sanctioned for causing danger to all drivers. Under these conditions, we can state that there is a fault on the police's behalf, it being obliged to ensure that the driver can drive his vehicle safely on the road, without any obstancles impossible to anticipate thoroughly. As such, we state that violating the right of the drivers to drive safely on public roads is considered to be one of the causes of such types of lethal accidents.

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